

GENESIS OF THE STAGES OF COMMITMENT OF CRIMES IN THE TERRITORY OF UZBEKISTAN (BASED ON THE ANALYSIS OF ISLAMIC LAW RULES)

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Annotation: This article provides a retrospective analysis of the stages of crime commission based on an examination of sources related to criminal norms that were in effect in our country. The author has studied the historical aspects of the stages of committing crimes and has categorized them as follows: 1) the ancient period, from the emergence of early civilizations until the arrival of Islam in the territory of Uzbekistan; 2) the period when Sharia norms were in effect in our country, covering the time from the 8th century to the 1850s.; 3) The era of Tsarist Russia, spanning from the 1850s to the 1920s.; 4) The period of the former Soviet Union, which includes the years from 1922 to 1991.; 5) The most recent historical period, including the early years of independence, starting with the adoption of the Criminal Code of the Republic of Uzbekistan on September 22, 1994, and continuing to the present day. The first source that established liability for crimes in the territory of Uzbekistan was the Avesta. The author has explored how this source addressed issues related to completed and incomplete crimes, preparation for a crime, and the imposition of punishment for attempted crimes. The author also explains that in Sharia norms, the unity of action and intention is considered proportional, and the formation stage of intent holds particular significance. Although issues related to preparation for a crime and attempted crimes are not specifically regulated in Islamic law, certain judgments do exist. The author substantiates that for attempted crimes, punishments such as ta'zir and hadd were prescribed.

Keywords: history, stages of committing a crime, incomplete crime, preparation for a crime, attempted crime, formation of intent, intention, Islamic law, Sharia, ta'zir punishment, hadd punishment.

History plays an important role in the revival of the moral values of the nation, in the truthful and unbiased coverage of past and present historical events. "History is the most valuable heritage of our nation. We should always

appreciate, learn and pass our great history on future generations. A nation that does not know its history cannot construct its future. Therefore, we need to study all aspects of our history in depth and learn from it. “Retrospective analysis and research of the rules of the Criminal law in determining the criminality of the act are distinguished in many ways. The analysis of historical documents, based on the study of its specific aspects, makes it possible to apply some achievements to the legislation, and to completely abandon some of them. The study of the history of the development of criminal law rules, which determine criminal responsibility for the stages of committing a crime, is important in determining their perspective.

Since the concept of the stages of crime, their types and the history of the issue of punishment are poorly studied in the Republic of Uzbekistan, there are almost no sources that reflect the information related to these relationships. Only in some historical sources can you find some information about how these crimes were punished.

Since the main concepts of our research are related to the stages of crime, we considered it appropriate to analyze the sources of criminal rules in our country and study them in four following groups. Including: 1) the ancient period – the period when the first civilizations appeared and before the introduction of Islam to the territory of Uzbekistan; 2) the period when sharia norms were in force in our country. This period covers the period from the 8th century to the 50s of the XIX century; 3) the period of Russian empire – the period from the 1950s to the 20s of the XX century; 4) the period of the former Soviet Union – this period includes the period from 1922 to 1991; 5) the most recent historical period, which includes the first years of independence, the adoption of the Criminal Code of the Republic of Uzbekistan on September 22, 1994, and the time up to the present day.

We think that the peculiarity of these periods refers that responsibility for these crimes is determined in each of them, that the rules of the Criminal law apply to that period and that it has its own characteristics.

Avesta is the first source of responsibility for crimes in our country. In the Avesta, crimes are divided into complete and inchoate crimes according to the composition of the committed act. According to Zoroastrian law, attempt to commit a crime, and the commission of a crime are punishable. “Attempt to crime is the search, making and adaptation of tools for the commitment of a crime, or the creation of favorable conditions for the commitment of a crime, provided that the crime was not completed due to circumstances beyond the



