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The Right of State to Punishment and its impact on Criminal Policy

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Abstract

To protect social interests worthy of protection, states have the right of punishment in order to combat crime in society by drawing up a sophisticated criminal policy that is compatible with the changes that occur in society. Changes may be political, social, or economic. The legal rule is to split the punishment to determine the appropriate penalty and the act violating the law in order to deter the violator, rehabilitate him/her, and return him/her as a useful member in the society. Several factors make the practice of the state's right of punishment a valid way to formulate criminal policy in the state.

Introduction

Combatting crimes is the goal sought by all people who are interested in this issue because combating and limiting it is the real indicator of the success of criminal policy within the society. Criminal policy consists of two parts, the first is the criminalization part, which is related to the extent to which society needs to criminalize an act, and also the extent to which this criminalization fits with the values and customs within the society in terms of determining the facts that are considered criminal acts and those facts that are considered permissible (Othman and Ali, 1993). As for the second part, it is represented in the penalty part. It ranges from criminalization to penalization, up to defining the most appropriate method of executing punishment within penal institutions in order to achieve the goal of punishment represented by reform, as well as public and private deterrence and the reintegration of the criminal with the society in order to reconcile between protecting the public interest in society and protecting the Constitutionally maintained rights and freedom of individuals. Therefore, the criminal policy does not aim only to formulate legal rules, but it extends to directing the judge in order

to implement these rules, as well as determining the best method of executing the penalty in the correctional institutions that implement the penalties ordered by the competent judge. Accordingly, the criminal policy or the punitive policy is to guarantee the right of the state to punish the person who violates security and stability. Therefore, the subject of the present study is the methods of confronting the criminal phenomenon at the stage of implementing the punishment in order to achieve the objectives of the punishment in reducing crime.

The Significance of the Present Study

The state right has gone through many stages of development since the family emerged as the first nucleus of the smallest human societies until the state was established as a final embodiment of the largest of these societies. Between this and that, the development pursued the state's right of punishment from more than one side, which led to a change in the concept of this right And how it is used at each stage of its development and its impact on the state's criminal policy in drawing the state's right of punishment to be a tool in the hands of the state to use in order to achieve proportionality between the public interest and the rights and freedom of individuals from being robbed of the matter. This called for discussing this topic to explore its theoretical and practical concepts.

The Problem Statement

The problem of the present study arises from the idea of how to use criminal policy in order to achieve the best means in combating crimes because there are many objectives of criminal policy. They are not only represented in formulating the legal rule, but they extend to directing the judge in order to apply the appropriate rule to the criminal incident. They also extend to correctional institutions at the stage of Implementation of the penalty in order to achieve the goal of punishment to find out the good criminal policy in these areas and the failures resulting from the requirement of this right and to find effective means to fulfil this right in the interest of both the state and the individual alike.

Based upon, section one of the present study is devoted to defining the state's right of punishment by presenting its concepts and the legal basis. Section two is devoted to the definition of criminal policy and its characteristics, objectives, and influence on the development of the Penal Code and to show how the right of punishment is required, and its expiry without necessity. Section three of this study is devoted to the state's right of punishment and the mechanism of its implementation in light of criminal policy.

Accordingly, the present study is divided into three sections. Section one discusses the definition of the state's right of punishment. Section two presents an introduction to criminal policy. Section three tackles the state's right of punishment and mechanisms of its implementation in light of the criminal policy.

Section One

Definition of the state's right of punishment

Clarifying or defining the concept of the state's right of punishment is related to the development of societies from ancient times to the formulation of legal texts related to punishment, as well as the development of the family from primitive societies to civil and the emergence of the state as an independent entity. Therefore, it is not reasonable to say that the state's right of punishment is as old as the existence of man because although crime has existed since the existence of man, but the punishment did not represent the right of society to punish the perpetrator. The punishment was a reaction to the offense or the actual assault, so it cannot be said that this reaction is a punishment because the right of punishment appeared with the emergence of organized societies. This development is attributed to many schools that established the idea of the right of punishment. In order to understand the concept of the state's right of punishment, this section is subdivided into three subsections. In the first subsection, the concept of the state's right of punishment is explained. In the second subsection, the legal basis for this right is examined. In the third subsection, the state's right of punishment in modern philosophies is identified.

First The concept of the state's right of punishment

When a crime occurs, it results in a general personal right for the state to impose punishment because this right is not considered private property due to the multiplicity of those affected by the crime, including the victim in the first place, as well as the state whose security and stability are affected by many crimes, which negatively affects the rights of individuals, including their right of Security and safety. The state's right of punishment, which is expressed in judicial punishment, is what is considered a true representation of the principle of state sovereignty. It is also the right of the victim affected by the crime (Al-Shamlawi, 2014).

