



*Corresponding author:

**Dr.ANOUD MADLOOL
SBAHN**

University: Wasit University
College: College Of Law
Email: anod204@uowasit.edu.iq

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The Negative Punishment of Freedom in Islamic Law

ABSTRACT

Islamic rulings are means towards achieving purposes (Al-Munthur, 2011), and their foundation is based on bringing benefits and preventing harm. When harm and benefit conflict, prioritizing the prevention and removal of harm is generally given precedence over obtaining benefits (Al-Sabki, 1991), unless the harm is overwhelmingly dominant. Care for avoiding prohibited actions is more stringent than performing obligatory actions due to the harm that may result from violating the wisdom of Islamic rulings in prohibition (Ali Jum'a, 2001).

In the case of the prevention of harms, if it is possible to prevent them, they should be prevented. If preventing harm is impossible, the lesser harm is chosen, and if they are equal, a decision must be made. Islamic rulings interests are manifested in two ways: the positive approach, which involves pursuing benefits, aiming to find positive means to achieve the legal purpose and maintain it, and the negative approach, which involves warding off harms from both expected and actual perspectives through legislation that prohibits and penalizes attacks on the legal purpose (Al-Kubaisi, 2016). This is referred to as negative freedom sanctions by tightening the grip on anyone who dares to violate the rights of others. This is the focus of this research, which is divided into two sections, followed by a conclusion, and references are mentioned.

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العقوبة السالبة للحرية في الشريعة الإسلامية

م. د. عنود مدلول سبهان سعيد / كلية القانون – جامعة واسط

الخلاصة:

ان الأحكام الشرعية هي وسائل الى غايات مقاصدية (أبو المنذر ، 2011م) ، وأساسها جاءت لجلب المنافع ودرء المفساد ، فإذا تعارضت مفسدة ومصلحة، فدفع المفسدة وإزالتها مقدّم في الغالب على جلب المنفعة (السبكي، 1991م) ، إلا أن تكون المفسدة مغلوبة ؛ فالعناية بترك المنهيات أشد من فعل المأمورات، لِمَا يترتب على المناهي من الضرر المنافي لحكمة الشارع في النهي (علي جمعة، 2001م) ؛ وفي حال

اجتماع المفسد فان امكن درؤها درأناها ، وان تعذر درأنا الأفسد فالأفسد ، وان تساوت نتوقف أو نتخير وان اختلفت فالمصالح الشرعية تكمن في طريقتين هما : الطريق الإيجابي : جلب المصالح ، ويراد به (ايجاد الوسائل الايجابية لتحصيل المقصد الشرعي واستمرار بقائه ، أي المحافظة عليه من حيث الانشاء والبقاء) (الكبيسي و 2016م))، وهذا يتمثل بالأمر الأساسية لديموميه الحياة البشرية من ضروريات وما يتعلق بها من تكميليات ، والطريق السلبي : دفع المضار من جانبيين (جانب العدم المتوقع : وهو تشريع القوانين المحذرة من المساس واستمراره، بتحريم الاعتداء عليه ، وهو احتراس مما يحتمل أن يقع على المقصد من اخلال . أما جانب العدم الواقع : فيعني أنه متى ما حصل اعتداء فأن تلك التشريعات— من قصاص وحدود— ستنفذ في حق الجاني حفظاً على المقصد الشرعي...) (الكبيسي و 2016م) ، وهذا ما يطلق عليه بالعقوبات السالبة للحرية بتضييق الخناق على كل من تسول له نفسه الاعتداء على حق الغير ، وهذا ما سنتطرق اليه في هذا البحث الذي قسمته على مبحثين ، ثم خاتمة وذكر المصادر والمراجع ، وبالله نستعين ...