control of the criminals”. Line 17 refers to attempt to crime by inflicting bodily harm with a military weapon. “Whoever stands up with the intention of inflicting physical injury on someone is considered a crime called – “*ogerepta*”. *Ogerepta* is a criminal who took a military weapon, or an impenetrable object or a protective device in his hands with the intention of harming someone, but due to unknown reasons failed in committing crime [1; 316 p.]. This means the inability to continue criminal activity in a situation that does not depend on the will of the criminal. Otherwise, if the criminal shows the intention of causing injury, and then realizes his actions and stops, the possibility of preventing criminal actions is excluded. The peculiarity of this type of attempt to crime is “standing up and holding a military weapon in his hand with the aim of harming another person”, but due to the intervention of others, he was unable to complete the crime. If, the armed with a military weapon, approaches the object of the crime, i.e. another person, for this purpose, the person is guilty of attempted murder. Since the risk of harming human health as a result of such actions is real, it is appropriate to be punished more severely. An act (inaction) of a person that is aimed directly at committing a crime is considered an attempt to crime, if it is not completed independently of his discretion. It is designated in Avesta: “Who stands up and goes near someone with the intention of harming, his guilt is qualified as *avaurishta*”. *Avaurishta* is considered a crime, and it should be understood that when a person intends to injure someone with a military weapon, due to the intervention of other people, he cannot carry out his decision to the end [1; 316 p.]. Therefore, the Vendidad defines several types of criminal attempts and assassination according to the reality of the risk of injury to others health. A threat that is less dangerous according to the level of severity, accordingly, deserves a lighter sentence. For instance, if a person stands up to attempt to crime, they still become an *ogerepta*, even though they didn’t get anything in their hands. If he is stopped at this stage, this is considered the first stage of attempted murder, i.e. attempt, and is punishable by “five lashes with a horse whip and five lashes with a cane”. If a person approaches an object for the purpose of a crime or swings a weapon over his head in order to strike, if he is stopped at this stage, the act that poses a greater threat to the person’s health (*avaurishta*) is punished more severely: “ten lashes with a horse whip and ten lashes with a cane” [1; 316 p.].

It is noteworthy that in the Avesta, preparation to a crime and attempt to crime are more clearly classified according to specific types of crimes that present a real danger to the criminal. For instance, when committing a

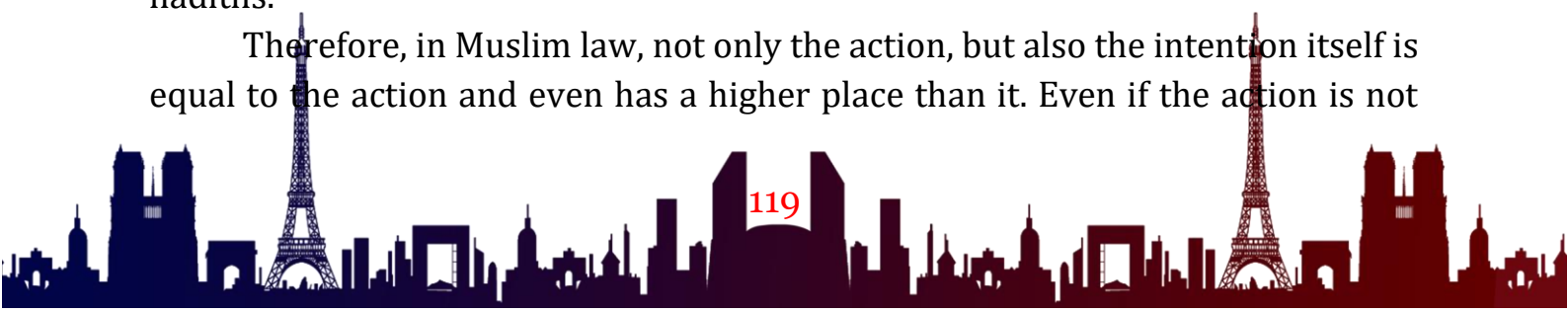


premeditated crime, if a person stands up only for a criminal purpose or takes a weapon, the risk is relatively less. It is possible that he will change his mind and refrain from committing the act until he reaches the target or destination, so there is enough time before committing the crime. On the other hand, if the person comes close to the victim's head and is ready to strike with a weapon, the risk of injury to human health is much higher. The chances of preventing the crime are greatly reduced. In this regard, in the classification of these acts in Vendidad, the reality of the commitment of the crime was taken into account as a necessary qualifying feature. Another feature of the Avesta is that when determining whether to attempt or prepare for a crime, the repetition of these acts is considered a very dangerous act. Repeated attempts to commit a crime increase the guilt of the offender and, accordingly, causes tougher punishment. The above indicates that the Avesta continuously aims to prevent crime and delinquency. Therefore, attention is paid to the prevention of crime from the stage of preparation and assassination. As can be seen, in the Avesta, a person's act is evaluated based on committed behavior. Preparation for a crime and attempt to commit a crime are distinguished from the point of view of the proximity of the act to the crime and the possibility of harm. It is noteworthy that in the Avesta, criminal responsibility for criminal preparation and attempted crime was differentiated and reflected in the punishment.

