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The Governmental Approach Affects Jurisprudence in Islamic Punishments

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Abstract

This research has investigated the effect of the governmental approach to jurisprudence in Islamic punishments. In this approach, the execution of rulings in the government system is considered as the governing body of the society, that is, the ability to execute orders in a government system is regarded as an important indicator, in contrast to the individual approach in jurisprudence, which only tries to enforce the orders and infer the individual's duties. This approach has wide effects on jurisprudence, including criminal jurisprudence. This approach makes jurisprudence sources expand, and elements such as expediency and jurisprudence justice are included in the sources. Islamic punishments should be able to be changed according to the higher interests of the Islamic system and jurisprudential justice. Contrary to the common division in traditional jurisprudence, the theory that claims all Islamic punishments are Ta'zir is strengthened; as a result, the problems, that exist in the Islamic Penal Code regarding punishments, are solved.

Keywords: *Governmental Jurisprudence; Criminal Jurisprudence; Jurisprudential Evidence; Stability; And Change in Punishments*

Introduction

Jurisprudence rulings can be classified into two main areas, personal jurisprudence rulings, and public-social jurisprudence rulings**.** This division comes from the fact that some jurisprudence rulings, like most acts of worship, are related to a person, in such a way that there is no need for executive bodies and governmental organizations to implement them; in such a way that religion itself does not try to enforce it. For example, praying, going to Hajj, etc., if someone wants to do it, there is no need for special support from the government, and religion, and not forced to be implemented by power, but some rulings require governmental organizations and special institutions, like punishment, to enforce. That is, not a personal and private thing anyone can follow, prove and execute. But it needs a guardian, someone who has both scientific and practical competence to be able to follow up and execute the punishment if the crime is proven.

So, it can be claimed that the inference of jurisprudence is also possible in two ways, like common inference, regardless of complex social issues and enforceability. The second case is to make

inferences considering the fact that many rulings originate from society and return to society. The results of these two approaches will be very different, and it can be clearly seen in the case of punishments. The inference method in the second case can be based on the governmental approach in jurisprudence.

Definition of the Governmental Jurisprudence Approach

Sometimes, the description of being a government is considered to be the reality and nature of Shari'a rulings. It means that in the position of falsifying Sharia rulings, the Shariah has considered the fact that these rulings should be implemented in a government system, and they were enacted with this attitude. Sometimes being a government is described as inference, which means that the jurist, in the position of discovering and inferring Sharia rulings from sources, takes into account the fact that these inferred rulings are in charge of managing the society in a governmental system (Ziaifar, 2012, p. 12).

In short "the governmental approach in jurisprudence is a view and theory about the method of deriving jurisprudence rulings, which is opposite to the individual approach and method of deriving rulings. In this approach, the execution of rulings in the government system is considered the institution of social administration. In other words, in this approach, the ability to implement rules in a government system is an important indicator, as opposed to the individual approach in jurisprudence, which only tries to infer the rulings and duties of the individual (Ziyaifar, 2011, P.10). From here, the difference between governmental jurisprudence and personal jurisprudence in both inference and implementation becomes clear. In the implementation phase, it is clear, but in the inference phase, it is possible to face the question of what difference can be made between governmental and non-governmental jurisprudence. some researchers say: "should pay attention to the difference between individual and social rules of Islam in individual rulings, the goal is servitude, and merely excusing and fulfilling the rulings, which is due to their authority, both removes the burden of duty from the obligee, and to a large extent fulfills the purpose of falsifying the rulings, which is servitude, submission, and obedience". In individual rulings, the goal is servitude, and merely excusing and fulfilling the rules, which is due to their authority, both removes the burden of the duty from the obligee and a large extent fulfills the purpose of establishing the rulings, which is servitude, submission, and obedience. Although those rules are not very true. But in social rules, the goal is to properly manage society and solve social, economic, and legal problems. Such a role is only made of measures that are the best available options, not rulings that only have social validity; because, the goal is not to get rid of the task or to be enslaved, but the goal is management, which arises only from reality (Qayasi, 2006, p.101). The noteworthy point is that the approach of governmental jurisprudence is different from political jurisprudence. It includes activities to obtain, maintain, stabilize, criticize power, as well as activities that negate and subvert a power and replace it with another power. (Ziaifar, 2013, p. 30). One of the researchers, while providing a precise definition, also points to the most important characteristics of governmental jurisprudence: "Governmental jurisprudence is a comprehensive description and environment for all parts of jurisprudence (religious, social, individual, etc.), which is based on and the special thought is based on religion and Shari'ah and it is recognized by signs like this:

