

Statute of Limitation and its meanings development in Islamic punishment Law

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ABSTRACT

Statute of limitations is a very important and high usage and useful Legal establishment for law of every country, also it causes the constancy of legal situation. If there is no such law, claimant that neglect his or her adjudication or because of neglect of prosecution system, the accused person is not prosecuted and or for the reason of judicial systems neglect, the sentence is not issued or because of guilty crime that escape from punishment; It shouldn't disturb the court corridors and waste the judges time with old claims. Also, it is not easy to prove the claim that happened long ago, because that after passing time more proof reasons of crime such as witnessing and circumstantial evidence will lost. And how often a guilty person that after passing duration of time that included statute of limitation, always was in thought of Punishment and escape from it and mentally punished enough and if punish again, the memory of crime commitment revive in mind of guilty person and community and this action causes insecurity in society and people become pessimistic toward judiciary and justice .because the crime that happened several years ago and now, after years, the guilty person is punished. In this research, it is tried that with a analytical approach we study the, statute of limitation and its meanings development in punishment law approved 2013.

KEYWORDS: statute of limitation, criminal laws, jury bases of statute. of limitation, meanings of statute of limitation..

1. INTRODUCTION

A brief looking at legislation flow in Iran, especially in years a after the revolution, indicative the hasty trend of legislation and lowlife of Laws that because of different reasons, faced with explicit abolition, or implicit or reformatory laws. Among these, we should search the most unstable laws among forms laws. It is clear that sacrifice the quality and principles in legislation flow not only, it can't satisfy needs of approved time, but also, by prior way, it has not con sonant and congruity with future needs. In the meantime, the transient and unstable laws, in addition to social undesirable effects, is an obstacle against the juridical procedure as a most important of legal sources. In fact, all of the legal systems in world, as far as possible, try to not propound the claims in judicial authorities and before arrival the disputes in this authority, the enmity ends with other ways like arbitration, agreement, peace and other authorities other than justice. along these policies, the legislative policy is dependent on this affair that expel special cases from the range of judicial protection and ability hearing that (legal establishment of statute of limitation) is one of them. This kind of vision and leg is native policy has different explanation bases that one of them is, reduce the extent to opened claims in court and giving tranquility to judge for deep and quality investigations; because superficial investigations not only, it cant reach to the aim of procedure that is ending enmity, but also, causes reworking and renewal of investigations and forces the superior au thirties to reinvestigate because of abolition or breaking of judgement. legal Establishment of statute of limitation is among the legal establishments that because of being unlawful is omitted after the revolution. definition of criminal statue of limitation the de function of statute of limitation in article 731 of previous law of civil procedure was such that(statute of limitation consists of passing a period that according to law after the expiration of that time, the lain is no sheared. (so, statute of limitations is established for preventing of revival and propounding the dead claims and for helping the stabilization of legal status, and a right that is not prosecuted and claimed for along time, is not considered fixed and alive and valid.

So statute of limitation consists of passing duration that according to law, it is suspended after expiration time of crime prosecution or executive of criminal definitive sentence. In other words, whenever crime investigation or execution of criminal definitive sentence suspend for a certain time, the next time, that crime is not investigated and definitive sentence is not executed in a real time (Akhondi, 2000, page49). In this case it is said that crime included statute of limitation.

“law fullness of criminal statute of limitation”

Majority of Juris consult of guardian council know the statute of limitation legal affairs contrary to religious law, criminal authorities, not only pay attention to the theory of guardian council about legal affairs, but also relate these theories to criminal subjects and problems. In addition, as a result, they formally consider criminal statute of limitation abolished and even previous commission of religious matters.

Of superior judicial council and legal department of judicature intermittently talk about being abolished of laws of criminal statute of limitation (Akhondi1999, page 153).

“Kinds of criminal statute of limitation”

Criminal statute of limitation is divided into 3 kinds:

1 . prosecution statute of limitation: prosecution statute of limitation is related to stage before complaint and investigation. It means from the date of occurrence crime until expiration the legal time that statute of limitation is reached, there shouldn't be any prosecution. In this ease, the article 173 of criminal procedure code of public and revolution courts 1378 says that: In crimes that it, legal Punishment is kind of preventive punishment or preventive action and educative, there isn't any demand for prosecution from the date of crime occurrence to expiration of elaborative times.

