

Exploring the repentance construct in medical mistake and its effect on Haddi punishment

Mohammad Hasan Hajariyan¹, Mohammad Hasan Javadi², Siamak Jafarzadeh^{2*}

¹ PhD Candidate of Islamic Law and Jurisprudence, Urmia University, Urmia, Iran. ² Assistant Professor, Department of Islamic Law and Jurisprudence, Urmia University, Urmia, Iran;

Correspondence: Siamak Jafarzadeh, Assistant Professor, Department of Islamic Law and Jurisprudence, Urmia University, Urmia, Iran.

e-mail: S.jafarzadeh@urmia.ac.ir

ABSTRACT

In Islamic resources, including the Holy Quran's ĀYĀT and narrations, as well as from the perspective of various religions, including Christianity and Judaism, repentance enjoys a lofty position in such a way that it has been realized as the cause of the human beings' deliverance and felicity. Following the lead of the canonical resources, the Islamic penal code of law, passed in 2013, posits repentance construct as one of the regulations of the law on general punishments. The present study makes use of a descriptive-analytical method to discuss about and investigate this legal construct as one of the reasons for the abolishment of the punishments as viewed by the jurisprudents and jurists. The study results indicated that all of the Islamic religions consider repentance as the cause of the otherworldly chastisements' abolishment. However, there are discrepancies regarding the abolishment of earthly punishments through repentance. In Imamiyyah Jurisprudents' ideas, repentance dismisses the criminal liabilities in the violations of the God's rights and it abolishes the punishment if it is done before the crime justification. The repentance after the justification of the crime through presentation of proofs is not considered as the cause of punishment abolishment by them. As for repentance after confession, it is believed that the judge is free to either enforce the punishment or grant the amnesty demand. The individuals realizing repentance as a cause abolishing the Hadd punishments are of the belief that repentance originally causes the abolishment of Ta'azirāt. Repentance is amongst the criminal law's constructs in Islam that, in comparison to the other criminal law schools, has been considered for the correction of the criminals and it causes the abolishment of punishment in the majority of the cases but it is less frequently seen to be employed in the judicial courts for the abolishment of the criminals' punishments.

Keywords: repentance, Hadd, punishment, criminal liability, criminal law schools

Introduction

Assigning the secondary and ancillary roles to criminal law in the programs for fight against transgression that stems from the doubt in the effectiveness of the traditional suppressive methods for achieving the goals of the Islamic penal law has been followed by an emphasis on the decriminalization policies.

Meanwhile denying the exclusive limiting of the methods of fight against crime to the enforcement of punishment, decriminalization policy of Islam's penal system provides the possibility of resorting to the institutions that are clearly distinct from the hard and suppressive approaches. Repentance is amongst the constructs predicted in the Islamic penal laws in line with decriminalization in the light of attracting the cooperation and participation of the criminal in the process of the fight against transgressions. Undoubtedly, the most effective way for the achievement of the criminal law's objectives is the voluntary measures taken by the criminal without any pressure from outside for repairing the effects of the perpetrated crime and changing the life path and correction of his or her own self. Following the lead of the jurisprudential resources and canonical regulations and with a novel and relatively unprecedented approach, the Islamic penal code of law, passed in 2013, has paid attention to the general or partial effect of the

Access this article online

Website: www.japer.in

E-ISSN: 2249-3379

How to cite this article: Mohammad Hasan Hajariyan, Mohammad Hasan Javadi, Siamak Jafarzadeh. Exploring the repentance construct in medical mistake and its effect on Haddi punishment. *J Adv Pharm Edu Res* 2019;9(S2):174-180.
Source of Support: Nil, Conflict of Interest: None declared.

This is an open access journal, and articles are distributed under the terms of the Creative Commons Attribution-Non Commercial-ShareAlike 4.0 License, which allows others to remix, tweak, and build upon the work non-commercially, as long as appropriate credit is given and the new creations are licensed under the identical terms.

repentance on the abolishment of the penal reactions. This construct has provided amazing possibilities for correcting the criminal through his or her voluntary re-adaptation and leads to the stopping of the common course of criminal trial in such a way that the assertion of repentance and its verification suspends or cancels prosecution or the continuation of the culprit's pursuit or sentence issuance and punishment enforcement.