الكلمات المفتاحية : العقوبة السلبية، الواقع، العدم غير المتوقع

1- Introduction

Thank God, prayers and peace be upon our Prophet Muhammad and on his God and those who follow him until the day of judgment, but after:

The Islamic provisions are means to purpose purposes, and the basis of which is to bring benefits and prevent evils. If there is a conflict between interests, then pushing the spoiler and removing it is often a prelude to bringing benefit (Najim, 1999 ,78.). Leaving the ends is more severe than the act of the sheriffs, because of the harm that the terminator entails contrary to the wisdom of the street in the prohibition(jumea ,2001, 265). In the event of a meeting of evils, if they can be done, we will see them. If we cannot see the corrupt, the corrupt, and if they are equal, we stop or we choose and disagree with it. The legitimate interests lie in two ways: the positive way: bringing interests, and it is intended (finding positive means to collect the legitimate purpose and its continuation, i.e., maintaining it in

terms of construction and survival) (Al-Kubaisi,2016, 51), which is the basic things of the permanence of human life of necessities and related complementarities; and the negative way: pushing the harm on two sides. The aspect of the expected nothingness: the legislation of laws warning against prejudice and its continuation, prohibiting the assault on it, which is a precaution against what is likely to occur on the purpose of breach. (Same source, 51) This is called the negative punishment of freedom by tightening the noose on anyone who begs him to attack the rights of others, and this is what we address through this research, which divided him into two researchers, then the conclusion and mentioned sources and references, and God we use.

1. The first topic: the concept of punishment in Islamic law

1.1. The first requirement: the definition of the negative punishment of freedom

First: defining the punishment that is negative for freedom as a single consideration:

the definition of punishment as a language: its origin is a punishment punishable, punishable and punished, punished, punished for what is done, or: taking badly what was made (Amrallah, Egypt, Issue 4.2.), and in the term: (marriage sought by

Allah Almighty to deter Committing what is prohibited, leaving what he ordered) (Al-Kubaisi, 51), but negative in language: the object was taken away, meaning embezzled,(Al-Kasani, 1986, 7/33; and Abdoun,2007, 66) , and Islamic jurisprudence did not know the negative punishment of freedom for the modernity of the term, and defined imprisonment as a picture linked to the concept of meaning: (Forbidden from going out to work and tasks, and to collecting, groups, holidays and funeral funerals, patient clinic, visitation, hospitality) (al- albaqara: From verse 187) ..

Second: defining the negative punishment of freedom as a single consideration and as an additional compound:

The negative punishment of freedom (is depriving the convicted person of his freedom in the hope of reforming it) (Ibn manzor,2000, 2/799, Ibn alatheer, 1979, 1/352), and deprivation is by preventing him from organizing his life and isolating him from his social environment and nature.

The terminological meaning explains to us that all kinds of punishments are a restriction on the freedom of the convicted person, and a negative for his freedom to exercise his life normally. So the rhythm of the prescribed punishment is called the negative punishment of freedom, and it relates to the second way of preserving interests on the one hand, the negative way: the payment of harm on two sides The aspect of the expected nothingness: the legislation of laws warning against the infringement of this existence and its continuation, prohibiting the assault on him, which is a precaution that is likely to occur for the purpose of breach. The side of nothingness: it means that when an attack occurs, such legislation , such as retribution and limits, will be implemented against the perpetrator in order to preserve the legitimate purpose. (Behnessy, 1983, 123)

1.2. Demand II: Sections of punishment in Islamic law

1. The original punishment: which is stipulated in the wise law of its kind and the amount (Surat al-Fath: Verse: 9), and it is called the marginal punishment: the limit, and the prohibition, which is the barrier between two things so as not to infringe on the other, such as the saying of Allah Almighty: Each sin and punishment are called together, because it is difficult because of the prohibition of sin and punishment for the sin from falling into it, and the punishment for its association with guilt (Bahnsi, 1983, 123.), the limits are a term: It is ((an estimated punishment that truly answers to God)(Abdelkader Odeh:2010, 1/632; , Abdoun2007, 66).
2. Alternative penalties, which were instead of the original punishment for failing to apply them, for the loss of one of the pillars of the original crime, or the existence of a quasi-punishment, are called the punishment of the excuse: a motif, which has meanings: prohibition: i.e., preventing him from recidivism, and discipline. Absolutely, as: c: c: 19, forced order, sex of beatings, blame, deterrence, adultery and humiliation,20 and torture in the terms of: ((Discipline for a sin of one in which there is no atonement, i.e. it is a disciplinary punishment imposed by the governor on a felony or sin for which the Shariah has not been assigned a penalty, or has been punished but has not met the conditions of execution)) It is called alternative sanctions, because they came instead of the original punishment for some reason (al-Tarmadi, s, 4/426, 8163).
3. Dependency penalties: this is the consequence of the offender simply for the original punishment because it belongs to it and is not individual without having to provide for it legally. (al-Saadi, 2000, 1/239.)
4. Supplementary penalties: the penalties that complement the original punishment of the offender, expressly stated: such as suspending the thief's hand for a certain period, or for confiscating the crime machines.