In addition, in the sources of "*Tuzuki Temuriy*" [2; 182 p.; 3; 64 p.] and "*Yassa*" [4; 64 p.] studied in our research, we did not find rules regarding the stages of crime and their types.

The next stage of development of social and legal relations in our country included VIII-XIX centuries. Taking into account the fact that Sharia rules have been followed in our country during this period, we believe that it is appropriate to study the special features of Sharia Criminal law rules, including the determination of responsibility for the stages of committing a crime. Since criminal-legal relations in Sharia are not regulated by a specific legal acts, it can be concluded that there is no specific rule that includes the concept of stages of crime, types and their definitions. The stage of formation of intention is described in a slightly different way in Islamic law. In other words, according to the sources of Islamic law, intention is considered necessary as the proportional unity of action and intention. Examples of this can be given from the following hadiths.

Therefore, in Muslim law, not only the action, but also the intention itself is equal to the action and even has a higher place than it. Even if the action is not



performed, the action is considered to have been performed at the time of the intention for this action. According to Islamic law, Allah motivates people first because of his intention, and only after that is the person's action taken into account.. Therefore, according to Muslim law, unity of action and intention is defined as a necessary condition. The intention of people acquired legal significance and was even considered a sin.

Imam Bukhari says: Allah says in Quran: "Say (O Prophet), "Everyone acts in their own way. But your Lord knows best whose way is rightly guided". (Surah Isra, verse 84). Another hadith has the following idea. Actions are accepted according to intention, whoever intends, achieves what he intends. Whoever emigrated for the sake of Allah and His Messenger will be rewarded for migrating for the sake of Allah and His Messenger. Those who emigrated with the intention of gaining wealth or getting a wife can only achieve that intention (but will not receive reward) [5; 19 p.].

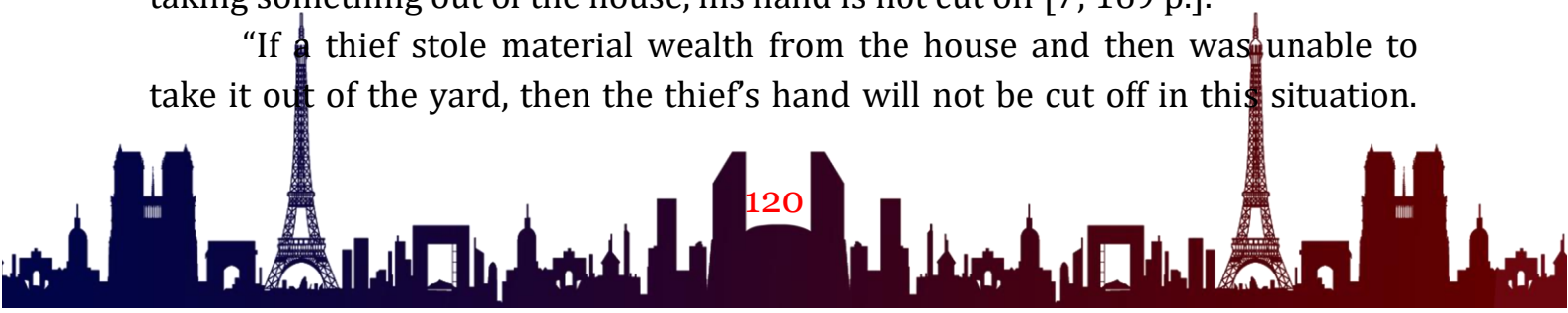
In Sharia rules, punishment is prescribed not only for the formation of the intention, but also for the manifestation of the intention. The following source can be cited as evidence. "For the public interest" punishment is applied to persons who have not yet committed a crime, but who have sufficient grounds for the possibility of committing a crime [6; 200 p.].

Thus, in the sources of Muslim law, we can find cases of punishment being applied to persons suspected of committing a crime. In our opinion, the purpose of the punishment applied to such persons was to prevent the commitment of socially dangerous acts.

According to some sources, Islamic law provides for criminal responsibility for crimes that have been committed. The concept of attempt was not fully developed. However, in a number of crimes, the occurrence of a criminal consequence was considered the basis of responsibility. For instance, criminal consequences are provided for crimes such as theft and bodily harm [7; 169 p.]. In particular, if the criminal consequence of murder is the life of the victim, the consequence of theft, invasion, robbery is property damage.