2. statute of limitation for sentence Issuance: if from the first date of prospective action to the expiration of time duration that is necessary for statute of limitation, a sentence is not issued for subject. after the expiration of legal time ,the subject included statute of limitation. So, a part of article 173 in criminal procedure code of public and revolution courts is observer of this kind of statute of limitation and regulate about this that. « or from the first date of prospective action to expiration of mentioned times that judgment is not ended, the prosecution will can celled»

3. statute of limitation for sentence execution: if sentence is not executed from the definitive date of sentence to expiration of legal time necessary for statute of limitation, In this case sentence execution is stopped. Based on statute of limitations, whole criminal sentences from the kind of preventive punishment that their definitive legal time is past, or for any reason the sentence is not executed, the next time it is not executable. (Akbari,2012,page 167).

Crimes statute of limitation in juris prudence of Sunnites religions.

be for presenting the view of Islamic jurisprudence, it should be noted that « right» is eternal and undeclinable in Islamic Laws. Even if elongation of it is passed but from the light of scientific and judicial, it may has a limited right and special situations. In other words, In Islam, it is not accepted to misuse right and persisting others in getting right and It means that every right in Islam is request able with special situations. So being permanent and absolute of vindication of rights has it, s difficulty and doubt. One of the reasons of this claim is accepting statute of limitation and non-hearing of claim in criminal and civil affairs in some of Islamic religions. In addition, we pay attention it as following so, although right may be permanent in proof mode, but it faces with limitations and situations in proving and vindication mode that it is possible that real right becomes unprovable and unvindicable.

“Reason of judgments and promises”

A) accepting statute of limitation in limiting crimes.

ebn abi leil (is one of the medina jurisconsult and con temporary with Imam sadegh (greetings to him) who lived in medina and in Logic or reasoning position, says that: « limiting crimes is described for making aversion and pre venting and frightening the guilty, and when these aims is satisfied that without distance after crime occurrence, punishment is executed and delay in executing punishment destroy it,s preventive mode. another reason that is usable from ebn abi leil,s speech is that « guiltyperson want to repent; it means that there is a high probability that becomes regretful for his action and repents in divine presence and the fact that confesses at near of judge and in fact this confession is indication of repentance and returning and taking confession to cleanse himself» (akhondi, 2001page 242)

B) accepting statute of limitation in proven limits with witness not with confession:

In hanafi religion, using of statute of limitation in limiting crimes is proved with witness and non – proceeding of statute of limitation is proved with confession.

Page4 “bases and range of statute of limitation in Islamic jurisprudence”

although studying the executive nature and range of statute of limitation was a subject of investigation and opinion among honourable jurisconsult,but discussion about it does not open dependently and it didn,t find a suitable vin dication and saturation, so that even deceased sahib javaher who has a compreh ensive Looking at jurisprudence problems and general laws, didn,t mention the nature and scientific meanings of statute of limitation. It can be said that the only explicit speech about statute of limitation is this sentence of sheikmofid who says in maghnaeh book: whenever a person transfers house or immovable property orland to another person,and doesn,t speak about it for ten 10 years and doesn,t ask it or doesn,t claim it, hence the right of making claim is deprived from him/his. In civil law of Iran that is derived from jurisprudence texts and famous sayings and opinions of Juris consult, it is not mentioned about lapse of time but regulations concerning statute of limitation by followers from Europe law

and with adaptation from civil law of France is reflected in civil procedure code of our country. In article 121 of civil procedure code, lapse of time is defined such that: « lapse of time consists of passing a time that aftertimes' expiration, the right of adducing complaint is taken away according to law or accused prosecution or executing definitive criminal sentence is suspended.»

rational and quotation foundations of statute of limitation in jurisprudence:

