The Penalty for Drinking Wine and Its Criminal Responsibility

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ABSTRACT: Drink literally means any liquid which can be drunk, but in fact it this word means an intoxicating liquid. Drinking wine is a crime and its penalty in Islam is eighty whips for the drinker. In Islamic jurisprudence the penalty is applicable if the drinker is mature, wise, free, informant of the prohibition of wine drinking, informant of what he is drinking is wine, and finally is not obliged to drink. The major reasons for this penalty are the narrations from Imams and authorities. If drinking wine destroys one’s determination and is not intended to commit a crime, the criminal responsibility related to it will be ignored at the time when the person is drunk.

Keywords: wine, drunk, sin, penalty, criminal responsibility

INTRODUCTION

Any person is obliged to defend from his own rights and freedom whether he does it as defending from his society or realizing the rights of the people in the society where he lives. Criminal responsibility is of a very great importance. It means that the person who is regarded as a criminal must be able to understand his own behavior, and be physically as well as mentally healthy. The person must also have the freedom to choose whatever is regarded as a crime.

Under some conditions, the lawmaker considers the criminal free from any crime and thus not deserving any penalty since his reasons are justifiable. This matter shows the importance of criminal responsibility and show that setting boundaries in laws can be highly effective in executing the laws related to the society.

Nevertheless, this important matter has not been valued as it deserves. No criminal law has ever defined criminal laws clearly. As it can be seen, in many cases the lawmaker has simply sufficed to the term ‘responsibility’ and sometimes the term ‘criminal responsibility’ has been used to define or illustrate this phenomenon without any reference to the eliminating factors.

One of the crimes which bear criminal responsibility is drinking wine. Islamic instructions have warned frequently against this crime. Drinking wine has a lot of consequences, but the main question which may be raised here is that whether the drunken condition can eliminate the criminal responsibility. Thus it seems that drinking wine is controversial in many respects and the drinking can be surveyed as one of the Islamic Jurisprudence issues.

Literature Review

The Punishment for Drinking Wine Based on Islamic Jurisprudence and Its Reasons

Jurisprudents have always emphasized that the punishment for drinking wine must be eighty whips no matter the drinker is a male or female (Helli, Allameh, 1989). Imam Khomeini (1980) believes that whether the drinker is a male or female, (s)he should be whipped for eighty times. Of course as Imam Khomeini says a Non-Muslim who drinks in public must be punished but if drinking wine is committed in private, there will be no punishment for pagans like the case they drink in their own churches and temples. Ayatollah Khoie also said that there is no difference between a man and a woman who drinks wine and Imam Bagher or Imam Sadegh(PUBH) have narrated that Imam Ali (PUBH) had ordered whipping the wine drinker whether the drinker is male or female, free or slave, Jewish or Christian (Ameli, H., 1981).

The Conditions for a Person to be Regarded as Wine Drinker in Islamic Jurisprudence

In Islamic jurisprudence there are some conditions for a person to be regarded as a wine drinker and punished accordingly which are maturity, being wise, choice, knowledge of wine drinking, knowledge of being wine what he drinks, and finally not obliging to drink wine (Imam Khomeini, R., 1980).
To punish the wine drinker, it has been said that maturity and being wise are the two necessary conditions, thus those wine drinkers who are not wise or immature should not be punished and there is consensus in this regard (Najafi, 1981).

Knowledge in this article means knowing the rule of punishment for a wine drinker. If a person drinks wine assuming that the liquid is water, (s)he should not be punished (Golpayegani, 1993). The case here is ignorance of the subject. It has been narrated that during Abubakr period, a person had drunk wine. Abubakr asked him why he had drunk wine and he replied if he had known it had been wine, he would have never drunk it. Abubakr referred it to Omar to punish the man. Since Omar did not know the rule either, he asked Imam Ali. Imam Ali (PBUH) knew that the person was ignorant of the rule and thus did not punish the man but warned him if he would drink wine thereafter, he would be punished (Hor Amoli, M., 2001). Imam Sadegh has also said that if a Muslim drinks wine or commits adultery, on the condition that he is ignorant of what is sin and what is not, he should not be punished (Hor Amoli, M., 2001).