With the progress of societies, the state appeared, which took on the task of establishing justice in order to end the idea of revenge, which showed the concept of general deterrence. By developing the principles of justice and the theory of punishment, schools and theories that explain the crime and clarify the appropriate punishment appeared. There are some philosophers who state that the human being has the will and choice in committing the crime. Therefore, he/she is responsible for his/her actions. They called for the punishment to be proportional to the harm without taking into account the position of the offender. Others state that the circumstances of the perpetrator should be considered.

The goal that the state seeks from punishment is to achieve the right, fairness of justice, protection of interests and reparation, and to notify the offender of the gravity of the act he/she committed because the crime is an attack on the legal and moral system in the society. Therefore, the state's right of punishment comes in order to end this attack and restore rights.

Crime and punishment are linked through a causal relationship in order to achieve the goals of justice, which are represented in the accused's right to have a fair trial and the state's right to impose punishment, as well as the society's right to punish the perpetrator who disturbed security and stability, as well as achieving public and private deterrence and ruling the victim with appropriate compensation for reparation. No act or crime must go unpunished because it harms the community itself.

Second The legal basis for the state's right to impose punishment

Law is a set of binding rules that regulate the behaviour of the society and impose penalties on those who violate them. Regulating the behaviour of the society inevitably leads to the emergence of mutual relations that may or may not be compatible according to the desires and interests, which calls for the establishment of an organizational framework that guarantees the stability of rights and prevents aggression.

The right of the state to punish is based on a set of foundations, depending on the time period the state is going through. They will be explained as follows:

In this section, the stage of revenge is tackled in two aspects:

1. Retaliation

Previously, and before the emergence of the state as a political organization and an independent entity as it is known today, the punishment in the past was the revenge of the victim against the offender as every individual had the right to pay the harm inflicted on him/her by him/herself in retaliation against the offender, regardless of whether the offender's act was intended or not (Al-Saifi, 1972; Quddous, 1998). Previously, people considered the crime as an evil that must be deterred by a similar act, which resulted in the spread of revenge at that stage.

The forms of this act of revenge vary as to whether the offender belongs to this group or belongs to another group. If he/she belongs to the same group, then the punishment will be in the form of discipline and may reach to expel him/her from the group or kill him/her (Al-Marsafawi, 1986). After the individual developed into a family, tribe, and clan, and due to the lack of a supreme authority to which they were subject, the punishment took the form of expanded revenge, and it became in the form of a war that arises between the family of the offender and the family of the victim, which resulted in physical and exaggerated damage. This revenge in those ages may be explained by the fact that the crime is a transgression and abuse of the divine forces and a clear violation of religious texts. Therefore, they considered severe punishment to please the gods.

Second Equal revenge

After the development of the human community and their transition to the stage of the dominance of public authority, the first stages of restricting retaliatory

revenge appeared. The punishment ought to be balanced with the damage caused by the crime. Punishment is similar to the crime in terms of quantity and quality. This principle appeared among most ancient people, such as Hammurabi's law, as well as among the ancient Egyptians (Pharaohs) (Mustafa, 1952). The blood money system, which was known to the Greeks and Rome, appeared, specifically in the law of the Twelve Tablets (Mustafa, 1966).

Second The deterrent and expiatory basis of the right to impose punishment

Because of the defects that marred the exclusionary function of punishment due to the negative consequences that are reflected on the offender, and also due to the disproportion of the punishment with the crime, another punitive purpose appeared called the deterrent basis, which is intimidation or reform.

The basis of deterrence is general deterrence directed at all people to intimidate them from committing any crime (frustrating their criminal will), as well as private deterrence represented by intimidating the offender alone. Private deterrence is of great importance that is not less than the importance of general deterrence because of its future effect represented in preventing the offender from committing any second crime in the future, which is called deterrence by reform.