Distinguishing the role of repentance in various crimes, the legislator has made rulings about the effect of repentance on the abolishment of the Hadd punishments in article 114 of the Islamic penal code of law; article 115 of the same law presents a detailed description of Ta'azir punishments in terms of their intensity and disregarding the classifications of them into canonical and inhibitory Ta'azirat and expresses the verdicts about the role of repentance in Ta'azirat in such a way that it has been pointed out as a cause for the abolishment of the punishments and its neutral effect has also been occasionally effect. The current article deals with the position of repentance as a construct in respect to Hadd punishments.

Meaning and Conceptualization of Repentance:

Literally, repentance [equivalent in Arabic to Tawbeh from the root Tawb] means returning and restoring as it is defined in Lisan Al-Arab by Ibn Manzour in the following words: "Al-Tawbeh Rojū'e Min Al-Zanb"^[1-3]. Some have also constrained repentance to sins and realized repentance as a return from sinfulness^[4].

In Maqabis by Ibn Fars, repentance has been defined as "*Tawb Al-Tā'a wa Al-Wā'a wa Al-Bā'a Kalemah Al-Wahedah Tadollo Elā Al-Rojū'e, Yaqāl Man Tāba Min Zanbehi Rah'e Anho, Yatūbo Elā Allah Tawbatan wa Matāban, Al-Tawbah wa Qāl Allah Ta'ālā Qāfer Al-Zanb wa Qābel Al-Tawb*"^[2]. It has also been defined by Raqeb-e-Esfahani in the following words: "repentance means quitting the perpetration of the sins in the best possible way and it is the most eloquent and the most articulate form of expressing apologies because asking for excuse is of three types; the excusing person may either say that s/he has not done that thing or s/he may say that s/he has done a bad thing but s/he has not meant it (in other words, s/he is seeking to present a justified visage of his or her wrongdoing and offering a reason for it) or even s/he may say that s/he has perpetrated a bad thing (or a sin) but that s/he has been wrong and it would not be repeated again and s/he would stop doing it forever"^[4].

Repentance in Common Terms: the common meaning of repentance has been used close to its lexical meaning. By repentance, the present study means the remorse about the past events and its acceptance by the God so the common meaning and not the literal meaning is intended herein. Due to the same reason, various definitions of repentance introduce it as expressed in the following words: "in canon, repentance means quitting sin perpetration for learning about its heinousness and being regretful about what has happened in the past and making a decision for quitting and returning from that sin in the future and compensating for the actions that have been left undone"^[4];

also, Professor Motahhari realizes repentance as an internal revolution, a sort of rise and a type of change by a person against his or her own self^[5]. In Qazali's mind, repentance is knowledge of the hugeness of a sin and remorsefulness about it and determination for quitting it at present and in future and compensation for the number of times the sin has been carried out in the past^[6]. Molla Ahmad Naraqī has the following words in the common definition of repentance: "the goal of repentance is return to the God through emptying the heart of the intention for perpetration of sin and return from the far distance to the divine court to the close distance thereto the result of which would be quitting of sins at present and making decision for remaining so in future"^[7]. Khajeh Nasir Al-Din Tusi (may Allah have mercy on his soul) gives the following common meaning for repentance: "repentance means return from sin and one should first come to the understanding as to what sin is"^[8]. According to what was mentioned in the above lines, it can be stated that repentance is the return to the God, regret and remorsefulness about what one has perpetrated, quitting the sins and not repeating them and making up for the past.

Meaning and Concept of Hadd:

Literal meaning of Hadd: the word "Hadd" is an Arabic word with its plural form being "Hodūd" and literally meaning distance, barrier, separation between objects, the maximum limit of a thing and prevention.

Common meaning of Hadd: in canonical terms, Hadd is a specified punishment in the book or Sunnah that is enforced by the canonical ruler onto the body of the sinful person or a convict for the perpetration of certain canonized transgressions and offenses so the Imam and the ruler do not have the right to exceed that limit. As viewed by the general public, except Hanafis, Hadd includes a specified punishment the extents and types of which have been determined by the canon and legislator^[3, 9]. But, it is considered by Hanafis as an amount of punishment specified and determined as a God's right so Ta'azir is not to be envisioned as Hadd because it is not predetermined; Qisas [atonement], as well, is not called a Hadd punishment because, although it is predetermined, it is a people's right and, due to the same reason, amnesty and peace hold therein^[10, 11].

Moreover, in article 15 of the Islamic penal code of law, passed in 05/01/2013, Hadd is determined as follows: "Hadd includes the punishments that the type, the amount and the quality of their enforcement have been determined in the canon".

