



# The Stance of Warning in Iran's Criminal Rules and Regulations

Abolfath khaleghi<sup>1</sup>, HamidReza Hajizadeh<sup>2\*</sup>

Associate Professor Of Criminal Law And Criminology Group Of Qom University

Email: [ab-khaleghi@qom.ac.ir](mailto:ab-khaleghi@qom.ac.ir)

M.A Student Of Criminal Law And Criminology Of Qom University

Email: [lawiran110@gmail.com](mailto:lawiran110@gmail.com)

**Abstract:** *The topic of “warning role in the elimination of foreboding criminal and civil liability” is accepted in almost all of the legal systems but the position given to the warning in the rules and regulations, especially in criminal rules and regulations, differs from a legal system to another. It can be said that in Iran’s criminal rules and regulations meanwhile the liability elimination is accepted from a notifier who has observed the conditions of cautioning, it has been case-specifically recounted as “the order by law” and “the ordinance by the legal authority”. The present study makes use of a library research method and it comes to the conclusion that although the position of warning has undergone changes and evolutions in the course of legislation but its role in the elimination of cautioning criminal liability has been stabilized dependent on the adherence to the terms and conditions stipulated by a great number of the Islamic penal codes of law approved in 2014 including the Articles 309 and 310 and Notes to the article 308, for instance article 45 of the former law of atonement. It is worth mentioning that the topic of warning had not been taken into consideration in the Islamic punishment codes of law enacted in 1992.*

**Key words:** *warning, elimination of liability, axiom, benefaction, penal rules and regulations*

## INTRODUCTION

The present study aims at the survey of the position given to warning and foreboding in Iran’s penal code of law and this idea is explained that how is the criminal liability elimination provisioned in regard of the notifier who observes certain conditions in cautioning? In other words, is it among the justifiable reasons behind a crime or factors contributing to the elimination of criminal liability or excuses exempting from punishment? Else, what is its position in the penal rules and regulations? It has to be determined whether it is clearly pointed out or not?

### **The jurisprudents, Jurists and Legislators Perspectives Regarding the Quality of such a Provision:**

Regarding shooting with prior warning as stipulated in the Note (1) of the article 41 of the penal law regarding the armed and military forces’ crimes and the other related ratifications such as the law of applying weapon enacted in 18/01/1995 and the related regulations and the quality of such cases’ adjustment with the justifying reasons and factors or the instruments for permissibility of a crime and excuses exempting the perpetrator from punishment, one of the jurists expresses that:

“Removing the liability of paying atonement or being retaliated from a shooter is based on the jurisprudential axiom of ‘the one who warns is excused’”.

The idea that the shooter is exempted from punishment and paying atonement is among the excuses for excluding one from punishment or among reasons justifying and permitting crime, the law signifies certain excuses which seem on the surface to pave the way for punishment exemption. But, it seems that it is among

the justifying factors exempting one from the punishment as a result of legal certificate and legal ordinance<sup>1</sup>".

With the explanations presented by the jurists regarding the "reasons or factors contributing to the justification of the crime and the reasons behind elimination of the criminal liability and the statutory excuses for the exemption from punishment<sup>2</sup>, there is no doubt that shooting with prior warning is not enumerated as the reason leading to criminal liability elimination and it does not comply with such a statutory provision and among the statutory exempting excuses and the crime justifying reasons this latter idea corresponds more than anything with the reasons or factors justifying or authorizing a crime because:

Firstly, one example of the crime vindication reasons which is relevant to the topic under study herein has been predicted in the article 158 of the Islamic penal code of law enacted in 2014 as put forth in the following words:

"Article 158-besides the aforementioned cases raised in the previous articles, perpetration of a behavior which is considered as crime corresponding to the law, cannot be punished in the below cases:

.....

b) In case that the perpetration of such a behavior is permitted by a legal order issued by a qualified authority and it is not contradictory to the canonical rules".

Secondly, the results of shooting with prior warning comply with the results of the reasons justifying a crime like the shooter's absolute liability and so on.