Third The right of punishment in modern punitive philosophies

One of the most important manifestations of human thought is development and change, which required the emergence of intellectual and philosophical trends whose mission is to develop criminal law. The literature advocated by philosophers and thinkers such as Cree Toss, Hobbes, Locke, Montesco, Rousseau, and Icaria had a great influence on the outbreak of revolutions such as the French Revolution, which provided the conditions in order to develop the criminal policy. The Universal Declaration of Human Rights was issued in 1789, which was one of the effects of this revolution. Corporal punishments have been replaced by punishments that affect freedom. In his book *The Spirit of Laws*, Montesquieu mentioned that every individual possessing a certain authority always seeks to abuse this authority until limits are imposed on this authority. This will be highlighted in this subsection by studying the most important punitive schools, which had a significant influence on the development of the criminal system as follows

1. L'école Classique

At a time when the weakness of the criminal system prevailed, the classical school arose. This school adopts the idea that punishments were harsh and severe and therefore disproportionate to the act committed by the offender as well as the damage caused by the crime. At the same time, judiciary excessively controlled for the sake of satisfying the ruling class, moving away from achieving equality between individuals. The Italian thinker Di Beccaria had the greatest credit for fighting this tyranny and control by judiciary through his book *On Crimes and*

Punishments issued in 1767. This book is considered the turning point in the history of The criminal system (Hayati, 1985).

After that, the traditional school appeared. This school tried other attempts by many jurists who were contemporary with this school, all in order to reduce the arbitrariness and brutality of the criminal law in the eighteenth century, as well as the absolute authority of the rulers at that time.

Because of the irregular conditions, new ideas emerged. Those ideas were advocated by philosophers and thinkers because of the intellectual renaissance that occurred at that time. Among the most prominent philosophers and thinkers are Jean-Jacques Rousseau and Montesquieu, who called for changing and replacing the tyrannical criminal policy, which actually happened at the end of the eighteenth century. They demanded that Legislation of penalties be through a competent legislative authority, and thus the role of the judge is to implement those penalties stipulated in the law without any arbitrariness in order to satisfy the ruling authority.

The ideas of this school had a very important role on several levels in contemporary criminal policy. Despite this, this school was not free from defects. This school focused on crime without looking at the personality of the offender, his/her circumstances, and the reasons for committing the crime because individuals differ in their motives and their perceptive power (Bu Saq, 2002).

Second The neoclassical school

The pillars of the neoclassical school are represented in two elements. The first element relates to the idea of absolute justice as a basis for the right to impose punishment. The second element relates to relative freedom of choice as a basis for criminal responsibility. This school was based on the ideas advocated by the German thinker Immanuel Kant regarding justice. This school tried to reconcile between the idea of absolute justice and the idea of utility. This school came out with the result that punishment should not combine justice and utility because punishment always aims to achieve justice within the limits of the benefit of society. This school tried to avoid criticism that was directed at The previous school. This school relied on the following issues (Al-Himlili, 1982):

1. Criminalization and Punishment; The reformist philosophy advocated by the proponents of the modern traditional school had a great influence in pushing the legislator to distinguish between political and ordinary crimes. Thus, the distinction is considered to be sinful in the types of crimes.
2. Criminal responsibility; Supporters of this school called for the existence of freedom of choice for every sane adult, which gives states the right to impose punishment on the offender due to the discrimination and awareness he/she possesses.
3. The function of punishment; The idea of absolute justice is what allows the state to impose punishment, while the idea of social benefit represents the framework that defines punishment.

Third Modest and Moderate Schools

1. The positivist school; The experimental scientific method and criminal policy

Traditional schools built their criminal policy on the pillars of the prevailing philosophical thought at the time. Therefore, abstraction prevailed over them until a new trend emerged that transferred studies from abstraction to experimentation, basing its criminal policy on the experimental scientific method. From the beginning, it faced a challenge that is to subdue crime behaviour to the experimental method. One of the most important justifications for this trend is the emergence of a philosophical trend that adopts the realistic experimental method. The ideas that the three jurists worked with had a great influence on the development of criminal studies and the jurisprudence of criminal law.

A. The school's criminal policy; Through the studies carried out by the school's leader, "Lombroso," he came to a new idea, which is the inevitability of the criminal phenomenon. Therefore, the social reaction will not be determined by looking at the crime, but based on the personality of the criminal or his/her seriousness.

One of the positive results that the school has also reached is the necessity for the punishment to achieve that duality between general deterrence and private deterrence, and not only general deterrence because that would push to tightening the penalty on the offender, which may not be useful in achieving private deterrence for the offender (Al-Husseini and Abu Amir, 1988).

The jurist "Garo Vallo" was influenced by the ideas of the Italian philosopher "Rosmini" and concluded that the penalty is not measured by the amount of the criminal's own sin, but by the amount of the criminal seriousness and the possibility of his/her return to crime, not on the basis of what he/she actually committed.

