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The Role of Canonical Ruler in Transformation of Hadd to Ta'azir Punishments

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Abstract

In the Islamic perspective the ruler is a consummate jurisprudent with special authority. In criminal matters, for example, the ruler also has a prominent role, such as setting limits (Hadd) to accepted behaviors and punishments for reprehensible behaviors. In fact, in the case of convenience and special circumstances, the ruler can disapprove or modify a certain punishment. The objective of the article is then to analyze the role of the canonical ruler in the transformation of limit punishments or corporal punishment (tazir) in Iran. Based on the descriptive analytical method, the work concludes that, according to the belief concerning the permission to implement the limits during the time of The Absence, the basic principle is the lack of permission to switch the limits. But if the religious ruler realizes that the implementation of the limits, in certain circumstances, is contrary to the application objectives, the interests of Islamic society and the maintenance of the government, or in the confrontation with certain rules, such as “to be ashamed” (جرح‌ال) and “without harm” (ررضال), he can rule to commute the sentence.

Keywords: role of the canonical ruler in Iran; Hadd; Ta'azir; jurisprudential protection; Islamic law.

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El papel del gobernante canónico en la transformación de los castigos hadd en tazir

Resumen

En la perspectiva islámica el gobernante es un jurisprudente consumado con autoridad especial. En materia penal, por ejemplo, el gobernante también tiene un papel destacado, como establecer límites (Hadd) a las conductas aceptadas y castigos a los comportamientos reprochables. De hecho, en el caso de conveniencia y circunstancias especiales, el gobernante puede desaprobar o modificar un castigo determinado. El objetivo del artículo consiste entonces en analizar el papel del gobernante canónico en la transformación de los castigos límites o castigos corporales (tazir) en Irán. Con base en el método descriptivo analítico, el trabajo concluye que, según la creencia concerniente al permiso de implementación de los límites durante el tiempo de La Ausencia, el principio básico es la falta del permiso para conmutar los límites. Pero si el gobernante religioso se da cuenta de que la implementación de los límites, en determinadas circunstancias, es contraria a los objetivos de aplicación, los intereses de la sociedad islámica y el mantenimiento del gobierno, o en el enfrentamiento con ciertas reglas, como “ser avergonzado” (جرح ال) y “sin daño” (ررضال), puede gobernar para conmutar la pena.

Palabras clave: rol del gobernante canónico en Irán; Hadd; Ta’azir; tutela jurisprudencial; derecho islámico.

Introduction

The people are always in need of a government that takes care of their affairs and this issue is not specific to a special time or place. Therefore, there is no difference between the times of presence and absence for the people are also in need of individuals that can shoulder their affairs on behalf of the Imam during his absence. Such a proctorship belongs to the just jurists.

The guardianship of the jurists at the time of occultation is like the guardianship of the rulers and deputies installed by the Imam himself in the era of presence. A substantial part of the considerable role considered for the ruler in line with the arrangement of the common jurisprudential relations in the society can be analyzed within the format of the ruler’s duties and obligations. The ruler’s role is related to the obligations he has to shoulder (Masjedsara’ei and Kabiri, 2015: 12). In penal affairs, as well, the outstanding role of the ruler is well clear in cases like the enforcement of

the Hadd and Ta'azir Punishments. By ruler, a well-qualified exegete with judgment position is intended (Ja'afari Langarudi, 2012: 58-69).

Shahid Thani states that well-qualified jurispudent is intended by ruler; "Al-Morad Bi Al-H ākem Haith Yatleq Fi Abw āb Al-Fiqh, Al-Faqih Al-J āme'e Li Shar āyet Al-Fitw ā Ejm ā'an"⁴ (Shahid Thani, Mas ālek Al-Afh ām, 1993: 161).

As it is observed, besides realizing the capability of issuing decrees as a qualification for the well-qualified jurispudent, Shahid claims consensus in this regard. This article has been written based on a descriptive-analytical method to deal with the role and authority of the ruler in the transformation of Hadd to Ta'azir Punishments and to investigate the foundations of such an authority.

In regard of the role of ruler in transforming Hadd to Ta'azir Punishments, it has to be stated that since there are discrepancies amongst the jurispudents regarding the enforcement of the divine limits (Hodūd as a plural for Hadd) in the occultation time, the transformation of Hadd to Ta'azir punishments is justifiable based on the opinions of the individuals who do not realize it permissible to enforce Hadd punishments during the occultation period; however, based on the perspectives of the jurispudents who realize it permissible to enforce Hadd punishments during the occultation period, the question raised is that whether the Islamic ruler can rule the transformation of Hadd to Ta'azir punishments under certain conditions or not?

1. A Review of Some Perspectives About the Ruler's Authorities

As it was mentioned, a jurispudent qualified for issuing decrees is intended by ruler. He has special authorities. The forthcoming part points to some perspectives regarding the ruler's authorities.