1 The government can easily implement it in any age and time.
2. The interests of all members of the society are meant in it.
3. Allocations and exceptions in rules and regulations are few.
4. It adapts and harmonizes with the changes in life.
5. Appealing to secondary rules is not the only way to adapt to the changes in life, and its implementation leads to the realization of social justice, which is one of the supreme goals of religion." (Mehrizi, 1997, p.125).

Of course, it should be noted, that the intention is not to consider criminal sentences among the governmental sentences, because the governmental sentence has its own definition, and it is possible that it does not match with all the criminal sentences. The meaning is that in criminal jurisprudence, the discussion of government and system is raised in such a way that this discussion is not seen in individual rulings. For example, a mujtahid (a high level clergyman) who rules in individual rulings such as acts of

worship, most of his rulings do not depend on the place and time of the imitator, the mujtahid is in one country and the imitator is in another country, without any problem he can follow many of the permission and inhibition of his personal authority, but in punishments, the case is not that simple, if the mujtahid's opinion is that a man can impose limits on his wife (Bahrani, 2008, vol. 1, p. 121). If the imitator lives, for example, in non-Islamic countries, can he follow this opinion? Therefore, it can be said that the government's view of criminal jurisprudence can have many effects, which are not only effective in the implementation aspect but also effective in the inference stage.

The Effect of the Governmental Approach to Jurisprudence in Referring to Evidence of Crimes

A jurist who has a governmental approach to jurisprudence knows that the lawgiver has considered the issue of the enforceability of the ruling. Thus, the jurist should pay attention to this issue in the position of inference, in such a way that the criminal sentences are in harmony with the religious system, including goals, principles, and beliefs. A jurist who looks at criminal jurisprudence with a governmental approach does not go only to the evidence found in the Hadith books, but about those Hadiths, he looks at the issue of macro-criminal policies, the goals of punishments, the impact of society, the impact of punishment, and economic conditions.

This view of jurisprudence has been strongly approved by Ayatollah Khomeini and has criticized its opposite reading (Khomeini, B. Ta., vol. 21, p .150). Governmental understanding of jurisprudence gives understanding the Hadiths a special direction.

This kind of ijtihad in evidence is different from ijtihad with an individual jurisprudence approach. For example, the sentence for theft, if it reaches a certain quorum, is to cut off the hand of the thief, but the lawgiver has changed this sentence according to the specific economic conditions. The jurists have a title if a thief steals food in " famine year", what is the ruling? The meaning of famine year is a year when famine has put pressure on the people and economic problems have put the people in a tight spot (Tusi, 1986, V. 5, p. 432). There are different opinions on the details of this issue, but it includes the point that the lawgiver considers the economic situation of the people and does not only look at the act of the thief. It is stated in another hadith that: “If the thief steals from the from an unjust ruler store, then there is no cutting off against him, but he took his right, and if it was from a just ruler, he must be killed (Ameli, 1988, v. 28, p. 289). In this hadith, it is detailed whether the theft took place from the store of a just government or from unjust government if it was from an unjust government there is not cut off his hand. Of course, some jurists have not accepted this hadith (Marashi Najafi, 2003, p. 71). But in general, it can be said that the conditions can affect the execution of the punishment. The third example that can show the approach of governmental jurisprudence is establishing a limit in the enemy's land. Hazrat Ali says about this: “I will not enforce punishment on a man in the land of the enemy - until he gets out of it - lest the zeal carry him and he catches up with the enemy.” (Aamili, 1988, vol. 28, p. 24). In this hadith, it is detailed whether the theft took place from the store of a just government or an unjust government if it was from an unjust government there is no cut off his hand. Of course, some jurists have not accepted this hadith (Marashi Najafi, 2003, p. 71). But in general, it can be said that the conditions can affect the execution of the punishment. It seems that the government's lack of attention to jurisprudence can lead to this type of rulings, rulings that are capable of many cases of abuse (Elham and Abdian, 2015, p. 75) and in some cases, lack of implementation.