1 – In order to studying carefully the mentioned reason, we divide them into 2 groups including rational and quotation bases and describe separately. rational bases of statute of limitation according to description in the beginning of this writing, Lapse of time relying on decline of basic right or decline the guarantee of its execution is divided in to3 class, and base of effect of triple kinds has differences that is discussed in its place. Bases of statute of limitation effect of claim is most important rational base of lapse of time in occurring of claim in public order: there is no doubt that attention to every old claim or documents contrary with existing situation causes that tribunals be busy in old and lost claims and relying on pale reasons of proving, allowing to make claims related to old rights of people that was suspended for along time is contrary to public and social regulation. unlike idea of some researchers such action on behalf legislator can,t rely

on legal indications, because circumstantial evidences are prevailing and in lapse of time problem, disregarding rightful from own right cannot be considered as a prevalent affair in cases of suspending time. In addition to that if decline of holder right is considered a right according to indication, this indication is contrary to power indication that is main reason of new possessor for being his rightful and thus both of them become in valid. As a result present possessor can't refer to his possessions and assure claimant in having a just claim.

2. apparent exigency is one of the proving reason of apparent claim that its documentation in jurisprudence texts is usual but in texts of current law is Less common. Nevertheless, article 265 of civil law is about it (shahidi, 1368, page 138). apparentsness it ate that whenever rightful detain using of right for a long time and another person exploits it, towards current possessor will be more important.

3. harmless rule : with respect to using harmless law in law range and that this law governs the first reason of government commandments in case of occurring harm and damage so, con temporary Juris consult (Bejnurdi, page 345) con sidered this law as a bases of lapse of time effect. With this reasoning that people duty for maintaining documents ownership for a long time in one side and in attention current situation that flows in far or of another person, and this causes harm and damages that is clear in this famous judicial statement so, we should for presenting from above mentioned damages, consider statute of limitation that causing falling of previous right and occurrence of new right.

Statute of limitation of limiting crimes in Islamic religions be for presentation of famous Islamic religions view, it should be noted that right is permanent and un declinable in Islamic law, even if a long time of it is passed. But it is possible that scientifically and judicially the indication of right be limited to some situation. In other words, in view of Islam it is not acceptable to misuse right and persisting others for vindication of right. So, being absolute and permanent for vindication of right is not allowable. It means that every right in Islam is indictable with special situation.

One of the reasons of this claim is accepting lapse of time and non hearing claim in civil and criminal affairs in some of Islamic punishment.

lapse of time kinds

In order to express law properties of time of lapse, we review it, s kinds briefly statute of limitation is divided in to following kinds: acquisitive is a causal for a ownership acquisition for property possessor that was belong to others and their owner or owners couldn't gain their rights or claim for along time. Writers consider this kind of statute of limitation as a acquisitive means (shahidi,1983,p141).

In civil law of France

Quisitive lapse of time is one of the basic foundations of ownership in immovable proper ties and it,s strengths is more than transactions. With this explanation that , for example, in selling contract, transaction not happening except with real and present owner if there is a corruption for subsequent authorities, thus it is effective for buyer and merely, existence of transaction document in hand, of buyer is not considered as apposite ownership.

« but if it is proved that a person holding a property and whole time of his possession and his conveyors is equal or more than time that law says, so this long possession is a document that preserving him against every kind of claim from third person. So , statute of limitation is a in depended document that its credit is more than transmission document and is immune from alteration for writings. (daftari,1337,page 18-17) says that acquisitive statute of limitation has no wide range, because it, only satisfies in range of irreplaceable law , so that, it includes right of ownership or right of benefit or right of easement , such that this kind of lapse of time occurred in immovable properties.

“statute of limitation for right falling”

Is a casual for commitment falling and releasing promiser due in opposite side of creditor who has not requested commitment execution from debtor for along time there is an evidence for this kind of lapse of time in civil law of frence, and is according to indication of debt payment and is titled as review of exceptional times and it,s regulations are mentioned in articLes 2271-2281 and is related to commitments that usually fulfil In common inter courses fore a short time and there is no document for them ,like the lapse of time for six month related to teacher wage for monthly teaching and renting hotel and Is properties of this special kind of lapse of time that according to article 2275 civil law of frence, this kind of lapse of times lost their effect by oath,namely, a creditor who his claim included statute of limitattion, can demand oath on behalf of himself and in case of refusing to swear or rejecting it ,the lapse of time is falled and with claimant oath , his right is approved. The lapse of time for falling right flows in all rights and whole proper ties including god and immovable equally.

