A contemplation on punishing recidivism of filicide and addiction to it based on Imami jurisprudence`s capacities

Hasan Ali Moazzenzadegan
Yusef Fateminia
Muhammad Ja`far Sadeqpour

Abstract

For proving the retaliation, the Muslim jurisprudents` agreement on stipulation of termination of paternity is indisputable. Nevertheless, there are differences as to the problems related to that stipulation. One of the important issues which has been rarely considered among them, is recidivism of filicide or addiction to it. According to the philosophy of legislating retaliation or similar cases in jurisprudences such as realizing addiction to murder a man slave, it is possible to conclude that a father may be retaliated in the assumption of recidivism of filicide or addiction to it. Similarly, the evidence of necessity of murdering some ones who have perpetrated the mortal sins more than three times or also evidence of corrupting on the earth can be referred in this concern. In this paper, based on the absoluteness and generality of evidence connecting the exemption of a father from retaliation (however he may be killed in some above cases), it was shown that all these forms are not enough for proving retribution of a father, and if they have proved it in some cases, it is not for as a retaliation but for an another criminal title.

Key words: murder, retaliation, termination of paternity, addiction and recidivism.

Semantics of indefinite noun in the science of jurisprudential principles and its jurisprudential function

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Sayyed Kaziem Mostafavi

Abstract

The word of indefinite noun has four identifiers in the discourse of the science of jurisprudential principles (Ilm al-usul al-fiqh), and there are three main concepts in its sense which are stated by the Ulam`. Some believe that its concept is always general, and others have expressed the idea of its particularity and some others have selected the intermediate theory; the latter group believe that if infinite noun occurs in the context of declarative sentence, its meaning is particular, and if it is located in the form of imperative statement, its meaning will be general. On the other hand, on the controversy in semantics of this institution in this science, a jurisprudential function has not been provided, and sometimes it was believed that it has no the mentioned function. Therefore, with explaining all the theories and criticizing the opponent ideas, the author is seeking to making his selected theory clear. In the following, the author will clarify Saheb al-fosul`s theory, and describe the famous intention of the usuli scholars concerning "farde moraddad (doubted meaning)" , and justify incorrectness of the term "tankir (indefinitness)" as to tanvin of the words such as term "rajolon (on male)", and finally provide and analyze the jurisprudential function of the discussion.

Key words: usuli indefinite noun, general, particular, farde moraddad, tanvine tankir, jurisprudential function and sa`e sobrah (three kilos from the wheat).

Studying the quality of the jurisprudents` reasoning as to the rational rules in the process of inference

Ahmad Baqeri
Razieh Sadat Hashemi Olya

Abstract

The wide disagreement concerning the question of applying the rational rules to the jurisprudence is an indicator of the necessity of a normative definition for this issue. The rational rules are created by intellection, and the jurisprudential precepts are the holy legislator`s innovation. The rule of "impossibility of oxymoron" is the root of many other rational rules, such as "impossibility of circle", " impossibility of sequence," " impossibility of some causes for the unitary effect," and so on, which their application to the different jurisprudential topics is a matter of dispute among the jurisprudents. By examining and analyzing the cases of functioning rational rules in the jurisprudence, this paper has sought to provide a criterion of applying rational rules in the process of inference. Based on the findings of this research, except in the special cases related to an external subject of a legal ordinance, the rational rules are relevant to the process of inferring the legal injunctions, because the position of jurisprudence is for the religious innovations, and the existence of them based on nass (explicit text), `orf (common sense), maslaha (expediency), etc., is valid in this regard.

Key word: jurisprudence, inferring the precepts, foundations of legislation, rational rules, `orf, maslaha.

Unchangeable hodud (determined corporal punishment) in Islam

Mohammad Ali Khademi Kousha

Abstract

Despite some determined hodud and corporal punishments for some especial crimes are much earlier background than Islam, and the Prophet`s emphasis is on the implementation of their unchanged penalties, and the opposition of the Jews around Medina to their conversion, nowadays, it has being heard that some people are proposing a theory of changing Islamic punishments. Since stability and immutability of Islamic hodud (as the first percept) is according to the jurisprudential method and the certainties of all the Islamic sects, there was no doubt that it would be proved. For this reason, it appears that the mentioned idea has been provided without attention to the background of stability of hodud and without full access for reasons of them. As a result, for possibility of evaluating such a theory, it seems necessary that the evidence that can be the basis of the jurisprudents` opinion is briefly - and as much as a paper - to be considered and explained. Accordingly, for the first time, this paper has provided 17 evidence that according to the method of jurisprudence and philosophy of the precepts, the principles of jurisprudence and theology can indicate the immutability of the hodud punishments.

Key words: hodud, corporal punishment, determined penalties, Islamic punishment.

Jurisprudential feasibility study of transition from corporal punishment

Rahim Nobahar

Abstract

This paper seeks to find jurisprudential foundations that based on them, legal feasibility of transition from corporal punishment as the hodud (determined penalties) or ta`zir (discretionary punishment) can be theorized. Relied on the evidenc such as being confirmative of all the punishments stated in religious texts, lacking importance of the form and method of executing a punishment, being importance of the intended aims in executing a punishment for the wise of the world, non -worshipfulness of the ordinances concerning the kinds of punishments and, consequently, the necessity of understanding the texts related to determining punishment in the light of rational change and development, this paper has justified transition from corporal penalties - whether as hodud or ta`zir- as a jurisprudential theory, though the door of debate is open. Similarly, in this research, transition from corporal penalties has been validated according to the second titles of the precepts, the secondary effects of executing the bodily punishments such as public condemnation in Muslim and global societies, and the broadness of Islamic government jurisdiction. Of course, sometimes some second titles of the precepts are making legality of executing bodily penalties confront to problem. Suggesting the alternatives of the bodily punishments - if they are permitted , is not subject matter of this article, and needs a separate opportunity.

Key words: criminal jurisprudence, bodily penalty, stoning, flogging and amputation.

Jurisprudential considering the rule of "adherence of interests to property" and removing its prevention in the formation of cooperative companies

Ahmad Ali Yusofi
Sayyed Ibrahim Sabbaghian

Abstract

In some economic activities, productions are produced by sharing work force of the labor with the capital of its owner. Based on the rule of "adherence of interests to property", production is located on the ownership of possessor of the capital, and the work force should be only satisfied with the wage. Accordingly, Contracts such as modarabah (sleeping partnership) have been criticized by some people. Concerning the cooperative companies, this critique is more obvious. In other words, in the cooperatives, we faced with this question that in spite of the mentioned rule, is an economic activity as the form of the cooperatives correct? Based on the raised question, study hypothesis is: If a number of work forces jointly provide capital of an economic activity, they have the right to determine the suitable and limited interests according to the religious standards and their agreement on the capital; and the rest of productions and interests can be distributed among the work forces in terms of amount of their work and their roles on producing output and interest. Therefore, according to the jurisprudential criteria, there is no any problem to establish the companies such as common cooperatives. In order to answer the above question and also to study the research hypothesis, this research has been carried out with the text analysis and library method, and the produced results indicate that the rule is related to the natural interests and such a rule is not applying to the commercial contracts. Assuming that this rule is confirmed, if the economic actives agree to each other, they have right to do based on the agreement. Therefore, the cooperatives in their common meaning, have no jurisprudential problem from this rule.

Kew words: cooperative company, adherence of interests to property, capital, work force and produced output.

Contents

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