Failure to complete the crime by the criminal was the basis for imposing a lesser punishment than the prescribed punishment. For instance, if the criminals were caught blocking the road without taking the goods and killing anyone, they were given prison sentences rather than death. Also, if a thief is caught before taking something out of the house, his hand is not cut off [7; 169 p.].

"If a thief stole material wealth from the house and then was unable to take it out of the yard, then the thief's hand will not be cut off in this situation.



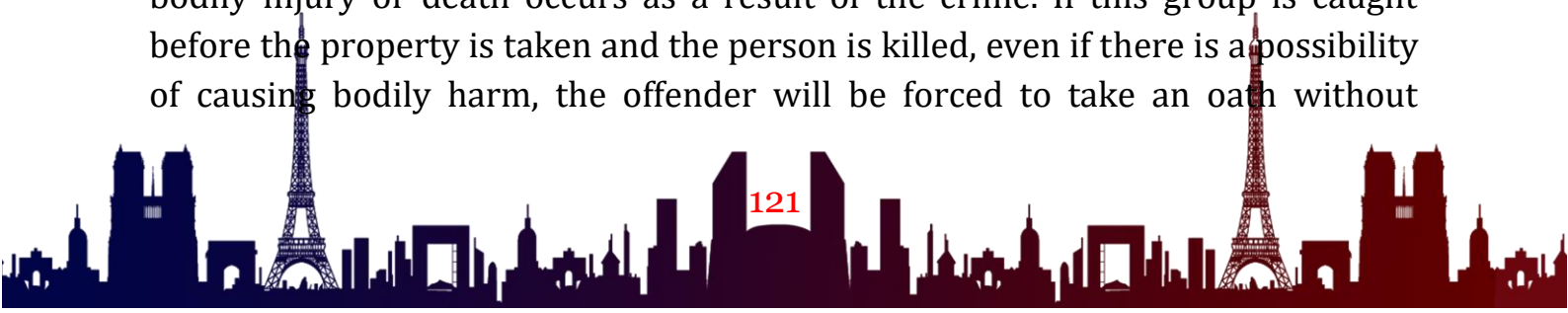
Because the yard is under the rule of the owner, it is part of the territory that protects the property of the person". As long as the items are in the yard, it is not a literal theft, but an attempted theft. In order for the hand to be cut, the items should have been taken out of the yard. When things are in the yard, it is considered that the property is in the hands of the owner of the property because the yard is subordinate to the owner of the house. Thus, the theft is a completed crime from the moment a person has the right to dispose of the property in full. It should be taken into account that the person who committed the crime acquired the property. Faqih Jalolitdin Khorezmi says: "If a thief did not have time to take the stolen thing out of the house, and in the meantime the thing in the hands of the thief perishes (that is, if it loses its previous quality, if it leaves its previous state, if it loses its value), in this case, the value of this property will be recovered from the caught thief" [8; 145 p.]. Thus in cases where a person does not have the right to own property, it is enough to collect the value of the property and no penalty is imposed.

In addition, according to Sharia, punishment is assigned to the guilty persons in proportion to their actions. According to some sources, if robbers took the property of a Muslim or *dhimmi (non-Muslims)*, their right hands and left legs were cut off. If they killed them without taking their property, all the guilty parties will be punished with death. In this case, even if the owners of the goods forgive, the punishment will be enforced. If the culprits caused bodily harm to a person without taking the goods, they were all retaliated to the extent of the bodily harm inflicted. If warriors took property and then injured a person, their hands and feet were cut off [9; 99 p.]. It can be seen that the issue of guilt of individuals is determined based on the nature of the committed act.

It should be noted that although there is no special rule regulating the preparation of a crime or an attempt to commit a crime in the Sharia, one can see rulings aimed at regulating these issues in a number of sources of Islamic law.

Punishment measures are classified in Islamic law based on the social danger of the stages of crime. For instance, if a completed crime carries a fixed penalty, attempted crime is punished more lightly. The following points can be cited as an example.

"Trespassing by an organized group is punishable if property is taken and bodily injury or death occurs as a result of the crime. If this group is caught before the property is taken and the person is killed, even if there is a possibility of causing bodily harm, the offender will be forced to take an oath without



severe punishment” [10; 49 p.]. Therefore, it is envisaged that a lesser punishment will be imposed for the crime of attempted murder.