The Effect of the Governmental Approach in Jurisprudence, in the Stability and Change of Punishments

The Prophet Mohammad and the infallible imams have different dignities. As explainers of religion, they have had the dignity of propagating religion while in some cases they have emerged as rulers and managers of a society, and in some cases, they have been responsible for judging. From these different dignities, different orders and rulings have been used. In this sense, religious scholars have divided the orders issued by them into three important categories. General, government, and judicial

rulings, each of which has its definition, scope, and effects. General provisions mean address or credit that has been directly or indirectly assigned to the actions of the obligee by necessity or choice or situation. Judicial rulings are the command to execute a legal or contractual ruling or the subject of those two special things by a judge, not by God. Government rulings are those types of Islamic regulations in that the ruling jurist obliges the people to do something or leave it in certain cases based on the exercise of guardianship and the use of his right to preside and lead. This kind of ruling is also called the governor's decree (Omid Zanjani, 2000, vol. 2, p. 25). This division has important effects in deriving rulings, especially criminal rulings. Because if a ruling is in the form of a judicial or provincial ruling, it is not considered a fixed and permanent ruling, and it cannot be used to obtain general criminal and non-criminal rulings. In this difference, one of the researchers says: "Any speech and behavior that comes from this dignity (mission and propagation of the religion) of the innocents is a part of the religion and one of the established rulings... But undoubtedly, a part of the speech and the behavior of the innocents, which has reached us today, was issued from their other dignity (the dignity of the governorship and government). This kind of speech and behavior was based on the requirements of their time and place, although obeying it for the people of that time was like obeying the fixed rules of Islam are considered obligatory, they are considered situational and variable rules. Therefore, its content is not from the religion of Islam. The Holy Prophet (PBUH) used to make judgments during his mission, but since the subject of judgment was always partial and personal, the content of the Prophet's speech and behavior is about a specific judgment outside of religion. (Ali Akbarian, 2009, Vol. 1, p.p. 83-93).

Religion, in general, and especially the practical rulings of religion, which is the term jurisprudence, must be taken from the source of revelation, in such a way that it can be attributed to the Prophet and his successors. For this reason, the most important sources of jurisprudence are the Qur'an and the Hadith. According to the Qur'anic text, the prophets were among the people, and according to the Qur'anic interpretation, they went to the market like people, and they also used the foods that humans used. Therefore, there have been humans on earth, but at the same time, they have also been responsible for guiding humans. From here, the question arises whether it is possible to attribute different dignities to the Holy Prophet (PBUH) and the Imams. In a more precise interpretation, different things should be given to those gentlemen because they were human beings who, while reaching their personal lives, were in charge of expressing rulings, opinions, and morals and in some cases were in charge of political affairs, peace and war. In addition to this, in many cases, they were also responsible for judging and arbitrating between people.

One of the researchers says: "During his mission (at least after the Hijrah), the Holy Prophet had various tasks: the dignity of the mission and prophethood and the explanation of religion, the dignity of guardianship, the dignity of judgment, in addition to these matters, all of which were entrusted by God It happened that he lived a normal life like other people and was recognized as an obligee in fulfilling his religious duties, which we interpret as personal dignity. In Shia, Imamia thought, the infallible imams also had and will continue to have these duties. Speech and behavior that is simple in any of these subjects have special rules for that dignity. (Ali Akbarian, 2009, vol.1 p.83).

Any act, behavior, or speech issued in a certain dignity is possible to be removed from it within the scope of that dignity and should not be extended to other matters. If the Holy Prophet (peace be upon him) or Imam Masoom issued an order as if they were the ruler of the society and made a ruling for the management of the same society, there is a problem with using it as a general and eternal ruling. Similarly, if they issued a ruling in the capacity of a judge, that ruling cannot be easily overruled to all its similarities, because the possibility of that ruling being specific is very high.

