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Research Article

The Jurisprudential Basis of Crimes Equivalent to Moharebeh

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Abstract

The aim of this research is to examine the jurisprudential basis of crimes equivalent to Moharebeh and analyze the principles and rulings related to these crimes in Islamic jurisprudence. Moharebeh, as a crime that threatens the security and stability of the Islamic community, has specific rulings in Islamic law. The research method is library-based, utilizing jurisprudential, legal, and interpretive sources to analyze the topic. The findings of this study indicate that crimes equivalent to Moharebeh include actions such as highway robbery, terrorism, and creating fear in society. These crimes are of particular importance due to their direct threat to community security, and scholars, referring to verses from the Qur'an and Hadith, have prescribed severe punishments for them. The results of the study show that the concept of Moharebeh and its related rulings have evolved throughout Islamic history, and in each period, based on social and political conditions, their definitions and rulings have been reviewed. Ultimately, it can be concluded that special attention to crimes equivalent to Moharebeh by judicial systems in Islamic societies is essential to prevent the occurrence of such crimes and to maintain community security through the formulation of clear laws and the implementation of justice. This can be achieved through necessary education for the public and executive officials, as well as the development of preventive policies.

Keywords: *Moharebeh, Islamic Jurisprudence, Crime, Punishment.*

Introduction

In Islamic jurisprudence, moharebeh (warfare) refers to fighting against the Islamic community and creating insecurity and fear among people, making it one of the major crimes. This introduction aims to examine the concept of moharebeh, its conditions and elements, and the various views of scholars regarding this issue. Moharebeh is explicitly mentioned in the Qur'an, particularly in verse 33 of Surah Al-Ma'idah, which prescribes severe punishments for those who are recognized as mohareb (criminals in the context of warfare against society). A thorough understanding of this verse and its interpretation by scholars plays a critical role in defining the criteria for moharebeh and the crimes that fall under its scope (Sharifzadeh et al., 2022).

Scholars consider several key elements when determining moharebeh and related crimes. The first element is the intention of the offender. To be considered a mohareb, an individual must act with the intent to create fear and disorder among the people and disrupt public order. The second element is the use of weapons and tools that have the potential to instill fear and terror. Another important condition for moharebeh is the location of the crime. In general, scholars believe that moharebeh must occur in a public space so that its impact is widespread across the community. This underscores the importance of maintaining public security and preventing threats to society (Jafari, 2023).

Sharifzadeh et al. (2022) conducted a study titled "Examining the Relationship Between the Crime of 'Moharebeh' and 'Fasād fi al-Ard' (Corruption on Earth); From Jurisprudential Foundations to Judicial Practices." A review of jurisprudential sources reveals differences in the interpretation of verse 33 of Surah Al-Ma'idah. Many scholars and Islamic commentators consider these two terms as descriptive of the same issue, while some view them as independent, recognizing a relationship of general and specific between them. By utilizing library resources and a descriptive-

analytical approach, the author concluded that the relationship between the two terms, moharebeh and fasād fi al-ard, is one of general and specific.

Jafari et al. (2023) conducted a study titled "Exploring the Jurisprudential Foundations of Criminalizing Fasād fi al-Ard and Its Applications in Iranian Penal Law." One of the crimes mentioned in various sections of the Islamic Penal Code of Iran is fasād fi al-ard. In this article, the researchers aim to review and critique the jurisprudential and legal foundations of crimes that are considered corrupting to the earth and are subject to the death penalty according to the Islamic Penal Code of 2013. The study suggests that the legislator views it as an independent and severe crime, determining the death penalty for it. However, this punishment (whether hadd or ta'zir) seems incompatible with the meanings of Qur'anic verses and hadiths. The study also argues that the laws concerning corruption and moharebeh should be revisited because there are theological and legal issues with these rulings. If these issues exist, then some provisions regarding fasād fi al-ard in Iranian criminal law may not be doctrinally valid, although they carry the death penalty.