Exceptions in the Punishment

If somebody is obliged to drink wine or is in need of drinking wine because of his illness, he should not be punished (Imam Khomeini, 1980). According to Holy Quran’s verses, in Baghare Sura, if somebody is obliged to drink wine while he is unwilling to do that there is no sin to drink a sip of wine. Also if the person is under great pressure to drink wine and is in danger in case of no drinking wine, he can commit the sin and drink. In this case he can follow whoever has ordered him to do so and drink wine (Imam Khomeini, R., 1980).

Drinking Wine without Criminal Responsibility

Some jurisprudents including Imam Khomeini believe that if someone loses his mind because of drinking wine or using narcotics, and commits a crime, there is no punishment for him because of the following three reasons:

First Reason: Lack of Intension in Committing the Crime

Intension means that the person knows and wants to do something. The person is free to continue something or refuse to do so. However, sometimes factors like duress, coercion, and insanity affect human beings and limit them. In this case, punishment will be cancelled since the person must be physically and mentally ready to be responsible for his action.

Second Reason: Lack of Goals in Punishment

There are three goals to punish a wine drinker: frightening someone, punishment, and correction. Frightening is meaningless since the person has intentionally drunk wine. While in a drunken state, the person does not know what he is doing, thus there should be logically no punishment for him. Moreover, fear is meaningful when the person is completely conscious. Revenge is also unfair since the person is ignorant of everything which has happened to him.

Third Reason: The Effects of Drunkenness on Criminal Responsibilities Basics

The bases of criminal responsibility are wisdom, maturity, and discretion. First, drunkenness removes discretion. Second, it removes and weakens wisdom because the mental powers of human being are affected by alcohol and are almost disabled. Therefore, drunkenness affects discretion and responsibility of the person. Anyway the drunken person has been an obliged person without any discretion who is very similar to a mad person.

RESULTS AND DISCUSSION

Drunkenness influences the determination and intention of a person. It even ruins them. As a result, all of the mental structure of the human being is affected by drinking alcohol. Thus it can be said that the drinker’s crime is because of his lack of willingness. Thus it is one of the unintentional crimes.

If the judge in a court knows that there has been no willingness in a drunken man and the person has not drunk just for murdering, there is no need for retribution. But if the judge knows that there has been willingness, the retribution is a must. But if the judge doubts whether the person has intentionally or unintentionally has committed the drinking and murdering, the retribution is necessary.

Imam Khomeini doubts retribution of a person who has drunk wine and committed murder. He believes that it is better to avoid the retribution of such a person if we are nearly sure that there has been no intention of murder. If we doubt about it, he will be accused of murder and must be punished.
If a person does not know what the liquid in a glass is and drinks it and becomes intoxicated and also killed someone else while in drunken state, he cannot be accused of murder. Perhaps he has drunk under an obligation to save his own life.

If the judge doubts that the person has committed the murder unintentionally and perhaps has intentionally killed someone else; in other words, drinking has been an excuse to release from retribution, ‘owning determination’ or ‘being determined’ rule will be governed. Anyhow, it is commonly accepted that if drinking has not been done with the intention of murder, there should be no retribution; however, there are doubts on how to decide on the intentionality or un-intentionality of the subject.

CONCLUSION

Drinking wine has a special punishment. If somebody is obliged to drink because of being threatened to death and so forth, there is no penalty if he drinks a little of wine. Being drunk without any willingness causes the judge to cancel the punishment. Doubting on the lack or existence of determination damages the accused while doubting on the drinking for murder or other reason is in favor of the accused person. Here, the lawmaker has focused on punishment which is against the Islamic jurisprudence principles.

REFERENCES