

THE IMPACT OF THE DEATH OF THE ACCUSED AND CONVICTED ON THE ENFORCEMENT OF PUNISHMENTS: PERSPECTIVES FROM AFGHAN CRIMINAL LAW

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Abstract. *It is an undeniable and fundamental principle that every individual is accountable for their criminal actions and consequently subject to punishment. Punishment serves not only as a necessary and legitimate means of social protection but also as an instrument for the rehabilitation of the offender. However, the implementation of certain forms of punishment—especially corporal penalties—may become impracticable or impossible when the accused or convicted individual passes away. It is therefore essential to determine which punishments are extinguished by the death of the offender and which remain unaffected. This study aims to explore the effects of the death of the accused and the convicted on the enforcement of punishments from the perspective of Afghan criminal law. Employing a library-based, descriptive-analytical approach, the researcher draws on relevant literature to investigate the issue. Findings reveal that if the accused dies during pre-trial judicial procedures—such as investigation or prosecution—the proceedings are halted and discontinued. Conversely, if the convicted dies following the issuance of a final court verdict, all corporal and capital punishments, including imprisonment and execution, become null and void. It is noteworthy, however, that the death of the accused terminates civil liabilities and confiscation of illicit assets, while the death of the convicted does not impede the enforcement of financial penalties, compensation claims, or the seizure of unlawful property.*

Keywords: *Afghan criminal law, accused, convicted, death, punishment.*

Introduction

A deep reflection on the course of human history reveals that crime and wrongdoing have perennially existed and been universally regarded as undesirable social phenomena. Societies across ages have thus responded by formulating and imposing punishments tailored to deter and penalize offenders. In many early legal systems, these punishments were often severe and primarily designed to protect society and victims rather than to rehabilitate the offender. Over time, however, penal philosophies evolved, gradually embracing the goal of offender rehabilitation alongside societal protection. Today, the administration of justice seeks not only to safeguard the community but also to guide offenders toward reform. Nonetheless, circumstances arise in which an offender dies before the imposition or execution of punishment, rendering certain punishments—especially those of a corporal or capital nature—impossible to carry out.

These punishments require the physical presence of a living individual; thus, the death of the offender effectively extinguishes the rationale and feasibility of such sanctions.

Consequently, corporal punishments lapse upon the death of the accused or convicted.

Meanwhile, financial penalties, restitution, and confiscation of illicit property remain enforceable regardless of death.

This research endeavors to critically analyze the influence of the death of the accused and convicted on the enforcement of punishments within the framework of Afghan criminal law. It seeks to answer the central question: What is the effect of the death of the accused and convicted on the enforcement of punishments under Afghan criminal law? The study adopts a descriptive-analytical methodology based on library research.

Prior scholarship has addressed related issues; for instance, Mohammad Ashraf Rasouli's *Principles of Criminal Proceedings* discusses the impact of the death of accused or convicted individuals on financial penalties. Similarly, respected scholar Alam Estankzi addresses this topic in his work *Principles of Criminal Proceedings*, while Fazl-Ur-Rahman Ayubi and Mohammad Shafi Salehi have examined the implications of the accused's death on punishment enforcement in their writings. While these works predominantly focus on legal interpretations, this study uniquely integrates perspectives from both legal frameworks and Islamic jurisprudence.

The paper proceeds by first defining key concepts and general principles, then examining the impact of death on the implementation of punishments, including financial penalties and the responsibilities of co-offenders and accomplices, as well as on specific punishments such as Hudud, Qisas, Diyyah, and Tazir. Finally, it addresses the broader legal and moral implications of the death of the accused or convicted, concluding with recommendations and references.

Literature Review

Prior scholarship addressing related matters includes Mohammad Ashraf Rasouli's *Principles of Criminal Proceedings*, which discusses the impact of the death of the accused or convicted on financial penalties; Alam Estankzai's *Principles of Criminal Proceedings*; and the works of Fazl-Ur-Rahman Ayubi and Mohammad Shafi Salehi on implications of the accused's death on punishment enforcement. These studies primarily adopt a legal interpretive perspective, whereas this research additionally integrates Islamic jurisprudence.

Methodology

This research employs a qualitative, doctrinal methodology relying on library-based resources. The analysis is both descriptive and analytical in nature, focusing on primary Afghan legal texts, scholarly opinions, and classical Islamic jurisprudence. The integration of statutory provisions and fiqh-based interpretations provides a dual legal perspective throughout the study.

