Analyzing the Segregation between Declaring War against God and Corruption on the Earth in Islamic Revolution of Iran's Penal with Emphasis on Islamic Penal Code (2012)[1]

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Abstract

As ratification of new laws and regulations really needs refinement and expurgation and as the necessity of analyzing such laws is crystal clear, the resent paper is to level a fundamental criticism on the penal rule of declaring war against God (mohārebeh) and corruption on the earth (ifsade filardh). The main question of this research is that why the criminal acts of declaring war against God and corruption on the earth have been mentioned as two separate criminal subjects? The research hypothesis is created based on the Fourth Principal of Constitution of the Islamic Republic of Iran and seems that categorizing these two crimes under the same subject and category lacks reliable reason. Therefore, the existence of Innamā (showing limitation) and wāw (showing linking), the same subject in the word yuhāriboon and yasoon and interpreting this verse for the accused, as well as considering jurisprudents' opinions and concluding the traditions on the issue of mohārebeh all entail that these two issues enjoy the same rule which corresponds the criminal act.

Key words: Declaring war against God, Corruption on the earth, penal justice, reason, punishment, indictment.

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the Islamic Penal Code about this ethical institution relying on jurisprudential principles and resources to disambiguate the ambiguities such as the realm of influence of crime blockage in texted clear religious taziart and stating the shortcomings and pathology such as the condition for making sure for the correction and repentance of the repenter, so that his repentance is accepted without determining criterion and adopting a method for its certainty and offering applied corrective suggestions to improve this institution all form the significance of this research.

Key words: Repentance, texted religious ta'zir, non- texted religious ta'zir, crime blockage, commutation.

The Position of Repentance in Legal System of *Ta'zirāt* Penalty [1]

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Abstract

Beyond a religious, jurisprudential and ethical teaching, repentance has been systematically inserted to the penal law policy of Iran for the first time. Currently, it has been proposed as a lenient institution in the Islamic Penal Code ratified in 2012. The lawmaker's such a novel and admirable approach is appreciable as it helps the criminals repent voluntarily to improve themselves, and such a decision promotes remedial and corrective justice and stopping crimes instead of punitive justice using Qur'anic teachings. Investigating jurisprudential and theoretical principles about this valuable and ethical institution and stating penal policy of Iran after a long period of time regarding the effect of repentance on tazirat which devotes the highest amount of shares to itself has been specified with this action. The legislator has approved three systems based on the type and degree of the crime in *ta'ziri* crimes using a differential approach between the types and degree of *ta'ziri* crimes. The lawmaker believes that the influence of repentance in crime amputation or commutation is subject to the degree of *ta'ziri* crime with respect to the strength and weakness of crimes and clear textual or non-textual identity of *ta'zirat*. Investigating the position of eight articles in

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them has considered a specific amount. Using a descriptive-analytical research method and referring to valid sources, taghlib theory is prioritized in this research, and among the three opinions under the second theory maintaining that the lower lip enjoys a higher amount adopts the one which accords with zarif tradition and has determined the upper lip ransom amount half of the lower one and has determined the ransom amount for the lower lip as two third of full amount of ransom.

Key words: The lower lip, the upper lip, taghlib theory, tansif theory, better function, zarif tradition.

A Jurisprudential Analysis of Article 607 of the Islamic Penal Code in Determining the Lips Sum of Ransom[1]

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Abstract

The majority of Imāmiyah jurisprudents are of the view that injuring two lips leads to paying a whole body ransom, but regarding determining the ransom for each lip separately and individually there are contradictions. Having extracted all of the opinions in this respect, one may claim that these opinions could be categorized under two general theories. The first theory, tansif theory, states that the upper and lower lip enjoy equal share in the sum of ransom and each shares half of the sum of full amount of ransom. Such a theory has been approved by the Iranian law-maker and stipulated in the article 607 of the Islamic Penal Code (ratified 2013). The second theory, as called taghlib theory in this research, states that the lower lip enjoys a higher amount of ransom contrary to the higher lip. As the scholars who belief that there exists a higher amount do not have the same opinions with respect to the ransom amount, each of

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documentations and argumentations in rejecting the ratifications of criminal extradition and jurisprudential reasoning regarding the primary ruling of a Muslim criminal extradition to Islamic and non-Islamic countries (except that of Nafyi Sabil), the researcher has highlighted that to sign contract of criminal extradition with non-Islamic countries could be considered as problematic given it is required to submit a Muslim criminal to infidels for execution or trial by the virtue of some primary jurisprudential rules such as the reasons for illegality of confirming infidel's judiciary system and the principle of "hormat I'aneh bar ithm". Thus, referring to Hodaybiyah Peace Treaty is not true for proving the permissibility of extradition.

Key words: Criminal extradition, Muslim criminal, jurisprudence, the Guardian Council's Jurisprudential reasoning.

