



## 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 (*qiṣāṣ*) 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, *qiṣāṣ* 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 general principle in religious and Islamic teachings, and consequently in criminal laws, is the respect and sanctity of human blood, property, and lives. In criminal laws, the most important and severe punishment for violators of such principles has always been considered, to the extent that the preservation of such values has never been accompanied by lenient rulings. Islamic teachings emphasize caution regarding bloodshed and the preservation of life, and any action or measure that questions or violates these principles and rules is not accepted. Furthermore, the imposition of punishment is recognized solely as the right of legitimate authority, and ordinary citizens or anyone else do not have the right to enforce or intervene in this matter without the permission of the Imam or the ruler. Human dignity is regarded as the foundation of all human rights, and any actions or regulations that violate dignity and human rights are not supported or accepted by Islamic jurisprudence. The Islamic Penal Code, inspired by legal rulings and regulations following the victory of the Islamic Revolution, was approved by the Judicial and Legal Affairs Commission of the Islamic Consultative Assembly in 2013, with the aim of transforming laws and aligning them with Islamic regulations. Despite numerous criticisms it faces, this law is noteworthy and commendable because it reflects the legislator's determination to bring societal laws closer to the objectives of the sacred Islamic Sharia. In the criminal policies of various legal regimes, to ensure proper justice and protect societal integrity while

safeguarding the accused's social rights, countries have endeavored to utilize defined supportive tools within substantive and procedural criminal law principles to provide the best means for fair proceedings. In this context, the accused has been granted immunity from accountability and punishment for actions that are not defined as crimes in law under the principle of legality of crimes and punishments. Additionally, according to the presumption of innocence principle, individuals are always presumed innocent unless proven guilty in a competent court; if someone claims otherwise, they must provide evidence. The accused also has the right to security under the principle of non-interference with life, ensuring that no one, not even the legislator through law, can infringe upon their security. These principles, based on respecting human dignity and sanctity, have always been emphasized in various international conventions, and countries worldwide, regardless of their legal regime structures, have recognized them as undeniable principles in their criminal texts. Today, considering the numerous developments and advancements in human civilization, alongside these changes, various laws have also evolved significantly. No one can deny that the status of judiciary and justice among people is regarded as a noble and highly respected matter, further emphasized by the principle of separation of powers. The Constitution underscores the importance of judiciary and justice among people in various principles. Attention to these principles indicates that anyone claiming a right or having a complaint against another must refer to



one of the judicial authorities to prove their claim or complaint; they do not have the right to engage in private justice. This act not only leads to very harmful social consequences, including disruption of public order but also constitutes interference in judicial matters, which cannot be justified. However, with the introduction of Articles 302 and 303 of the Islamic Penal Code under current circumstances, there arises a discord with the principles and teachings of Islamic jurisprudence as well as with criminal law principles and rules, necessitating careful attention in this area. In this research, we will analyze these inconsistencies using a descriptive-analytical method. The question that arises in this regard is: With which principles of Islamic jurisprudence do Articles 302 and 303 of the Islamic Penal Code conflict?

## **2- Method**

Descriptive-analytical

## **3- Result**

The legislator, after the establishment of an Islamic government and the possibility of implementing punishments through legitimate and legal courts in the country, has returned us to an era of private justice by allowing ordinary people to pursue cases regarding the designation of those deserving death and the application of judicially mandated punishments against them. This is done solely based on a belief in their deservingness of such punishment and the determination of their status as deserving death, without regard for modern judicial processes, the necessity of legal proceedings through competent courts, or the importance of not enacting regulations that could disrupt public order and security or be considered criminal. Even if Articles 302 and 303 of the Islamic

Penal Code align with jurisprudence and religious law, it should be noted that there is no obligation to include all religious rulings within the law; rather, what is enacted must simply be in accordance with religious principles. It is suggested that if the legislator does not intend to remove this issue due to its presence in Shia jurisprudence (while there is no obligation to include it in the text of the law, and only what is included must comply with religious law), they could amend Articles 302 and 303 of the Islamic Penal Code to allow for the killing of an offender deemed deserving of punishment only after a thorough investigation into their charges, proving their status as deserving through a definitive ruling, and in cases where access to them for executing the sentence is impossible. This could be done by publishing complete details of the offender and the final ruling, along with a specific permit for their killing by the public in a widely circulated newspaper or official media outlet. Furthermore, anyone who commits an offense against such a person deemed deserving of death under these conditions would be exempt from liability. Additionally, if someone commits an offense against a person whom they sincerely and reasonably believe to be deserving of death but who does not meet that criteria, they would be exempt from retribution but would still be liable for paying blood money (diye). In contrast, anyone who commits an offense against a person whom they believe to deserve death would always be subject to retribution in order to prevent arbitrary killings, violations of the rights of the accused, and other shortcomings arising from Articles 302 and 303 of the Islamic Penal Code, thereby preserving the foundation and



purpose of these articles. A person who believes someone deserves punishment should not act out of a desire for vengeance but should instead defer such matters to competent courts for proper adjudication rather than taking matters into their own hands.

#### **4- Conclusion**

According to the principle of presumption of innocence, all individuals are presumed innocent unless their crime is proven in a competent court. However, victims of crimes deemed "mahdoord al-dam" (worthy of death) are identified as criminals under Article 303 of the Islamic Penal Code without having committed any crime or being tried in a competent court. Article 303 of the Islamic Penal Code places the lives and safety of people at risk from criminal individuals. This situation allows attackers to commit crimes against others based on emotions and revenge, under the pretext that their victims deserve to be harmed, which contradicts the principle of caution regarding bloodshed. The implementation of punishment is exclusive to the religious authority; however, the legislator, by enacting Articles 303 and 302 of the Islamic Penal Code, implicitly permits ordinary individuals to execute punishments, which is inconsistent with the imposition of punishments and limits by the ruler, Imam, and those authorized by them in Islamic

jurisprudence. Given that merely believing in the inclusion of a victim under Article 302 of the Islamic Penal Code leads to the cancellation of retribution (qisas), this encourages individuals to commit crimes in hopes of invoking Article 303, which is in clear contradiction with the principle of "la yabtal" (nothing is void) and its underlying philosophy. In cases of crimes deemed "mardood al-dam," without the victim having forfeited their dignity through committing a crime, betrayal, or spreading corruption, the legislator, by virtue of Article 303 of the Islamic Penal Code, unilaterally deprives the victim of dignity and absolves the perpetrator from retribution based on a mistaken belief that the victim deserves to be harmed, thereby implicitly allowing an infringement on human dignity and life.

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#### **6- Authors' contribution**

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#### **7- Conflict of Interest**

Authors declared no conflict of interest

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