2.3. D First: controls on the implementation of punishment in Islamic law:

First: controls on the implementation of punishment in Islamic law:

- 1 - Carrying out punishment from the authority of the Sultan or his deputy, for saying, "You, Anis, be against a woman, if she confesses to her.
2. If he has a way out :(, the imam will make a mistake in pardoning him rather than erring in punishment.
- 3 - Punishment is lawful for discipline and reform, not for revenge and humiliation, taking into account the circumstances of the personal and temporal offender(30), (O Messenger of God cleanse me, he said: and he said: Come back, forgive God and Toby to him. She said: I see you want to return me as I echoed the goat of Ibn Malik, he said: And what is that? She said: she is pregnant of adultery, he said: You? she said: yes. He said to her: until you put what is in your belly, he said: So a man of supporters guaranteed her until she put. He said: "If we do not stone her and let her son be young, he has no one to breastfeed him, and a man of ansar rose up and said, "To his satisfaction, prophet of God, he said, "So he will destroy her.""³¹ It is preferable to carry out punishment in front of the public eye to consider it, he said:

Secondly, the wisdom of the legislation of punishment in Islamic law:

the preservation of social security: the origin for which the sanctions began to defend the interests of creation and protect them from abuse, which is one of the purposes of the Creator in the legislation to preserve religion, self, and money, as well as forced labor and deterrence: punishment is forbidden before the obscene act and marriage after it, the punishment is not intended for itself, but a means of returning the offender to the right and right. (Sharbini,2000, 4/177) This is one of the doors of divine mercy by creating justice among people.

2. The second topic: examples of applied crimes of the negative punishment of freedom:

3.1 . The first issue: the negative punishment of freedom in the form of haraba:

haraba is ((going out with the intention of intimidating or taking an human right as a matter of confrontation)) (Ibn Jizya, 2010, 236).

The negative punishment on the part of the expected nothingness: slander and prohibition of infringement of others unjustly, and the aspect of nothingness that is the rhythm of the punishment provided by Allah Almighty in his book for the warrior: the warrior shall be punished according to the offence committed by him, the punishment of killing and crucifixion together in the event of committing murder and taking money from the cut by agreement,(Surat al- alnisa: Verse 29) and the cut from a dispute for the warrior robber, cutting off his right hand and left leg to a strict limit, and the punishment of exile (imprisonment) of the warrior who feared the way. Or to be removed from the country where they were to others and imprisoned there (bin Haidar, I2, 1970, 9/140.), and the penalty for guaranteeing money as a refund if it exists or like it or its value to the lump sums of it (Sura al- albaqara : From verse 283), or refund that money in the event of its survival and destruction, the guarantee shall be dropped, or provided that the guarantee relates to the case of the warrior at the time of the execution of the limit as a lycée (Surat al- alnisa: From Verse 103).

3.2 . The second issue: the negative punishment of freedom for the procrastinator debtor if he is pleased:

the negative punishment in the event of expected nothingness: the sin of taking people's money falsely said: The jurists agreed on whoever admitted a debt if he

could pay for his delay in fulfilling him in prison until he was imprisoned for his condolences. Imam Al-Shawkani said: "Because punishment is absolute and imprisonment is one of the things that the absolute believes in him," inferring what he said about the Prophet, peace be upon him: I have the grandfather to solve his punishment and offer. To me the grandfather: looking at the one who is able to spend his religion. It is permissible for the owner of religion. His offer: To mention his loyalty and lack of loyalty and offer is the subject of praise or slander from man.

3.3 . The third issue: the negative punishment of freedom for those who abstain from the oath of office:

Keeping interests in the path of plunder from the expected side of nothingness: prohibiting the secrecy of testimony by truth, he said: 48, and the side of nothingness: imprisoning the defendant who is not on the right of the Kassam, as it is a right of duty, so that he is not sworn in as a reason for imprisoning him in a single way.

