# A Critique on Saheb Javaher's View Regarding the Calculation of Blood Money Surplus of the Retaliated Killers Participating in Voluntary Murder

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(Date of Receipt: 7 August 2016; Date of Acceptance: 17 December 2016)

**Abstract**

The present paper, taking a descriptive- analytical approach, argues seriously, for the first time about the view of the late Saheb Javaher regarding the way of calculating blood money surplus which is allocated to the killers with different genders (masculine, neutral, and feminine) of a single person killing him deliberately. The main hypothesis of the study is that the view of the aforementioned jurisprudent regarding the original blood money of the killers with different genders is incompatible with blood money surplus in the case of retaliating against several persons for killing a single person. It seems that the blood money surplus of the killers with different genders (masculine, neutral, and feminine) participating in a single voluntary murder has not been calculated exactly by him. Since Javaher al-Kalam is referred to frequently by the honorable jurists and lawyers of justice, it is necessary to discuss exactly some of its criminal aspects specifically its calculating matters.

**Keywords:** blood money ratio, blood money surplus, killing, participation, retaliation.

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# A Comparative Study of the Situation of Wife of the Missing Person in the Jurisprudence of Five Schools of Islamic Thought

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(Date of Receipt: 4 September 2016; Date of Acceptance: 17 December 2016)

**Abstract**

The husband may be absent for different reasons such that he may be unheard or missing. There are two views regarding the situation of missing husband: patience and continence (Tarabbus). Shi'a jurisprudents make a judgment on patience where it is clear that the absentee is alive or gives alimony. Otherwise the wife has the right to file an application for divorce. After waiting for four years and looking for him by the judge, if no news has been received of him, the judge will grant divorce. In the view of Hanabila jurisprudents in the case where the reason of absence is apparently the death of missing person and in the view of Maliki jurisprudents where the absentee is missing in the Islamic territories and in the fighting against unbelievers the wife has the duty to wait for him. In the view of Hanabila jurisprudents in the case where the missing person is apparently alive, and in the view of Maliki jurisprudents where the absentee is missing in unbelievers, land the wife has the duty patience. Shafi'i and Hanafi jurisprudents give the absolute verdict on patience.

**Keywords**: absentee, divorce, missing person, patience, probe, waiting.

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# Jurisprudential - Legal Analysis of the Validity of the Condition of not Dismissing the Attorney

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(Date of Receipt: 27 September 2016; Date of Acceptance: 17 December 2016)

**Abstract**

This study analyzes the validity of the condition of not dismissing the attorney accepted by civil law. The findings show that the truth and requirement of attorney contract in terms of customary and literally agreement is representation. The right of dismissing the lawyer with guaranteed implication or even by the claim of adjustment implication lies in the meaning of representation and the two are not separable. Therefore, the condition is against the requirement of a power of attorney contract. Moreover, the condition of not dismissing the attorney may be analyzed in terms of its disagreement with the Book and *Sunna*; as applying specific arguments for representation in the client's withdrawal includes both conditional and unconditional situations, and in case of any doubt, it is based on the presumed continuity of the permission of the client's withdrawal. Also the permission of withdrawing from representation is considered in its specific meaning in which the parties cannot agree against it based on a conditional statement. Thus, the condition of not dismissing the attorney is against the Book and the *Sunna*. A descriptive-analytical (*Ijtehadi*) method of study has been used in this paper.

**Keywords**: the Book, condition of dismissal, contrary to the requirement of the contract, judgment, representation, right, *Sunna*.

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# The Jurisprudential and Legal Analysis of Independent Value of Securities

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(Date of Receipt: 15 October 2016; Date of Acceptance: 17 December 2016)

**Abstract**

Undoubtedly, the value of securities in economic analyses depends on the origin of assets and they don't have any value by themselves. Nevertheless, some of the lawyers, emphasizing on the stocks and based on the mimetic theory of "combination", maintain independent value for the securities and have considered them independent of the legal relations of their origins. This group of securities is considered by themselves a specific type of objective rights the transfer of which is out of the rights to the agreements and contracts. Accordingly, it seems that not only neither of the arguments presented are not valid, but also it is not necessary to justify independent value of the securities and it has no specific effect; it is because of the fact that in the Islamic law and consequently the Iranian law the regulations of the rights of property are not separated of the rights of agreements. In fact this view has neither economic justification, nor jurisprudential and legal ones. A descriptive-analytical method of research has been used in this paper.

