



Electronic Theft from View of the Jurisprudence of Ahl al-Bayt and the Iran-Afghanistan Criminal Law

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Abstract

Electronic theft, as an emerging, complex, and transnational crime, is perpetrated using electronic tools and through connection to the powerful, international internet network within cyberspace. Although cyberspace has facilitated numerous activities and created opportunities for communication and the exchange of information globally, it also presents dangers and threats. One of these threats is theft, where perpetrators, by unauthorized access to others' websites or systems, seize property, data, and unauthorized information, disrupting the social and psychological order of society and depriving the rightful owner of their assets and data. This research adopts a descriptive-analytical method to explore the jurisprudential and legal dimensions of electronic theft within the frameworks of Iranian and Afghan law, aiming to propose appropriate legal strategies for penalizing offenders and preventing the proliferation of this crime. In the criminal laws of Iran and Afghanistan, electronic theft is categorized as a (*ta'zir*) crimes (discretionary penalties), with punishments that are often lenient and insufficiently deterrent. However, from a jurisprudential perspective, three viewpoints can be proposed on this matter: 1- The first view, based on the lack of direct evidence and the principle of innocence, does not classify it as a crime. 2-The second view considers electronic theft a discretionary crime due to its distinct context from physical theft and the absence of certain required conditions. 3- The third view argues that, if all conditions are met, electronic theft can fall under the category of (*hadd*) crimes (fixed Islamic penalties). Considering the existing realities and evaluating the similarities and differences between electronic and conventional theft, the third view is supported by sound scientific and logical reasoning and is, therefore, defensible.

Keywords: *Electronic Theft; Cyberspace; Hadd and Ta'zir Punishments; Stolen Data*

Introduction

Nowadays, electronic devices and tools have permeated various aspects of human life and have become essential in numerous fields. For instance, they are used in entertainment centers for video games, in offices for typing, sending email, copying, correspondence, archiving information, and providing informational services, in travel agencies for booking and selling tickets for airplanes, trains, and buses, and in hospitals for archiving and recording patient information.

Additionally, many advanced medical systems like MRI machines, ultrasound devices, and other technologies, as well as industrial centers for controlling factory machinery and improving productivity, rely on electronic and digital tools. Banking networks use these tools to register customer information and manage financial transactions, while universities and research centers deploy electronic and computer systems, along with suitable software and hardware, to conduct numerous research projects.

With the advent of electronic tools and communication technologies, many challenges in human life have been alleviated. Internet and computer networks, created by connecting multiple devices in various locations, play a crucial role in information transfer and bringing people closer. However, the crimes, harmful consequences, and considerable threats posed by these tools are undeniable and alarming.

Owners of electronic tools and users of cyberspace face not only risks like internet addiction, moral and ideological deviations, social isolation, and psychological problems but also threats such as fraud, information theft, financial theft, and more. Nowadays, electronic and cybercrimes have developed to such an extent that they are considered a global dilemma.

In this research, electronic theft, one of the cybercrimes and adverse consequences of cyberspace, is discussed and analyzed. It is not feasible to fully examine all aspects of this transnational crime in a single article. Therefore, this study focuses solely on the nature and essence of electronic theft, whether it can be jurisprudentially and legally equated with *hadd* theft (fixed Islamic penalties)? What is the view of Shiite jurists on this issue? and What is the perspectives of Iran and Afghanistan criminal law on the electronic theft?

1. The Concept of Theft

The concept of "theft" is first examined from the perspective of linguistic scholars and then from the viewpoints of jurists and criminal law experts.

1.1. The Linguistic Definition of Theft

The Arabic term for "theft" (*sariqa*) originates from the root *saraqa* (*yusriku*, *saraqan*, *sariqan*, *sariqatan*, *sarqan*), meaning "snatching" or "stealing" (Bustani, 1996: 484; Farahidi, 1989: 5/76).

In Persian, "theft" translated as "stealing" or "robbing," and it is used both as a noun and a verbal noun (Dehkhoda, 2011; Moein, 2009). Its English equivalents are terms like "stealing," "theft," or "thievery."

Some linguists define "theft" as taking someone else's property secretly (Raghib, 1993: 408; Ibn Faris, 1984: 3/154). For example, the verse "استرق السمع" (*is'taraqa as-sam'a*) has been interpreted as "listening secretly."

The term "theft" has also been interpreted as secretly stealing property through deception and trickery (Khawārazmi Mu'tarizī, n.d.: 1/393). Furthermore, the stolen property itself has been metaphorically referred to as "theft" (*ibid.*). Farid Wajdi defines theft as secretly taking something from a secure place (Wajdi, 1923: 5/109).

1.2. The Terminological Definition of Theft

The technical concept of theft is examined from the perspectives of Shia jurisprudence (*fiqh*) and the legal systems of Iran and Afghanistan.

1.2.1. Terminological Definition of Theft in Shia Jurisprudence

The definitions of theft in the works of Shia jurists can generally be divided into two categories:

- A broad, general definition that encompasses all forms of theft, whether punishable by *hadd* or *ta'zir* (discretionary punishment).
- A specific definition that pertains solely to *hadd* theft.