Repentance and its Effect on Hadd Punishments:

Repentance has a tangible, specified and considerable position in respect to Hadd punishments and its exact investigation and exploration illuminates the effective and destiny-making impact on the culprit's position and conditions.

Kinds of Sins and Crimes and Quality of Asking Repentance for Each of Them:

The sins are different in their kinds and the quality of repentance differs in respect to each of them. These sins can be generally classified into three categories:

- A) The sins that do not cause the wastage of a right of the people or the justification of a type of Hadd punishment: in this case the sin is more of a personal nature and it does not include others like a lie that which is considered as a sin and transgression performed personally by a sinful and guilty person and the repentance can in this case be actualized through expressing regret and deciding not to perform it again and the person would enjoy the outcomes of repentance subsequently.
- B) The sins that cause the wastage of a financial right of the people or a right of the God: like failing to pay Zakāt and Khums. In this case, repentance is actualized when the person, besides being remorseful and feeling regret for the past, pays for the financial obligations that have been placed on his or her shoulder.
- C) The sins that need canonical Hadd punishment: in terms of the quality of Hadd punishments, these sins can be divided into three parts:
- Sins requiring canonical Hadd punishment in regard of the God's rights
 - Sins requiring canonical Hadd punishment in view of the people's rights
 - Sins requiring canonical Hadd punishment in respect to both the God's and the People's rights like robbery

Conditions and Qualities of Repentance in Respect to the Divine Rights:

The perpetration of some of the crimes like fornication, sodomy and drinking of wine is just an abuse of the God's rights not the people's rights because the perpetrators of sodomy and fornication do so with their own satisfaction not by force and coercion. As for the drinking of alcoholic drinks, as well, there is no opposite party so that the abuse to another person's right can be justified so it is only a breach of the God's right and the person drinking wine is considered as the one violating a command of the God and belittling the prohibitions and causing the promulgation of vice the harms of which would be spread in the human community and targeting the public expediencies. Surely, anything that is deemed harmful to the public expediencies would be an abuse to the God's right. In crimes that are pure wastage of the God's right and in all the other crimes that the abuse of a God's right is prevalent such as a Hadd-deserving robbery, the crime may become clear or it may remain hidden. The quality of repentance in each of them has been investigated below:

- A) Crime's Being Remained Undetected: in this case, repentance includes regret about the past and concrete decision for not repeating the sin; it is recommended that the perpetrator should avoid disclosing it and introducing oneself to the judge (ruler). There are numerous authentic narrations confirming this issue. Two of these narrations have been briefly stated beneath:
Ma'ez Ibn Malek Aslami confessed to fornication before the great apostle of Islam (may Allah bestow him and his sacred progeny the best of His regards) and the prophet

seminally indirectly guided him to keeping it as a secret and attempted to make him doubtful about his confession but Ma'ez insisted on his confession and finally admitted his perpetration of fornication. The great apostle ordered that "it was better if you had left it untold" [12-15].

Ali Ibn Ibrahim quotes Ahmad Ibn Khalid in the following words: "one day, a man went to Amir Al-Mo'menin Ali (PBUH) in Kufa and confessed to fornication and said 'O Amir Al-Mo'menin I have perpetrated fornication. Please make me clean'. Imam Ali (PBUH) used the same method of the great apostle and attempted to encourage him to hide it. But, his highness finally enforced Hadd punishment on him with the insistence of the fornicator after his four times of confession and ordered the following valuable sentences: '*Mā Aqbaha Bi Al-Rajol Minkom An Ya'ati Ba'aza Hāzehi Al-Fawāhesh Fa Yafzaho Nafsahū Alā Ro'ūs Al-Mala'a Afalā Tāba Fi Baitehi? Fawālehi Li Tawbatahū Fimā Bainehi wa Allah Afzala Min Aqāmati Alayh Al-Had'* meaning 'how bad it is for a man from you to perpetrate such heinous acts and subsequently divulge yourself before the public. So, was repentance at home not better? I swear to the God that his repentance between himself and his God was surely better than the enforcement of Hadd punishment by me on him'" [16, 17]. It is worth mentioning that Imam Ali (PBUH) has stated in the foresaid Hadith four things and, in fact, this way, his highness has provided answers to the problems and issues posited in this regard: in this narration, his highness Imam Ali (PBUH) angrily and sadly uses the words "how bad" to declare the heinousness and incorrectness of fornication and then uses the expression "*Fa Yafzaho Nafsahū*" to remind of the heinousness of fornication and the twice as much hatefulness of confessing to it in public because the adverse effects of disclosing a sin are a lot worse than perpetrating the sin in the society for such an action, besides abusing the life-bestowing commands of the Islam's canon, causes the encouragement of the frail and lecherous individuals to the perpetration of sins. Thirdly, the repentance by a person before the God is recommended to be very much more pleasant and, in the end, His Highness orders in very delicate words that "repentance is better than enforcement of Hadd punishment and that be an enforcement of Hadd punishment by an Immaculate Imam, Imam Ali (PBUH) not the rulers and imams, in general (*Fa Wa Allah Li Tawbatehi Fimā Bainahū wa Bain Allah Afzala Min Aqāmati Al-Hadd Alayh*).