Additionally, some scholars believe that moharebeh is only realized when the crime is committed in a group or organized manner. This view is more prominent in certain jurisprudential schools due to the broader and more complex impact of group crimes. On the other hand, there are differences in the interpretation and application of moharebeh across various Islamic sects. For instance, some schools of thought emphasize specific aspects of the crime, while others may focus on different elements. These differences reflect the dynamic and diverse nature of Islamic jurisprudence, which can lead to varying interpretations of laws and punishments (Makarem Shirazi et al., 1984: 4, 359-358; also, Tabatabai, n.d., 5, 331-330).

A deep understanding of the jurisprudential foundations of moharebeh and similar crimes requires a careful study of Islamic sources, the opinions of scholars, and consideration of the social and historical context in which these concepts emerged. Such study can help provide strategies for addressing crimes and maintaining public security.

Moharebeh

Article 183 of the Islamic Penal Code of 1370 (1991) serves as the foundational provision for the crime of moharebeh. By carefully examining this article, it can be understood that moharebeh is defined as "drawing weapons with the intent to intimidate and deprive the public of their freedom and security." This definition is derived from Islamic jurisprudential sources. Al-Muhaqqiq al-Hilli, in defining a mohareb (one who commits moharebeh), stated: "Al-mohareb is anyone who draws weapons to frighten people" (Al-Muhaqqiq al-Hilli, 1983: 4, 180). Other jurists have given similar definitions (Najafi, 1969: 41, 564; Sheikh Tusi, 1972: 8, 47; Khoei, 1975: 1, 318).

However, there is ambiguity regarding this article because it links the terms moharebeh and mufsid fi al-ard (corruption on earth) together, stating: "Anyone who... draws a weapon is both a mohareb and a mufsid fi al-ard." The title of Chapter Seven, under which this article is discussed, is "Moharebeh and Corruption on Earth."

The question that arises is whether these two terms refer to a single act or subject, or if they are distinct and each represents a separate crime. In other words, are we dealing with two independent criminal charges or just one?

Since the basis for criminalizing moharebeh is based on verse 33 of Surah Al-Ma'idah, to answer this question, we must first examine the verse:

"Indeed, the recompense for those who wage war against Allah and His Messenger and strive upon the earth to cause corruption is none but that they be killed or crucified, or that their hands and feet be cut off from opposite sides, or that they be exiled from the land. That is for them a disgrace in this world, and for them in the Hereafter is a great punishment."

This verse explicitly refers to both moharebeh and efsad fi al-ard (corruption on earth). However, its apparent meaning is that moharebeh against Allah and His Messenger and corruption on earth are separate subjects, as the word "wa" (and) is used to connect the two terms. Therefore, when all the conditions in the subject are fulfilled, the punishment is also activated (Mousavi Bejnourdi, 2005: 151).

Although some have tried to treat these two terms as referring to two distinct crimes of efsad fi al-ard and moharebeh (Habibzadeh, 2000: 12-14), the truth is that the vast majority of commentators and jurists believe that moharebeh and efsad fi al-ard in this verse are not separate titles. Rather, "alladhina" (those who) is a relative pronoun, with "yuharibuna Allah wa Rasulahu" (waging war against Allah and His Messenger) being its relative clause, and "yas‘awna fi al-ard fasadan" (striving to cause corruption on earth) is an addition to the relative clause, indicating a single concept. Had the relative pronoun been repeated, the implication of two independent actions would have been justified, but since it is not, it does not indicate independence (Imami Kashani, 1993: 90; Fadhil Lankarani, 2003: 638).

Furthermore, jurists unanimously agree that the punishment of killing applies to "moharebeh based on corruption on earth," not merely to "corruption" or general "efsad." Though the texts may not explicitly state this, the consensus of

fatwas (juridical opinions) and the context of the evidence clearly indicate that the punishment of killing involves two components: moharebeh and efsad fi al-ard. Therefore, efsad fi al-ard on its own is not the subject of the punishment (Najafi, 1988: 42, 51; as cited in Imami Kashani, 1993: 92).