Thirdly, the term "exempted" in a phrase posited in the Note (1) of the article 41 of the penal law regarding the military forces crimes in which it has been stipulated that "if shooting is exercised according to the regulations, its perpetrator will be exempted from punishment and paying atonement and compensation and ...", should not corroborate the opinion that, based on what is discerned from the surface of the law, elimination of criminal liability stemming from the military forces' shooting with prior warning is among the examples of statutory excuses exempting the shooter from punishment; because, if it was so, the term "exempted" should have been inserted in the exemption statutory excuses provisioned in the Islamic Penal Law enacted in 2014<sup>3</sup>, for instance in article 114.

### **A General Overview of the Perspectives:**

According to what has been stated so far, there is may be still the doubt that such a topic might not be qualified to be included among the reasons eliminating the criminal liability or the statutory exempting excuses saving a perpetrator of a crime from punishment but it does not seem necessary to correspond it with the reasons or the factors required for crime justification and it is possible that a new legal provision may look similar to the crime justification factors.

In response, there is a solid reason for asserting this idea as invalid and confirming the accuracy of the previous material which leaves no single doubt and that is in the evident narration posed in the form of the axiom of caution quoted directly from the triple Muhammad, two of them have expressed phrases in the continuation of the narration the content of which conveys the concept of the legal order and the ordinance by the legal authority both of which are examples of the "factor or the reason behind justifying a crime".

---

<sup>1</sup> Mahmud Malmir, "explication of the military forces' crimes penal code of law", p.95

<sup>2</sup> Although the legislator has selected the title of "the barriers to the criminal liability" for the entire subject matters discussed inside quotation marks in the second chapter of the fourth section of the first book of Islamic Penal Law enacted in 2014 and explained exclusion cases of criminal liability in a number of the other articles of the Islamic penal law enacted in 1997, but the crime and criminology jurists do not follow similar procedures in the selection of the titles. For example, the "ordinance by the legal authority" as put forth in article 159 of the Islamic Penal Law enacted in 2014 and the topics with the similar nature has been given different titles including the crime justification reasons, crime vindicating reasons, crime justification factors and the instruments of crime permissibility. Thus, the use of various titles such as crime permissibility instruments in lieu of the crime vindication reasons or vice versa does not impose any disorder on the ideas and notions proposed by the experts and the professors of the criminal law like Sirs: Ha'eri Shah Bagh, Baheri, Sami'ee, Abu Al-fath Khaleghi, Zera'at, Validi, Golduziyan, Shambiyati, Ardabili and others.

<sup>3</sup> For more information see R. K., Ibid, explanations on the article 114

Sheikh Koleyni and Sheikh Tusi quote the same narrators to continue the axiom of caution with the following words:

meaning “the narrator states that I asked Imam about a person who is killed as a result of executing a verdict of retaliation. Should the retaliator pay atonement? Imam answered: if it was so, no one would be ready to execute the verdict of retaliation and should anyone kill another person for the implementation of the canonical rule of Hadd, s/he will not be held liable to pay atonement<sup>4</sup>”.

It seems that in the aforesaid narration, the narrator, after becoming aware and sure of the notifier’s lack of being statutorily held liable, next, inquires about similar sentences regarding the others who should not be legally held liable that is the “executors of the retaliation and Hadd” and gets an identical answer for all of them which is indicative of their absolutely not being held liable.

Thus, according to the fact that the executor of retaliation and Hadd should not be held legally liable via it being permitted by a “legal order and legal authority’s ordinance”, the shooter’s not being held legally liable should be considered as a “legal order and legal authority’s ordinance”, as well.

Another reason is that the subjects discussed under criminal law especially under general criminal law can be separated in the form of distinct provisions when they possess at least one unique feature in respect to the other subjects, otherwise it is not necessary to assume similar cases as separate.

### **The Position of Warning in Criminal Rules and Regulations:**

In responding to the second question, it is not exaggerated if we say that the axiom of ‘cautioning’ is incurred with highest unkindness in the criminal law and in Islamic penal code of law enacted in 1992; since, there were topics in the Islamic penal code of law enacted in 1992 that were in close relationship with such an axiom but the legislator had not used the criterion of axiom and these shortcomings were removed with the constitutional revisions made in 2014.

A distinct example of such an issue is the article 341 of the Islamic penal code of law enacted in 8/8/1992 which stated that “if an action is carried out in a public passageway for the sake of the general public’s good and it is accompanied with the incidence of a crime or damage, the perpetrator should not be held liable to pay atonement and compensation”.