1.2.1.1. Theft in the General Sense in Shia Jurisprudence

Some jurists believe that "theft" does not have a specific definition derived from Islamic law or traditions but is used in its common linguistic and customary sense (Mashkini, 1998: 303; Ansari, 2008: 7/457). Consequently, the technical definitions provided by jurists are often based on linguistic definitions and primarily pertain to the *ta'zir* concept of theft.

For instance, some Shia jurists have focused on the act of stealing itself and defined theft simply as "the act of secretly taking something" (Tusi, 2008: 8/22; Ibn Idris, 2008: 222; Muqaddas Ardabili, n.d.: 13/227).

Others, without considering the act or the value of the property stolen, emphasized the condition of securing the property and defined theft as "taking a safeguarded property" (Allama Hilli, *Tadhkirat al-Fuqaha*, 1993: 9/142; *Al-Muntaha*, 1991: 14/197).

A third group, based on linguistic meanings, defined theft as "secretly taking an item from a secure location" (Mousavi Khonsari, 1976: 7/137) or "stealing another person's property from its protected place without explicit or implicit permission or indications of the owner's consent, done secretly" (Fazel Hindi, 1995: 5/568).

These definitions, however, lack comprehensiveness and fail to fully encapsulate the concept of *hadd* theft. This is because *hadd* theft requires specific conditions and criteria, which are absent from these definitions. Consequently, without considering the restrictions and conditions associated with *hadd* theft, these definitions do not encompass it.

1-2-1-2. Theft in the Specific Sense in Shia Jurisprudence

Comprehensive definitions that accurately describe the meaning of *hadd* theft (theft punishable by fixed Islamic penalties) and encompass all its conditions and restrictions have not been provided by past jurists, including both earlier and later scholars. Therefore, to find a complete and comprehensive concept of *hadd* theft, one must delve into the works of contemporary jurists and researchers.

An investigation into the works of contemporary jurists reveals that they have offered relatively more comprehensive definitions of *hadd* theft. Examples include:

1. Some scholars define theft, in the context of jurisprudence, as "secretly stealing property from a protected place in the amount of the prescribed threshold" (Mar'i, 1993: 112). Although the above definition aims to define *hadd* theft, it cannot be deemed complete and acceptable due to the lack of attention to certain conditions and restrictions necessary for *hadd* theft. The most obvious shortcomings are the absence of limitations regarding "property belonging to someone

else" and the absence of the condition regarding the lack of doubt about ownership, both of which are essential components of *hadd* theft.

2. Others define *hadd* theft as "theft by a mentally mature and rational individual who is voluntarily committed to Islamic rulings, stealing property from a secure place in the prescribed amount, intending theft, and without the doubt of ownership" (Hammad, 2008: 243). This definition is also incomplete and unsuitable for *hadd* theft because it lacks essential conditions such as "property belonging to someone else," "occurrence outside of famine years," "secrecy," and "not involving the property of one's own child." Furthermore, it includes an unnecessary condition, namely "commitment to Islamic rulings," which is redundant. This condition is unnecessary because the ruling on theft, like many divine rulings, is general and not exclusive to Muslim individuals, as some scholars have explicitly stated (Jaziri, Ghurai, and Mazah, n.d.: 5/230; Marashi Najafi, 2003: 332).
3. Some define *hadd* theft as "the intentional and voluntary theft by a legally responsible and knowledgeable individual of someone else's property, in the amount of a quarter dinar or its equivalent, removing it from a secure place, without any doubt about its belonging to someone else" (Sa'di, 1988: 171). Although this definition addresses some important components of theft, the precise wording used, without incorporating other conditions and restrictions, fails to provide a satisfactory and comprehensive explanation. Besides the mentioned conditions, *hadd* theft involves requirements and aspects that are missing in this definition, such as breaching security (*hatak al-herz*) Theft from a protected location, property not belonging to one's own child, and specific contexts like famine years. In general, between six (Ibn Zuhrah, 1996: 431–435; Mousavi Rouzati, 1953: 4/293; Marashi Najafi, 2003: 35) and ten (Tarhini Ameli, 2006: 9/343–345) conditions have been listed for *hadd* theft, but the mentioned definitions do not encompass all these requirements.

Thus, to provide a comprehensive and complete definition that explains the meaning and nature of *hadd* theft, the following definition can be proposed: "Theft is the act of breaching a secure place (*Theft from a protected place*) and removing someone else's property in the amount of a quarter dinar or its equivalent, with the intention of possession, by a knowledgeable and legally responsible individual, intentionally and voluntarily, knowing that the property belongs to someone else and that it is not food during a famine or property of their own child."

Although this definition might not be entirely free from logical objections, it contains restrictions and conditions considered significant by many jurists as part of its descriptive and conceptual aspects.

1-2-2. The Concept of Theft in Criminal Law

From a legal perspective, the concept of theft is studied exclusively in the criminal laws of Iran and Afghanistan.

1-2-2-1. Iranian Criminal Law

The Islamic Penal Code, approved in 2013(1392Ah), defines theft in Article 267 as "taking property belonging to someone else."

Theft is initially categorized into *hadd* and *ta'zir*. *Hadd* theft refers to a type of theft whose realization depends on fourteen conditions outlined in Article 268 of the Islamic Penal Code. If the fourteen conditions are not fulfilled, the theft is classified as *ta'zir* theft.

Thus, the definition in Article 267 of the Penal Code is a broad definition that includes both *hadd* and *ta'zir* theft.