B. Studies on the criminal policy of the school

Despite all this respectable effort in the field of criminal policy, it was not spared from criticism. It fell victim to the same criticism that was directed at the first traditional school, which was concerned with the crime rather than the criminal. Based on results achieved by Lombroso, regarding the first category, which has all the characteristics, in the opinion of Lombroso, he/she is a criminal by birth. In addition to the criticism that the idea of a criminal by birth has been subjected to, taking any measure against this person and depriving him/her of his/her freedom or eradicating him/her before committing the crime is a Dangerous violation to human freedom and a waste of the most important principle of justice, since a person is innocent until proven guilty. The purposes of the measure were limited to eliminating danger, and the objectives of justice and general deterrence were not given any attention despite the storming of the most important stable values in society and the elimination of the educational function of the law.

2. The Reconciliatory School

This trend in the science of punishment was based on the need to benefit from the inheritance of previous schools in the field of criminal policy. These conciliation

studies were known as the Reconciliatory Schools, which are the Third School and the International Federation of Penal Law that are addressed as follows:

1. The third Italian school; It was called the critical positivist school since it was established by jurists originally belonging to the positivist school, but they tried to avoid the criticisms levelled at it and reconcile it with the traditional school. This school was headed by each of the Italian jurists Emmanuel Carnevale, Bernardo Elyamini, and the jurist Florian Garspini.

The criminal policy of this school was based on the following pillars:

1. In its struggle against crime, it worked on confronting the criminal with one eye and looking at the crime with the other, and the responsibility was based on two main pillars, including error and criminal danger.
2. Not to be satisfied with the punishment alone or with the measure alone, but rather to combine them and use both of them in the appropriate place and time, thus achieving the objectives of public and private deterrence together.
3. On "this tendency when talking about measures, it means only security measures following the occurrence of the crime. As for preventive or precautionary measures, it is not recognized because the criminal penalty should never be imposed except as a result of a crime, but before that, it is an attack on the freedom of the individual. This is logical because the school excluded the idea of criminal by birth.

Second International Federation of Penal Law

It was established in 1880 by the Belgian jurist Prins, the Dutch hamel and the German Von Liszt. They declared their neutrality regarding the controversy surrounding freedom of choice. They put their efforts in organizing a kind of defence of society through effective means to confront the criminal danger. They reveal through scientific experimental research on the best forms of criminal policy, including the organization of prisons and methods of their management. The Union contributed to the preparation of research of a degree of importance in the field of penal science. The criminal policy of the Union is based on the following pillars:

1. Duplication of the criminal part; Specialists in this direction believe that protecting society from crime requires two types of punishment, including punishment in order to achieve public and private deterrence and measures to confront criminal danger.
2. Paying attention to the ways of treatment in prisons by individualizing the treatment by dividing prisoners based on the crimes they committed, their habitualness, and their criminal seriousness, as well as individualizing the punishment.

Section Two

Introduction to criminal policy

The interpretation of criminal policy goes back to the German jurist Feuerbach, who was the first to use it at the beginning of the nineteenth century.

He defines criminal policy as the legislative wisdom of the state. It means the set of means proposed by the legislator or stipulated in a specific time or country with the aim of combating crime.

The definition of the criminal policy of the Norwegian jurist Andinas was that it is the community planning for a set of measures in order to combat crime. This definition is characterized by ambiguity because it does not clarify the field of criminal policy.

The jurist R.vouin defines it as a set of means used to prevent crime and impose punishment on the perpetrator.

Dr. Barish Suleiman defines criminal policy as the policy that clarifies the principles that must be followed in order to determine what is considered a crime and thus impose the penalty and the measures prescribed for it.

First The concept of criminal policy and its characteristics

Criminal policy is the science that discusses the process of legislating criminal law and also discusses all legislative, administrative, executive, and judicial activities that the authority practices in order to combat crime. It can be defined as a set of means and tools that are considered a social reaction against crime with the aim of preventing crime, punishing, and confronting its perpetrators in order to reform and reintegrate them into society.

1. The concept of criminal policy

From the beginning, criminal policy aimed to show the lack of competent criminal legislation. Then, its scope evolved and it also sought to study the personality of the offender. This criminal policy is directed mainly to the criminal legislator.

Tackling criminal policy leads to focusing on the culture of this policy and its orientation. This policy determines the positions of the jurists in order to find the most successful solutions to the various problems produced by the criminal phenomenon through a policy imposed by a specific culture that differs according to time and place.