3.4 . The fourth issue: the negative punishment of freedom for those who leave the prayer in laziness:

preserving the interests of the necessary religion by taking away in the aspect of the expected nothingness: the order that the person who is charged with praying must be prayed to the one who says: And from the side of nothingness, the reality is that the discipline is in prison for those who left the prayer in laziness and did not deny its obligation, for refraining from the right that God has imposed on him with his ability to perform it (Al-Mawardi, 2008.,2/162), inferring that he said, "Peace be upon him and his God and his peace be upon him. ((Whoever sees you as a denier, change it with his hand)) (Al-Daratani, 3/103) .

3.5 .The fifth issue: The negative punishment of freedom for the offender until the guardian of blood reaches his pardon:

Islam has forbidden killing oneself unjustly, so he must, in the way of plundering the expected side of nothingness: forbid killing without right and consider him one of the sins of the sins, as stipulated by the Prophet, peace be upon him, by saying: "Avoid the seven remaining women, they said: O Messenger of God, and what is wrong with them?" He said: Shirk by God, magic and killing the soul that God has forbidden except by truth, and eat the lord's money, and eat orphan money, and take care of the day of crawling. (Ibn Abedin, 1966,4/104) But on the side of nothingness: the punishment must be imposed on the killer if the boy reaches the death of the madman or the answer of the absent or does not pardon the killer, he waits until the boy reaches or wakes up the madman, or attends the absent of the parents of the murdered, he is imprisoned because he deserved retribution by killing him himself unjustly, and if he cannot be satisfied with puberty or death or the presence of the people of merit, he will be damaged by imprisonment and fear of fleeing. And the duration of the prison from the sentence of imprisonment to the arrival or arrival or wake up of the right holder who is lighter than killing him or cutting off his hand (Surat al-Hajrat: Verse 6.)

3.6 . The sixth issue: the negative punishment of freedom for the dangerous criminal in order to secure his evil and immorality:

Islam allowed to take measures to preserve the security of society from the harm it threatens, so he made the path of plunder in the preservation of interests before they fall into danger from the expected nothingness: cooperation between Muslims must be done to prevent harm to the lives and money of the people, as God stipulated in the necessity of cooperation in preserving interests in his saying: Therefore, from the side of nothingness with regard to the

dangerous criminal, a criminal who destroys people's money and themselves may be imprisoned, so his imprisonment is a matter of cooperation on righteousness and piety (Al-Daratani, 3/103). It is not released until its repentance and reform (58) appear.

3.7. Issue 7: The negative punishment of freedom against a professional thief:

money is the strength of life and its preservation relates to the need for security and the preservation of the money of others, so Islam proved the path of looting in the face of the expected nothingness: intimidation in the infringement of people's money falsely and stealing it from the most severe way to eat money illegally, but in the right of nothingness, it is proven against the thief to cut off the right hand, and in case of repeated theft, the public of jurists went if it is proven that it was stolen on the third or fifth time imprisoned, If he steals his right hand, then he will be imprisoned in the event of repeated theft, and he will not leave prison until he repents and proves his goodness.

3.8 . The eighth issue: the negative punishment of freedom for the blind jurist:

that going into what is not known constitutes harm in the life of the public of the people, and the law has been forbidden in the boys and the diligence in religion for those who do not know it, as well as the doctor who prescribes the medicine and he does not know the obligations of the understanding because of his and his rules of this jurisdiction was the way of looting in case of prevention and hatred of a question in which they do not know what the inferred say: 12 If he does not end up with what is in him, he will be imprisoned as Malik said: "I found Rabia one day crying, and he was told, "What is your cry?" ... For some of those who are here, I deserve to be imprisoned by the robber.

3. Conclusion

1 - Islamic law has preserved the interests of creation by legislating preventive provisions before the harm occurs to reduce it, as well as after it has been stipulated in it as limits or retribution in killing or making it under the discretion of the general interest of the zajr and deterrence in accordance with the requirements of the times.

2- Restricting the freedom of the offender or preventing him from exercising his life and freedom is a path of good for the individual and society.

3- The legislation of the path of plunder to preserve the interest on two sides: the first before the harm is done through prohibition and obscenity of harm to avoid it, which is called the aspect of expected nothingness. The second is that after the harm and harm is done, the punishment is carried out for the snares and deterrence, which is called nothingness.

4- Islamic law calls for peaceful ways of coexistence in it to preserve human existence, which is built on the basis of preserving its necessity: religion, self, money, supply, offspring, mind.

5- The purpose of applying punishment in Islamic law, to preserve society and spread security and security. .

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