
Credibility and Influence of the Muslim Ruler's Legal Decision, Incongruent with Zilhajjah Moon Witness

*Mahdi Dargahi ¹, Reza Andalibi ^{*2}*

1. Professor of Qom Seminary School, Researcher of Al-Mustafa International Research Institute.
2. Graduated From Qom Seminary School, Researcher of Hajj Research Institute

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Abstract:

The moon of month has various discussions and aspects; one of them is the legal decision of Muslim ruler, opposing the positivity of Zilhajjah moon and evaluation of its juristic outcomes and consequences in Hajj rites. In the season of Hajj, the times of both Stays (At Arafat, Woqoof) are decided and declared by the legal decision of Muslim ruler and Amir Alhaji. It is possible that in some cases the legal decision of Muslim ruler may be incongruous with fact; likewise it is also possible that its incongruity with reality may be certain in some cases. Considering the generalities and peculiarities of Taqiyyah and some other particular traditions like Mu'tabirah Ibn Mughairah by Abi Jarood, obeying such incongruous legal decision is obligatory because of its being *Hukm e Taklifi* (law which defines rights and obligations); whereas it is also specified as obligatory even in the case of being certain in its incongruity. Of course some of the jurists believe that the correctness of Hajj depends on the *Woqoof e Izterari* (emergency Staying at Arafat) and some others believe that it depends on the practice of *Hilah* (legal device); however generalities and peculiarities of Taqiyyah and some other traditions like Mu'tabirah Ibn Sinan and Ibn Mughairah by Ibn Jarood implicate the correctness and sufficiency of Hajj while in case of Taqiyyah (fearful or compromising), the *Haqeeqi Sanavi Hukm* (Real Secondary Ruling) of Hajj, even in case of being certain in its incongruity, is 'correct' and lawful.

Keywords:

Credibility, Influence, Legal Decision, Ruler, Incongruity, Taqiyyah, Hajj.

* Corresponding Author: Email: aghigh_573@yahoo.com

Analysis of the Necessity of Cash Price in Forward Sale Transactions

Abdurrasool Ahmadian *

Assistance Professor of Allamah Majlesi Higher Education Seminary.

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Abstract:

The common idea among the Imamiya jurists is that the price should be paid in contract meeting in such a way that one of the conditions of the forward sale contracts is regarded as the necessity to submit the price in the meeting. It is not clear however that is this condition necessary to follow for the consolidation of the contract without which no ownership is determined? As it is the case in exchange of money or the ownership is transferred to the buyer even before submitting the price. Although jurists have not explicitly discussed, asked or replied the above mentioned questions, they have implied them. The traditions received around this subject are not capable of proving this condition, nor is there a general principle to refer to because with other proofs, there is no room for referring to the principle. Maybe the most important proof here is the consensus of the jurists which is undermined by many questions. An important point to notice is that to prove the necessity of this condition in such transactions many jurists have resorted to the invalidity of transacting debt with debt while the same jurists have referred to the necessity of the cash price in forward sale transactions to prove the invalidity of transacting debt with debt which will lead to the vicious circle. Considering above mentioned problems it is possible to omit this condition from the requirements of the validity of forward sale transactions.

Keywords:

Sale, Price, Forward Sale, Condition, Transaction of Debt with Debt, in Cash.

* **Corresponding Author: Email:** r.ahmadian@chmail.ir

The Realm of Government to Punish the Guilty

*Seyyed Javad Vara'I **

Assistant Professor of Department of Law, Research Institute of Hawzah and University.

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Abstract:

This research paper is focused on the realm of government authority to explain whether the government can determine the punishment for doing certain act or the failure to perform it, the one which is considered as sin in Islamic Law (Sharia). First, it articulates the relationship between "crime" and "sin" and then arguments for six views that exist in texts concerning Islamic jurisprudence are examined. The results obtained via this study show that only some, but not all, of the sins have worldly punishment. Hence, only some sins are considered as crime and the government has the right to intervene and punish their perpetrators. In addition to the sins which their punishments are determined as Hadd (ordained punishments) or Ta'zir (punishments determined by jurists and judges), only those sins which have public aspects and threaten the established order, system and social security can be subject to worldly punishment and the government could intervene as a guarantor of its implementation. But the sins which have personal aspects and the Islamic Law (Sharia) has not determined any Hadd or ta'zir in these cases are specified with no worldly punishment and the government has no right to intervene and punish the guilty.