In conclusion, it is correct to state that efsad fi al-ard, as mentioned in the Quran, serves as a description of moharebeh and justifies the severity of its punishment. In other words, when asked why such a severe punishment should be executed for the mohareb, the answer would be that the individual is a mufsid fi al-ard. As some scholars put it, "mufsid fi al-ard is not the subject of the punishment, but rather, in the terminology of rational scholars, it serves as an intermediary and a cause for the punishment to be applied" (Mar'ashi, 1991: 44; Fadhil Lankarani, 2003: 638). Quran commentators also agree that efsad fi al-ard is not independent of moharebeh and view it as a characteristic of the mohareb (Mar'ashi, 1991: 49-50; Imami Kashani, 1993: 93-94).

Thus, the few individuals who have considered efsad fi al-ard (corruption on earth) as an independent criminal title base their argument on verse 32 of Surah Al-Ma'idah (rather than verse 33). Verse 32 is as follows:

"For that reason, we decreed upon the Children of Israel that whoever kills a soul without a soul (killing a person unjustly) or causes corruption in the land, it is as though he had slain all mankind." This group argues that the verse indicates that if someone kills another person without committing a murder or causing corruption on earth, it is as though they have killed all people. Therefore, this verse "permits the killing of those who cause corruption on the earth and indicates that the title 'mufsid fi al-ard' (corruptor on earth) independently results in the death penalty... Thus, in cases where the title of efsad fi al-ard is realized, i.e., actions that harm society or a part of it, and the perpetrator does not use a weapon, they would be sentenced to death based on verse 32 of Surah Al-Ma'idah" (Habibzadeh, 2000: 12-13).

However, this view has been completely rejected by the jurists. For example, one contemporary jurist, discussing verse 32 of Surah Al-Ma'idah, says: "This verse indicates that killing is only permissible in two cases: qisas (retribution) and efsad fi al-ard (corruption on earth). This also indicates that moharebeh (waging war against Allah and His Messenger) cannot be separated from efsad. It further suggests that crimes which result in a death penalty, such as adultery by a married person, incest, and anal intercourse, are also types of efsad fi al-ard" (Fadhil Lankarani, 2003: 639). He continues a few lines later, stating, "efsad fi al-ard is not a specific crime that requires a separate definition; all crimes that lead to the death penalty fall under the category of efsad" (Ibid: 640-639).

In any case, according to him, efsad fi al-ard in this verse refers only to crimes that carry the death penalty, and to claim that there is an independent criminal title for efsad fi al-ard outside of these crimes is fundamentally incorrect. As another contemporary jurist puts it, "As previously stated, criminals for whom hudud (prescribed punishments) are specified must receive those same punishments, and it is not appropriate to change divine laws or introduce new punishments under the title of mufsid fi al-ard based on baseless assumptions and unfounded fantasies. This kind of thinking would lead to changes in divine rulings and Islamic law, which would be akin to ruling by something other than what Allah has revealed" (Mar'ashi, 1991: 55).

Ultimately, according to the interpretations of scholars and jurists, verse 32 of Surah Al-Ma'idah merely permits the killing of those who have committed intentional murder or who have performed a criminal act for which the death penalty is already specified in Islamic law, such as adultery by a married person or anal intercourse. Using this verse to justify creating an independent criminal title for efsad fi al-ard is neither logically, intellectually, nor religiously justified.

The occasion of revelation (Shan-e-Nuzul) of verse 33 of Surah Al-Ma'idah further clarifies the points mentioned earlier. It is narrated that a group of polytheists came to the Prophet (PBUH) and accepted Islam. However, they did not adapt well to the climate of Medina, and they became ill, with their skin turning yellow and their bodies weakening. The Prophet (PBUH) instructed them to go to a place outside Medina, where the camels for zakat (charity) grazed, which had a better climate. He told them to use the fresh milk from the camels to regain their health. They followed his advice and recovered. However, instead of being grateful, they mutilated the Muslim shepherds, cutting off their hands and feet and blinding their eyes. They then killed the shepherds, stole the camels, and left Islam. In response, the Prophet (PBUH) ordered that they be captured and subjected to the same punishment they had inflicted on the shepherds: their eyes were blinded, their hands and feet were amputated, and they were killed, so that others might take a lesson from this. (Makarim Shirazi et al., 1984: 4, 359-358; also Tabatabai, n.d., 5, 331-330).