Conceptual Definitions

1. Accused

An accused is someone who has been charged with an allegation or is under suspicion and doubt (Dehkhoda, 1998: 311). Jafar Langarudi, in his *Legal Terminology*, states: "An accused is a person who has been accused but whose crime has not yet been proven" (Langarudi, 2012: 828). Imam Abu Hanifa (may God have mercy on him) holds that the accused shall not be punished until their crime is established by clear evidence and confession (Kasani, 1985 AH: 62). In *Principles of Criminal Procedure* by the legal scholar Mohammad Ashraf Rasouli, the accused is defined as a person who has passed beyond suspicion and doubt, and judicial officials have collected sufficient evidence obligating that individual (Rasouli, 2018: 77).

2. Judgment

In Islamic jurisprudence, a "judgment" (hukm) is the affirmation or negation of a matter by the Lawgiver regarding the actions of the accountable (mukallaf) (Amedi, 2023: 111).

In other words, a legal ruling is God's command to His servants concerning their deeds, presented as obligation, preference, or permissibility. Furthermore, in Ja'far Langarudi's Terminology, judgment is defined as the verdict issued by the court at the conclusion of a judicial session concerning the substance of the claim; this verdict may be in-person or absentee, final or subject to appeal (Langarudi, 2012: 229).

3. Convicted Person

A convicted person is one against whom a competent court has issued a ruling obligating them in accordance with the governing legal provisions after trial (Rasouli, 2018: 79). In other words, a convicted person is one against whom the court's judgment has been rendered, whether the subject matter is civil or criminal (Langarudi, 2012: 739). In Islamic jurisprudence, if the truth is proven by evidence or confession, the judge imposes a ruling against that individual, who is then termed the convicted person and is bound to comply with the judgment (Ibn Qudamah, 1985 AH: 103).

4. Punishment

In Islamic jurisprudence, punishment is generally synonymous with terms such as penalty, hudud, Tazir, Qisas, and so forth. Punishment is the religious and legal response aimed at executing justice and deterring crime in relation to the commission of a forbidden act or offense (Serakhsi, 1985 AH: 70). Mohammad Ali Ardabili, in his General Criminal Law, defines punishment as "the official and legal reaction of the state to the commission of a crime, which is imposed upon the offender pursuant to a final court ruling" (Ardabili, 2019: 316).

The Effect of the Death of the Accused and Convicted on the Implementation of Punishments

Upon the death of the accused or the convicted, criminal proceedings or enforcement of punishment—at any stage of judicial pursuit—are halted. This topic is discussed in two sections: the effect of the accused's death on the implementation of punishments, and the effect of the death of convicted on enforcing penal judgments by competent courts.

1. Death of the Accused

One circumstance leading to the dismissal of a criminal case is the death of the accused.

If the accused dies, the criminal case is suspended. This is evident because crime is a personal act; prosecution, detention, and punishment do not extend to others. Consequently, upon the death of the accused, there remains no basis to pursue criminal charges or continue judicial processes, thus the criminal case is halted immediately (Rasouli, 2018: 556). In Islamic jurisprudence, the death of the accused before the issuance of the court's judgment and the implementation of punishment results in the dismissal of the case, especially in corporeal and personal punishments such as those related to alcohol consumption, adultery, Qisas, and corporal Tazir (Ibn Qudamah, 1985 AH: 96). Article 39 of the 2014 Afghan Criminal Procedure Code stipulates: "In case of the death of the accused, prosecution and criminal proceedings shall be suspended; however, if there exist rights of the individual (huquq al-abd), civil claims shall be pursued according to relevant laws." This implies that if the crime involves a private right (such as blood money or compensation), the claimant may file a private claim against the heirs of the accused.

Several scenarios arise upon the accused's death:

1. If the accused dies after the crime has been discovered or during the investigation phase, the investigation ends immediately.
2. If death occurs after the investigation but before trial, the court proceedings are halted.

3. If the accused is convicted in the primary court but dies afterward, the public prosecutor cannot appeal the verdict (Rasouli, 2018: 557).

1.1 Effect of the Accused's Death on Financial Judgments

The accused's death does not affect compensation, confiscation of illicit property from their heirs, or fines. Hence, the heirs are obligated to pay any private claims for damages and surrender illicit assets and fines to judicial authorities (Neddie, 2024: 60).

1.2 Effect of the Accused's Death on Accomplices and Partners

In cases involving multiple perpetrators—whether direct, accomplices, or partners—the death of one direct perpetrator does not absolve others from liability; criminal proceedings continue against them and may lead to their trial. Similarly, the death of an accomplice does not halt prosecution of the direct perpetrator and partners, nor does the death of a partner exempt the others from punishment (Rasouli, 2018: 556).

