



Feasibility of Exempting the Milk-Father from the Punishment of Theft in Light of Jurisprudential Teachings

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Introduction

One of the significant topics in the field of Islamic jurisprudence and family law is the examination of hudud punishments and their application conditions in specific family relationships. The issue of the amputation punishment (ḥadd) for a milk-father who steals the property of his milk-child is a particularly challenging jurisprudential-legal matter. This issue holds importance not only due to the intricate jurisprudential and legal complexities surrounding hudud punishments but also because of its profound psychological and social impacts on family structure and the personality of children. On one hand, amputation of the hand is a definitive divine ruling which must be executed when specific conditions are met. On the other hand, kinship relations serve as a decisive factor, and Islam's emphasis on respecting parents and preserving family sanctity can influence the implementation of punishment. Therefore, analyzing this issue and proposing jurisprudential and legal solutions is essential and highly significant.

Research Objectives

The main objective of this study is to investigate the possibility of exempting the milk-father from the hudud punishment of hand amputation

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for theft from his milk-child, providing jurisprudential and legal arguments supporting this position. This study seeks to offer a comprehensive view by integrating jurisprudential foundations and findings from the humanities and to address the following questions:

1. Is the punishment of hand amputation applicable to a milk-father who steals from his milk-child?
2. Does jurisprudence and law provide grounds for exempting the hudud punishment in such cases?
3. From the perspective of epigenetics and psychology, can the hudud punishment be waived for the milk-father?

Literature Review

Previous research has focused on paternal guardianship over children.

- Eshaghi (2013) concluded that although the father is exempt from punishment for theft from his child, the mother could similarly be exempted.
- Ahmadvand et al. (2020) concluded that guardianship belongs to the father and paternal grandfather, allowing them to take from the child's property as necessary.

Despite their value, these studies have not examined the specific implications of milk kinship in hudud theft cases.

Methodology

This study uses a descriptive-analytical approach relying on library resources, including jurisprudential, legal, and related scientific sources.

Jurisprudential analysis involves Quranic verses, authentic narrations from the Imams, and opinions of both Shia and Sunni jurists.

Jurisprudential principles such as the rule of *dara'* (dropping of hudud in case of doubt) and *ihhtiyat* (precaution in blood-related matters) are

employed as a basis for reasoning. Moreover, the study incorporates insights from epigenetics and psychology concerning the impact of hudud implementation and parental respect on children's personalities.

The analysis proceeds by first examining rulings on milk kinship and theft, then discussing jurisprudential arguments for exempting the milk-father from hudud, and finally concluding based on collected evidence.

Results

1. Jurisprudential Analysis:

Both Ja'fari and Sunni jurisprudence consider hudud punishments as definitive divine rulings. However, when enforcement conflicts with other principles, such as respect for parents, jurists tend to exempt the punishment, citing established principles like *la darar* (no harm) and *dara'* (removal of hudud in doubt). The hadith "You and your property belong to your father" does not imply ownership but calls for tolerance due to the necessity of respecting parents, including milk-parents. The circumstances of the hadith's revelation suggest a legislative concern for honoring parental dignity. The authors argue that the Qur'anic verses on theft do not specify details but establish the general rule, supporting a contextual understanding.

2. Legal Analysis:

Legally, the implementation of hudud punishments involving family members faces limitations. Iran's legal system emphasizes family sanctity and mitigates punishments in familial contexts. The broad application of the principle of *dara'* reinforces the possibility of dropping hudud punishments in ambiguous cases, including in the establishment and proof phases.

3. Psychological Analysis:

The study shows respect for parents profoundly affects children's behavior and personality. From an epigenetic standpoint, environmental factors influence gene expression related to social and emotional behavior. Severe punishments within the family context can negatively affect children's mental health and moral development, influencing future decision-making.

Conclusion and Recommendations

The findings suggest that in hudud punishment cases involving the milk-father, certainty should be strictly established before execution, and severe penalties such as amputation should be avoided. The study interprets the term "father" to include the milk-father, considering it a specific case under Article 268 of the Islamic Penal Code. Given the presumption of doubt and jurisprudential expansion of the *dara'* rule,

which requires only a possibility of doubt to exempt hudud, the milk-father should be included within this leniency. Since respect for parents is fundamental in Islam and milk kinship is a form of parental relationship, enforcing hudud in ways that violate this principle faces jurisprudential challenges. The positive effects of parental respect and the imperative to preserve family dignity support the reduction or waiver of hudud punishments in such cases. Additionally, family protection and punishment mitigation in familial matters are emphasized in Islamic legal systems. Therefore, it is justifiable to refrain from applying the general rule of theft punishment strictly to milk-fathers. According to Articles 120 and 121 of the Islamic Penal Code and the principle of *dara'*, a specific rule takes precedence over a general rule when applicable. Ultimately, this study proposes adopting an approach focused on reducing punishments and preserving family integrity in hudud cases involving milk-fathers. This approach aligns with jurisprudential and legal principles and offers psychological benefits for family welfare and child development. It may also serve as a model for revisiting hudud rulings in specific family contexts.