“statute of limitation for claim falling”

In our country ,by considering the definition of article 731 in law of civil Procedure code about lapse of time and with respect to other related regulations, we cannot account statute of time as acquisitive or falling the right and commitment, but , we should know it as a tool in dependant hand for falling the claim of claimant and preventing form hearing. So ,in contrary to civil law of frence , there is not any mention about lapse of time in civil law of Iran and related regulations is reflected in law of civil procedure code that including forms regulations for investigation (shahidi,1368, page 139). There is a basic difference between acquisitive lapse of time and falling of right or commitment or falling claim and that difference is that base in lapse of time for falling right and commitment and acquisitive lapse of time is turning indication from right or disregarding, but, the base in lapse of time of falling claim is public order.

“legal range and nature of discussion about lapse of time”

First discussion: range of lapse of time

There is no doubt that time duration is origin of effects in law world and juris consult like lawyers, not only, accepted it , but also, respect to it,s role in related to rights of people detachment effect in wife divorce or death that with passing of it, the parties commitments for marriage offspring ends, is a kind of this category.

So that, passing a given time for joining the baby to husband ,or passing a given time for making dissolution in some of options and eventually decline of return right of husband after detachment expiration in re turning divorce and like these.

But discussion about lapse of time should not mix with this kind of phenomenon's relying on time ,although some writers (shahidi,1368,page 140)

Known these cases as conformation for lapse of time.

of course there are many differences between legal time or dates in above meaning and lapse of time, and most important of these differences are:

1) with respect of legal nature

In principle , in special meaning, statute of limitation, lonely , is causal of acquisitive or falling right and commitment and it need not to effect of other factor. But time passing ,lonely, has not such property and is only a time for right performance.

2) with respect to being discoverer or transmitter of right

Phenomenon, statute of limitation is indicative of full transmission a right or uncompleted transmission and converting it to natural commitment, while time passing in time duration of above arguments is discoverer of remaining of previous right and is not considered right transmitter, at all.

3) with respect to origin or being exceptional of law

lapse of time phenomenon is a exception for having the remaining of previous right, while time passing is agreement with origin of remaining right.

4) with respect to kind of right

lapse of time phenomenon has not any way in non-financial rights, while passing of time is equally in financial and non-financial rights.

“statute of limitation in law of criminal procedure code”

different goals is guaranteed by determining punishment.

One of the mis reply to anxiety of society. Crime occurrence makes society un easy and disturbs the situation, but assumption is that with guilty prosecution and his/her punishment, order and regulation re turns to society and common situation is established.

If crime is occurred for a long time; meanwhile, society for gets the crime subject and as a result, if guilty person is prosecuted and punished again, again anxiety and disturbance come back to society and namely, punishment violates its aim. Many of criminal systems , with passing a time of crime commission, doesn't ,t permit further statement of subject in courts again, and this procedure is titled as lapse of time.

“crimes included statute of limitation”

We should know before every thing that statute of limitation is in crimes which its legal punishment is a type of «deterrent punishment or preventive and educative action». The property of these crimes is that type and extent of their punishment is not predicted in religious law. Page 8 so, limiting crimes like adultery, nemesis and wergild have no statute of limitation and if someone in youth committed these crimes and he or she be out of reach until old age, again he/she can be arrested and punished.

A) statute of limitation for crime occurrence

If a crime is happened and there is no prosecution demand from the date of crime occurrence to expiration of times that is stated in following, or from the first prosecution to expiration of mentioned times, there was no sentence issuance ,so ,in this ease, prosecution will be suspended: most specified punishment more than 3 years or monetary punishment more than 1 million rials with expiration time of 10 years.it means that if there is a crime that its maximum punishment is more than 3 years imprisonment or monetary punishment is more than 1 million rials and it is passed 10 years from the occurrence of this crime, so, this crime in clouded lapse of time and there is no possible to punish it, on condition that from the date of first prospective action to expiration 10 years, The sentence is not issued and it is not ended.

