



## Research Paper

# The Conflict of Legal Permission of Crime against the Unprotected Outlaw (*Mahdūr al-Dam*) with the Teachings of Islamic Jurisprudence

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### Abstract

According to Article 302 of the Islamic Penal Code of Iran (April 21, 2013), if someone commits an offence against an unprotected outlaw (*mahdūr al-dam*) and someone who deserves death, she/he is exempted from retaliation (*qiṣās*) and paying blood money (*dīya*). Article 303 also stipulates that if the perpetrator commits a crime believing that the victim is *mahdūr al-dam* and can prove this belief, *qiṣās* will not be applicable and he/she will be convicted of *dīya* and *ta'azīrī* (discretionary) punishment. This research investigates the conflicting cases of legislators prescribing crimes against *mahdūr al-dam* by normal people. The corollary is that the provisions of articles 302 and 303 of the Islamic Penal Code are in conflict with some of the principles and rules of Islamic jurisprudence such as the principle of the presumption of innocence, the principle of caution in issuing death penalty and peoples honor (precautionary principle in blood and peoples' honor), the principle of legality of offences and punishment (the principle of execution of punishment by Imam (or Judge) and authorized persons on his behalf), the jurisprudential principle of respecting Muslims' blood in general sense, and the principle of human dignity. To resolve not only the existing conflicts but also preventing private justice and maintain the order and security of citizens, this research uses the analytical-descriptive research method with a critical approach to propose to the activists of legislative criminal policy of Iran that the aforementioned articles should be omitted from Islamic Penal Code or amended in such a way that no one can easily resort to them in order to get rid of punishment.

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## Extended Abstract

### 1- Introduction

The Qur'an is the most important source in legislating Islamic rules in all schools of jurisprudence; For it is the last divine revelation sent down to guide people in all aspects of life (Al-Isrā': 9)<sup>1</sup>. Muṣṭafā Aḥmad al-Zarqā' says: "The Qur'an is the basis of Islamic legislation, on which Shari'a is based and, according to its text, establishing and achieving justice between people have been obligatory." (Al-Zarqā', 1968, 1/60-61). Ibn Qayyim Jawziyya believes that the Qur'an has explained the reasons for more than a thousand legal rulings (Ibn Qayyim Jawziyya, 1411 AH, 2/22).

On the other hand, Sunnah, meaning the sayings, deeds and tacit approval (*taqrīr*) of the Holy Prophet (PBUH) or the Infallibles (PBUH), is after the Qur'an the most widely used source among all Islamic denominations. Sunnah has mostly reached us through hadiths in which the existence of fake hadiths is undeniable. Assessing the hadith's *sanad* (chain of transmitters) has limitations, including the presence of heretic narrators in the Shi'ite hadith heritage, few influential data for recognizing frequent narrators, lack of explaining the concepts of descriptive words in the first Rijāl books, etc. (nd: Hosseini, 2018: 50-86). Therefore, examining the text alongside the *sanad* can play a very important role in the evaluation of narrations. Even if the *sanad* is authentic, in some cases it leads to the invalidation of the hadith. Sometimes in hadith books, we come across narrations that are authentic in terms of *sanad*, but they contain concepts that are not acceptable based on the framework of Islamic Shari'a. A criterion that can play an important role in evaluating the text of hadiths is those Qur'anic verses in which the purposes (*maqāsid*) are shown.

The early *fuqahā* and *'usulīs* did not provide a definition of *maqāsid*, just as Shāṭibī, the first person who independently examined *maqāsid*, did not provide a definition for it. However, Ibn 'Ashūr, as the second person who has written on *maqāsid*, says: "The general

purposes of the legislation are the meanings and wisdoms that have been included by the Shari'a in all aspects of legislation or its great part (Ibn 'Ashūr, 1366 AH: 171). It can be said that the purposes of the lawmaker are the goals and objectives that he has included in his legislation, and basically, the rules of the law have been established to achieve these goals.