Before the ratification of the Islamic penal code of law in 1992, it was stipulated in the article 45 of the atonement law that “if an action is carried out in a public passageway for the sake of the general public’s good and it is accompanied with the incidence of a crime or damage, in case that the actor performs in such a manner that the passengers are commonly made aware of the dangers s/he will not be held liable to atonement and compensation payments”.

In a succinct comparison between the article 341 of the Islamic penal code of law enacted in 1992 and the article 45 of the atonement law it can be easily understood that the stipulation “in case that the actor performs in such a manner that the passengers are commonly made aware of the dangers” proposed in the article 45 of the atonement law has been omitted from the article 341 of the Islamic penal code of law enacted in 1992.

Because attributing in-vain actions to the legislator is far from being given a way to the mind, one should refer to the jurisprudential sources to seek for the reason for such elimination. It can be seen that the article 341 of the Islamic penal code of law enacted in 1992 corresponds to the notions posed by some of the jurists in such a manner that some of the jurists affirm observing the others’ expediences unconditionally and they base their reasoning on the axiom of “benefaction”<sup>5</sup>. Some of the other jurists neglect the axiom of benefaction and issue the verdict of lack of being legally held liable solely for the sake of the good of the Muslims<sup>6</sup>.

The reason for the authenticity of the stipulations incorporated in the article 341 of the Islamic penal code of law enacted in 1992, plus the axiom of benefaction may be the axiom of meaning “there is no liability in whatever is authorized canonically in case it results in a loss” as well as the Aya “تعاونوا على البر” meaning

---

<sup>4</sup> In Tahzib Al-Ahkam, the term “do does not exist but it does not cause any harm to the conceptualization of the phrases.

<sup>5</sup> Mohaghegh, Helli, “Sharaye’ Al-Islam”, v.4, p.1025; Shahid Sani, “Masalek Al-Afhām”, v.15, p.361; Hamu, Al-Rowza Al-Bahi’eh fi Sharh Al-Llam’a Al-Dameshiyeh”, v.10, p.151

<sup>6</sup> Allameh Helli, “Ghava’ed Al-Ahkām”, v.3, p.654; Hamu, “Tahrir Al-Ahkām”, v.2, p.624; Ahmad Mohaghegh (Moghaddas) Ardabili, “Majma’ Al-Fa’edah”, v.14, p.257; Seyyed Muhammad Hassan Najafi, Javaher Al-Kalam, v.43, p.99

“cooperate in doing good” but the following reasons and opinions indicate the necessity for adherence of this article to the axiom of cautioning for the sake of elimination of liability:

- a) Every action which is to be carried out in public passageways brings about liability even if it is going to be done for the sake of the general public's good. The late Fakhir Al-Mohagheghin is among the proponents of this theory<sup>7</sup>.
- b) An action done for the sake of the others' good does not cause liability if it is carried out by the permission taken from an Imam or the governor.
- c) An action taken for the sake of the others' good does not cause liability if it is not accompanied with violation or going to extreme measures. This theory is logical and acceptable therefore the article 341 [of the Islamic penal code of law enacted in 1992] should be restrained to this stipulation<sup>8</sup>.

Also, a person who does an action for the sake of the others' good should consider the expediences from every aspect and giving warning and informing before taking an action as included in the stipulations of the article 45 of the atonement law is the best and the most appropriate faucets of cautioning and observing expediences in respect to the others the lack of adherence to which is equal to violating the axiom of benefaction and not coming out as sufficiently attentive regarding the others.

It might have been the case that some individuals caused life and property losses to the others through claiming to exercise the article 341 of the Islamic penal code of law enacted in 1992 and taking actions for the good of the passenger but with accompanying it with violation and going to extremes in the course of carrying out actions in the public passageways and public places. Therefore, it could have been better if the article was revived and restored to its previous effect and its contents were embedded with the stipulation of the necessity to inform and warn; fortunately, the legislator noted such a mistake in the Islamic penal code of law enacted in 2014 and the article 509 of the aforesaid law was devised similar to the contents of the article 45 of the atonement law and quite contrary to the article 341 of the Islamic penal code of law enacted in 1992 as stated in the following words: “whenever an individual performs an action for the good of the passengers in the public passageways or places through adhering to the statutory provisions and observing the safety standards and happens to cause a crime or damage, s/he will not be legally liable<sup>9</sup>”.