Maximum punishment less than 3 years imprisonment or monetary punishment to 1million rials with expiration 5 years. It means that if a crime occurred and its maximum punishment be Less than 3 years imprisonment or a monetary punishment be to 1 million rials and 5 years is passed from the occurrence of the is crime , this kind of crime in clouded lapse of time and it can not be punished again, provided that There was no any end issuance from the date of first prospective action to expiration of 5 years.

“ the punishment other than imprisonment or monetary punishment with expiration of 3 years time.

It means that if someone committed deterrent crime or preventive and educative action that its punishment isn't imprisonment or monetary punishment, in this ease if 3 years is passed from the crime occurrence and there was no end issuance from date of first prospective action to expiration of this time, again, the guilty person is not prosecutable.

B) lapse of time of sentence execution”

Is kind of lapse of time is predicted in current law of criminal procedure code that is famous as lapse of time of sentence execution.

When a sentence is issued but it is not executed, so its execution is ceased after the expiration times of 10, 50 or 3 years from the sentence finality and in any case, the subordinate effects of sentence will be remained.

Commandments of courts out of country towards Iranian followers in range of legal provisions and agreements included the regulations of this article. Prosecution endorsement and stopping the sentence execution is not an obstacle for vindication of claimant rights and private pretender. An argument in new law of Islamic punishment is devoted to statute of limitation and with its approval, articles related to statute of limitation in law of criminal Procedure code is abolished implicitly.

An interesting subject in new law is that Punishable crimes included known statute of limitation, but in law of current criminal procedure code, only deterrent crimes and preventive and educative action included statute of limitation.

It is also specified about statute of limitation of sentence execution that: statute of limitation, ceases execution of Punishable definite sentences and its duration from the final judgement is as following:

- A) punishable crimes I to 3 degree with expiration 20 years, page 9
- B) punishable crimes, degree 4 with expiration 15 years.
- C) punishable crimes degree 5 with expiration 10 years.
- d) punishable crimes degree 7 and 8 with expiration 5 years.

There are many innovations in this law that some of its cases is related to statute of limitation, In other words, one of the innovations of new law is allocation of time for statement of legal objections. Based of this, according to article 387 in new law of criminal Procedure code, «after determining lawyer or attorney, immediately, office manager warns to accused and his attorney and according to case, warns to claimant or private plaintiff or their agent to give up their whole objections and protests for period of 10 days from the communication date. Giving time renewal to accused demand or his agent for one time and duration of 10 days from date of ending previous time, and with diagnosis of court has no problem». In addition to this, according to, article 388 of this law, «accused and claimant or private claimant or their agents should give up all objections and their protests including lapse of time, in efficiency, rejection of judge or being not prosecutable of acquisitive action, researches imperfection and necessity investigation for another reason or new reason and in sufficiency of reason court.

To court after ending the mentioned time, no objection is accepted behalf of aforesaid people, except that objection cause discoverer happen after break time. In anyway, it is for bidden to state case in preliminary session of court and before the break ending.

lapse of time acceptance in punishable crimes.

according to provision a, article 107 in law of Islamic punishment, if a definitive criminal sentence is issued in punishable crimes degree 1 to 3, with passing 20 years from issuance date of definitive sentence, if sentence is not executed during this time, is not executable again; so by considering punishable crimes of degree 1 to 8, times duration is difference. In past, Law of criminal procedure code pay to subject of lapse of time and it is for first time that this subject is planed in law of new Islamic punishment

There are differences among new law of Islamic punishment and law of criminal procedure code; statute of limitation in law of criminal procedure code 1378 is only accepted in deterrent crimes; but legislator accepted lapse of time in punishable crimes by omitting preventive punishment in law of “

Statute of limitation in limiting crimes, nemesis and atonement:

There is no lapse of time in limiting crimes, nemesis and atonement and right is not lost by lapse of time. In fact, leg is later has accepted lapse of time in punishments and because of that governor has this option to execute or not execute the punishments, we are free for accepting lapse of time. According article 109 law of new Islamic punishment, some don't include lapse of time of prosecution, sentence issuance and punishment execution and this cases are as following: crimes against internal and external security of country, economic crimes including fraud and crimes in subject of article note (36) this law (with attention to specified amount in that article) and crimes of law matter in combat with opiate products, legislator says in article 113 of new law of Islamic punishment that lapse of time does not cause losing the right of private claimant; it means that if, for example, a robbery taken place 30 years ago, private claimant can compensate his financial harm and loss; but using punishment and public aspect of crime included lapse of time. different philosophies is said about for lapse of time that one of them is that with passing long time from crime occurrence and removal existing anxiety subsequent it so occurrence, people forgot crime and because that society has not past sensitivity about that subject ;it is not necessary to search past time of person and deliver him to law also, if a person has not committed other crimes after years, it can be indicative of his amendment, we should pay attention to this subject that main goal of punishment is amendment and remedy of guilty person. Sometimes lapse of time can be repentance indication.