A Jurisprudential Investigation of Iranian Guardian Council's Selected Reasons in Rejecting Extradition Treaties between Iran's Government and other Ones[1]

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Abstract

Investigating the reasons and documentations of the Guardians Council in declaring some ratification against the shariah rules could wield remarkable influences in jurisprudential studies. The issue of extradition is among the ones whose related treaties have been declared against shariah rules by the Guardians Council. The different branches and subsidiaries of extradition and the Guardian Council's jurisprudential documentations such as "submission of a Muslim criminal to other countries under the issue of extradition" should be assessed and analyzed and its principles and sources should be studied. Having examined and analyzed the Council's Guardian

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ples and regarding the issue of blood money, the legislator has ruled to multiplicity of ransoms (article 538 of the Islamic Penal Code) and the interference of ransoms (on the clause B of article 538 of the Islamic Penal Code). Likewise, to enact the law for determining the method of the blood money in the assumed above-mentioned third and fourth assumptions has been stipulated in the continuation of clause B, article 539 as: " If death or amputation or any more severe injury are due to the contagion of some kind of injuries, the ransom of contagious injuries interfere with the whole body full ransom, or member ransom, or greater injury while the ransom for non-contagious injuries are calculated separately and thereupon the ruling is issued". Although, regarding the third assumption, the legislator's ruling is in accordance with jurisprudential principles, the legislator's law-making are criticized severely regarding the fourth assumption. Using a descriptive-analytical method, the present paper is to investigate the issues regarding the fourth assumption based on separation of single blow and multiple ones, either successive or no-successive. The researchers prove that contrary to the related article, if some injuries are contagious and the inured dies, the whole body full ransom is merely required to be paid and there is no obligation to calculate non-contagious injuries, unless the blows are knocked repeatedly and in some intervals.

Key words: Crime interruption, contagion, death, the article 539 of Islamic Penal Code.

A Comparative Reflection on Erroneous Contagious and non-contagious Injuries in Jurisprudence and Criminal Law [1]

(A Criticism and Correction Proposal for the article 539 of the Islamic Penal Code)

Ahmad Haji Deh Abadi [2]

'Azam Mahdavi Pur [3]

Tāhā Zargariyan [4]

Abstract

Different injuries could be the result of a single blow or various ones. Assuming such blows are contagious or non-contagious, no more than four assumptions would be conceivable. 1) None of the injuries are contagious. 2) All of the injuries are contagious and lead to a new crime. 3) Some of the injuries are contagious and could end in a more severe injury. 4) Some of the injuries are contagious and could end in the injured death. In line with jurisprudential princi-

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and expanded these opinions, the researchers have investigated the weaknesses of these opinions using the Qur'an verses and the Imam's traditions and have proved that proposing the issue of compulsion by the shariah legislator from the viewpoint of ruling the society is narrowed; therefore, any kind of compulsion cannot remove the illegality. Ultimately, they have proved the opinion to the permissibility of gathering the command and forbiddance using other jurisprudential chapters.

Key words: Togetherness, command, forbiddance, permissibility, refusal, lack of freewill, the obliged.

Analyzing the Togetherness of Command and Forbiddance[1]

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Abstract

The issue of the permissibility of togetherness of command and forbiddance is considered among the most complex and oldest issues in the knowledge of oṣūl which has jurisprudential and practical benefits such as the truth or wrongness of saying prayers in a usurped place. Having investigated the lexicon and clarifying the subject matter, the researchers have proposed three opinions in this regards such permissibility, refusal, and intellectual permissibility and customary refusal. In the next phase, the researchers have raised the most important issue of negating and confirming reasons and the issue of compulsion due to the lack of freewill. There are to six opinions and principles about the person who have doomed himself obliged due to lack of freewill among which the absolute command wavier, taking the obligation, affirming the forbiddance of act, and lack of obligation could be mentioned. Having explained

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lated, and cases-related, the researchers have classified the implication-related one to specific (textual concept) and general (common concept). Thus, some of the contradictions are resolved and some of the countenances of indication are supported, while due to some of the in-text and out-text indications and evidences and due to the infeasibility of resolving some contradictions, the effect of these traditions is in contradiction with the preference of ahdath to reach the true ruling regarding the issue of contradiction.

Key words: Tradition contradiction, textual preferences, ahdathiyat, preferring the ahdath, reservation, abrogation.

The Preference of Narration based on Ahdathiyat [1]

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Abstract

The current research is to validate the preference of tradition based on ahdathiyat. Posteriority of the issuance of a narration to another, as it is called ahdathiyat, is an issue that has been focused on by some jurisprudents and osūli scholars regarding the contradiction of traditions. Some scholars contend that such a matter is categorized under the issue of devoted preferences of the hadith whose argument relies on the five traditions, although the majority of osūli scholars have criticized such a basis and do not confirm its indication. Among such scholars, some believe in the intellectual basis for preference while on the contrary, most of such scholars have absolutely denied and rejected its being preferable. The research method is descriptive-analytical with a critical approach. Having mentioned the tentative countenances of the effect of these traditions and classifying the contradictions into document-related, implication-re-

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