Keywords:

Crime, Sin, Hadd, Ta'zir, Government.

* Corresponding Author: Email: Jvarai@rihu.ac.ir

Jurisprudential - Legal Study of the Necessity of Maturity and Faith of Witness

*Esmatussadat Tabatabaei Lotfi ^{*1}, Zahra Sadat Sarkeshikian ²*

1. Assistant Professor of Department of Jurisprudence and Principles of Islamic Law, Qom Branch, Islamic Azad University.
2. Ph.D Student of Department of Jurisprudence and Principles of Islamic Law, Science and Research Branch, Isfahan, Islamic Azad University.

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Abstract:

In cases of appealing to testimony, maturity and faith of the witness are among the conditions which are considered as necessary according to the consensus of Imamiya jurists and explicit statement of law under article 1313 of Civil Code and article 155 of the procedure of the public and revolution courts in the Criminal affairs. But: 1. Contrary to the explicit statement of jurists and point 1 of article 1210 of C.C., on the age of maturity (15 lunar years for males and 9 for females), article 1314 of C.C. has necessitated age of 15 for the witness and hence has questioned the testimony of female witnesses aged between 9 to 15. 2. In jurisprudence, the testimony of 10 year old discriminating-minor boy is exceptionally accepted in cases of murder and injury. However, in law, despite a reference in the rest of article 1314 to the possibility of exception, the exceptional cases have been left unidentified. Therefore, some relate it to female witnesses aged between 9 to 15; in order to remove the contradiction of point 1 of article 1210 and article 1314 of Civil Code and others, defining maturity as ‘ capability of understanding the importance of witnessing’ have justified the equality of witnessing of males and females. The best way is to say that it is the actualization of maturity and its original acquisition by jurist that is important and age is only an indication of maturity but not its decisive proof. 3. From the viewpoint of the Imamiyah jurists, faith means believing in Twelver-Imam Shiism; however, lack of limiting faith exclusively to Twelver-Imam Shiism in articles 1313 and 155, has caused some scholars to interpret faith as contrasted with disbelief, which considering the principle role of Shiia jurisprudence in articles of law in Iran it is not correct.

Keywords:

Maturity, Faith, Witness, Witnesses, Jurisprudence, Statues.

* Corresponding Author: Email: esmat.tabaei@gmail.com

Murder Caused By Infection: A Jurisprudential and Legal Study

*Jalaleddin Qiyasi*¹, *Morteza Mirzaei Moqaddam*^{*2}

1. Assistant Professor of University of Qom.

2. Ph.D student of University of Qom.

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Abstract:

Infect caused by crimes is one of subject that can be discussed in murder. Here, the main question is that if the victim dies as a result of infection caused by an intentional crime what will be the verdict? It is obvious that if criminal has intention of murder or crime that often spread to death, murder is attained. But problem occurs when there is no intent to commit murder and felony often cannot be passed to life. This problem can be studied both in criminal law and jurisprudence. In this subject jurists are divided into two categories: The famous and the non- famous. The famous as evidence-based consensus, taking advantage of the principle of liability for effect of crimes without right, taking advantage of the other legal rules, have ordered the murder. While the non- famous, referring to traditions and public rules about murder, have denied murder and emphasized on semi-intentional murder. Review of reasons of both parties reveals that the non-famous judgment (taken semi- murder) is more compatible with general rules of murder. Review of law also makes clear that, legal measures is compatible with the non-famous judgment, because different law systems (France, England and Iran) delete obvious intention only to such extent that considering the actions of who has committed the crime, which in the most of cases and in some law systems are certainly killing, intention can be proved.

Keywords:

Infection, Intentional Crimes, Murder, Semi-Murder, Versus, Principle of Liability for Effect of Crime without Right.

* **Corresponding Author: Email:** morteza_mirzai@yahoo.com

Comparative Study of Enforceability of Punishment in Iran Religious Jurisprudence, Penal Law And France Law

Abolfazl Alishahi Qal'ehJouqi ^{*1}, *Somayyeh Najafi Kashkouli* ², *Bi Bi Zeinab Hosseini* ³

1. Assistant Professor of Department of Jurisprudence and Principles of Islamic Law, Yasouj University.
2. M.A. in Jurisprudence and Principles of Islamic Law, Yasouj University.
3. Assistant Professor of Department of Quran and Hadith Sciences, Yasouj University.