Some jurists have even stated that judicial rulings are not considered Sharia rulings. Some jurists do not consider the judicial ruling as a Sharia ruling (Najafi, 1983, vol. 40, p. 100). This phrase (judgment, enforcement of a legal or shari'a ruling is from the ruling area, not from the Shariah area) shows that judicial rulings should not be included in general and Shariah rulings.

In the differences between general rulings and government rulings, it is said that, firstly, the determination of criteria and expediency in the general ruling is the responsibility of the Shariah, unlike the government ruling, which is the responsibility of the ruler. Secondly, interests and corruptions in the general decree are generally on the axis of obligation, and in the government decree, it has more of a social aspect. Thirdly, the general decrees are permanent and unchangeable, unlike the temporary government decree. The ruler is psychological in the rulings of government (Bahrami, Naseri Moghadam, 2006, p. 14). These differences have an impact on the perceptions of criminal jurisprudence and indicate the temporary or permanent status of a ruling that can be inferred from a single hadith.

With the government's view of criminal jurisprudence, many punishments are out of the state of durability, stability, and eternity. In the following, we refer to examples and proofs that show that all punishments are ta'zeer type and were issued in the form of a government order.

Governmental Jurisprudence and to be Ta'ziri of All Punishments

The punishments mentioned in jurisprudence are divided into Hadd and Tazirat in a well-known division. In the definition of Hadd, it is said: "Prescribed and special punishments, the type and amount of which have been precisely determined by the Islamic legislator" (Yazdi, 1985, Vol. 4, p. 75). The author of Shari'i says: "Any punishment that is definite is had, and if it is not, it is called Ta'zeer." (Hali, 1987, vol. 4, p. 136). But there is a possibility that all punishments are ta'zeer. This means that even the punishments mentioned in the name of had in jurisprudence were based on certain conditions of the governmental-judicial authority of the Prophet or Imam. In other words, the amount and quality of that was not intended as lawful, but the principle of punishment was intended for the benefit of the wrongdoer or the society, and the format and form of these punishments were appropriate to the time and conditions of that era. One of the researchers says: "Actually, contrary to what is thought, the maximum punishments have not been completely fixed, but innocent people have made changes in it according to the circumstances, and sometimes, due to some foresight, there have been changes in the execution of punishments." (Nobahar, 2010, p. 343).

The proof of this possibility is that for each crime, a corresponding punishment has been specified, and only some of them have been mentioned in the Holy Quran, and the quality and manner of many punishments have been expressed by the Prophet and Imams over time. Since the Holy Qur'an is the main source of religious issues and is limited to introducing some punishments, it is assumed that the punishments can be the responsibility of the legitimate ruler.

Pay attention to this historical report: "Khalid bin Waleed wrote a letter to Abu Bakr and asked about a person who gave Luwat?" Abu Bakr asked his companions for advice on this matter, others said that he should be killed, but Amir al-Mu'minin said: Burn him with fire, because an Arab is not afraid of being killed... This opinion was accepted. (Barghi, 1992, vol. 1, p. 112).

Pay attention to the reason stated in the hadith, the reason why he prefers the punishment of fire over other punishments is that killing does not deter, but setting fire does. This clearly shows that punishment is the responsibility of the ruler Both its quantity and quality.

Some of these examples can also be seen in Sunni jurisprudence. It has been narrated in Sahih Bukhari that the punishment for drunkards in Khmer was when they brought drunkards, they would beat them with shoes, sticks, etc., until during the time of Umar, the punishment for drunkards in Khmer was forty lashes, and when people were They brought him to Migsari and did a lot of trespassing, the punishment was increased to eighty strokes.