“obligations of lapse of time” in law of Islamic punishment

In legislator predicted in some cases that after a lapse of certain time, the sentence is not issued or executed or that accused person is not prosecuted. There are 3 types of lapse of time in law of Islamic punishment that including lapse of time of prosecution, issuance and execution of sentence.

article 105 law of Islamic punishment says that lapse of time can suppresses crimes prosecution causing punishment that definitive sentence is not issued from date of crime issuance to expiration of following not prosecuted times or from the last date of prospective or investigative action to expiration of these times:

- A) punishable crimes degree 1 to 3, with expiration 15 years.
- B) punishable crimes degree 4, with expiration 10 years.
- C) punishable crimes degree 5, with expiration 7 years.
- d) punishable crimes degree 6, with expiration 5 years.

e) punishable crimes degree 7 and 8, with expiration 3 years.

Note1: prospective or investigative action, is an action that judicial authorities do in execution of a legal duty including recalling, arrest, inquiry, hearing witness saying sand well-in formed people, investigations or local search and judicial succession.

Note 2 – in case of issuance of depending contract ‘ prosecution lapse of time begins from final date of sentence that criminal investigation depending to its issuance .

Prosecutive or investigative action in article 105 of law of Islamic punishment means every action that judicial authorities do along their legal duties like recalling ‘ arrest ‘ inquiry ‘ hearing witnesses sayings ‘ and well – inform persons (people who know everything about crime occurrence)‘ investigation or local search . if a punishable crime of degree 1 ‘ degree 2 or 3 is happened ‘ but 15 years is passed from its occurrence and in this period its accused is not prosecuted ‘ we cannot prosecute accused present after lapsing this time .

If a person committed a punishable crime degree 4 ‘ with passing 10 years from occurrence not prosecuting accused in this time ‘ so this crime is not prosecutable anymore.

((lapse of time in issuance of depending agreement))

Sometimes it is specified in court investigation on a subject that this making decision is depend on problem that should be investigated in other court.

also it is necessary to do further investigation in same court ‘ some of other regulations and circumstances of criminal procedure code should be observed . in these cases‘ agreement namely depending contract is issued by court and communicates to both parties . in cases that depending agreement is issued ‘ prosecution lapse of time begins with court sentence which criminal investigation is related to it ‘ has been definitive . meaning that incases of depending issuance ‘ from time of issuing definitive sentence.

by second authority so subject is not prosecutable anymore.

“ developing meanings of lapse of time in un forgivable crimes”

There are 3 types of lapse of time in unforgivable crimes; lapse of time related to be fore before beginning complaint and investigation, lapse of timer elated to investigation times to issuance of definitive sentence and lapse of time related to after issuance of definitive sentence and times of sentence execution and are famous as:

lapse of time in complaint or prosecution

lapse of time in investigation and sentence issuance

Executive lapse of time

“com plaint or prosecution lapse of time”

This kind of lapse of time, also, called prospective or search lapse of time. If in punishable crimes, the given time duration that is considered by legislator, and prosecution does not begins from crime occurrence, so after mentioned time, prosecution is not possible.

article 105 in law of Islamic punishment 1392 approved by Islamic consultative assembly cays that: lapse of time suspends crimes causing punishment that has not began from occurrence date to expiration times or from last time of prospective or search action to expiration these times, that issuance of definitive sentence is not ended.

a): punishable crimes degree 1 to 3 with expiration 15 years.

b) punishable crimes degree 4 with expiration 10 years.

c) punishable crimes degree 5 with expiration 7 years.

d) punishable crimes degree 6 with expiration 5 years.

e) punishable crimes degree 7 with expiration 3 years.