2. Death of the Convicted

If the punishment is corporeal or personal, it ceases upon the death of the convicted because the execution of punishment targets the offender's person; if the offender no longer exists, punishment is impossible. However, if the punishment is financial—such as blood money, fines, or confiscation of property—the death of the offender or convicted does not nullify the penalty, as enforcement remains feasible (Awda, 2015: 737). Punishments have several aims, chiefly the reformation of the offender, societal protection, and deterrence. The primary goal is offender reformation, which presupposes the offender's existence; thus, death prevents this goal's fulfillment. Therefore, the death of the accused or convicted results in the termination of criminal proceedings (public prosecution) and corporeal punishment (Alm Estanakzay, 2019: 231).

2.1 Extinguishment of Hudud, Qisas, and Diyah Upon the Death of the Convicted

Hudud penalties cease with the death of the convicted, as corporeal punishments cannot be applied posthumously (Ibn Qudamah, 1985 AH: 96). Regarding whether the death of the convicted causes the extinguishment of Qisas and its substitute (Diyyah), jurists differ. Imam Abu Hanifa and Imam Malik hold that Qisas ceases with the death of the offender, and consequently, Diyyah also lapses because its payment requires the offender's consent, which cannot be given posthumously. Thus, the death of the convicted extinguishes both Qisas and Diyyah regardless of whether the offender dies due to illness, murder, or divine punishment; in all cases, Diyyah is not obligatory on the offender's estate (Awda, 2015: 737).

However, if the offender is wrongfully killed, Imam Malik's view grants the victim's heirs the right of Qisas, obliging the heirs of the second victim to obtain their consent for retaliation or pardon. If consent cannot be obtained, the first victim's heirs may execute Qisas or pardon. If blood money was paid by the second victim's heirs but the first heirs remain dissatisfied, and the offender died accidentally, Diyyah belongs to the first victim's heirs (Awda, 2015: 738). Imam Abu Hanifa holds that death by just or unjust means equally extinguishes Qisas and Diyyah on both the offender's and the victim's estates. Conversely, Imam Shafi'i and Imam Ahmad hold that while Qisas is extinguished by death (just or unjust), Diyyah replaces it as an alternative punishment payable from the offender's estate (Awda, 2015: 738). The death of the convicted does not affect monetary fines, confiscations, or compensation claims (Neddie, 2024: 60).

2.2 Extinguishment of Tazir Punishments Upon the Death of the Convicted

If the convicted dies after the judgment is finalized, all Tazir punishments affecting life and liberty—such as imprisonment, substitution of imprisonment, or execution—cease, as

enforcement becomes impossible. However, fines, monetary penalties, and compensation may still be collected from the deceased's estate (Rasouli, 2018: 557).

3. Effects of the Death of the Accused or Convicted

As previously noted, the death of the accused or convicted results in the suspension of criminal prosecution against them. This suspension does not affect others involved in the crime. Notably, the death of the accused does not nullify civil claims (huquq al-abd) arising from the crime, which may continue. Moreover, the death of the accused or convicted does not impede the confiscation of illegal property or inherently criminal objects (Ayubi, 2017: 140).

Conclusion

Focusing on the points discussed above, it is understood that the enforcement of punishments upon offenders, with the aim of their reform and rehabilitation as well as the protection of society, has always been an inevitable necessity. However, sometimes the continuation of criminal proceedings becomes impossible due to the death of the accused.

Moreover, the implementation of certain punishments after the issuance of a court verdict, when they concern the personal obligation of the offender, is extinguished if the convicted individual or accused dies. In this context, the death of the accused or convicted person does not affect the continuation of judicial prosecution or the enforcement of punishments against other individuals involved in the commission of the crime through various means (such as perpetration, partnership, or assistance).

It should be noted that the death of the accused or convicted party only affects the enforcement of those punishments that directly impact the physical body or life of the offender, such as retaliation (Qisas), execution, imprisonment, flogging, and the like. Under our country's laws, the enforcement of other punishments, such as monetary fines, is not disrupted and remains possible. Indeed, after the death of the convicted individual, the amount owed may be collected from the deceased's estate. Although in some countries the death of the convicted may also lead to the extinction of monetary penalties, this is not the case in our legal system. It is also important to note that the death of the accused does not preclude the confiscation of illicit property nor does it affect civil liability.

Hence, it can be concluded that the death of the accused results in the dismissal of the criminal case. If, after the issuance of a judgment by a competent court, an individual is found to be a convicted party, their death will lead to the extinction of corporal or life-related punishments, provided these punishments are physical in nature. This is because, according to the laws of our country, the death of the convicted party does not affect the enforcement of financial punishments such as fines.

Recommendations

Most domestic sources have examined this subject with a focus on the Criminal Procedure Code of Afghanistan (1393 AH), while our penal system is entirely based on Islamic jurisprudence. Therefore, there is a pressing need for esteemed scholars to undertake research and produce academic works on this topic within the framework of Sunni jurisprudence, particularly Hanafi fiqh.

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