

# **A Comparative Study of Tajjarri from Muhaqeq Khorāsāni's and Imam Khomeini's Perspectives**

**Taher Alimohammadi**

**Mahdi Zarei**

**Hamzeh Nazarpour**

## *Abstract*

Tajjarri means disagreement with legal or intellectual proofs without any disagreement with the fact. Tajjarri is among the subject that finds different entities based on the approach taken to it, but as this subject is discussed in the principle of jurisprudence, there might be different views and rulings by the Osūli scholars on that. Muhaqeq Khorāsāni maintains that tajjarri is illegal and the one who does so deserves punishment. To support his claim, he mentions some proofs and believes that the motejarri is obliged to do so and Muhaqeq examines the arbitrariness of freewill and determination and he also studies the dimensions of human's proximity and distance to his lord to shed more lights on this issue. On the contrary to what Muhaqeq has mentioned, having examined the nature of tajjarri, Imam Khomeini is of the opinion that motejarri has committed no illegal act and does not deserve any punishment. Thus, he has criticized Muhaqeq by proposing this criterion. Deploying a descriptive-analytical method, the authors have approved the jurisprudential nature of tajjarri and approved that Imam Khomeini's approach to this issue is more authentic on his dispute with Muhaqeq Khorāsāni.

*Key words:* Tajjarri, freewill, authority, multiplicity of punishments, Muhaqeq Khorāsāni, Imam Khomeini.

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**VII**

# **The Extent of Interplay between the Special Status of Siamese Twins in Islamic Lex talionis Punishment**

**Mahdiyeh Ghanizādeh**

**Muhammad Reza Keikhā**

**Ali Tawallāyee**

## *Abstract*

Murder or injury to the peoples' physical entirety is considered among crimes which have been attracted the attention of human law-makers, and consequently, the most severe punishments have been leveled against such crimes. The Islamic lawmaker has considered lex talionis as the penalty for murder. Such a crime punishment turns to be so complicated in cases it is associated with people with special physical conditions such as Siamese Twins which needs to be investigated. The findings of this paper report that Siamese Twins reflect either independent or joint personalities. Thus, this issue is effective in the related sentences passed for them. Regarding the murder sentence, if one of the twines commits murder, due to the death of the other because of the lex talionis, this sentence would be cancelled, otherwise one of them could be separated from the other, and if the twins are intentionally murdered, due to the multiplicity of crimes, punishments are also multiplied. However, if one of the twins is killed intentionally and the other dies consequently, regarding to the first one, the murderer is sentenced to lex talionis and with respect to the other, given the murder is intentional or unintentional, the related sentence is passed.

*Key words:* Siamese Twins, intentional murder, lex talionis, multiplicity, unity.

Abstract

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# Stating Deterrent Crimes with Emphasis on Non-litigious Matters

Sajjād Routayee

## *Abstract*

Most of the studies done on the analysis of the jurisprudential principles of deterrent crimes have legally justified such crimes based on Osūli principles of preventing any corruptive deed (Sade Zaraye'), the obligation of the obligatory introduction and illegality of illegal introduction and so on and so forth. However, they have all ignored this fact that none of the above mentioned principles could not be considered as general rules and thereof are not generalizable to justify the prohibition of deterrent crimes. The significant issue is studying the end of non-permissibility of such crimes and finally proposing a general rule, so that it could be a comprehensive rule for such crimes, as the lack of formulating rules and frameworks in this respect may lead to deprive committers' rights under the pretext of social rights. According to present research findings, non-litigious institution- a phenomenon which fully supported by the legislator- could be the most acceptable criterion for deterrent crimes. Based on this view, bringing order to the society and citizens' affairs and in general, strengthening the regime are considered among Non-litigious affairs which occasionally are fulfilled by preventing the preliminaries and means which pave the ground for other major crimes. Thus, this is the focal point where the crimes are committed. Therefore, according to this criterion, deterrent crime could be changed to a considerable assumption.

*Key words:* Deterrent crime, non-litigious affairs, deterrent rules.

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# **An Analysis of Rare *Shia* Injunctions on Muslim Women's Covering**

**Mojdeh Sādāt Ebrahimi**

**Muhammad Taqi Fakhla'i**

**Hossein Säberi**

## *Abstract*

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The existence of women's covering is essential but there is no consensus on its limit and extent. The majorities of jurists believe in the obligation of covering the whole body except for the face and hand palms. Hence, any view contrary to such is considered a unique and exceptional one. Since neither is the popularity reason for the authenticity nor is the rareness the reason for weakness of the rule, investigating the reasons and documents for unique and rare ruling seems to be essential. Having examined the development of covering and identifying the rare rulings and views in different periods, the present study have analyzed them. The findings of the study reveal that the majority of jurists are of a moderate view and the rare views are placed in the middle of the extreme. The research method is descriptive and explanatory, and data gathering is done through library research.

*Key words:* Covering, Fitwa popularity, Prayer's Dressing, face and hand palms covering.

## **A Reflection upon Using Lots in Contradiction**

**Mirzā Muhammad Wāezi**

**Muhammad Taqi Qabouli**

**Muhammad Taqi Fakhla'i**

### *Abstract*

The objective examples of two contradictory rules could be seen in so many instances and clarifies the investigation of the metrics for identifying the most important ones which have not been examined closely. The present paper has focused on the status of using lots among the metrics of preference in the contradiction issue. To be noted that, the one who is charge of deducing the most significant looks for the criteria for preferring a rule to the others and by resorting to the rationality, he refracts the metrics of preference so that he could conclude or see it likely to rule against or for one of the contradictors. Having stated the types of contradiction and using lots rules, this paper is to analyze and investigate jurisprudential examples in this regard and discusses the conditions of using lots in different categorizations of contradiction. According to the authors, the applicability of lots given the indications and practical principles are met should be taken into account, while the definite and probable metrics are (un) balanced due to the contradiction of different rights. With respect to two instances of contradiction from the viewpoint of preference, it is acceptable in criterion-based contradiction while in complying contradiction, if the metrics are absent or unbalanced and practical principles are not referable, resorting to the lots is sound, although in most cases optional priority is prioritized to the obligatory ones.

*Key words:* Lots indications, contradiction preference, types of contradiction, obligatory priorities of lots, lots conditions.

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**III**

# The Validity of Future Time Presumption of Continuity in Deducing Legal Rules

Mojtaba Elāhi Khorāsāni

Amir Zāhedi

## *Abstract*

Presumption of Continuity (Istishāb) is one of the most applicable evidences in deducing legal rules, one of which is future time presumption of continuity according to definite and uncertain time. Future time presumption of continuity means that given all the three sureness time, doubt, and definite happen at present before the obliged but the uncertain time is presumed in the future, it is reinstated from its continuation to the future. Likewise present common type of presumption of continuity, such a kind of presumption of continuity has got paramount significance and application to jurisprudence and deduces rules. However, most of Osūli scholars have failed to discuss it and trivial discussion have been made regarding to this type of presumption of continuity in Osūli books, albeit there are some evidences to the effect that future time presumption of continuity could be proved. The traditions on the issue of presumption of continuity and conformity of presumption of continuity with future time presumption of continuity prove the validity of future time presumption of continuity and would resolve the proposed problems in this regard. Similarly, a review of its applications to jurisprudence such as bedār permissibility, blood money non-reparation, early transaction necessity, trustee's justice, fetwā alteration, and etc. all show the significance of this type of presumption of continuity.

*Key words:* Future time presumption of continuity, present time presumption of continuity, certainty, certain, doubt, uncertain, practical effect.

Abstract

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