Second Characteristics of the criminal policy

The criminal policy is characterized by several characteristics that crystallized in the way of drawing up the goals and objectives of that policy to be achieved in the field of combating the criminal phenomenon in the field of imposing appropriate punishment as follows:

First The teleological property

In the various stages of establishment, the criminal policy seeks to achieve its objectives through the development of the positive law related to

criminalization, punishment, and prevention, i.e. the scientific goal, and its application is as follows:

The legislator has to take note of the latest developments in the criminal policy in order to use its results in the interpretation of the provisions of the criminal law. It is noted that in this interpretation, it is not required that the criminal legislator has relied on the criminal policy and its texts have become expressive of the principles of this policy. Rather, it is sufficient that these texts allow this interpretation, That is, to be flexible enough to allow any interpretation required by scientific development, for politics does not develop legislation, but also develops the interpretation of laws by means of jurisprudence and the judiciary because interpretation cannot remain far from real changes and scientific laws. It is not legally suitable not to harmonize the balance of its interpretation with the real needs and the prevailing ideas. This meaning is what also applies to the role of criminal policy in guiding the administration when executing penalties because in the implementation procedures it undertakes, it explains the texts for these procedures (Amir, 2013).

Second The characteristic of relativity

Crime is a social phenomenon whose causes are affected by the environment and social conditions that may be related to the natural, moral, economic, or political aspects. The means proposed by a particular country in combating crime may not be suitable in another country due to the different social conditions in each of these two countries because each country adopts the criminal policy that suits it in light of social conditions.

Third The political characteristic

Because there is a close link between the general policy of the state and its criminal policy, the first directs the second and defines its framework. Therefore, in light of how this issue is dealt with in a particular political system, the criminal policy must be determined. The link between criminal policy and the political system espoused by the state is close. On the other hand, it is not possible to neglect the basic relationship between the important issues of the state's national policy and its criminal policy. Developing countries are at the fore in their internal problems. If they want to reach a higher level in order to achieve their goals in development, the treatment of the problem of crime is linked to other problems in society. The crime theory is nothing but the theory of human behaviour in general, and all the solutions that the state sees from a political point of view To confront the problems of society, it affects and is affected by what it deems necessary in order to solve the crime problem. It organizes society what makes it related to all its problems and what it proposes for solutions to these problems.

Fourth The characteristic of evolution

Criminal policy is characterized by movement and development, not stagnation.

Fifth It is based on a scientific method

Criminal policy is characterized by a scientific nature, so it must be based on a set of scientific laws that determine the causal links between the means it proposes and the purpose it aims at. Accordingly, the means it specifies to reach its end must focus on the availability of a causal link between these means and those ends. It depends on determining these methods according to the scientific research method on which this policy depends.

Second Areas of criminal policy

The areas of criminal policy are achieved through their synergy with the objectives that are related to the policy of criminalization and prevention.

First Criminalization Policy

This policy aims to clarify the social interests that are worthy of protection and that concern society and the human being from assaulting. The criminal policy aims to criminalize acts that are harmful to society through legal texts with the imposition of the appropriate punishment for them, in accordance with the principle of no crime and no punishment without a text in order to avoid moral decadence and the increase in crimes, which prompted thinkers to adopt the idea that the legislator should adopt the approach of the preventive criminalization policy, which stipulates defining the measures that must be followed in order to confront the criminal danger and thus prevent the commission of the crime.

The criminal policy also has an important role in the educational and social field in addition to its role in protection. This is evident through the legal rules related to morals, traditions, and social customs that aim to preserve social and religious values.

Second The punishment policy

The punitive policy is a means of implementing the penalty determined by the criminal policy and which is mainly related to the criminal law. Which gives the state the right to impose punishment in order to achieve the principle of legality of crimes and punishments in light of the principle of no crime and no punishment without a text. In the field of social crimes, individuals respect the provisions of the law more than they respect the principles of society. Therefore, the criminal policy has taken the importance of looking at the personality and circumstances of the offender and thus imposing the appropriate punishment according to the degree of his/her seriousness.

Third Prevention policy

This policy aims to pay attention to the stage that is prior to the commission of the crime through the measures and procedures that are taken by the supervisors of the criminal policy in order to prevent the commission of the crime. The search for the causes and factors that lead to deviation is one of the most important preventive measures that the state must adopt. This is done by improving living conditions, raising the economic and social level, combating unemployment, providing adequate housing, sensitizing individuals to the danger of crime and its dire consequences, as well as tightening control over public places and providing security within the society.