Keywords: Theft by Father, Milk-Child, Rule of Dara', Islamic Penal Code

References

- *Holy Quran*.
- Ahmadvand, Kh. & Tal, H. (2019). *Investigating the Legal and Jurisprudential Dimensions of the Hadith "You and Your Property Belong to Your Father"*. Journal of Judicial Law, 1(2), 153-170. In Persian.
- Ansari, M. (n.d.). *A Treatise on the Principles of Islamic Jurisprudence*. (Vol. 1). Place of publication unknown: Publisher unknown. In Arabic.
- Awda, Abdul Qader (n.d.). *Islamic Criminal Law compared to positive law*: Beirut: Institute al-Risalah. In Arabic.
- Bahnassi, Ahmad Fathi (1980). *An Introduction to Islamic Criminal Jurisprudence*. Beirut: Dar al-Sharq. In Arabic.

- Bahuti, Mansur (1402AH). *A Commentary on al-Iqna*. (Vol. 6). Beirut: Dār al- Kutub Ilmiyyah. In Arabic.
- Bejnordi, M. (2022). *Principles of Jurisprudence*. (Vol. 1). Tehran: Uruj Institute. In Arabic.
- F. Desportes; F. Le Gunches(1996). *Le Nouveau Droit Penal*, Paris. Englisg.
- Fathel Hindi, Muhammad Hasan (1416 AH). *Clarifying the Ambiguities in the Rules of Jurisprudence*. (Vol 10). Qom: Islamic Publications Office. In Arabic.
- Fazel Aabi, Hasan ibn Abi Talib (1417 AH). *An Exposition of the Symbols in the Concise Benefit* (Vol 2). Qom: Islamic Publications Office. In Arabic.
- Fazel Lankarani, Mohammad (1406 AH). *The Elaboration of Jurisprudence in Explaining the Purification Manual*. Qom: Institute athaar. In Arabic.
- Guerrero-Bosagna, C. , & Skinner, M. K. (2012). *Environmentally induced epigenetic transgenerational inheritance of phenotype and disease*. *Molecular and cellular endocrinology*, 354(1-2), 3-8. Chicago. English.
- Hasan, Helli (1420 AH). *A Codification of Islamic Jurisprudence According to the Imamiyyah School*, (vol 5).Qom. Imam Sadiq Institute. In Arabic.
- Haydari, Sayyed Ali-Naqi (1412 AH). *Principles of Legal Reasoning*.Qom; Seminary Management Council. In Persian.
- Hussein Montazeri, *The Book of Limits*. Qom: House of Thought Publications. In Arabic.
- Ishaqi, M. (2013). *An Examination of the Punishment for Theft from a Child*. *Journal of Islamic Jurisprudence and Legal Foundations*, 46(2), 161-181. In Persian.
- Jubayi Amili, Zayn Addin (1412 AH). *A Commentary on Lumah Dimashqiyyah*. (Vols. 2 & 5). Qom: Islamic Propaganda Office. In Arabic.
- Jundi, Abdulmalik (n.d.). *the Criminal Encyclopedia*. (Vol. 5). Beirut: Dare eiya Turath Arabi. In Arabic.
- Kasani, Ala addin (1982 CE). *Novelties of Crafts in the Arrangement of Jurisprudence*. (Vol 7). Beirut: Dar al-Kutub.

- Khansari, Sayyed Ahmad (1405 AH). *Comprehensive Collection of Evidences*. Vol 7. Qom. Esmailiyan. In Arabic.
- Khoei, Sayyed Abul-Qasem (1368 AH). *The Best Explanations*. (Vol 2). Qom. Mustafavi Bookstore. In Arabic.
- Khoei, Sayyed Abul-Qasim (1396 SH). *Foundations of Completing the Methodology*. (Vol 1 & 2). Qom: Mustafavi Bookstore. In Arabic.
- Kothari, Abbas (2015 CE). *Analytical Encyclopedia of Quranic Synonyms and Semantic Varitions*. (Vol 1). Qom. Islamiyyah. In Persian.
- Variations. (Vol 1). Qom: Islamic Sciences and Culture Research Institute. In Persian.
- Kulayni, Muhammad ibn Yaquub (1998 CE). *The Book of Jurisprudence*. (Vol 7). Tehran: Kutub Islamiyyah. In Arabic.
- Lewis, Maalouf (1986 CE). *The Arabic Dictionary*. (Vol 1). Beirut: Center For Dar al-Mashreq. In Arabic.
- Mahdavi-Kany, Sedigheh (2013). "The Governing Principles of Family Members Relationships in the Islamic Knowledge System". *Journal of Family Law and Jurisprudence*. 18(58). pp. 5-32. In Parsian.
- Makarem Shirazei, Naser. (1388 SH). *A Model Interpretation of the Quran*. Vol 2 & 17. Tehran. Islamic Book Center. In Persian
- Maki Amili, Jamal addin Muhammad. *The Damascus Luminosity*. Place Unknown: Publisher Unknown. In Arabic.
- Maraashi Najafi, Shahab addin (2004). *Theft in the Light of the Quran*. Qom: Maraashi Bookstore. In Arabic.
- Marvarid, Ali Asghar (1999). *The Chain of Jurisprudential Springs*. Beirut: Shia Institute of Jurisprudence. In Arabic.
- Mejlesehi, Muhammad Baqir (1983 CE). *The Seas of Luminosity*. (Vol 100). Dare Ihya Turath. In Arabic.
- Mir Mohammad Sadeghi, Hussein. (1392). *Crimes against Property and Ownership*. Tehran: Mizan Publications. In Persian.
- Mohammadgholiha, Fatemeh; Sedigheh Mahdavi-Kany; Mozhdeh Taghizadeh-Khajaki (2022) "Methodology of Acquiring Principles Governing the Family with Application to the Discovery Method of

Martyr Sadr". Journal of Family Law and Jurisprudence. 27(77). pp. 51-77. In Persian.