In Conclusion: There is no crime specifically called "efsad fi al-ard" (corruption on earth) in Islamic jurisprudence. Efsad fi al-ard is merely a descriptor for moharebeh (waging war against Allah and His Messenger). The definition of moharebeh accepted by Islamic jurists aligns with the definition in Article 183 of the Islamic Penal Code, which states: "Raising a weapon with the intent to intimidate and deprive people of their freedom and security." According to this definition, the two main characteristics of moharebeh are:

1. Raising a weapon (material element)
2. The intent to intimidate and deprive people of their freedom and security (mental element).

If either of these two characteristics is absent in an act, the individual cannot be considered a mohareb (a person waging war against Allah and His Messenger).

Jurisprudential Foundations

The jurisprudential foundations of crimes under the category of moharebeh (waging war against God and His Messenger) are rooted in Islamic sources and principles, which play a significant role in the identification and interpretation of such crimes. Moharebeh refers to a state of war and conflict against the Islamic community, causing insecurity and fear among the people. This concept is clearly discussed in the Quran, especially in verse 33 of Surah Al-Ma'idah, which outlines severe punishments for mohareb (those who wage war against Allah and His Messenger). This verse serves as one of the primary jurisprudential bases for analyzing such crimes. (Imami Kashani, 1372: 57-56)

Islamic scholars, or faqaha, consider several key elements when determining whether an act constitutes moharebeh. The first element is the intent and purpose of the offender. For an individual to be classified as a mohareb, their actions must be driven by the intention to create fear and chaos among the people, thus disrupting public order. This intention is of crucial importance and is one of the fundamental conditions for establishing moharebeh. (Mir Mohammad Sadeghi, 1386; 45)

Another important element is the use of weapons and tools that can instill fear and terror. Scholars believe that the use of weapons indicates the seriousness and dangerous nature of the crime, and thus it plays a pivotal role in determining whether the act qualifies as moharebeh. Additionally, the location of the crime is also crucial. Typically, moharebeh is expected to occur in a public place so that its effects on society are widespread.

There are differences in the interpretation and application of moharebeh among various Islamic sects. Some schools of thought place more emphasis on specific aspects of the crime, such as its group and organized nature, while others may focus on different facets. These differences reflect the dynamism and diversity within Islamic jurisprudence, leading to various interpretations of laws and punishments.

Ultimately, the jurisprudential foundations of moharebeh require a thorough study of Islamic sources, the opinions of scholars, and an understanding of the social and historical contexts in which these concepts were developed. Such a study can provide valuable insights into strategies for combating crime and ensuring public safety, and it plays a critical role in the formulation of legal frameworks and policies in Islamic societies.

Critique of the Law and Correct Approach

Article 279 defines the crime of moharebeh as: "Moharebeh is drawing a weapon with the intent to harm the life, property, or honor of people or to terrorize them, in a manner that causes insecurity in the environment." It further states that if someone draws a weapon with personal motives toward one or more specific individuals and the act does not have a public impact, or if someone points a weapon at people but fails to cause insecurity due to their inability, they are not considered a mohareb (one who wages war against public security).

Article 282 of the Islamic Penal Code describes the punishments for moharebeh:

- Execution (death penalty),
- Crucifixion,
- Amputation of the right hand and left foot,
- Exile (banishment from the country).

Regarding the characteristics of the crime of moharebeh, it can be said:

1. Definition: The crime of moharebeh is the act of drawing a weapon with the intent to harm people's life, property, or honor, or to create fear in a way that disrupts public peace and security.
2. Objective: The objective of moharebeh is to target public security and public peace, aiming to disturb the safety of the community.
3. Public Nature: For moharebeh to occur, the act must be public in nature, affecting the broader society.
4. Criminal Tool: The use of weapons is an essential condition for the crime of moharebeh. Without the use of a weapon, the act does not constitute moharebeh.
5. Subject Matter: The subject of moharebeh in the Islamic Penal Code is life, property, honor, or the act of terrorizing people.
6. Result: Moharebeh is a result-oriented crime, meaning it must lead to disruption of security. If the act does not result in harm or fear that disrupts public peace, it does not qualify as moharebeh.