1-2-2-2. Afghan Criminal Law

The Afghan legislator, in Article 699, Clause 1, of the Penal Code adopted in 2016, defines theft as "taking movable property owned by someone else, without consent, and with the intent of ownership."

The legislator means by "taking property" the act of seizing and transferring property from one location to another without the owner's consent. By "intent of ownership," the legislator refers to proprietary possession and permanently depriving the owner of control over their property.

However, Afghanistan's regulations defer the issue of *hadd* theft to Hanafi jurisprudence, which must be explored further within that framework.

1-2-3. The Concept of Electronic Theft

After examining the concept of theft and its types in Shia jurisprudence and the laws of Iran and Afghanistan, it is now appropriate to provide a definition of electronic theft. Clearly, from the combination of these two terms, it can be understood that electronic theft refers to theft occurring within the cyber realm using electronic tools.

Electronic theft can also be defined in two forms: general and specific, which are discussed below.

1-2-3-1. General Definition of Electronic Theft

In Article 740 of the Islamic Penal Code of Iran (adopted in 2013) concerning cybercrimes, electronic theft is broadly defined as the unauthorized seizure of data belonging to others, without addressing the financial value of the data or other conditions and restrictions.

Similarly, Afghanistan's laws, under Article 860 of the Penal Code, define electronic theft as theft committed using computer systems or electronic tools.

In both definitions, the legislator merely adheres to the linguistic meaning of theft (i.e., seizing property) without discussing the extent of the theft, its economic value, the manner of the breaching security (*Theft from a protected place*), or other conditions and restrictions, highlighting the general and unrestricted nature of these definitions.

1-2-3-2. Specific Definition of Electronic Theft (Hadd)

Electronic theft, in its specific sense, is defined as "an act where a knowledgeable and legally responsible individual, intentionally and voluntarily, breaches the lock of a website or file belonging to another party in cyberspace using electronic tools and computer technology, and seizes a specified amount of property or financially valuable data with the intent to possess and deprive the rightful owner, provided the property does not belong to their child."

This definition incorporates several conditions and elements that are briefly explained below:

1. **Legally Responsible (Mukallaf):** The perpetrator of electronic theft must be mature and sane. If a child or a person with a mental disorder independently and directly uses electronic tools to steal property equal to the threshold amount, electronic theft has not occurred, as maturity and sanity are absent. Although the criminal act of seizing another's property may have occurred, they lack the capacity for legal responsibility and are not subject to *hadd* or *ta'zir* punishments, though they may face disciplinary actions in cases of repetition.
2. **Knowledgeable:** The user must be aware of the criminal nature of their actions, understanding that their act is prohibited both legally and religiously, and subject to punishment. In other words, the

perpetrator should not face ambiguities in either the legal ruling or the specific circumstances of the case.

3. **Intentional:** The criminal act must be deliberate. For example, if someone unintentionally accesses another's site or obtains another's property through accidental use of electronic tools, this act would not constitute electronic theft, as the action was unintentional. Even if subsequent actions, such as transferring funds or copying data, were intentional, the lack of intent in breaching security would preclude the act from being categorized as *hadd*-level electronic theft.
4. **Voluntary:** The criminal act must be carried out willingly. If someone is coerced or forced into breaching the security of a site or file and deprives others of their property, electronic theft is not attributed to the perpetrator due to the lack of volition. Responsibility may lie with the coercer, but determining their culpability involves considering whether they directly caused the crime (*strong cause, weak intermediary*) or whether ambiguity exists under the principle of *Dar' al-Hudud*.
5. **Use of Electronic Tools and Computer Technology:** The theft must involve the use of electronic tools and computer systems in cyberspace. If someone physically breaks into a bank's ATM and removes cash, this constitutes theft due to breaching security and seizing another's property, but it is not classified as electronic theft since it was not committed using electronic systems.
6. **Breaching the Lock of a Website or File Belonging to Another:** If a user accesses a site or file with permission, the conditions differ. If the owner grants permission for access and retrieval of content, no theft has occurred. Conversely, if access occurs without the owner's consent, the absence of security breaches may prevent it from being categorized as *hadd*-level theft.
7. **In Cyberspace:** The act must occur within the cyber realm utilizing electronic signals and tools. Acts conducted physically outside this realm cannot be categorized as electronic theft.
8. **Specified Value of Property or Data with Economic Value:** Merely breaching a site or file without appropriating or appropriating less than the minimum threshold amount does not fulfill the criteria for electronic theft.
9. **Intent to Deprive and Possess:** For the act to constitute theft, there must be intent to deprive the rightful owner permanently and acquire the property for oneself. Without such intent, the act may not qualify as theft under Islamic law.
10. **Not Belonging to One's Own Child:** If the hacked site or file belongs to the perpetrator's child, the ruling differs. For example, if the site belongs to the perpetrator's child but its content belongs to others, determining whether theft has occurred involves considerable debate among scholars.

2- Jurisprudential Perspectives on Electronic Theft

Regarding whether a user, by hacking into websites and breaking passwords or locks without authorization, accesses another's system and transfers valuable and significant data to their files or another's file for financial benefit, three jurisprudential perspectives emerge:

1. Electronic theft is not considered a crime due to its absence during the era of Islamic law's formulation and the lack of direct evidence for its criminality.
2. If the necessary conditions are met, the act constitutes *hadd* theft.
3. Due to the non-physical nature of electronic theft, it falls under the category of *ta'zir* offenses.