- Mohammadi Gilani, Mohammad (2005). *Islamic Criminal Law*. Tehran: Saye Publications. In Persian
- Mohammadi, Abul-Hassan (2023). *Foundations of Islamic Legal Inference*. Tehran: University of Tehran Press. In Persian.
- Mohhaqiq Damad, Sayyed Mostafa (2002 CE). *The Rules of Islamic Jurisprudence: Penal Section*. (Vol 4). Tehran: Center for Islamic Sciences Publications. In Persian.
- Muhammad ibn Idris, Helli (1410 AH). *The Comprehensive Repository for the Formulation of Fatwas*.(vol 3). Qom. Islamic Publications Office. In Arabic.
- Muzaffar, Mohammad Reza. (N.d)*Principles of Islamic Jurisprudence*. (Vol 2). Qom: Esmailiyan. In Arabic.
- Najfi, Muhammad(1363 AH). *The Jewels of Discourse in the Explanation of Islamic Jurisprudence*. (Vol 41). Tehran: Islamic Books House. In Arabic.
- Najm addin, Helli (1408 AH). *The Laws of Islam Concerning the Lawful and the Forbidden*. (Vol 4). Qom. Esmailiyan. In Arabic.
- Norbaha, Reza (1392 SH). *Foundations of Public Criminal Law*. Tehran: Ganj Danesh Publications. In Persian.
- Qaraati, Mohsen (1994). *The Enlightening Commentary on the Quran*. (Vol 2). Tehran: Cultural Center of Lessons from the Quran. In Persian.
- Qurtubi, Muhammad ibn Ahmad (1405 AH). *The Compendium of Quranic Jurisprudence*. (Vol 6).Tehran: Nasser Khosrow. In Arabic.
- Ragheb Isfahani, H. (1992). *A Dictionary of the Quranic Vocabulary* Beirut: House of Knowledge. In Arabic.
- Rawandi, Qutb addin (1425 AH).*Jurisprudence of the Quran*. (Vol 2) Qom: Marashi Najafi Library. In Arabic.
- Ruhollah Musavi Khomeini, (1403 AH).*The Elaboration of the Means of Salvation*. (Vol 2). Qom: House of Knowledge Publications. In Arabic.
- *Saba Law Collection*, 2023 Edition. In Persian.

- Sadeghi Moghaddam, Sayyed Amirali (2019). *Examination of the Rejection of a Case by a Judge Based on Knowledge Obtained Through Unreliable Means*; Masters Thesis University of Meybod. Supervised by Dr. Ardavan Arjang. In Persian.
- Saduq, Muhammad ibn Ali (1404 AH). *A Manual of Islamic Law*. (Vol 4). Qom: Islamic Publications Institute. In Arabic.
- Safaei, Sayyed Hossein; Imami, Asadollah (2018). *concise Law family*. Tehran: Mizan.Publications. In Persian.
- Samarqandi, Nasr ibn Muhammad (1314 AH). *The Commentary of Samarqandi*. (Vol 1). Lebanon: Dar al-Fikr. In Arabic.
- Sarakhsi, Shams addin (1406 AH). *The Comprehensive*. (Vol 9). Beirut: Dar al-Marifah. In Arabic.
- Shabestari, Abdol-Hussein (1379 SH). *Persons and Places Mentioned in the Quran*. Qom. Center for Publications of the Islamic Office of Propaganda". In Arabic.
- Shathili, Sayyed Qutb (1412 AH). *Commentary in the Shadow of the Quran*. (Vol 2). Beirut: Dar al-Sharq. In Arabic.
- Tabatabaei, Sayyed Ali (1422 AH). *A Treatise on Islamic Jurisprudence*. (Vol 2 & 13). Qom: Islamic Publications Institute. In Arabic.
- Tabatabaei, Sayyed Mohammad Hossein (1390). *The Criterion of Interpretation*. (Vol 5). Beirut: Aalami. In Persian.
- Tusi, Abu Jaafar (1407 AH). *A Treatise on Jurisprudential Disagreements*. (Vol 5 & 6). Qom: Islamic Publications Office. In Arabic.
- Tusi, Abu Jaafar (1443 AH). *The Pinnacle of Pure Jurisprudence and Fatwas*. Tehran: University of Tehran Press. In Arabic.
- Ubeid, Raouf (1979). *Principles of the General Part of Criminal Legislation*. Cairo: Daral-Fikr. In Arabic.