Perhaps it can be said that within the limits that the jurists have also counted, the types of punishments for each crime have been stated separately, not because these punishments should last forever, but because the ruler of that time recognized that the amount and type of this punishment let it be

so. This possibility is consistent with the philosophy of punishments and also with the obedience of rulings to interests, explaining that as it has been proven in the science of principles and theology that rulings are subject to real interests and corruptions and if those interests change, rulings will also change. On the other hand, we know that punishment is not just worship, but some philosophies and causes of punishment are mentioned both in the hadiths and in the verses of the Qur'an. The goals of punishment in Islam are diverse and multi-dimensional. In short, it can be said to execute justice, purify the memory of the victim, reduce the punishment in the afterlife, refine the criminal, maintain the social system, preserve the interests of khumsa and deterrence (Maqimi, Bita, vol. 51, p. 106). It is one of the most important goals of punishment, Ayatollah Khomeini says: "These limits, just as they educate individuals, they also bring the nation to a place where corruptions will be reduced. If there is a limit, this is the limit." It both educates the person who has violated the limits and is good for the nation" (Khomeini, Bita, Vol. 19, p. 193). The confirmation of this finding is what some Islamic scholars have said about the benefits of Khumsa. Ghazali and some Imami jurists have said that the purpose of Sharia is to protect the five interests and to forge Islamic rules to protect them (Shahid Awal, 2024, p. 62).

Another effect of punishments being punishments is the change of punishments according to time and place conditions, because one of the important features of punishments is that the form, method, and amount of punishments in punishments are not specific and determined, but according to the expediency that the ruler recognizes. If it is said that all the punishments are actually the same punishment, the requirement of it will be that the change in the quantity and quality of the punishments will be easily acceptable. Even if this possibility is not accepted, there are those among the jurists who do not consider it permissible to perform Hudud during absence. It can be very effective in criminal matters for the Islamic government.

Governmental Jurisprudence is the Solution to the Problem of Prescribed Ta'zeerat

One of the issues in jurisprudence and penal law is the issue of Shariah-mandated punishments. Mandatory punishments are in such a way that while the name of punishment applied to it. treated like a hadd, many of the rules of hadi apply to it. If it is ta'zeer, what does it mean to writ? And if prescribed, it is a hadd and not a punishment, while the general consensus is that such punishment considered among the athers. Another problem is that according to Note 2 of Article 115 of the Islamic Penal Code, "Note 2- The application of the provisions of this article as well as paragraph (b) of article (7) and paragraphs (a) and (b) of article (8) and article (27), (39), (40), (45), (46), (93), (94) and (105) this law does not include punishments prescribed by Sharia. Many abbreviated aspects (such as the passage of time, postponement of sentencing, exemption from light punishments, suspension of execution of punishment, etc.) which included in Tazeerat have been removed from prescribed Tazeerat. What is the reason for this separation?

If it is proven that there is no difference between written and unwritten punishments, this distinction will have canceled. It seems that by carefully paying attention to the categories of criminal rulings, it can have concluded that the division of punishments into prescribed and non-prescribed punishments is wrong as a result, there is no difference between the so-called prescribed and non-prescribed punishments.

First, the differences between hadd and ta'zeer will briefly mentioned, and then this problem will have answered by using the theory of separation of ruling classes.

In the difference between hadd and ta'zeer, it said that there are differences in several ways:

First, in terms of the topic, "the subject of punishments such as Hudud, Qisas, and Dayat has been completely defined and defined. For example, the issue of retribution for murder or wounding or mutilation is intentional and aggressive. Similarly, in the punishment of the limit of the crime, the extent and angles of its realization have been precisely determined according to the criteria of

proving it in the court, in such a way that for any reason in the realization of the crime or if there is any doubt, the punishment will not implemented. However, this is not the case with Ta'ziri punishments, and what is stated in the holy law of Islam as the subject of this category of punishments is violation of obligations and committing taboos" (Salimi, 2016, p. 42).

Secondly: The type of punishment is defined and stated within certain limits, but it is at the discretion of the ruler the amount and quality of punishment is determined by the ruler: "In order to punish criminals and violators, the Islamic ruler can impose all kinds of punishments commensurate with the crimes committed, such as prison, financial fines, exile, detention in welfare and training centers, deprivation of government jobs, closure of activity and work centers, and the like according to the conditions of the time. To determine the place and abilities of individuals" (Yazdi, 1985, Vol. 4, p. 223). And other differences are also mentioned (Shahid Awal, Bita, Vol. 2, p. 142), which do not need to state.

There is a difference of opinion in the examples of punishments (Ramazani et al., 2017, p. 160). Some have mentioned up to 15 cases (Shirazi, 2014, p.102), such as scolding, cursing, having sex with animals, intercourse during menstruation, or during Ramadan.