- B) Discovery of the Crime: in case that the crime is detected, repentance includes regret about the past, not repeating the crime and accepting the Hadd sentence. It is clear that repentance in this case does not abolish Hadd punishment because it is after the disclosure of the sin that the repentance loses its effect for the individual and the society and becomes devoid of worldly legal effect (abolishment of punishment) as it is ordered by Sheikh

Tusi in *Al-Mabsūt* that “*Ezā Kāna Moshataheran Fa Lā Fā’edah Fi Tark Eqāmatehi Alayh*” meaning “when the crime was proposed in a public form, there would be no good in abandoning the enforcement of the Hadd punishment on him (the convict)”^[18].

The notable point is that such repentance would have an effect on the otherworldly support of the individuals in the form of getting them rid of chastisement on the Judgment Day.

Repentance after Confessing to the Crime:

If the perpetrator asks for absolution before the canonical ruler after confessing to a crime, the majority of the jurists state that the ruler is free to forgive the convict or enforce Hadd punishment on him or her. Of course, such repentance does not cause the abolishment of punishment rather it only gives the canonical ruler the option to forgive or to punish.

Repentance after Presentation of the Proofs:

The majority of the jurists hold that a crime can be justified by the testimonies of the witnesses and if a perpetrator asks for absolution after that, the imam is not free to punish or forgive rather he has to subject the convict to the divine Hadd punishment.

The document to the well-known theory is the great many of the narrations stated in this regard but a few of the jurists believe that the repentance by an offender who has asked for absolution after the justification of the guilt through testimony is accepted by Imam (PBUH) and s/he can be forgiven. In this regard, Sheikh Mofid has inferred the “originality of exoneration” with the explanation being that if the enforcement of Hadd punishment is doubted based on the principle of exoneration’s originality, the person would not be deserving the punishment and similarly the otherworldly chastisement would be also abolished. The late Sheikh Mofid opines that there is a relationship between the abolishment of the otherworldly and earthly punishments and the person who cannot be punished in the other world cannot be also punished herein. But, his idea seems to be flawed because it appears that it is an exegesis with the existence of the plain canonical texts and it is not consistent with what mentioned in *ĀYĀT* and narrations. The late Sheikh Mofid has offered another proof for justifying his theory and that is “the generalization of the news” (*Wa Ezā Kāna Al-Emām Al-Lazi Min Allah En Yo’āqeb An Allah Kāna Lahū En Yomenna An Allah*)^[17]. He bases his reason on the generalization of the news in regard of the idea that Imam (PBUH) can forgive after the justification of the crime through proofs whereas the generalization of the news can be specified by other narrations that do not consider it permissible to forgive a culprit after the justification of the crime by clear proofs. Amongst these narrations, a quote can be pointed out from Imam Ali (PBUH) who has ordered that “*Ezā Qāmat Al-Bayyannah Fa Laisa Li Al-Imam An Ya’afī*” (Ibid, p.330). Of course, a person should ask for absolution before being arrested in regard of the repentance for such a crime as engagement in fight as it is

ordered in an explicit text in the holy Quran that “the punishment of the persons who fight against the God and His apostle and perform depravity on earth is that they should be either killed or hung or their hands and legs should be oppositely cut or they should be banished; this is their worldly scandal; then, they will have a more intense punishment in the other world unless those who redeem before you have your hands on them. So, know that the God is the most forgiving and the most compassionate” (*MĀ’IDA*: 33-34). That is because the repentance that is done after apprehension is generally not for the fear of the God but for the fear of punishment and it would not be a real repentance.