According to Islamic law, offenses are divided into three categories based on the punishment imposed: crimes punishable by *qisas* or *diya*, crimes punishable by *hadd*, and minor offenses punishable by *tazir* (“corrective punishment”) [11; 360 p.]. Of these punishments, the measure of *tazir* is assigned to the persons who committed the crime. It includes from 3 to 39 lashes, imprisonment, warning, public reprimand, fine, deprivation of the right to wear a *turban* [9; 87, 113 p.]. According to some sources, the punishment measure *tazir* was assigned for minor crimes and offenses and was used in the form of a public sentence, reprimand or demotion [10; 49 p.]. According to other sources, the punishment of *tazir* includes verbal warning, smearing black on the face (in addition to banishment), humiliating the offender by shaving his hair (but not his beard), destroying the property of the offender, confiscating his property.

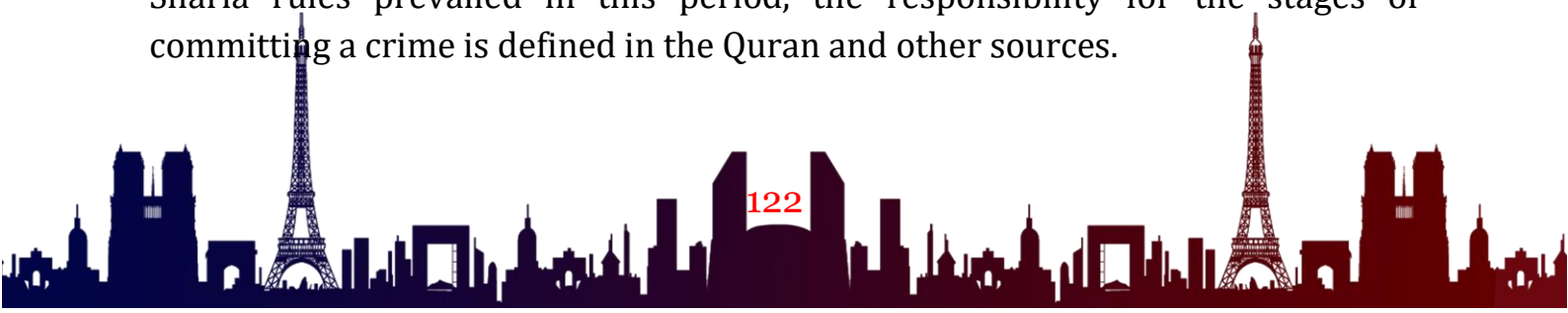
It should be noted that the peculiarity of *tazir* punishment is that it does not include an officially defined system of sanctions for certain crimes, and law enforcement officials, especially judges, have the opportunity to choose a specific punishment based on the identity of the guilty person and the nature of the crime [9; 113 p.].

It should be noted that, according to some sources, not only *tazir*, but also *qisas* (retribution) was used for the crime of attempted murder [10; 53 p.].

In addition, in Sharia, when an attempt is made to kill a person, if another person dies due to the change of the guilty party, the thoughts on the qualification of the act are given in Section 127 of Crimes of “*Mukhtasarul Viqaya*”. For instance, “If a person shoots an arrow to kill another person, and the arrow hits him and kills the second person, the killer will be avenged for the previous one. For the latter, it is obligatory to pay for the victim’s family” [11; 309 p.].

At the end of the analysis of the rules determining criminal responsibility for the stages of crime in Uzbekistan from the VIII to the XIX centuries, the following conclusions can be drawn:

Firstly, despite the fact that the crime, its types, and the basis of responsibility were not regulated by a specific rules, taking into account that Sharia rules prevailed in this period, the responsibility for the stages of committing a crime is defined in the Quran and other sources.



Secondly, in Islamic law, the formation of intention is expressed as the unity of action and plan which should be proportional.

Thirdly, the stage of formation of intention in Islamic law is characterized by its own characteristics. Despite the fact that the concept of completed crime has not been defined, the occurrence of a socially dangerous consequence is required as the basis for criminal responsibility for most crimes. In cases where consequences are necessary for crimes with a material content, if the consequences have not occurred, a lighter punishment measure has been assigned.

Fourthly, *tazir* as well as *hadd* punishment was applied to the persons who committed a crime

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