Carefully all the mentioned cases, it can said that these should not be called prescribed Tazirat, and this interpretation is wrong because all the cases mentioned are examples of "What the ruler thinks". And if the Imam ordered certain punishments, it is not because those punishments would be of the same form and amount forever but because he saw expediency in that particular punishment at that time in other words, these punishments were from the category of judicial rulings, not general rulings. If this justification is accepted, the problem of punishments stipulated in the laws will solved, and these cases should not considered outside the general rules of punishment.

The Impact of the Governmental Approach of Jurisprudence in the Scope of Criminal Evidence

The sources of jurisprudential evidence introduced in jurisprudential books are: Qur'an, Sunnah, Reason, and Ijma, (Mohammed Taqi, 2008, Volume 3, p. 315). In common jurisprudence, all rulings must derived from these sources, which can be seen by carefully referring to the book of jurisprudence, that the role of the book (Qur'an) and intellect is very insignificant, the consensus, which actually returns to the Sunnah, and the Sunnah as well. In fact, it manifests itself in single hadith that statement it can said that it is the main source of common jurisprudence in single hadith. But if jurisprudence is viewed from a governmental perspective, other sources will added to jurisprudential arguments. Government sees jurisprudence as the basis of the validity of sources such as justice and expediency" (Sarami, 2011, p. 84). Because expediency is the basis of government and justice is the most important goal of implementing the social rules of Islam, this evolution has a direct impact on the source of criminal jurisprudence, it seems that it can completely transform criminal jurisprudence. This issue can explained in a reasonable way in several introductions:

First introduction: The approach of criminal jurisprudence is a government approach, and its practical and executive aspect in the society that needs government. Therefore, it needs to understand both justice and the benefit of society.

Second introduction: On the other hand, it is clear that many Islamic criminal rulings signed and the custom of that time was confirmed by interferences and possessions, and the custom of that time considered these crimes and punishments to be just. Because all nations have at least sought justice in speech, and Islam, which approved it, is a sign that Islam did not see it as oppressive, at least at that time, or at least approved it due to the existing interests at that time.

The third introduction: Islamic legislation based on justice, and all Islamic rulings are fair and Islam seeks to legislate and implement fair rulings in such a way that justice is one of the most important criteria for religious and Islamic rulings and it can be distinguished by justice. that the ruling attributed to religion, whether its attribution is correct or not?

Fourth introduction: It is possible to understand and recognize the fairness of the social rules of Islam, such as government rules, for committed experts of Islam, such as righteous jurists, it is not like the social rules of Islam are mysterious, and there is no way to understand its interests, corruptions, and goals. (Sadeghzadeh Tabatabai, 2012, p.120).

According to these four introductions, whenever someone wants to infer criminal sentences from the evidence of suspicion, he must acknowledge the justice of that sentence or at least acknowledge that it is not cruel in order to be able to rely on the evidence of suspicion. However, if the ruling based on presumptive reason is considered oppressive in the common practice of the same era, in such a way that the expert (just jurist) is convinced that the ruling based on presumptive reason is oppressive, he cannot attribute that ruling to religion and call it Islamic. It is assumed that it should be implemented in the Islamic society.

The criterion of expediency and jurisprudential justice theory can play an effective role in criminal jurisprudence, both in the inference stage and in the execution stage of the criminal sentence. For example, the punishment of a warrior in the Holy Qur'an is as follows: killing, crucifixion, amputation, and exile (one year). The popular theory is that the ruler is benevolent, but the unpopular theory says that the punishment is adjusted according to the severity of combatant for example, if combatant accompanied by murder, the combatant will killed, but if combatant has not caused any harm other than fear, he should exiled. Now, if the first theory, which is optional, is accepted, the ruler will order the amputation of a hand and leg in the case of a person who drew a weapon and scared the people but did not harm anyone, but in the case of a person who formed a gang and terrorized the people for years. He has been persecuted, and he has even committed murder and assault. Is this sentence fair?