As for the other crimes like fornication or drinking of alcohol, as it is explicitly stated in the narrations, the sinners can ask for absolution before the justification of the crime and they should redeem before confession or before being presented with the testimonies of the witnesses even if they have been arrested on suspicion and it is in this case that penance is accepted from them. It has to be mentioned that repentance before being arrested means that the individuals who want to engage in war should be in a situation that they find no way for evading the clasps of justice and it should not be so that they are tied by handcuffs and/or be kept in detention houses. For example, if the security forces become aware that the war instigators have formed an extensive organization in Iran and are working against the system and inform the entire border police stations, airports and other authorities about this for preventing their escape and it becomes clear that they will be arrested within a few days, it seems that their repentance would not be acceptable within these several days. Of course, on the condition that the organization’s members know that their organization has been compromised because the repentance performed in this case would be for the fear of the punishment not the fear of the God. So, if the organization’s members are not aware that their organization has been compromised and ask for absolution in this case, it seems that such a penance can be accepted. The honorable *ĀYA* apparently states that the combatants should be aware of being subjugated by the government in which case the fulfilment of a real penance is questioned.

The Position of Repentance in the New Islamic Penal Code of Law:

Repentance had been mentioned in various sporadic articles in 1991’s Islamic penal code of law but the verdicts and the criteria governing it were not so much clear. However, in the new Islamic penal code of law like several other cases, the legislator has compiled and expressed the verdicts of repentance in five discussions from chapter 11 of the law within the format of the articles 114 to 119. The verdicts mentioned in the fifth discussion of the chapter 11 of the new Islamic penal code of law are listed below:

- In regard of the crimes deserving Hadd punishment, except false accusation of a person to adultery and engagement in fight, repentance before crime

justification causes the abolishment of Hadd punishment.

- In the same crimes, repentance after the justification of the crime in case of being justified through confession makes the court capable of asking for amnesty through the head of judicature from the supreme leadership for the person asking for penance.
- The repentance by the combatants before apprehension or before being dominated by the agents causes the abolishment of Hadd punishment (the expression "before being dominated" is not so much clear).
- In fornication with chaste women or reluctant fornication or enticed fornication, the repentance before the justification of crime or in case of justification through confession enables the court to ask for the perpetrator's amnesty in the way explained above; however the criminal would be sentenced to Ta'azir incarceration for a period between six month to 2 years or Ta'azir lashing for 31 to 99 strokes or both of them.
- In degree 6, 7 and 8 Ta'azir punishments the minimum punishment of which would be imprisonment for a period between 3 months to 2 years, repentance would be followed by abolishment of punishment, if accepted, and it would cause the installment of the punishment for the other Ta'azir punishments.

The followings are the other cases that can be discussed regarding repentance considering what was mentioned so far:

- Repentance cannot be accepted from the individuals who have repeated a Ta'azir-deserving crime. Verdicts of repentance do not hold for cases that the punishment exemption or change in the sentence type or suspension of punishment or reduction in punishment is proposed; they also do not hold for the crimes perpetrated by children and adolescents.
- Repentance does not cause the abolishment of atonement, blood money, Hadd punishment for false accusation and Hadd punishment for instigation of fight.
- The culprit can present the prosecuting or trying authority with the proofs of his or her repentance in a case-specific manner until before the finalization of the judgment.
- If a prosecutor opposes the abolishment or mitigation of a punishment, he can object to the appeal authorities.

A Comparative Glance at the Position of Repentance in the Former and New Islamic Penal Code of Law:

In the new law of the Islamic penal code of law, punishment mitigations have been taken into account for the remorseful criminals who have exhibited the outcomes of regret and correction in themselves and the ground has been even set in certain cases for the exemption of the crime perpetrator through the acquisition of the legal conditions. The following

part deals with the investigation of this jurisprudential construct in the new Islamic Penal Code of Law. Repentance is envisioned as a canonical means of punishment abolishment in the new Islamic Penal Code of law and it has been taken into consideration as a topic from the chapter eleven under the title of the punishments' abolishment from article 114 to article 119. This is indicative of the importance of such a jurisprudential institution as repentance for the codifiers of this law. In crimes deserving Hadd punishment, repentance causes the abolishment of punishment if it is done before the crime justification. Of course, corresponding to the new code and the canonical regulations, repentance can transform the Hadd to Ta'azir punishment in some of the cases. The note 2 to article 114 of the new code inter alia stipulates that the repentance by an adulterer or a buggler who has performed adultery or sodomy by use of force can transform the punishment to incarceration or Ta'azir lacing if s/he has asked for absolution beforehand.