Section Three

The right of state to impose punishment and mechanisms of its implementation in light of the criminal policy

Criminal politics is the science that deals with researching what the law should be in the future, not what already exists. The stage of drafting legal texts, as well as directing the judge to apply texts that are appropriate to the crime and its circumstances, as well as directed to the penal institutions to implement what the judiciary has ruled. Accordingly, the lines of the state's right of punishment are connected to the criminal policy. That punishment is part of this policy that is concerned with studying the goal and purpose of the penalty and thus achieving the best methods to be followed when implementing this penalty in a way that achieves the purpose of imposing the penalty. Therefore, this section is divided into two basic subsections. The first subsection includes state's right to impose punishment. The second subsection is about the expiration of the state's right of punishment without necessity in the context of criminal policy.

First State's right to impose punishment

The right of punishment refers to the means by which the purposes of the criminal penalty are achieved, as an obligation of the state and its authorities concerned with combating the criminal phenomenon by deterring the perpetrator and ensuring that he/she does not return to committing a violation. The second is rehabilitation, treatment, and curbing the criminal phenomenon that exists within the criminal person so that it does not turn into criminal behaviour in the future.

The right to impose punishment is a matter that necessitates defining the method of treatment in penal institutions in order to achieve a balance with the personality and circumstances of the crime and the offender. Therefore, specialists in this field such as doctors, psychologists and all concerned had to be involved in order to develop a rehabilitation program aimed at rehabilitation and reform within the penal institution.

Based upon, definition of the stage of criminal justice and the legal regulation of punitive treatment are discussed.

First Criminal justice stage

First The criminal case; The state has the right to impose on the offender the penalty prescribed for the crime if the crime is verified by the offender's breach of the criminal mandate that falls on him/her. In the case of direct execution, the state cannot resort to it, as it must resort to the judiciary to confirm its right to impose punishment, and that the state cannot resort to direct execution even in cases in which the offender confesses, upon arrest, to having committed the crime, with which it can be asserted that the conviction is certain and unquestionable. The judiciary resolves the conflict between the state and the accused, so the criminal case must move through the public prosecution or other public bodies. The state's means of claiming punishment before the judiciary is the criminal case that is defined as a judicial authority practiced by the public prosecutor on behalf of the group before the reference competent judicial authority in order to reach the decision of the state's right to punish the perpetrator of a particular crime. The criminal case differs from the interest that it aims to achieve, which confirms the independence of the case from its goal, as the case may lapse without achieving its goal, as is the case in the case in which a judgment is issued to imprison the perpetrator, but the state is not able to impose the penalty for escape. The case ends with the issuance of a judgment on its subject. With this, it does not achieve its goal of punishing the perpetrator of the crime.

The Law of the First Criminal Courts clarified the means of initiating the criminal case and the restrictions contained therein. Filing the criminal case is the first stage of this case. Article (1) of the Law of Penal Procedures in force states who has the right to initiate the lawsuit and the means used in that, as it indicated that the penal lawsuit is filed by a verbal or written complaint by the victim of the crime or his/her legal representative or any person with knowledge of the crime or through News submitted to the Public Prosecution unless the law provides otherwise. Therefore, the means of criminal action are either complaint or news. As for the parties that may initiate and investigate the case, they are as follows:

- A. Judges in accordance with Paragraph First of Article 35 of the Judicial Organization Law No. 160 of 1979
- B. Judicial investigators
- C. The official in the police station
- D. Public Prosecution

Second The judicial ruling, its legal nature, and its requirements

To confront the perpetrator of a particular crime, there must be permission from the judiciary in order for the state to practice its right of punishment against him/her. The judiciary is represented in this regard, but the judgment is issued by the

competent judicial authority in terms of place and type to consider the crime as established by the Code of Criminal Procedure. Comparative jurisprudence has differed in determining the legal nature of the ruling. Some believe that it is the originator of the state's right to impose punishment, while others believe that the ruling transforms the state's right of imposing punishment from an abstract right to a tangible right. A third group believes that before the judgment is issued, the state has only a legal status, subsequent, or just a hope. However, the most correct opinion is the opinion that considers the judgment as revealing or determining the state's right to impose punishment. It is stipulated in the criminal judgment to be final or justified in order to settle the case and confirm the state's right to impose punishment.

The purpose of the legislator's requirement of a judicial ruling for the possibility of practicing the state's right of imposing punishment is to protect the public interest, which is to protect the perpetrator of the crime from transgressing his/her money and interests in cases other than those specified in the criminal rule.