Is it not possible to reject this ruling because it is cruel and unfair with the criterion of the theory of justice in jurisprudence? Therefore, it can claimed that the theory of justice is against the absolute discretion of the ruler in determining the punishment of a warlord, rather he is obliged to determine the punishment by observing the proportionality of the crime and the punishment.

According to these prerequisites, the sources of criminal jurisprudence, in addition to the book and tradition, must be in accordance with the interests of the Islamic society and include jurisprudence.

Result

The governmental approach to jurisprudence causes fundamental changes in jurisprudential inferences one of the areas directly affected by this approach is criminal jurisprudence. The approach of governmental jurisprudence causes the sources of evidence of criminal jurisprudence to expand, and in addition to the famous sources of jurisprudence, interest and justice are also considered as sources of criminal jurisprudence. Following the change of these resources, the possibility of changing many crimes and punishments will be acceptable. For this reason, the theory of Taziri of all punishments is gaining strength, and as a result, the Islamic government has the authority to determine the quality and quantity of all punishments according to reliable sources of jurisprudence, and the measure of justice and expediency.

References

Ibn Batal Abu al-Hasan Ali ibn Khalaf ibn Abdul Malik (died: 1057) Sahih al-Bukhari commentary by Ibn Batal Research: Abu Tamim Yasir ibn Ibrahim, al-Rashad Library - Saudi Arabia, Riyadh, second edition, 2003 .

Ardabili, Ahmed bin Muhammad, Majma al-Fedat wa Al-Barhan in the explanation of Irshad al-Azhan, 14 volumes, Islamic Publications Office affiliated with the Qom Theological Seminary Society, Qom - Iran, 1, 1982.

Bahrani, Mohammad Sanad, Sanad al-Arwa al-Wathqi - Kitab al-Nikah, two volumes, Fadak Library, Qom - Iran, first, 2008.

Barqi, Abu Jafar, Ahmad bin Muhammad bin Khalid, Al-Mahasen (Lal Barqi), 2 volumes, Dar al-Kutub al-Islami, Qom - Iran, 1992.

Bahrami, Bahram, Naseri Moghadam, Hossein, A look at Imam Ali's jurisprudence with an emphasis on the elements of government rulings, judicial approach and narrative anomalies, Islamic Studies Fall 2006, Vol. 73, p. 14.

Hali, Mohaghegh, Najm al-Din, Jafar bin Hasan, Islamic Laws in Halal and Haram Issues, 4 volumes, Ismailian Institute, Qom - Iran, 1987.

Hali, Mohaghegh, Najm al-Din, Jafar bin Hasan, Islamic Laws on Halal and Haram Issues, 4 volumes, Ismailian Institute, Qom - Iran, 1987.

Hali, Moqdad bin Abd Allah Seyuri, Kenz al-Irfan fi Fiqh al-Qur'an, Mortazavi Publications, Qom - Iran, 2004.

Ramezani Mohammad et al., Mansos punishments from eternal sentences to judicial and governmental rulings, studies of Islamic jurisprudence and law, year 10, 2018, 2017.

Zanjani, Abbas Ali Omid, Political Jurisprudence (Omid), Amir Kabir Publications, Tehran - Iran, 4th, 2000.

Salimi, Mohammad, Punishment in the Islamic Judicial System, Publications of the University of Judicial Sciences, 2016.

Siyuri, Moqdad bin Abd Allah, Against the Jurisprudence of the Imamate Religion, Publications of Ayatollah Murashi Najafi Library, Qom, Iran, 1982.

Shirazi, Naser Makarem, Tazeer and its extent, publications of Imam Ali bin Abi Talib, peace be upon him, Iran, 2004.

Shirazi, Nasser Makarem, Tazeer and its extent, in one volume, publications of Imam Ali Ibn Abi Talib (peace be upon him) school, Qom - Iran, 2004.

Sadeghzadeh Tabatabai Seyyed Mahmoud Validity and scope of the rule of justice in jurisprudence from the point of view of books and traditions, supervisor, Seifullah Sarami, advisors Kazem Ghazizadeh, Mehdi Mehrizi, student, defended at the University of Quran and Hadith in 2013.

Sahifa Imam, vol. 21, 150, letter to Mr. Mohammad Hassan Qadiri (judgement of chess game and trading of musical instruments).