The regulations related to repentance have been inserted in one discussion in the new law. This method seems to be better than the sporadic regulations on various crimes as in the law passed in 1991. In the meanwhile, the new law generally points to the role of repentance in crimes deserving Ta'azir punishment and it has been stated in some of the cases that the repentance by a criminal causes the abolishment of the punishment and in some other cases gives the court the freedom to mitigate the punishments of the individuals who have perpetrated Ta'azir crimes. This, i.e. the generalization of the effect of repentance to the Ta'azir crimes, is amongst the innovations of the new law. Another notable point in the new law is that repentance would not have any effect on the punishments' abolishment in case of recidivism because repetition of the crime contradicts the existential proof of repentance which is the regret about the perpetration of criminal action and making efforts for the compensation of them. In fact, the repentance would be accepted of the individual who turns oneself in before apprehension and confesses to his or her crime and s/he would be given a safe-conduct based on which s/he would be immune of offensive treatment.

Repentance can be effective in all of the heavy and light crimes but it is up to the judges' decision that for what crimes repentance can be utilized meaning that there are differences in the recognition of the repentance's acceptance and mitigation of the punishments for the criminals who refer to courts for submitting themselves as individuals who ask for absolution and forgiveness including the case that an individual who redeems oneself and cooperates for the elimination of the crime's effects can enjoy the legal and judicial mitigations that have been predicted in the new law. The person expressing regret about the perpetration of criminal actions can also take advantage of the punishment suspension in some of the cases. In some of the articles of the new law, the convict's repentance provides him or her with the opportunity of benefiting from the supreme leadership's amnesty through it being requested by the judge. The repentance by a criminal after the perpetration of crime can have numerous benefits for him or her. For instance, when a

person confesses to a fornication deserving Hadd punishment and asks for absolution after that, the judge can request his amnesty from the jurisprudential guardianship in command or subject him or her to Hadd punishment. In other crimes like drinking wine and sodomy, as well, repentance by the perpetrator has been predicted. Therefore, it can be noted in an investigation of these cases that the legislator has had a sublime glance at this jurisprudential institution in the new Islamic Penal Code of law and he has pointed to it in an appropriate manner.

Conclusion:

It can be concluded from all of the abovementioned materials that repentance is one of the best methods of preventing crime and correcting the criminals. Therefore, the legislator is required to perform researches about this subject (punishment abolishment by repentance) that has found its way into statutory provisions and predict its accessories in the legal texts. The ground is set for the deliverance and guidance of the society when the enlivening principles of the Islamic law are regularly written down but they would cause abuses to the original Islamic bases by the uninformed and dissidents if they are imperfectly specified in the regulations. Thus, it is worthwhile for the officials in charge of law codification to pay attention to this important subject in the codification of the Islamic regulations. Furthermore, considering the legal effects of repentance, the noble judges of the country are assumed to exercise more care in this regard when trying the cases and resolving the hostilities and enforcing the sentences. It can be inferred through scrutiny in the *ĀYĀT* and narrations related to repentance that real regret and determination for quitting the sin perpetration is always sufficient as held in a definition of repentance and performance of repentance does not need any special wording or ritual. The notable point is that repentance does not solely destroy the punishment and the criminal may even be subjected to corrective and security undertakings. Exertion of punishment on the criminals serves the accomplishment of numerous goals including terrifying and threatening and purifying the criminal and cleansing of the sins. The most important goal that can be inferred from the philosophy of punishments in jurisprudence and Islam's penal laws is the corrective aspect of punishment that plays an effective role in correcting the criminals and pulling them up to a proper degree helping them to be redeemed and become felicitous and such a goal is a sort of the criminals' veneration. As a consensus reached by all of the Islamic creeds, repentance causes the abolishment of the otherworldly punishments. But, there are discrepancies about the abolishment of the criminal and earthly punishment by means of repentance. The majority of the Imamiyyah jurists, some of the Shafe'ei and Maleki jurists in one of the sayings and the Hanbali jurists believe that repentance causes the abolishment of the punishment. Ibn Abbas, Mojahed, Qanadeh and Ibn Hazam are of the belief that repentance does not have any role in the abolishment of the earthly punishments. Abu Hanifah, Malek and Shafe'ei are of the belief that repentance only causes the