2-1. Non-Recognition of Electronic Theft as a Crime

One interpretation is that, due to the lack of explicit legal texts (*nass*), no crime has occurred. This perspective relies on the principle of exoneration (*bara'ah*) and the maxim "there is no punishment without clarification." Additionally, interpreting legal ambiguities in favor of the defendant supports the view that electronic theft lacks a criminal description.

Response: While it is true that electronic tools and the internet are modern phenomena absent during earlier Islamic legal rulings, examining the essence of the act reveals no fundamental difference between physical theft and electronic theft. The distinction lies only in the method and medium of committing the crime, not in the core criminal act.

In conventional theft, tangible property is stolen, while in electronic theft, property is stolen through waves and electronic channels. Both result in financial loss for the victim, and sometimes the damage can be irreparable. For instance, if an automotive designer stores their patented designs on a secured site and a hacker steals the design before it is submitted, the designer faces significant financial and professional losses.

Moreover, in customary and rational practices, taking valuable property or data via electronic means is deemed criminal and punishable. Islamic law does not oppose these rational practices; rather, it aligns with them unless proven otherwise (e.g., Sayyid Muhammad Baqir al-Sadr, 2002; Imam Khomeini, 1990).

Islamic law's general ruling on theft remains relevant regardless of the era, as theft evolves in form, from traditional methods to electronic means. The underlying principle of protecting people's property and preventing unauthorized intrusion applies to both. Thus, unauthorized access to others' files to extract valuable content is a form of aggression against their property. Islamic law prohibits such aggression, prescribing severe punishments such as *hadd* (*cutting off the hand*).

2-2. Electronic Theft as a *Ta'zir* Offense

Another view holds that electronic theft and unauthorized data extraction are punishable as *ta'zir* crimes (Moqaddam-Nadim, 2016). Proponents of this perspective argue that electronic theft, like physical theft, is unlawful and causes liability when it results in harm. However, they assert that *hadd* cannot be applied due to the absence of physical action, particularly the lack of *hatk al-herz* (Theft from a protected location)

They claim that breaching digital files or systems lacks the physical "hand" required for theft in conventional jurisprudence. However, this physicality (using the "hand") is incidental and not intrinsic to the definition of theft, as evidenced in scenarios where theft occurs using unconventional means (e.g., breaking locks with the mouth). Hence, the absence of a physical "hand" in electronic theft should not exclude it from being categorized as *hadd* theft.

2-3. Electronic Theft as a *Haddi* Offense

The third perspective posits that, when all conditions of theft are met, electronic theft qualifies for *hadd* punishment (Mavi, 2004).

Arguments Supporting this View

1. The definition of *haddi* theft applies to electronic theft. The Quranic verse (5:38) referring to "the thief, male and female" is interpreted in its literal and general sense, encompassing all theft, whether conventional or electronic. Additionally, no restrictions in the definition of *hadd* theft exclude electronic theft.

2. The essence of theft—unauthorized seizure of another’s property—remains consistent across forms. While the method evolves, the crime's nature remains unchanged.
3. The conditions for *haddi* theft, such as meeting the prescribed amount (*nisaab*), apply equally to electronic theft. For example, if data stolen via cyberspace meets the *nisaab* and other conditions like *breaking the sanctity of a secure place* (breaking security) are met, *hadd* is applicable.

This view, supported by scholars such as Ahangaran and Razavi Asl (2019), concludes that electronic theft meeting all conditions of *hadd* theft should be subjected to *hadd* punishment. Thus, if property of the specified value is stolen electronically, alongside meeting criteria like breaching security and other stipulated conditions, *hadd* punishment can be enforced.

3. Punishment for Electronic Theft in Shia Jurisprudence and the Laws of Iran and Afghanistan

Electronic theft, being a criminal act that harms individual rights and interests, disrupts social order, destabilizes economic security, and creates psychological tensions within society, necessitates a societal response. This section examines how Shia jurisprudence and the legal systems of Iran and Afghanistan address this offense to prevent its occurrence.

3-1. Punishment for Electronic Theft in Iranian Law

Before the adoption of the cybercrime law in Iran, there was no legislative response or legal provisions ensuring enforcement against electronic theft. In the Cybercrime Law, the legislator addresses punishments for both natural persons (individuals) and legal persons (organizations), as discussed under the “Islamic Penal Code” of 2013, dividing penalties into principal, complementary, and consequential categories.

3-1-1. Punishments for Natural Persons in Electronic Theft Cases

For individuals, depending on the severity of the electronic theft, the law prescribes varying punishments:

3-1-1-1. Primary Punishments for Natural Persons

For electronic theft offenders, Article 740 of the “Islamic Penal Code” (adopted in 2013) stipulates different penalties under two conditions:

- If the original data remains accessible to its rightful owner, the offender is fined between 1,000,000 to 20,000,000 Iranian Rials.
- If the original data is no longer accessible to the owner, the offender may face imprisonment of 91 days to 1 year, a fine of 5,000,000 to 20,000,000 Iranian Rials, or both.

For instance, if the offender merely copies the data and transfers it to their system without depriving the owner of access, they are subjected to a lighter monetary penalty. However, if they cut and remove the data from the owner’s possession, more severe penalties, such as imprisonment or a combination of imprisonment and fines, are applied.