When something is said to be in the ruling of a particular act, it means that the act in question is not essentially the same as that act. When we say it is in the ruling of Moharebeh, it means that it is not Moharebeh, but another act or crime, and the punishment for Moharebeh is applied to the perpetrator of that act. Accepting this theory, it is religiously problematic

to extend the punishment of Moharebeh to other ta'zir (discretionary) crimes that do not meet the essential elements of Moharebeh. Therefore, we cannot extend the punishment of Moharebeh to other ta'zir crimes that lack the components of Moharebeh.

What is stated as in the ruling of Moharebeh must be a manifestation of efsad fil ardh (spreading corruption on earth) or another crime whose punishment is equivalent to the punishment for Moharebeh. For instance, saying that qazf (false accusation of adultery) is in the ruling of alcohol consumption does not pose an issue because the punishment for both is the same, and religiously, no problem arises.

Before the enactment of the Penal Code in 1392 (2013), we did not have the independent crime of efsad fil ardh, so its instances were considered in the ruling of Moharebeh. As a result, whenever it is said that something is in the ruling of Moharebeh, it must align with efsad fil ardh, and in other cases, it is not correct.

Sometimes, there is no direct reference to Moharebeh or efsad fil ardh, but the punishment imposed is a hudud punishment (prescribed by Islamic law), such as in drug-related crimes. In this case, the previous rulings (equality of punishment) would not pose a religious issue. Unless one adheres to the mistaken theory that the ruler can exercise absolute authority and impose discretionary punishment with the death penalty, which is unacceptable. If someone's punishment is death, their act must correspond to efsad fil ardh. Now, we will proceed with the classification of existing cases in the laws based on whether they are directly or indirectly related to the subject or not related at all.

1) Instances Not Related to the Subject

Article 515 of the Islamic Penal Code in the section on discretionary punishments states:

"Whoever attempts to harm the life of the leader or any of the heads of the three branches of government or prominent religious authorities, if they are not recognized as a Moharebeh, will be sentenced to imprisonment for a period of three to ten years."

Additionally, Article 33 of the Armed Forces Criminal Law states:
"Military personnel, at least three of whom must be involved, will be considered insurgents and will be punished as follows: a) Armed military personnel who, in collusion or collectively, refuse to obey their commanders or superiors will be sentenced to imprisonment for a period of three to fifteen years, if they are not considered Moharebeh. b) Military personnel who, as part of their service, collectively use firearms or cold weapons to assault the life, property, honor of the people, or public assets will be sentenced to imprisonment for a period of three to fifteen years, if they are not considered Moharebeh. c) Armed military personnel who, for personal, professional, or group purposes, or to gain benefits and privileges, or against the legal decisions of authorities, engage in protests, sit-ins, strikes, or in any other way disrupt order will be sentenced to imprisonment for a period of three to fifteen years. d) If the offenders are unarmed, they will be sentenced to imprisonment for a period of six months to three years. Note: If one of the offenders is armed in a group action, all individuals will be punished according to the punishments mentioned in paragraphs (a), (b), and (c) of this article."

Article 39 states:
"Any commanders or military or police officials who, according to national security council resolutions, the National Security Council, or provincial or city security councils, fail to implement decisions that they are legally obliged to follow, if they are not subject to the punishment of Moharebeh or do not face harsher punishments under other laws, will be sentenced to imprisonment for a period of six months to two years."

As can be seen from the text of the legal provisions mentioned, these crimes do not align with any of the cases outlined in Article 286 or the crime of "Fasad fi al-Ard" (corruption on Earth). Therefore, these instances cannot be considered as crimes "in the ruling of Moharebeh."

2) Instances Directly Related

Article 14 (Draft Law on the Punishment of Arms and Ammunition Smuggling and Possession of Unauthorized Weapons and Ammunition):
"Article 14 - If the judge, with the consultation of experts from the bodies mentioned in Article (4) of this law, determines that the items or materials in question are of significant quantity and have the potential for substantial harm, the perpetrator will be sentenced to discretionary imprisonment ranging from twenty-five to thirty years, unless the perpetrator is recognized as a Moharebeh."