There are three ways to discover the purposes. The first way to achieve the Qur'anic purposes is the explicit meaning or the appearance of the verses of the Qur'an. The second way is to pay attention to the commands and prohibitions of the Qur'an. The third way is to pay attention to the text of the Qur'an, such as the cases where God intends to remove hardship (Al-Hajj: 78; Al-Mā'idah: 6) and states the goal of easement (Al-Baqarah: 185). In addition, many verses refer to the criteria and purposes of legislating rulings, including the purpose of preventing indecencies and wrongs, which is the goal of practicing prayer (Al-Ankabut: 45).

Paying attention to the Purposes of the Shari'a (*maqāsid al-Sharī'a*) as a method of *ijtihād* has found a special place in the Sunni scholarly community and many books and articles have been written in this field. In the contemporary era, many research works and articles have been written in the field of purposes and their function in Imami jurisprudence; however, as far as the author has searched, no work clearly explains the role of the verses showing the Purposes of the Shari'a in the evaluation of hadiths in Islamic denominations. Using library documents and the descriptive-analytical method, this research aims to pay special attention to the role of the Qur'anic purposes in the review and criticism of the hadiths, and examine its possibility in the evaluation of the hadiths, through searching the practice of jurists and traditionists of Islamic schools. There is a broad difference between the contemporary scholars of Imamiyyah regarding the application of the purposes of the Shari'a - the purposes that are extracted from the Qur'an - in one of the stages of *ijtihād*, i.e. confronting the hadiths. The author intends to prove it by referring this discussion to the precedential *fiqhī* and *'usulī* discourses.

<sup>1</sup> إِنَّ هَذَا الْقُرْآنَ يَهْدِي لِلَّتِي هِيَ أَقْوَمُ وَيُبَشِّرُ الْمُؤْمِنِينَ الَّذِينَ يَعْمَلُونَ الصَّالِحَاتِ أَنَّ لَهُمْ أَجْرًا كَبِيرًا.



## **2- Method**

This article aims to deal with the role of these purposes in the evaluation of narrations with a descriptive-analytical approach. In this article, the functions of the verses indicating the intentions in connection with the hadiths have been extracted and critically examined.

## **3- Result**

Qur'anic texts showing the purposes of the lawmaker are effective in understanding, interpreting, clarifying and developing hadiths; and in case of exceeding the preferences of the text, it can be considered as a preference of the conflict. Also, these intentions can be used as a criterion for measuring the accuracy of the text of the hadiths.

## **4- Conclusion**

1- "Texts showing purposes" means the Qur'anic verses or narrations which do not indicate divine rulings and laws; rather, they express the general goals or prescriptive wisdom of the Shari'a.

2- The lawmaker's purposes and the texts indicating it are usually goals, while the texts that indicate rulings are plans. In the position of inference, one should go to the plans, while the goals should also be desired and can supervise the plans; therefore, the provisions of the texts that show the purposes take precedence over the provisions of the texts that show the verdict.

3- Paying attention to the Qur'anic texts that show God's intentions in some cases causes narrowing or developing the texts after their appearance; therefore, even though the reason appears in generality or absoluteness, according to these purposes, generality or absoluteness is not adhered to.

4- Paying attention to the Qur'anic purposes, which indicate God's purposes, in some cases, causes the elimination of specificity from the reason for the ruling and its generalization.

5- If we consider exceeding the limits (*ta'addī*) of the authorized preferences to be permissible, then we can consider the agreement with the Qur'anic texts that show the lawmaker's purposes as among the preferences of conflict.

6- Definitive knowledge of the Qur'anic texts showing lawmaker's intentions can be used as a criterion for evaluating the text and meaning of the hadiths.

## **5- Funding**

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## **6- Authors' contribution**

Ramona Mohamadi, the corresponding author of this article, is a Ph.D. candidate of sociology at Islamic Azad University, Tehran Markaz, Iran.

## **7- Conflict of Interest**

Authors declared no conflict of interest.