**Keywords:** independent value, obligations, property, securities, stock, Sukuk.

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# The Conflict between Ideological Interpretation of Penal Jurisprudence and the Purposes of Islamic Criminal Justice: an Obstacle Impeding the Development of a Islamic-Iranian Model of Criminal Policy

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(Date of Receipt: 25 October 2016; Date of Acceptance: 17 December 2016)

## Abstract

Criminal policy is an interdisciplinary system consisting of several interactive nation-state subsystems that attempt to address serious crimes and deviances by managing criminal justice through organizing the relationships between criminal science and actors within the criminal justice system in both theoretical and practical settings. As an important element at the most strategic level of soft power for any system of governance, criminal justice requires particular attention since any inefficiency in development and monitoring of the national criminal policy system may lead to efficiency crisis or even legitimacy crisis of a regime. Despite its several strengths, criminal policy of the Islamic Republic of Iran suffers a number of weaknesses including unevaluated strategies developed at macro level to govern legislative, judicial, and executive decisions made by legal authorities in the country. Reviewing the significance of localization of criminal policy, the present article draws on an analytical approach to describe instances that indicate a crisis resulting from lack of a localized criminal policy in the Islamic Republic of Iran. In particular, it examines the process of formation and development of traditional anti-rationalist approaches to penal jurisprudence through a scrutiny of how such approaches hindered realization of ultimate goals in terms of criminal justice at the macro level of the Iranian criminal system. On the other hand, a number of approaches are proposed to strengthen the opposite view that draws on the legal capacities of Islamic jurisprudence to localize a criminal policy centered on Islamic penal jurisprudence and to partially meet the requirements for the development of an Islamic-Iranian progress model within the realm of criminal policy system.

**Keywords:** anti-rationalism, Islamic-Iranian model, localized criminal policy, penal jurisprudence, theory and letter of law.

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# Analysis of the Reliable Authority in the Subjects Focusing on Seyyed Ahmad Khansari's View

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(Date of Receipt: 6 November 2016; Date of Acceptance: 17 December 2016)

**Abstract**

One of the most important sources of Imamiyyah jurisprudence is the tradition in the form of reliable report. A significant part of it refers to external matters, but the famous Osouli's jurisprudents take the view that the scope of the reliable authority credit is limited to injunctions and argue that account is a subject related to the evidence chapter in which justice and witnesses' multiplicity, is accounting on valid sense and observation. On the other hand, the judicial decrees of some scholars of the principles of jurisprudence not only apparently, but even explicitly, stress on the validity of the reliable authority of the subjects. Taking an analytical-descriptive method, this article aims to study the judicial decrees and arguments of opponents and proponents of the reliable authority in juridical subjects focusing on Seyyed Ahmad Khansari's view and to specify its scope. The findings indicate that, from the proponents' view, evidence validity has been legislated in order to prove the issues related to the legal and financial claims, in other subjects the reliable authority has no problem. The author of Jami' al-Madarik also, criticizing the famous view, considers establishing the view of the wise as the condition for the reliable authority.

**Keywords**: evidence, juridical subjects, reliable account, Seyyed Ahmad Khansari, single account, validity.

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# A Grammatical Study of the Verse of Ablution (Wuzu) and an Approach to Its Religious Law

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(Date of Receipt: 20 November 2016; Date of Acceptance: 17 December 2016)

**Abstract**

This article aims to study the grammatical situation of the word "*Arjul*" in the 6th verse of Sura al-Ma'ida. The verse, also known as wuzu aya, indicates an important legal rule and the diacritic marks of the word "*Arjul*" has a considerable influence on making the rule clear. The word "*Arjul*" in the 6th verse of Sura al-Ma'ida is recited in three different forms; *Marfu'*, *Mansub*, and Majrur. The two later forms are more popular. Given that the word "*Arjul'* in the Majrur mode is coordinated to "*Ru'usikum*" and in the *Mansub* mode it is coordinated to the position of "*Ru'usikum*", and the both possibilities would make the word "*Ru'usikum*" object of the verb "*Imsahu*", the feet are also need to be wiped instead of being washed, the same as wiping the head. In another hand, coordination of "Arjulakum" in Mansub mode, to "*Wujuhikum*", would make a distance between two objects of a single verb, which contradicts the eloquence of the sentence. Coordination to "*Wujuhikum*" in the Majrur mode according to the rule of neighboring words is not correct too. And according to the rules of Arabic syntax, "*Arjulakum*" could not be coordinated to "*Wujuhikum*", so the only possibility is that it is coordinated to "*Ru'usikum*" which concludes the obligatory rule of wiping the feet in wuzu, but not their washing.

**Keywords:** coordination, rule of neighboring words, washing, wiping, *wuzu*.

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# Punishment in Hereafter for Immature Children Violating Right of Others

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(Date of Receipt: 3 December 2016; Date of Acceptance: 17 December 2016)

**Abstract**

Historically, there has been always the supposition in the Shi'a jurisprudence that the children have no duty and obligation, so there is no punishment in hereafter for them. This dominant idea brings with it a kind of freedom for immature children which have unpleasant educational and social consequences. In the recent century the above-mentioned approach has been challenged by Naeini. He believes that there are punishments for the independent sentences of intellect of the children at the age of discretion. This theory is disagreed generally by the later legal scholars due to its conflict with hadith of Rufi'a al-Qalam except some contemporary scholars who decree a punishment for such children without resolving the problem of its conflict with the aforementioned hadith. A documentary-library method of research with intratextual analysis has been used to discover the ideas before and after Naeini about this theory. This theory is rebuilt and recreated by allocating punishment for children that violate intellectual sentences (or orders). Accordingly the problem of mentioned people is answered by proving inherent restriction of the mentioned hadith to independent intellectual sentences.

**Keywords:** immature children, intellectual sentences (or orders), Naeini the researcher, punishment of immature children.

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