3-1-1-2. Critique and Evaluation of Primary Punishments for Natural Persons

Although the prescribed punishment is a step up from a lack of legal enforcement, several shortcomings are noted:

- a) **Lack of Consideration for *Hadd* Punishment** One significant flaw is the legislator’s disregard for considering electronic theft as a potential *hadd* offense. The punishments stipulated in Article

740 apply exclusively to *ta'zir* theft, reflecting either the legislator's disbelief in the *hadd* applicability to electronic theft or an oversight. Many scholars argue that electronic theft, under certain conditions, fulfills the criteria for *hadd* theft and is fundamentally comparable to traditional theft.

- b) Lack of Deterrence** The prescribed punishments fail to emphasize deterrence. Given the high economic value of much of the stolen data in cyberspace, the penalties are insufficient. According to rational-choice theory, offenders assess the risks and benefits of their actions. If potential rewards outweigh risks, they proceed with the offense (Razavi Asl, 2019).
- c) Disproportionate Punishment** In cases where offenders replicate others' data, monetary penalties are imposed, neglecting the broader consequences such as public disorder, disruptions in the flow of information, financial damage, and emotional harm to victims. When the data is transferred to another system, making it inaccessible to the rightful owner, the prescribed punishments fail to adequately address the scale of harm or ensure proportionality between the crime and its punishment.
- d) Lack of Provision for Returning Stolen Property** Unlike traditional theft, where Article 214 and 215 of the Islamic Penal Code mandate the return of stolen property, the Cybercrime Law does not explicitly require the restitution of stolen data or files. In such cases, Article 214 and 215 may be interpreted to apply analogously to electronic theft, obligating offenders to return stolen data in its original state, ensuring no recoverable traces remain.

3-1-1-3. Supplementary and Accessory Punishments for Natural Persons

Given the lack of substantial difference between conventional and electronic theft, courts may, based on Article 23 of the Islamic Penal Code of Iran, supplement the punishments stipulated in Article 740 concerning cybercrimes by sentencing the thief to supplementary punishments, provided that the original data is not in the possession of its owner. According to the Islamic Penal Code of Iran, in cases of conviction for discretionary punishments graded from six to one, supplementary and accessory punishments can be applied. Grade six discretionary punishments include imprisonment for six months to two years. Since, under Article 740 of the Islamic Penal Code, the maximum imprisonment for electronic theft in cases where the owner does not have control over the original data is one year, the supplementary punishments outlined in Article 23 also apply to electronic thieves. In accordance with Article 23 of the Islamic Penal Code, supplementary punishments must be proportionate to the committed crime and its characteristics. Therefore, in electronic theft cases, subparagraph "P," which entails barring the perpetrator from engaging in specific professions, and subparagraph "R," which involves confiscation of tools used in committing the crime or media and institutions involved in the crime, can be considered as supplementary punishments. This is because one of the objectives of supplementary punishments is to prevent the recurrence of crimes by the offender. The term "tools of the crime" refers to any weapons, instruments, materials, or equipment necessary for committing the crime that facilitates its occurrence and encourages potential offenders to commit crimes (ibid).

3-1-2. Punishments for Legal Persons in Electronic Theft

As the prevalence of cyber and electronic crimes increases, so does the scope of criminal liability. Similarly, the expansion of legal entities in this space has broadened the scope of their criminal liability. In Iranian laws, the criminal liability of legal persons was partially recognized before the enactment of the 2013 Islamic Penal Code but was addressed sporadically. With the adoption of the Islamic Penal Code in 2013, this issue was acknowledged to ensure the integrity of legal entities, encourage care in selecting managers and employees, compensate for damages inflicted on aggrieved individuals by legal entities, and promote social justice. Therefore, if a legal entity is held accountable for a crime under Article 143 of the aforementioned law, considering the severity of the committed crime and its harmful consequences, it

will be sentenced to the punishments prescribed for legal persons. It is noteworthy that the liability and sentencing of legal entities do not preclude the punishment of natural persons involved (ibid).

3-1-2-1. Primary Punishments for Legal Persons

Due to the extensive role of virtual service providers in Iran, legal entities bear criminal responsibility under the law (Aali Pour, 2017: 53). Therefore, if a natural person, as a manager of an entity, or under the direction and awareness of the manager, commits electronic theft for the benefit of the entity, the respective legal entity will be prosecuted for the crime of electronic theft. According to Article 748 of the Islamic Penal Code of Iran, the punishments stipulated for legal persons are significantly more severe than for natural persons, at least in cases of electronic theft. This is because the provision states that a legal entity committing cybercrimes shall, based on the circumstances, the nature of the crime, the revenue generated, and the outcomes of the crime, be sentenced to fines three to six times the maximum monetary penalty for the committed crime. This is more severe compared to the main punishments outlined in Article 740. For natural persons, electronic theft may result in both monetary fines and imprisonment, provided the original data is not under the owner's possession. However, for legal persons, if the theft occurs, the entity shall be penalized both financially and through temporary or permanent closure. Specifically, if the original data remains with the owner, the legal entity shall be fined three to six times the maximum monetary penalty, ranging from sixty million rials to one hundred and eighty million rials. If the data is transferred in a way that the owner loses possession of the original, the legal entity is subject to both the aforementioned fine and a temporary closure of one to nine months. If electronic theft recurs, the legal entity may face temporary closure ranging from one to five years (ibid).