It is consider able that contrary to article 173 law of criminal procedure code in new law of Islamic punishment:

Firstly – lapse of time is executed in punishable crimes overall (other than exceptional cases), (and there is no any classification called punishable and preventive, any more).

Secondly – lapse of time in punishable crime s is corresponded with new classification in article 19 law of Islamic punishment and a certain time of lapse of time is predicted for every degree of punishment. According to note 1 and article 105 new law of Islamic punishment, a prospective or search action is an action that judicial authorities do as a legal duty including arrest, recalling, inquiry, hearing witnesses sayings and well – in formed people or local investigation.

“lapse of time for procedure and sentence issuance”

Procedure lapse of time to sentence issuance time is second type of lapse of time, if prosecution begins in mentioned times , in article 105 of new law and discussion of prose cut iv e lapse of time, but with expiration of mentioned times, and with any possible reason, prosecution is not ended with issuance of definitive sentence, so in this case, punishment included lapse of time and suspending agreement of prosecution is issued last prospective or search action about accused is criteria for beginning times of this kind of lapse of time, but in practice, except in punishable crimes degree 7 and 8 with attention to predicted time for execution lapse of time, this kind of lapse of time happen less then others.

because, at last , the mention case usually investigated in given times of this article and ends with definitive sentence, but exceptionally, this kind of lapse of time may happens.

This lapse of time like complain lapse of time consists of:

A) punishable crimes degree 1 to 3 with expiration 15 years.

b) punishable crimes degree 4 with expiration 10 years.

c) punishable crimes degree 5 with expiration 7 years.

- d) punishable crimes degree 6 with expiration 5 years.
 - e) punishable crimes degree 7 and 8 with expiration 3 years.
- “executive lapse of time”

Third kind of predicted lapse of time in new law of Islamic punishment titled as sentence execution lapse of time. definitive commandments of courts executed by execution of judgements and immediately, guilty person who was free with one of the criminal presentation agreements in stage of preliminary and investigation searches, is recalled of sentence execution is provided, sometimes, by reason of non-presence guilty and non-possible of arresting him, last necessary pressure is done by recalling agent or warning guarantor or recording security to reach him/his. but some of guilty people don't present for execution of sentence and it may that they released by obligation of appropriate criminal guarantee or in appropriate security, but there are some reason that accused people didn't present for executing sentence: judge careless in stage of investigation or procedure, or non proportion of issued guarantee with kind of crime and amount fits punishment, or carelessness in origin or efficiency of taken guarantee by judge, or non-reaching to accused; and other reasons, however if execution of sentence is not facilitated by time duration that is specified by legislator, its execution included lapse of time that titled as definitive sentences execution lapse of time and suspends execution of definitive sentence, and its cases is as following:

according to article 107 of Islamic punishment law approved 1392, lapse of time as following – mentioned suspends execution of punishable definitive sentences and its time from date of final sentence is as following:

- a) punishable crimes degree 1 to 3 with expiration 20 years.
- b) punishable crimes degree 4 with expiration 15 years.
- c) punishable crimes degree 5 with expiration 10 years.
- d) punishable crimes degree 7 and 8 with expiration 5 years.

Note1-if whole execution or rest of punishment is depending to passing time or removal obstacle, lapse of time is calculated from expiration date of that time or removal of obstacle.

For example, if someone committed two different crimes that punishment of first crime is 5 years or more and its tolerance makes second imprisonment unexecutable and is an obstacle for second imprisonment, that in deed, in practice execution of two imprisonment is not possible, and second imprisonment does not include lapse of time.

Note2 – lapse of time in execution of courts commandment of country about Iranian followers in range of legal regulations and agreements includes regulations of this article.

according to article 108 in law of Islamic punishment, whenever execution of punishment begins, but, then stops by any reason, beginning date of lapse of time is execution of punishment date, and in cases that it stopped more than one time, beginning lapse of time is from separation date, except that execution of punishment is stopped because of intentional behavior of sentenced person, and so, in this case, lapse of time is not used, so, escaping accused from prison or intentional non – returning from leave does not cause to use legal advantages of lapses of time.