abolishment of the punishments for instigation of fight and it has no effect on the other crimes. The statements by the individuals who believe in the abolishment of Hadd punishment through repentance seem to be more correct because although repentance is an internal promise made between a sinful person and the God, the existence of numerous *ĀYĀT* indicating the acceptance of repentance after expressing the punishment for various crimes is a robust proof to the authenticity of repentance as a factor for the abolishment of the earthly punishments. Repentance before arrest causes the abolishment of punishment and, after the arrest and in case of the crime's justification with the criminal's confession, the judge can request amnesty from the jurisprudential guardianship in command for the perpetrator. Therefore, it is worthwhile to pay special attention in the judicial courts to repentance and there should be an institution comprised of experts and counselors as advisors of the judge in the courts so that it can be effective in the sentence to be issued by the judge. Society members should realize the person asking for absolution as equal to other individuals in terms of social position and even encourage him or her for the fact that s/he tries correcting oneself in such a way that such a behavior can be affirmed as a cultural practice. It was better if the scholars of the ethics and the committed jurists of the country paid more attention to the moral aspects of the criminal law so as to clean the dust of accusation and doubts from the completely ethical-legal visage of the penal code and provide the Muslims with this peace of mind through expressing the legal issues and elaboration of them based on ethical principles that their individual and social felicity and security is guaranteed in the light of the Islamic Penal Code of Law.

References

1. Ibn Manzour Al-Efriqi, Jamal Al-Din, Muhammad Ibn Mokram, (1988), "Lisan Al-Arab", 1st ed., Beirut, Dar Al-Ehya'a Al-Torath Al-Arabi.
2. Ibn Fars, Abu Al-Hussein, (1984), "Mo'jam Maqabis Al-Loqah", researched by Abd Al-Salam Muhammad Harun, Qom, Maktab Al-A'alam Al-Eslami.
3. Zubidi, Morteza, (1967), Taj al-arus men Jawhar al-Qamous, Beirut-Lebanon: Dar al-Fakir Publication.
4. Al-Raqeb Al-Esfahani, Abu Al-Qasem, Hussein Ibn Muhammad, (1984), "Al-Mofradat Fi Qarib Al-Quran", 2nd ed., Iran, Nashr Al-Kitab.
5. Motahhari, Morteza, (1995), Goftarhayeh manavi, 14th Edition, Qom: Sadra Publication.
6. Ghazali, Mohammed, (1986), Ehyaye Ulum Al-Din, Dameshg: Dar al-Fakr Publication.
7. Naraghi, Ahmad Ibn Mohammad Mahdi, (1964), Meraj al-Saadi, Tehran: Howzat Al Elmiyat al islami Publication.
8. Tusi, Mohammad Ibn Hassan, (1986), Usaf al-Ashraf, Tehran: Elmi Publication.

9. Mohaghegh Damad, Mustafa, (1967), *Gavayed Al Fiqh Bakhsh-e jazayi*, Tehran: Ganje Danesh.
10. Al-Serakhsi, Muhammad ibn Ahmad, (B) *al-Mabsut*, al-Maktabi al-Shamalah.
11. Ibn Abedin, (1995), *Takmeleye Hashiyye Ibn Mabedin*, Dameshg: Dar al-Fakir.
12. Majlesi, Mohammad Bagher, (1984), *Bahar al-Anwar*, Tehran, Publisher: al-Maktaba al-Islamiyah, Vol. 2.
13. Beihaqi, (BT), *Sunan Al-Kubra*, Beirut: Dar al-Fakir Publication.
14. Ibn Hanbal, Ahmad ibn Muhammad (1993), *Mosnad Ahmad*, Beirut: Dar al-Fakir.
15. Ibn Maja, Mohammad bin Yazid, (2016), *Sunan*, Beirut: Dar al-ehya al-Torath.
16. Kleini, Mohammad Ibn Yaqoub, (1984), *Usul al Kafi*, Beirut: Dar al-Zawah.
17. Al-Hore Amoli, Al-Sheikh Mohammed Ibn al-Hassan, (1984), *Vasayel Al-Shi'a*, Qom: Al-Albit Institute: Le ehyiye al-Torath.
18. Tusi [Sheikh], (1984), *Mabsut*, Tehran: Heidari publication.