



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

Hamid Rostaei sadarabadi² Sayyed Amirali Sadeghimoghaddam¹
Mohammadmehdi barghi⁴ Abbas Kalantari Khalilabad³

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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

1. Ph.D. student in Criminal Law and Criminology in Meybod University, Meybod, Yazd, Iran. Sadeghimoghaddam1369@gmail.com

2. (Corresponding Author) Assistant Professor in the Department of Islamic Law and Jurisprudence at Meybod University, Meybod, Yazd, Iran. rostaei@meybod.ac.ir

3. Professor in the Department of Islamic Law and Legal Theory at Meybod University, Meybod, Yazd, Iran. abkalantari@meybod.ac.ir

4. Assistant Professor of Law at Meybod University, Meybod, Yazd, Iran. barghi@meybod.ac.ir

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

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