Second The stage of execution of the penalty

The issuance of a judicial ruling convicting the perpetrator of the crime entails confirming the state's right to impose punishment. It also entails transferring its right from an abstract right to a tangible right that is applied to a specific case that was presented to the court for a decision, and questions begin to arise about whether the execution of the punishment is based on the criminal rule that arranged the punishment as a penalty for violating the mandate, or it is based on the judicial ruling of conviction. The most likely opinion is that the execution of the penalty is based on both the preventing criminal rule and the judicial ruling of conviction. The judicial ruling is nothing more than the face of sense or Personification in the legal system. It transforms the abstract right into a tangible right that applies to a specific case in itself. The link between the state and the perpetrator of the crime in the implementation stage is itself the link of punishment that passes through one of its five successive stages. Concerning the Execution Bond, it is undoubtedly a legal bond, as it creates a right for the state to impose the penalty on the offender. It is also matched by an obligation on the offender to surrender to the execution of the penalty, i.e. if he/she breaches this obligation and flees, a penalty will be imposed on him/her. That independent offense is the crime of the prisoners' decision. On the other hand, the offender has the right that the authority does not exceed to implement the legally prescribed penalty in terms of the form, type, and amount of the penalty. The state has an obligation corresponding to this right and the effect of which is that the powers to implement the penalty do not exceed the limits drawn by the criminal judgment.

Second The expiration of the state's right to punish without necessity

Arab and comparative legislations instruct that the state's right of imposing punishment is fulfilled by subjecting the perpetrator of the crime to punishment.

For example, in Article (150) of the Iraqi Penal Code about the abolition of crime and punishment, the Iraqi legislator states that the most accurate legislation in its expressions is to some extent the Lebanese and Syrian legislations. They refer to the fall of the public right Article (435) of the Lebanese criminal trials Law and Article (434) of the Syrian law. In all cases, what lapses is the right of the state itself to punish the perpetrator. The criminal case is only a legal means to claim this right judicially, so it is obvious that in the event of the lapse of the right, the teleology has moved from resorting to the instrumental truth. That is why the jurisprudential and legislative consensus in saying that the criminal case has expired is not agreed upon for the reasons mentioned above, as there is only one case in which this case lapses, which is the case if a final ruling is issued on its subject matter. With this ruling, the case is final. It is a procedural and instrumental act, whose purpose is to carry the claim of the public prosecutor as a representative of the state that has the right of imposing punishment from outside the Judicial Council to inside it in order to issue a final ruling that reveals it and settles the dispute over it.

Accordingly, this section will be subdivided to discuss the reasons for the expiration of the state's right to impose punishment.

First Prescription

The expiration of a certain period is determined by the different division of crimes into felonies, misdemeanours, and violations. The state has not issued any evidence to the extent that it adheres to its personal right to punish the perpetrator. Based upon, it can be said That this prescription is a legal adaptation that strips the criminal incident of its direct legal effect and prevents the state from requiring its personal right to punish the perpetrator of the crime. The statute of limitations has multiple considerations of jurisprudence, among which is the passage of a certain period that is commensurate with the gravity or insignificance of the crime, which is a presumption that the group forgets the crime that has the effect of punishment as a social reaction to the crime.

The statute of limitations is considered a waiver by the state of its right to punish the perpetrator of the crime if it was aware of it because this right must be practiced by the state within a certain period. If it ignored it and did not adhere to it, this would be a waiver On by the state. In the event that the state ignores the existence of its right to impose punishment, the justification of prescription in this case may be based on practical considerations that are adopted by some jurists.

Hence, the expiration of the state's right to punish by statute of limitations has an effect in kind. It benefits all the accused who contributed to the commission of the incident constituting the crime. It remains despite the lapse of the state's right to punish the perpetrator, and there is no evidence that the legislator entails criminal effects in some cases, such as that it is suitable to be a precedent in recidivism or repetition, as well as an aggravating circumstance for a murder associated with it, as well as it is suitable as a basis for claiming civil compensation

if the right of the aggrieved party has not been extinguished by prescription or for any other reason. It is sanctioned by civil law.

Second Death of the offender

The state's personal right to punish the perpetrator of the crime expires if the offender dies due to two main factors, the first of which is related to the nature of this right, and the second relates to how it is used. The passive person is the perpetrator of the crime, so the life of the criminal and his/her financial liability is the place on which this right rests. If the offender dies, this right lapses due to the impossibility of replacing the offender. As for the second factor, the principle of the personality of the penalty determines the scope of its use, since the actions of this principle prevent the state from requisitioning its right from a person other than the one against whom a verdict has been passed as a subject to punishment.