“lapse of time in forgivable punishable crimes”

a kind of prospective one year lapse of time is predicted in article 106 of new law of Islamic punishment that is anew establishment, and it is in this way that when wronged person does not complain in one year from crime occurrence, right of criminal complaint is taken him/her, except that wronged person has been an accused and in every reason out of reach, he could not complain, but in this case, one year time of falling right of criminal complaint is fixed but beginning lapse of time is calculated from time of removal obstacle. There is a basic question in this argument that whether lapse of time in forgivable crimes stopped with death of wronged in fact, there is a question that if wronged of crime dies in duration of mentioned one year, can heirs plan a criminal complain in duration of one year from date of death? or can they complain in remaining time of leg at or lapse of time?, or in principle, right of criminal complaint is lost with death of wronged? If there is no reason for refusing wronged of crime of his complaint, principle is that his or her heirs can complain and this is a subject which is predicted in article 106 of new law and in fact, heirs have the right of criminal complain, but its duration is sixth month after death date, whether more than 6 month from date of crime occurrence is ceased in lifetime of legato or less than it. As a result, previous lapse of time with expiration every a month of its time breaks with wronged death and sixth month lapse of time begins from death date for heirs. It is mentionable that right of criminal complain in forgivable crimes lapses with expiration of mentioned time.

“results summary”

Based on new punishment law, criminal lapse of time divided in to 3 types: prosecution lapse of time, issuance and execution of sentence.

1) prosecution lapse of time: it is related to stage before complain and investigation; meaning that there is no prosecution from date of crime occurrence to expiration of legal time that lapse of time is obtained.

According article 105 Islamic punishment law, lapse of time suspends prosecution of crime that is not prosecuted from date of crime occurrence to expiration of mentioned times in this article. According « provision a» of mentioned article, if punishable crime degree 1 taken place, but 15 years is past from it and there is no prosecution about it, so with passing this time, it is not prosecutable any more and we cannot prosecute accused or form a case for him/her. New ease in punishment law is about lapse of time in forgivable crimes, according article 106 in law of Islamic punishment, if one year is passed from date of complainant in formation from occurring crime and complainant does not complain, so this included complaint lapse of time and his right of criminal complaint is fallen. except that he/she be under rule of accused or in any reason out of his option, he is not able to complain, and in this case, one year period will be from date of removal obstacle.

If wronged of previous crime dies from expiration of mentioned time and there is no reason for his refusing of complaint, everyone of his/her heirs have right of complaint in duration of six month from death date.

2) lapse of time in judgement issuance: if judgement does not issued from first date of prospective action to expiration of necessary time for lapse of time , so after expiration of legal time, subject includes lapse of time in article 105 law of Islamic punishment , lapse of time is regarded form date of last prospective action to expiration of mentioned times, and this is in a case that definitive judgement was not issued.

meaning of prospective or investigative action in last – mentioned article « is an action that judicial authorities do in executing a legal duty including recalling , arresting, inquiry, hearing witnesses sayings and well – informed people, investigations or local search and judicial succession.» it should be considered that judicial authorities should issue needed commands and when office manager of a criminal authority issue to recall accused person or order renewal of summons papers and further communication, these action don't include criminal lapse of time. in addition to past actions , legislator in law Islamic punishment believed to some exceptions about lapse of time, according article 109 of this law, some crimes don't include lapse of time in prosecution, judgement issuance and punishment – execution that including: crimes against internal and external security of country, economic crimes including fraud and crimes related to note of article (36) this law (with regarded to given amount in that article) and crimes subject to law of combat with opiate products. Last no to about lapse of time is right of private complainant based article 113 of new law of Islamic punishment, suspending prosecution , issuance of judgement or punishment execution , are not an obstacle for vindication of rights of private claimant and wronged of crime can adduce private claim in a competent authority.

Suggestions:

1- it is suggested to represent that respectful guardian council did not act in interpretation an execution of religious law and so in discussion such as lapse of time, discussion of usefulness or non-use fullness of punishment action that seen crime related to years ago.

2- second suggestion is that legislator close ways of possible misuse in exceptions of lapse of time and in argument such as crimes against national security, and determining exact limits of these crimes.

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