Also, the position of such an axiom has been explicitly identified in regard of removing criminal liability via applying the expressions “negligence in informing” and “installing warning signs” in the notes 1&2 of the article 508: “Note (1): If the injured individual had trespassed a property without taking permission from the owner or if an individual enters a property by taking a permission which had been acquired before the aforesaid construction works started and the owner of the property proves unawareness of his or her presence, s/he will not be held liable unless the loss or the injury has been a result of suasion, negligence in informing and things of the like that can be proved attributable to the owner”.

Note (2): If an individual performs one of the actions cited in the article 507<sup>10</sup> of the aforesaid law in another individual's property and without permission and a third person who enters the property without permission gets hurt, the perpetrator is held liable to pay atonement unless it is justified that the incidence of the accident or injury can be attributed to the injured person in which case the perpetrator is not held liable; for instance, when the perpetrator places warning signs or locks the entrance door to the place but the injured enters the place neglecting the signs or by breaking the door”.

At the present time, the legislator has not sufficed to the subjects of the article 509 of the Islamic penal law enacted in 2014 and explains the superiority of the axiom of cautioning to the axiom of benefaction in the article 510 of the aforesaid law as stated in the following words: “whenever an individual, motivated by doing an act of benefaction and helping the others, displays a behavior for the sake of saving one's property, life,

---

<sup>7</sup> Izah Al-Fava'ed, v.4, p.662

<sup>8</sup> Abbas Zera'at, “Islamic penal law in the current legal order”, p.539, for more information see R.K.: Hamu, an explication of the Islamic penal law: Atonement, v.1, pp.378-381

<sup>9</sup> For more information see R.K.: Abbas Zera'at, “a brief explanation of the Islamic punishment law, comments on the article 509”; Muhammad Saleh Validi, “explaining the dos of the Islamic punishment law: comments on the contents of the article 509”.

<sup>10</sup> Article 507 of the Islamic penal law enacted in 2014: “whenever an individual bore a hole or place a slippery object in public passageways or places or another individual's property without it being allowed by the owner or performs anything that causes an injury to a third person, s/he will be held liable unless the injured person, knowing the presence of that slippery object and having the possibility to avoid, is proved to intentionally hit it.

reputation or honor and the same action causes injury or loss, s/he will not be held liable in case statutory regulations and safety standards are observed<sup>11</sup>”.

Also, the position of such an axiom has been explicitly identified in regard of removing criminal liability via applying the expressions “negligence in informing” and “installing warning signs” in the notes 1&2 of the article 508: “Note (1): If the injured individual had trespassed a property without taking permission from the owner or if an individual enters a property by taking a permission which had been acquired before the aforesaid construction works started and the owner of the property proves unawareness of his or her presence, s/he will not be held liable unless the loss or the injury has been a result of suasion, negligence in informing and things of the like that can be proved attributable to the owner”.

Note (2): If an individual performs one of the actions cited in the article 507<sup>12</sup> of the aforesaid law in another individual’s property and without permission and a third person who enters the property without permission gets hurt, the perpetrator is held liable to pay atonement unless it is justified that the incidence of the accident or injury can be attributed to the injured person in which case the perpetrator is not held liable; for instance, when the perpetrator places warning signs or locks the entrance door to the place but the injured enters the place neglecting the signs or by breaking the door”.

### Conclusion:

Giving warning and the elimination of the notifier’s criminal liability provided that certain conditions are met is a subject that has been confirmed in the great many of the legal systems and the same issue has been particularly dealt with in Iran’s criminal rules and regulations, based on jurisprudential sources, in the form of “legal order” and “legal authority ordinance”. Currently, the subject of the articles 309&310 as well as the notes to the article 308 of the Islamic penal law enacted in 2014 and some of the other specific rules and regulations is the notifier’s elimination of criminal liability as a result of installing warning signs and informing the danger.