Sarami, Saifullah, Governmental rulings and expediency, Strategic Research Center of the Expediency Assessment Forum, Q1 2019.

Sarami, Saifullah, Comparison of sources and methods of jurisprudence and law, Research Institute of Islamic Sciences and Culture, 2011.

Ziaeifar, Saeed, An introduction to the governmental approach to jurisprudence, Research Institute of Islamic Sciences and Culture, 2019.

Ziyaifar, Saeed, Government approach in jurisprudence, political jurisprudence magazine, 14th year, 53rd issue, Spring 2019.

Tousi, Abu Jafar, Muhammad bin Hassan, Al-Khalaf, 6 volumes, Islamic Publications Office affiliated to the Qom Seminary Society of Teachers, Qom - Iran, 1986.

Aamili, Harr, Muhammad bin Hasan, Wasal al-Shia, 30 volumes, Al-Bayt Institute, Qom - Iran, 1988.

Aamili, the first martyr, Muhammad Bin Makki, al-Dros al-Shari'a fi fiqh al-Imamiya, 3 volumes, Islamic Publications office affiliated with the Qom seminary community of teachers, Qom - Iran, 1996.

Aamili, the first martyr, Muhammad bin Makki, al-Qasa'e and benefits, Mofid bookshop, Qom - Iran.

Ali Akbarian, Hassan Ali, Criteria for recognizing fixed and variable sentences in traditions, Research Institute of Islamic Sciences and Culture, Q2, 2018.

Ghasemi, Muhammad Ali and the researchers of Razavi University of Islamic Sciences, Imami jurists and the fields of jurisprudence, two volumes, publications of Razavi University of Islamic Sciences, Mashhad, Iran, 2005.

Qalazi, Jalaluddin, Fundamentals of Criminal Policy of the Islamic Government, Research Institute of Islamic Culture and Sciences, 2015.

Kabli, Mohammad Ishaq Fayaz, Minhaj al-Salehin, 3 volumes.

Gilani, Mirzai Qommi, Abu al-Qasim bin Muhammad Hasan, Jami al-Shatt fi Ajuba al-Asthalat (Lal Mirza al-Qami), Kayhan Institute, Tehran - Iran, 1992.

Muhammad Taqi bin Abd al-Rahim, Hidayat al-Mustarashdin (new edition) - Qom, second edition, 2008.

Madani, Seyyed Mahmoud, expedient rulings in Islamic jurisprudence, Qods Rozavi Province Islamic Research Center, 2013.

Marashi Najafi, Seyed Shahab al-Din, Theft on the Light of the Qur'an and Sunnah, in one volume, Publications of Ayatollah Marashi Najafi Library and Printing House, Qom, Iran, 2003.

Moqimi Haji Abolqasem, The Philosophy of Punishment in Islam, a group of authors, Fiqh Ahl al-Bayt (Persian), 56 volumes, Institute of Islamic Jurisprudence on the Religion of Ahl al-Bayt, Qom – Iran.

Mehrizi, Mehdi, Naqd wa Nazar - Number 12 - Fall 2016.

Najafi, Sahib al-Jawahar, Muhammad Hassan, Jawaher Kalam fi Sharh Sharia al-Islam, Dar Ihya al-Trath al-Arabi, Beirut-Lebanon, 1983.

Najafi, Kashif al-Ghita, Ahmed bin Ali bin Muhammad Reza, Sifina al-Najat wa Mishkaah al-Hadi and Misbah al-Saadat, 4 volumes, Kashif al-Ghita Institute, Najaf Ashraf - Iraq, 2002.

Nobahar, Rahim, Objectives of punishments in sexual crimes, Research Institute of Islamic Sciences and Culture, 2019.

Elham Gholamhossein, Abdian, Mohammad Reza, Analyzing jurisprudential theories about murder in bed. Teachings of Criminal Law, Razavi University of Islamic Sciences, No. 12, Fall Winter 2015.

Yazdi, Seyyed Mostafa Mohagheq Damad, Principles of Jurisprudence (Moghagheq Damad), Islamic Sciences Publishing Center, Tehran - Iran, 1985.