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Abstract:

Essentially social reaction to a crime is realized as punishment and such punishment leads to achievement of goals of punishments. Such goals are achieved only if they are executed immediately and happen certainly. The more the punishment is rapid and certain, the more it is just and useful. This legal principle has originated in religious jurisprudence by virtue of the principle, "No delay is permitted in punishments", but in some cases it has been delayed in necessity or due its contradiction with other rules of punishments, maybe due to the prestige of the condemned party, third party, place validity, etc., in a way that if there is any obstacle regarding the order realization, it is delayed until the obstacle is removed, but at the same time, the delay would be executed in the order execution in future so in penal actions the orders are enforceable and this principle is taken into consideration in the statutes of all countries specially in France.

Keywords:

Enforceability of Punishments, Penance, Talio (Retaliation), Tazir (Punishment Having Maximum and Minimum Limits Determined by Law and Judge, Respectively), Delay in Punishment, Personal Obstacles, Local Obstacles.

* **Corresponding Author: Email:** Alishahi@yu.ac.ir

Jurisprudential Basis for Restoring the Rule of Prohibition of Double Punishment in Islamic Penal Code 1392

*Hesam Qapanchi^{*1}, Sadeq Safari²*

1. Faculty of Law Department of Ferdowsi University of Mashhad.
2. Master of Criminal Law and Criminology of Ferdowsi University of Mashhad.

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Abstract:

Basically societies have a set of norms and values called the statute law. Naturally, violating the values of criminal law is considered crime and the criminal deserves predicted sanction for violation of the act. According to a simple thought, any action that harms or violates the values should be punished only once. This idea is expressed in the rule of prohibition of double punishment. Review of Iranian penal code indicates that the rule of prohibition of double punishment (considering previous penalties) in different periods has always ups and downs, and there is no united and single approach toward this rule before and after the revolution in such a way that legislators in Iran had explicitly accepted the same rule before the revolution. But after the revolution we see that this clear rule was omitted first from Iranian law in 1982 and 1991 and restored again in 2013. The authors of this paper intend to state the meaning of this rule in particular and to find the basis for Iranian legislature after the revolution and discuss the issue of whether Iranian legislator's act in the removal of this rule corresponds to principles of jurisprudence, or its retrieval in the new Islamic Penal Code has been based on the principles of jurisprudence.

Keywords:

International Criminal Law, Exceptio Rei Judicatae (Adjudicated Action), Prohibition of Double Punishment, Retrial, Double Punishment.

* Corresponding Author: Email: ghapanchi@um.ac.ir

Influence of Genetic Abnormalities on Verdict of Embryo Abortion on Imamiyyah Jurisprudence

*Fatemeh Piri AmirHajilou^{*1}, Ali Tavallaie², Mohammad Hassan Sheikhha*

1. M.A. Student of Jurisprudence and Principles of Islamic Law, University of Yazd
Assistant Professor of Humanities, University of Yazd.
2. Professor of Shahid Saduqi University of Medical Sciences and Health Services,
Yazd.
3. Professor, Clinical and Research Center for Infertility, Shahid Sadoughi
University of Medical Sciences, Yazd, Iran.

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Abstract:

Human embryo is the honorable extant. According to Islamic sources such as: Quran, tradition, ijma, and wisdom, destroying embryo as the first verdict is prohibited. This research which has been performed with descriptive and analytical methods studies the question as to if genetic abnormalities exist in the fetus so that it is medically Impossible for it to live after the birth and it threatens life of mother would abortion be permissible? Results of the study indicate that according to the verdict of most jurists and legislation of therapeutic abortion, embryo abortion before soul inspiration is permitted. While after the soul is inspired into the fetus, only if it would be possible for the fetus to live after parturition and it has no threaten for mother, embryo abortion is prohibited. But in other cases according to juristic rules such as: “La Zarar” (no injury), “La haraj, (no hardship), “Tazahum” and observance of “Aham wa Mohem” and also relying on precarious life Embryo Abortion as a second verdict is permitted.

Keywords:

Genetic Disorders, Embryo Abortion, Abortion Prohibition, Abortion Permission, Imamiyyah Jurisprudence.

* **Corresponding Author: Email:** f.amirhajiloo@yahoo.com