### A) References:

#### B) Books

- 1- Ardabili (Mohaqeq), Ahmad, Majma al-Faeda va al-Burhan fi Sharh al-Azhan, edited and glossed by Hajj Aqa Mojtaba Eraqi, vol. 14, Qom, Institute of Nashri Islami, 1995.
- 2- Jabei Ameli, Hassan Ibn Zeyn al-Din (Ibn Shahid Thani), Maslek al-Afham ela Tanqih al-Sharyeh al-Islam, vol. 15, Qom, Institute of Islamic Doctrines, 1995.
- 3- Jabei Ameli, Hassan Ibn Zeyn al-Din (Ibn Shahid Thani), Al-Ruzat al-Bahyah fi Sharhi al-Lumah al-Dameshgyah, vol. 10, Second Impression, Qom, Dawari Publication, 1969.
- 4- Helli (Mohaqeq), Abulqasem Najm al-Din Jafar Ibn Hassan, Sharay al-Islam fi Masael al-Halal va al-Haram, vol. 4, Annotated by Seyyed Sadeq Shirazi, Second Impression, Tehran, Esteqlal Publishers, 1988.
- 5- Helli (Allamah), Abi Mansour Hassan Ibn Yusef Ibn Mutahar, Tahrir al-Ahkam, vol. 2, Qom, Institute of Al-e Bayt, d.
- 6- Helli (Allamah), Abi Mansour Hassan Ibn Yusef Ibn Mutahar, Qawed al-Ahkam, vol. 3, Qom, Institute of Nashri Islami, 1992.
- 7- Helli, Muhammad Ibn Allamah (Fakhr al-Muhageqin), Izah al-Fawaed fi Sharhi Ishkalat al-Qawaed, vol. 4, Tehran, Ismaili Institute, 1969.
- 8- Khaleqi, Abulfath, International Public Criminal Law, Tehran, Majd Scientific and Cultural Association, 2014.
- 9- Zeraat, Abbas, A Commentary of Islamic Criminal Law, vol. 1, Third Impression, Tehran, Qoqnoos, 2011.
- 10- Zeraat, Abbas, A Short Introduction to Islamic Criminal Law, passed in 2013, Tehran, Qoqnoos, 2013.

<sup>11</sup> For more information on axiom of benefaction see R.K. Abbas Zera’at, “civil jurisprudence rules: axiom of benefaction”.

<sup>12</sup> Article 507 of the Islamic penal law enacted in 2014: “whenever an individual bore a hole or place a slippery object in public passageways or places or another individual’s property without it being allowed by the owner or performs anything that causes an injury to a third person, s/he will be held liable unless the injured person, knowing the presence of that slippery object and having the possibility to avoid, is proved to intentionally hit it.

- 11- Zeraat, Abbas, Islamic Criminal Law in Current Legal Order, Fourth Impression, Tehran, Qoqnoos, 2011.
- 12- Zeraat, Abbas, Principles of Jurisprudence, Tehran, Jungle Publication.
- 13- Tusi, Abi Jafar Muhammad Ibn al-Hassan (Sheikh Tusi, Sheikh al-Tayefah), Tahzib al-Ahkam fi Sharh al-Moqneh (Sheikh Mofid), vol. 10, Third Impression, Beirut: Dar al-Azwa, 1985.
- 14- Kolehini, Theqat al-Islam, Muhammad Ibn Yaqub, Branches of Kafi, vol. 7, Annotated by Ali Akbar Ghafari, Third Impression, Tehran, Dar al-Kutub al-Islamiyah, 1947.
- 15- Malmir, Mahmoud, A Commentary of Criminal Law of Military Staff, Tehran, Dadgostar, 2006.
- 16- Najafi, Muhammad Hassan, Jawhir al-Kalam fi Sharhi Sharayeh al-Islam, glossed by Reza Ostadi, Vol. 43, Sixth Impression, Al-Maktab al-Islamiyah, 1983.
- 17- Walidi, Muhammad Salih, A Commentary of Requirements of Islamic Criminal Law, Tehran, Jungle Publication, 2014.

#### **LAWS**

- 18- Islamic Criminal Law, Passed in 1996.
- 19- Islamic Criminal Law, passed in 2014.
- 20- Laws of Application of Gun, passed in 1994
- 21- Criminal Law of Military Staff, passed in 2003