

A Comparative Study of the Concepts of “Forgivable and Unforgivable” in Customary Criminal Law with the Concepts of Haqullahi

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Abstract

Introduction

Officially and according to articles 101 and later of the Islamic Criminal Code, the legislator has divided the crimes into two categories of forgivable and unforgivable crimes in terms of the impact on the victim in the criminal proceedings. Islamic Penal Code and Criminal Procedure Law have also mentioned the terms Haq Allah and Haq al-Nas and attributed some of the works to them. As an example, we can refer to Article 406 on the issue of absentee voting, note 2 of Article 13 of the Criminal Code and Article 103, note 1 of Article 150 regarding the insanity of the perpetrator during the proceedings, and Article 255 regarding the legality of the crime of qazf from the Code of Criminal Procedure. A mentioned. The above examples and of course many other examples can be mentioned both in the previous and current criminal laws in which the legislator has used the concepts of HaqAllah and Haq al-Nas. All this while despite the explanation of the scope of punishable and non-committable crimes in Q.A., the legislator has not made any clarification about the concept and scope of examples of the crimes of Haqullah and Haqul-Nas; This heterogeneous criminal policy can create many problems in terms of identifying the crimes of Haq al-Nas or Haq Allah for the investigating authority and litigants and cause conflicts in the judicial procedure.

Now the question is whether these two categories of terms are completely distinct and different from each other, which have no connection with each other, or whether the scope and works of these categories overlap in some or many cases and have many common features. ? If these points of commonality are many, can we say that these terms correspond to each other?

Methodology

The current research is trying to find answers to the above questions with the analytical descriptive method and by applying and deepening jurisprudence texts (Imami Jurisprudence) and legal materials. In terms of the necessity of conducting research, it should be said that if the points of commonality between these divisions are

many in terms of foundations, territory, and effects, why does the legislator not move in this direction to set aside the non-native and imported division of "transmissible and non-transmissible" and categorize the crimes of "Haq Allah and Haq al-Nas" Officially add it to the set of criminal laws and put these two categories as the basis for the division of crimes to predict the consequences; This is something that has been emphasized by the constitution and this law has emphasized in its fourth principle on the basis and criterion of placing Islamic rules and regulations in the matter of normal legislation in all the affairs of the country.

Results and Discussion

By reviewing the concept, basis, territory, and effects of these two classifications, it should be acknowledged that the classification of crimes into Haqullah and Haqul-Nas has a wider capacity and flexibility to be used as a basis and criterion for the separation of crimes. The legislator's move in the law to reduce the punishment of penal servitude in the unprecedented expansion of the scope and territory of punishable crimes has also in a way provided the causes of greater similarity and adaptability of the scope of current punishable and non-prisonable crimes with the scope of the concepts of Haq Allah and Haq al-Nas existing in the jurisprudence texts. In addition to the necessities resulting from the fourth principle of the constitution, which emphasizes the movement of legislation in line with Islamic standards, and the practical necessities regarding the resolution of ambiguities and conflicts in the judicial procedure, this change in the basis and criterion of classification into Haqullah and Haqul-Nas is inevitable.

Conclusion

The specific proposal of the current research is to replace the concepts of Haqullah and Haqul-Nas as the main criteria for separating crimes and arranging the works in each category. In this way, firstly, expungible and non-expendable crimes have been set aside and the most important effects on them (the two effects of the necessity of the plaintiff's complaint to start the prosecution and non-forgiveness for its continuation) will be transferred to the crimes of Haqullah and Haqul-Nasi. Secondly, the numerous and of course scattered works that are currently included in the collection of criminal laws for the crimes of Haq al-Nasi and Haq Allahi, such as the prohibition of trial in absentia in Haq Allah, the possibility of testifying against the testimony of Haq Al Naas, accepting an oath in Haq Al Naas contrary to Haq Allah, etc., have practical value. Applied in such a way that by replacing the basis of classification, these works will also be able to be easily used by the court; finally, the above replacement will also bring this important benefit that many works contained in jurisprudential texts and sources, which although not included in the current criminal regulations for the crimes of Haqullah and Haqul-Nas, in any case, and according to Article 168 of the Constitution of the Judge If necessary, it is possible to refer to and use them, each of them can be used in specific crimes and the plaintiff or the accused can benefit from the privilege of their existence.

Keywords: Forgivable Crime, Unforgivable Crime, Haqullah, Haqulnas, Victim.



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