This article states "unless the perpetrator is recognized as a Moharebeh," and the sentence is about discretionary imprisonment. It only mentions being a Moharebeh, without referring to "Fasad fi al-Ard" or "Baghy" (rebellion). Therefore, since the legislator is specifically defining and limiting the scope, the reference to Moharebeh implies the exclusion of other cases, such as "Fasad fi al-Ard" and "Baghy." To address this issue, other instances should also be

added under the category of Moharebeh. Importantly, the Guardian Council did not find this provision to be against Sharia law.

Article 498 of the Islamic Penal Code (Discretionary Punishments):
"Anyone who, with any ideology, group, organization, or branch of an organization of more than two people, forms or manages a group inside or outside the country under any name or title, with the goal of disturbing the security of the country, and is not recognized as a Moharebeh, will be sentenced to imprisonment for a period of two to ten years."

It is clear from the text of this article and the circumstances of the crime that there is a possibility of it extending into the crime of Moharebeh. Therefore, the latter part of the article correctly refers to this possibility.

In other articles such as Articles 504, 508, 526, 610, 654, 675, Articles 5 and 6 of the Law on the Enhancement of Punishments for Hoarders and Price Gougers (approved in 1988), Article 1 of the Law on Punishment for Unauthorized Border Crossers and Amendments to Some Articles of the Passport Law and the Law on the Entry and Stay of Foreign Nationals in Iran (1988 Parliament), and Articles 17, 20, 24, 29, 31, 32, 34, 35, 37, 42, 43, 44, 51, 61 to 65, 71 to 74, 78, 90, 91, 112, 115, and others of the Law on Punishing the Crimes of Armed Forces Personnel (2003), a direct relationship between the nature of these crimes and the crime of Moharebeh can be inferred. However, it is better to use the term "Fasad fi al-Ard" (corruption on Earth) instead of "in the ruling of Moharebeh" to avoid legal objections. This is because, as is evident, when these laws were enacted, the crime of "Fasad fi al-Ard" was not foreseen in our legal system. As a result, these terms were used. Given these explanations, it is suggested that the text of the provisions be revised accordingly.

3) Examples Indirectly Related to the Subject
The majority of crimes that are indirectly related to the subject fall under crimes that carry the death penalty. Regardless of whether the legislator uses the phrase "in the ruling of Moharebeh" or similar terms, all crimes punishable by death are categorized under this topic. Therefore, we must examine the relationship of these cases with Article 286 and the examples of *Fasad fi al-Ard* (corruption on Earth). If there is no alignment, the legal basis for imposing the death penalty will face a religious issue, because a *ta'zir* (discretionary punishment) should not exceed the prescribed limits. In other words, a *ta'zir* punishment should be less than the prescribed limits.

Our legislator cannot and does not have the authority to impose the death penalty for an action that is not classified under the examples of *Fasad fi al-Ard*. Hence, all such examples must be aligned with Article 286 of the Islamic Penal Code.

A similar conclusion was reached when examining jurisprudential sources regarding discretionary death penalties. In fact, discretionary death penalties do not have acceptable jurisprudential justification, and it is not permissible to disregard the right to life in the name of societal interests.

The only cases in which the death penalty is accepted are as follows:
1. Relying on Fasad (Corruption on Earth)
2. The Principle of the Authority of the Ruler (which, with the explanations given, cannot extend beyond the cases of relying on Fasad).
3. Authorization of Killing for the Repetition of Discretionary Crimes

Among all these cases, only reliance on Fasad is agreed upon by Islamic jurists, and the other cases are raised only when they are somehow related to the subject matter.
Cases of the Death Penalty in Domestic Laws

Anti-DrugLaw
The Islamic Consultative Assembly and the Expediency Discernment Council

Article 2 - Anyone who engages in poppy cultivation or grows hemp for the production of narcotics will face the following penalties based on the extent of cultivation:
1. First offense: A fine ranging from one to ten million rials.
2. Second offense: A fine ranging from five to fifty million rials and thirty to seventy lashes.
3. Third offense: A fine ranging from ten to one hundred million rials, one to seventy lashes, and two to five years in prison.
4. Fourth Offense: The death penalty.