Third General amnesty

The right of the state to punish is a personal right, in which the positive party is the state as a legal person, and since the general amnesty is due to the fact that created the crime, stripping it of the character of criminality, by turning to the punishment as a consequence of the crime, makes it obvious that this general amnesty was issued by the state itself as the owner of this right. This is achieved by the issuance of a law from the Legislative Council. The legislative authority is the one that represents the state in its aforementioned capacity. General amnesty is considered a waiver by the state of its personal right to punish the perpetrator of the crime. It is a waiver that erases the crime and removes its criminal effect.

Accordingly, if the general amnesty law stipulates the eradication of every legal effect of the crime, whether criminal or civil, the criminal court ruled that the two rights together namely, the right of states to impose punishment, as well as the right of the victim to claim compensation as a result of the damage he/she sustained from the crime, and it refrained from considering the issue of The two cases after that.

Fourth Forgiveness

The state is considered a positive party with regard to its personal right to punish the perpetrator of the crime as a legal person. The state alone has the right to waive this right by its general comprehensive amnesty for the crime, or after a certain period of time has passed without claiming it during it. Therefore, the state entrusts the victim of certain crimes by deciding to adhere to this right or to waive it expressly or implicitly. An example of this is also that the state entrusts the public authority in which the initiation of criminal cases in some crimes depends on a request from it to hold on to the state's right to The right of both the complaining victim and the public authority that submitted the request to waive the state's

personal right of punishment that remains in place as long as no final judgment has been issued in the case, so either of them may waive the complaint or request while the public prosecution is conducting the procedures of investigation, or as long as the case is still in the hands of the competent court and it has not issued a final ruling on it. The waiver after the issuance of this ruling has no effect on the implementation of the sentence imposed, except in exceptional cases expressly stipulated by the legislator.

Fifth Reconciliation

Reconciliation is nothing but a reason for the state's right to punish for some crimes. The legislator may allow the public authority that requires it to submit a request for the possibility of the state's claiming its right of punishment to reconcile with the perpetrator of the crime. With the expiration of the state's right to conciliation, reconciliation can be distinguished from waiver by the fact that the first, even if it includes the second, is done in return for a consideration or compensation. The first is issued by a public authority that requires that it submit a request to punish the perpetrator. Without this request, the state is not entitled to demand its right to impose punishment, while forgiveness is issued by the victim, who is a natural or legal person, which is always compensated, while forgiveness may be achieved in return and takes the form of compensation or without compensation.

Conclusion

First The Results

1. The Right to impose Punishment has gone through many stages of development since the beginning of the formation of the family, the smallest example of this among human societies until it reached the establishment of the state as a final representation of the largest societies. The right of punishment was pursued by development in many aspects. Law pursues it in terms of its implementation, necessity, and adaptation. This was reflected in the clear body of the group, in terms of those charged with criminal offenses based on the principle of legality under the goal of neither crime nor punishment without a text.
2. Criminal policy necessitated that disagreement between the jurists allowed every man-made legislation to issue punishments that are suitable for time and place.
3. The state's right of punishment has developed as a result of developments in society and over time and eras. Schools appeared during the eighteenth century that tried to humanize punishment and its proportionality with crime in order to preserve the interest of the individual and the state alike.
4. The emergence of the principle of legitimacy and its consequences had an important influence on restricting the authority of the criminal legislator in

the field of punishment. One of the most important principles is the principle of proportionality in the field of punishment.

5. In order to protect rights and freedom of individuals from being violated, the criminal policy justified many cases of the expiration of the state's right of punishment without expiry.

Second The Recommendations

1. The legislator should observe the principle of proportionality in the field of punishment policy and by granting the state the right of punishment by amending legal texts in the field of criminal law whose provisions violate this principle in terms of imposing a punishment that is not commensurate with the crime and with the circumstances of the offender.
2. The legislator should keep pace with economic, social, and political developments that affect the state's right to impose punishment, making this right unable to achieve its purpose in maintaining public order on the one hand and protecting the constitutional rights and freedom of individuals on the other through amending the provisions of the constitution and not excessive criminal legislation. There are many laws that lead to confusion, ambiguity, and lack of complete knowledge of the law by the competent authorities, such as the judicial authorities.
3. Making the Penal Code the only law used to determine the state's right to impose punishment, with some other laws on its side, but when absolutely necessary. The multitude of legislation does not lead to the state's practice of this right in the required manner.
4. Criminal policy should be rational in the field of regulating the state's right of punishment in order to combat crime with rationality by defining the social interests worthy of protection, with the development of penalties that are commensurate with the importance of these interests, taking into account the preservation of social and human values in society and not wasting rights and freedom without a goal.

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