



Research Paper

Feasibility of the Generalization of the "Not wasting Muslim blood" Rule to Instances without Guarantee and Its Effects; A comparative study of Imāmī Jurisprudence, Shafi'i Jurisprudence, and Islamic Penal Code

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Abstract

In order to maximize the application of jurisprudential rules in criminal law, the rule of "Not wasting Muslim blood" has been generalized in the Islamic Penal Code of 2013 in the form of several articles, and at the same time, regarding the possibility of generalizing this rule to cases such as the testimony of women in intentional murder, the payment of the difference of *Diyeh* in the Revenge of the killer by the deceased's heirs, the *Diyeh* of the *Ahl-al-Dhimma*, the *Diyeh* of other victims in the assumption of the unity of the murderer and the multiplicity of the victims, etc. So far, nothing has been said.

Therefore, in the light of reviewing this rule, this article seeks to address the question that "What are the basics of generalizing this rule in Imamiye & Shafeyi jurisprudence and the Islamic Penal Code of 2013 in cases of lack of guarantee?"

The finding of the article is that the basis of the generalization of this rule are state-social duty to restore justice and ensure public rights, the application of the no-harm rule in the form of the welfare theory and the government's duty to compensate for damages through the rule of "Whoever has the sheep, he must pay the penalty". At the same time, the "Not wasting Muslim blood" rule can be seen as a reproduction of the "harmless" rule in criminal law. Also, the generalization of the rule on the basis of its context is not valid, and therefore, in the generalization of the rule to uncertain cases, must be relied on other rational bases.

As a result, the application of this rule is where no guarantee exists, but the customary-rational necessity of compensation and the responsibility of the government to maintain security and welfare is required that the blood of any citizen of the Islamic society should not be wasted regardless of religion, nationality and citizenship.

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Extended Abstract

1- Introduction

Restorative justice, although presented as a modern approach to supporting the rights of victims (Marshall, 2020, p. 101), has a long-standing precedent in Imamiyyah jurisprudence (Mar'ashi Shushtari, 1997, Vol. 1, p. 205). In particular, it has manifested in criminal cases as the principle of "not letting the blood of a Muslim go in vain." According to this principle—which is also discussed in *Ahkam al-Sultaniyyah* (Hosseini Tehrani, 2000, Vol. 4, p. 213)—the Islamic government is responsible for ensuring the safety of all its citizens against potential dangers. If a crime (intentional or unintentional) occurs due to the absence of security, it is the ruler's duty, in the first instance, to either carry out *qisas* (retaliation) or collect *diyah* (blood money). If, for reasons such as the offender's escape, death, or anonymity, *qisas* or *diyah* cannot be implemented, then—due to the government's absolute responsibility for preserving safety and restoring justice, as well as based on the principle of the sanctity of Muslim blood (Azizollahi, 2021, pp. 134–135)—the ruler must pay the *diyah* from the public treasury (*Bayt al-Mal*).

The Islamic Penal Code of Iran, in line with the legislature's policy to extensively utilize jurisprudential teachings (Sadati, 2019, p. 75), has incorporated this principle into several articles. However, in some cases, the content of these articles does not fully align with the literal meaning of the principle; rather, the principle has been interpreted broadly based on more fundamental grounds. On the other hand, the extension of this

principle is not a matter of consensus among scholars (Tusi, 2008, p. 65; Tusi, 1993, p. 322; Shahid Thani, 2012, Vol. 4, pp. 454, 492; Ghurchi Beigi & Maleki, 2020, p. 187). Therefore, this study becomes necessary because the principle of *la yubtal* (not letting blood go to waste) has not yet been implemented in certain cases. If the grounds for extending the principle are sufficient, then it should be applied to those cases as well.

Accordingly, the central questions of this article are:

1. What are the principled and theological foundations for the extension of the *la yubtal* principle in Imamiyyah jurisprudence and the 2013 Islamic Penal Code?
2. What instances can be identified that have not yet been included in this extension?

The proposed hypothesis is that: "Due to the incidental nature of the principle's wording, it cannot be extended beyond the cases directly inferred from its text. However, the principle of justice—which requires the ruler to compensate the victim—and the application of the no-harm principle (*la darar*) and the rule of *man 'alayh al-ghunm fa-'alayh al-ghurm* (he who gains must also bear the burden) necessitate the extension of this principle."

2- Method

The methodology of this article in addressing the above questions is qualitative, specifically of the grounded theory type. *Grounded theory* refers to a theory that is inductively derived from the study of a phenomenon and reflects the nature of that phenomenon. In other



words, it must be substantiated through the systematic collection of information and analysis of data originating from that phenomenon.

3- Result

The finding of the article is that the basis of the generalization of this rule are state-social duty to restore justice and ensure public rights, the application of the no-harm rule in the form of the welfare theory and the government's duty to compensate for damages through the rule of "Whoever has the sheep, he must pay the penalty". At the same time, the "Not wasting Muslim blood" rule can be seen as a reproduction of the "harmless" rule in criminal law. Also, the generalization of the rule on the basis of its context is not valid, and therefore, in the generalization of the rule to uncertain cases, must be relied on other rational bases.

4- Conclusion

The primary application of this principle arises in situations where, in essence, no legal liability (*damān*) can be established. However, the customary and rational

necessity of compensating for harm on the one hand, and the absolute responsibility of the state to maintain security and public welfare on the other, require that the blood of a Muslim—and arguably, of any human being—should never be shed in vain. The lack of explicit or implicit reference to this principle in the Holy Qur'an and the absence of scholarly consensus on its content further underscore that this rule is rooted in customary reasoning and is subject to temporal and spatial circumstances in its application and extension.

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6- Authors' contribution

Seyed mohamad mahdi Sadat, the corresponding author of this article, is Assistant Professor of Department of Criminal Law and Criminology at Shiraz University.

7- Conflict of Interest

Authors declared no conflict of interest suggestions.