3-1-2-2. Supplementary and Accessory Punishments for Legal Persons

Clause "A" of Article 748 of the Islamic Penal Code of Iran can be considered as providing for supplementary and accessory punishments for legal persons in cases of electronic theft. In addition to fines three to six times the maximum monetary penalty for the committed crime, a temporary closure of the legal entity for one to nine months, and in case of recurrence, a temporary closure of one to five years, is prescribed for legal persons committing electronic crimes. However, this is contingent upon the primary punishment for the crime involving imprisonment of up to five years. Considering the stipulation in Article 740 of the Islamic Penal Code, where the punishment for electronic theft is set to a maximum of one year of imprisonment, legal persons committing electronic theft are subject to Clause "A" of Article 748 only if, according to Article 740, the original data is not in the possession of the owner. If the original data remains with the owner, the thief is only fined between one million rials to twenty million rials. Consequently, if legal persons commit electronic theft by copying the data in a way that the original remains in the owner's possession, they are not subject to the supplementary and accessory punishments stated in Clause "A" of Article 748 (ibid). Furthermore, under Article 23, the court may sentence the manager of the legal entity or an employee acting under their supervision to other supplementary and accessory punishments, such as deprivation of social rights, prohibition from residing in certain areas, or mandatory residence in a specific location, among others (ibid).

3-1-3. Aggravated Penalties for Electronic Theft in Iranian Law

Aggravated penalties for electronic theft are outlined in Articles 754 and 755 of the *Islamic Penal Code*. The two bases for aggravation are:

1. **Severity of the Crime:** In line with the principle of proportionality between crime and punishment.
2. **Dangerousness of the Offender:** Tailoring punishment to the offender's characteristics and potential future harm.

These provisions reflect the law's commitment to addressing electronic theft in a manner that considers both the nature of the offense and the behavior of offenders.

3-2. Punishment for Electronic Theft in Afghanistan's Legal System

Before the enactment of the *Afghan Penal Code* in 2016, cyber and electronic crimes were not explicitly addressed in Afghan laws. With the expansion of cyberspace and the increasing number of users, the Afghan legislator revised the Penal Code and introduced Chapter One of Book Twelve dedicated to cybercrimes, including the punishment for electronic theft.

3-2. Punishment for Electronic Theft in Afghanistan's Criminal Law

In Afghanistan, prior to the enactment of the Penal Code in 2016 (1395), the legal framework had not addressed cyber and computer-related crimes. However, the rapid expansion of cyberspace and the increasing number of its users compelled the legislature to review criminal laws. Consequently, in 2016, with the adoption of the Penal Code, the first chapter of the twelfth section of this code was specifically dedicated to cybercrimes. Within this chapter, provisions regarding electronic theft and the punishments for its perpetrators were established.

This reflects Afghanistan's recognition of the importance of addressing the evolving challenges in cyberspace. If you'd like, I can further elaborate on the specific provisions or provide additional analysis of Afghanistan's Penal Code in the context of cybercrimes.

3-2-1. Punishment for Natural Persons in Electronic Theft Cases

Electronic theft in Afghanistan can take various forms, such as transferring funds from one bank account to another, purchasing goods or services using another person's account, stealing intellectual property, or taking confidential company information and selling it to competitors.

For individuals committing electronic theft, the legislator has prescribed imprisonment as the punishment. According to Article 860 of the Penal Code, offenders may be sentenced to:

- **Medium-term Imprisonment** (over one year up to five years), or
- **Long-term Imprisonment** (over five years up to sixteen years), depending on the value of the stolen assets.

3-2-1-1. Critique and Evaluation of Punishments for Natural Persons

Although Afghanistan's legislator has appropriately recognized electronic theft within the Penal Code and provided guidelines for prosecuting offenders, the prescribed punishments face several issues:

- a) **Disregard for *Haddi* Punishment** From the content of Article 860 and the penalties it prescribes, it is evident that the legislator treats electronic theft differently from traditional theft. The punishments apply only as discretionary (*ta'zir*) measures. Legal commentators argue that the elements of traditional theft are not fully applicable to electronic theft due to the distinct nature of stolen assets, the breach of security, and the complexity of criminal actions involved in electronic theft. For this reason, electronic theft has not been considered under the category of *hadd* theft (Various Authors, 2019: 4/466).

In contrast, many scholars in jurisprudence and law argue that there is no fundamental distinction between electronic theft and traditional theft. They believe that, under the necessary conditions, electronic theft should also qualify for *haddi* punishment.

b) Ambiguity in the Prescribed Punishments One of the main criticisms appears to be the lack of systematic regulations regarding the prescribed punishments. The legislator has determined medium-term imprisonment, which ranges from more than one year up to five years, and long-term imprisonment, which ranges from over five years to sixteen years, for electronic theft. However, this description is general and vague. The legislator has not explicitly clarified the threshold of the stolen property's value that would subject the offender to medium-term imprisonment or long-term imprisonment. Instead, it has ambiguously relied on the expression "considering the value of the stolen property," which can lead to inconsistencies and judicial extremes, as well as a deviation from justice.