Article 4 - Anyone who imports or exports, produces, distributes, buys, sells, or offers for sale cannabis, hashish, opium, opium extract, or opium residue, shall be sentenced to the following penalties, based on the amount of the mentioned substances:
1. Up to fifty grams: A fine of up to five hundred thousand rials and up to fifty lashes.

2. More than fifty grams but less than five hundred grams: A fine from four million to ten million rials, twenty to seventy-four lashes, and one to five years in prison.
3. More than five hundred grams but less than five kilograms: A fine from ten million to forty million rials, fifty to seventy-four lashes, and three to fifteen years in prison.
4. More than five kilograms: The death penalty and confiscation of assets, except for the costs necessary to provide for the defendant's family's reasonable living expenses.

Article 8 - Anyone who imports, produces, distributes, exports, buys, sells, offers for sale, or stores, conceals, or transports heroin, morphine, codeine, methadone, and other chemical derivatives of morphine and cocaine, as well as the chemical extract of hashish and hashish oil, shall be sentenced to the following penalties based on the amount of the substances:

1. Up to five centigrams: A fine from two hundred thousand to five hundred thousand rials and twenty to fifty lashes.
2. More than five centigrams but up to one gram: A fine from one million to three million rials and thirty to seventy lashes.
3. More than four grams but up to fifteen grams: A fine from ten million to twenty million rials, three to eight years in prison, and thirty to seventy-four lashes.
4. More than fifteen grams but up to thirty grams: A fine from twenty million to thirty million rials, ten to fifteen years in prison, and thirty to seventy-four lashes.
5. More than thirty grams: The death penalty and confiscation of assets, except for the costs necessary to provide for the defendant's family's reasonable living expenses.

And there are numerous other cases with the death penalty, where phrases like "in the manner of Moharebeh" or similar terms are not used, and the death penalty is directly prescribed for these offenses.

Opposing Views to the Above Theory

Some jurists, by referring to other bases such as the ruler's authority, the repetition of criminal acts, and so on, have argued that the legislator has the right to impose the death penalty for certain actions. However, as clarified in the previous arguments, such views cannot provide strong or sound justifications. The right to life is an inalienable human right, and it cannot be risked or compromised in favor of public interests.

Conclusion

Moharebeh (war and hostility) refers to waging war against God and the Prophet and creating insecurity within the Islamic community. In Islamic jurisprudence, specific punishments are outlined for such acts. These crimes include actions like highway robbery, terrorism, and causing fear within the community.

The findings indicate that Moharebeh is not only recognized as a severe crime, but also, due to its direct threat to the security of the community and the Islamic system, it carries harsh punishments. A jurisprudential review of crimes considered as "in the manner of Moharebeh" shows that these crimes are of significant importance in Islamic law due to their direct threat to the security and stability of the Islamic community. Jurists, based on Quranic verses and traditions, have set stringent punishments for such crimes to prevent their occurrence and preserve the safety of society.

Furthermore, an analysis of jurisprudential sources reveals that the concept of Moharebeh and related crimes has evolved throughout Islamic history, with the definitions and rulings being reviewed according to the social and political circumstances of each period.

Crimes in the manner of Moharebeh, due to their severe social and security consequences, require special attention from judicial systems in Islamic societies. This attention should be such that, while adhering to the principles of justice and fairness, it prevents similar crimes from occurring and guides the community towards lasting security and peace. This can be achieved through the development of clear laws and necessary training for both the public and executive officials.

As mentioned in the text, the punishment for Moharebeh (death penalty) must align with jurisprudential principles, and since the right to life is of such importance, it cannot be entrusted to the legislator to decide. In accordance with jurisprudential rules, the punishments for Ta'zir crimes (discretionary punishments) should be considerably lighter than those for Hudud crimes (fixed punishments), a principle that is self-evident due to the nature of these crimes relative to one another.

Therefore, as noted, a suggestion is made to amend the wording of existing laws regarding crimes in the manner of Moharebeh. Since the crime of "corruption on earth" (Mufsid fi al-Ard) has been explicitly defined and its scope widely expanded, it is advisable to change the phrasing to "if the person is not deemed a Mufsid fi al-Ard..." to avoid any semantic ambiguities. Though the legislator's intent is likely the same, such a revision would help clarify the law.

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