For example, if an offender commits electronic theft amounting to five thousand Afghanis, it is clear that it falls under medium-term imprisonment, where, according to Clause 2 of Article 147 of the Penal Code, the minimum punishment exceeds one year. Conversely, if an individual steals property valued at five billion Afghanis, the offense would undoubtedly result in long-term imprisonment, with the maximum penalty extending to sixteen years.

In the field of jurisprudence and criminal law, the concerns with the prescribed punishments for electronic theft can be summarized as follows:

Firstly, imposing even a one-year and one-day imprisonment for a thief who has stolen five thousand Afghanis classified under medium-term imprisonment according to Article 860 might appear harsh and deterrent relative to the crime committed. However, when compared to a thief who steals five billion Afghanis, whose punishment under the same article would fall under long-term imprisonment as stated in Clause 3 of Article 147 of the Penal Code, with a maximum sentence of sixteen years, this disparity seems unjust. The punishment for the latter is viewed as lenient and insufficiently deterrent, conflicting with the philosophy and objectives of legislation.

Secondly, if a thief electronically steals an amount between 100,000 and 200,000 Afghanis, it remains unclear whether the offender would receive medium-term or long-term imprisonment. This ambiguity reflects a lack of precision in the legislative framework.

Therefore, if the legislator had clearly specified thresholds for medium-term and long-term imprisonment, it would have eliminated uncertainties for judges during sentencing and fulfilled the legislative purpose of providing clarity and eliminating ambiguities for the public.

One possible solution could involve applying Clause 4 of Article 876, which introduces aggravated penalties for causing financial harm exceeding one million Afghanis or obtaining illicit benefits of the same value. In this framework, theft worth 500,000 Afghanis or less could fall under medium-term imprisonment, while amounts exceeding 500,000 Afghanis would warrant long-term imprisonment as per Article 860.

3-2-2. Aggravated Punishment for Natural Persons

The legislator has provided for aggravated punishments in cases of cyber and electronic crimes, as outlined in Article 876. Four specific conditions trigger the maximum penalty for the offense, which applies universally to all electronic crimes, including electronic theft.

Among the four aggravating conditions, Clause Four is particularly relevant to electronic theft. This clause justifies harsher penalties when the theft causes significant financial harm to the owner or results in substantial monetary gain for the offender.

The legislator differentiates between cases of electronic theft where the financial benefit exceeds one million Afghanis and those where it is less. For thefts exceeding one million Afghanis, the maximum

penalty is applied, limiting the court's discretion to impose lighter sentences (Various Authors, 2019: 4/517).

3-2-3. Punishment for Legal Persons in Electronic Theft Cases in Afghanistan

Based on Article 878 of the *Afghan Penal Code*, if cybercrimes including electronic theft are committed by legal persons, in addition to the punishment for the natural person, the legal entity will be sentenced to a fine equal to twice the maximum monetary penalty stipulated in this chapter. Furthermore, the legal entity will also be subjected to one of the following additional punishments:

1. If the maximum penalty for the crime is up to five years of imprisonment, the legal person will face temporary suspension of its activities for a period of one month to one year, and in cases of repeat offenses, for one to three years.
2. If the maximum penalty for the crime exceeds five years, the legal person will face temporary suspension of its activities for one to three years, and for repeated offenses, from three to five years.

In this article, the punishment for legal persons in electronic crimes is outlined based on the general principle of criminal liability for natural and legal persons, where crimes are committed in their name, for their benefit, or through them. This principle is also addressed in Articles 85 and 86 of the Penal Code. (Ibid)

According to Article 878 of the Penal Code, two types of punishments are stipulated for legal persons committing cybercrimes, including electronic theft:

- Monetary Punishment: A fine amounting to twice the maximum monetary penalty specified in this chapter.
- Temporary Suspension of Activities: This serves as a complementary measure to address the committed crime. (Ibid, 552)

3-3. Punishment for Electronic Theft in Shia Jurisprudence

Shia jurisprudence's response to electronic theft can be discussed under two categories: *haddi* (fixed Islamic punishment) and *ta'ziri* (discretionary punishment). Electronic theft may meet the conditions for *haddi* punishment, requiring its application, or fall short, leading to discretionary punishment determined by the court. Each scenario has specific rulings, examined separately below:

3-3-1. Punishment for Electronic Theft Warranting Hadd in the Jurisprudence of Ahl al-Bayt.

Different scenarios of theft are addressed in jurisprudence, including instances where theft is a one-time act or repeated offenses occur.

3-3-1-1. Punishment for the First *Hadd*-Level Electronic Theft

It has been discussed that electronic theft, like physical theft, may meet the conditions for *hadd*. Despite some differences between the two, their similarities are significantly greater.

If a thief breaches the electronic security of another's system or website and transfers funds or valuable data worth the legal threshold (*nisaab*) to their account or uses another's account for purchases, the crime qualifies as *hadd*-level electronic theft. The punishment for the first offense is the amputation of the thief's hand.

The Quran states in Surah Al-Ma'idah (5:38): "*As to the thief, male or female, cut off their hands: a punishment by way of an example, from Allah, for their crime.*"

According to Shia jurists, the term "hand" (*yad*) in this verse specifically refers to the four fingers of the right hand, based on narrations from the Imams (e.g., Boroujerdi, 2007: 30/913). As such, the punishment for a *hadd*-level theft, whether electronic or physical, involves cutting off the four fingers of the thief's right hand, leaving the palm and thumb intact. This ruling is unanimously agreed upon by Shia jurists.

3-3-1-2. Punishment for Repeated *Hadd*-Level Electronic Thefts

Repetition of theft can occur in two ways:

- **Before the Initial Punishment Is Executed:** If multiple thefts are committed before the thief is prosecuted or punished for the first theft.
 - **After the Punishment Is Executed:** If the thief reoffends after being punished.
- a) Repeated Theft Without Prior Punishment** In cases where multiple thefts occur before any trial or punishment, whether the thefts involve the same victim or different victims, only a single punishment is applied—amputation of the right hand's four fingers. This ruling is based on the principle of merging causes (*tadakhul al-asbab*) and supported by authentic narrations (e.g., Al-Kulayni, 1999: 7/224).
- b) Repeated Theft after Prior Punishment** If a thief reoffends after their first punishment:
- For the second offense, the thief's left foot is amputated at the ankle, leaving half the foot intact.
 - For the third offense, the thief is sentenced to life imprisonment.
 - For the fourth offense, committed in prison, the thief is executed unanimously by Shia jurists (e.g., Tabatabai, 1983: 2/492; Khomeini, 2005: 4/232).

This punishment is based on narrations from the Imams, including those describing rulings issued by Imam Ali (e.g., Al-Kulayni, 1999: 14/143; Al-Tusi, 1987: 10/103–104).

This perspective demonstrates Shia jurisprudence's rulings on *hadd*-level theft, applying equally to traditional and electronic thefts.

3-3-2. Punishment for Electronic Theft Requiring Ta'ziri in the Jurisprudence of Ahl al-Bayt

If electronic theft does not meet the conditions for *hadd*, such as when the value of the stolen property is below the minimum threshold set by Sharia, or if electronic theft occurs without violating a secure boundary, for instance, when the thief obtains another person's website password, mobile banking credentials, or username and transfers funds to their account with the intent of seizure, or transfers financially valuable data to their own system despite the significant amount, the absence of the violation of a secure boundary excludes it from *hadd* punishments and thus results in ta'zir punishment. Additionally, in cases where theft qualifies for *hadd* but for specific reasons cannot be enforced, it falls under ta'zir as well.

The question arises: Is the ta'zir punishment for the thief specified in Sharia, and is it limited to physical punishments such as flogging, or does it include other types of punishments like execution, imprisonment, fines, exile, prohibition of leaving the country, restriction from specific occupations, reprimands, humiliation, or social disengagement?

It can be said that the difference between *hadd* and *ta'zir* lies in the predetermined nature of *hadd* punishments for specific crimes, as opposed to *ta'zir*, which is unspecified and left to the discretion of the judge. Although certain traditions mention specific physical punishments for *ta'zir*, these are not considered exclusive.

Initially, it seems that there are two perspectives regarding general *ta'zir*. Some scholars limit *ta'zir* to corporal punishment, while others interpret it broadly to include various penalties, considering flogging as one form among many. A closer review of the works of Ahl al-Bayt scholars and existing evidence suggests that *ta'zir* in all *ta'ziri* crimes, including theft, is not confined to physical punishments and can be interpreted as encompassing any type of penalty. This is because the term "*ta'zir*" does not possess a specialized meaning in Sharia, religious practices, or jurisprudence. A term without these specific legal or customary significances retains its original linguistic meaning (Makarem Shirazi, 2004: 25).

The linguistic meaning of "*ta'zir*" refers to prevention and deterrence, which can apply to any action aimed at preventing an act. Deterrence is not restricted to corporal punishment, as the prominent Islamic jurists have applied it to non-physical punishments like imprisonment and reprimands (Allama Hilli, 1999: 2/239). In traditions, the term "*ta'zir*" has been used to denote punishment, which is a general concept that includes flogging, imprisonment, exile, reprimand, and any kind of corporal or non-corporal punishment that has a deterrent effect (Ibn Hayyun, 1989: 2/476; Tusi, 1987: 10/110; Ibn Babawayh, 1992: 4/30; Tamimi Amidi, 2004).

From the above, it can be concluded that *ta'zir* is a comprehensive concept that includes all types of punishments. Therefore, in cases of electronic theft where the conditions for *hadd* are absent or its execution is not feasible, *ta'zir* would apply, encompassing various forms of punishment.

Conclusion

Reflecting on the formation of electronic theft, its method of execution, and its harmful consequences, it can be stated that electronic theft, in essence, is not fundamentally different from traditional theft committed in the physical world. The main distinction lies in the setting, tools, and broader scope of its occurrence. The modern tools and ease of access to manipulate others' ownership and gain illicit wealth often make committing electronic theft simpler than traditional theft in physical spaces.

From the perspective of criminal law in Iran and Afghanistan, electronic theft is regarded as a crime warranting *ta'zir* (discretionary punishment). This is evident in the definition provided by the legislator and the punishments anticipated for its perpetrators.

However, in terms of Islamic jurisprudence, among the three principal views on the matter, it is possible to support the perspective that electronic theft, if fulfilling the conditions for *hadd* (fixed punishments in Islamic law), could be treated as a *haddi* theft. This argument is based on the fact that similar conditions have been set for traditional theft in physical environments from the viewpoint of jurisprudence and law. If electronic theft meets these criteria, it will be considered *haddi*, otherwise, it will fall under *ta'zir*.

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