Allameh Tabataba'ei states in this regard that "the existence of the authorities for the ruler is a natural principle like the authorities of a family head. The relationship between guardianship position and Islamic government with the religious organization and social system is the same as the relationship between the family head and organization of the family and family members. The ethereal rules and regulations of Islam have been revealed to the great prophet and they are termed the Islam's canon and Allah's verdicts.

4 All fragments of texts that are transliterated from Farsi or Arabic to English throughout the article do not, from our point of view, agree that they will be translated without losing much of their ceremonial meaning and original meaning.

According to the sure documents in the holy Quran, the book, and the tradition, the Sunnah, there are regulations that are invariable and fixed and the enforcement of them and the punishment of their violators are carried out by the Islamic guardianship position and it is in the light of the canonical regulations and observance of the accordance with them that the jurisprudential guardianship can adopt a series of proper decisions based on the time's expediencies and enact regulations according to them and enforce these regulations in a timely manner; the foresaid regulations are indispensable and enjoying credibility like canon (Tabataba'ei, 1962: 83).

In a discussion under the title of "Fi Bay ān Wazifeh Al-Olam ā Al-Abr ār Wa Al-Foqah ā Fi Omūr Al-N ās", Naraghi divides all the things under the guardianship of the just jurisprudent into two sets:

The first set includes the things over which the great prophet and the immaculate Imams have had guardianship and proctorship as the rulers of the people and the fortresses of Islam; all of them also under the guardianship of the jurisprudential guardianship unless they are excluded through consensus or explicit text and/or another reason.

The second set includes all the affairs related to the people's religious or corporeal matters. These affairs are not drawn on the intellectual rulings and habits and they should be necessarily carried out for the corporeal or otherworldly tasks of an individual or a group of Muslims depend on them or they are affairs that have been canonically ruled obligatory due to such principles as consensus, no-loss axiom, no-hardship axiom or no-harm maxim in the affairs of the Muslims and/or for another reason. They can be affairs the performance of which has been allowed by the canonical ruler, but their accomplishment has not been assigned to a certain person nor group. All these cases are to be shouldered by the jurisprudential guardianship and it is his right to take measures in line with getting them done (Naraghi, 1997: 536).

In the book "Kitab Al-Bay'e", Imam Khomeini deals with the ruler's authorities and states in this regard that "Fa Li Al-Faqih Al- ādel Jami'e M ā Li Al-Rasoul wa Al-A'emmah Alayhem ā Al-Salam Mimm ā Yarje'e El ā Al-Hokūmah Wa Al-Si āsah Wa L ā Ya'aghal Al-Feraq Li An Al-W āli Ayye Shakhs K ān Howa Mojri Ahk ām Al-Shari'ah Al-Moqim Li Al-Hodūd Al-El āhyah Wa Al-Akhz Li Al-Khar āj Wa S āyer Al-M āliy āt Wa Al-Motasarref Fih ā Bim ā Howa Sal āh Li Al-Moslemin" (Khomeini, 2001: 464) meaning "the just jurisprudent has all the authorities the prophet and the immaculate imams (peace be upon them) have; of course, in affairs that return to the government and the politics and it is not reasonable to make differences between them because the ruler, no matter who he is, has to enforce the rules of the religion and observe the divine limits and receive tributes and collect taxes and it is him who can make interventions in these affairs for the sake of the Muslims' expediencies".

As it is observed, the ruler has authorities that are related to both the government and the politics as well as the canonical rules and observance of the divine limits. Considering the discussion subject, we seminally deal with the jurists' perspectives regarding the enforcement of the Hadd punishments during the occultation time and subsequently explore the role and authorities of the ruler in the transformation of the Hadd to Ta'azir punishments.

2. Conceptualization of Hadd Punishments and their Enforcement During the Occultation Time:

In dictionaries, many meanings have been mentioned for Hadd [limit]. Amongst them, such meanings as the distinction and separation between two objects, punishment and the extreme end of a thing can be pointed out. The followings are some of these meanings:

Al-Hadd: Al-H ājez Bain Al-Shay'ayn Al-Lazi Yamna'a Ekhtel āt Ahadahom ā Bi Al- ākhar (Ragheb Esfahani, 1992: 221).

Hadd: Fasl Bain Kollo Shay'ayn Hadda Bainahom ā (Farahidi, 1990: 19).

Al-Hadd: Al-Fasl Bain Al-Shay'ayn Wa Montah ā Kolle Shay'e (Ibn Manzour, 1994: 140; Jawhari, 1990; Waseti, 1994: 410).

Al-Hadd Fi Al-Loqah Al-Fasl Wa Al-Man'e (Fayyumi, no date: 124)

In defining Hadd, Ameli states that "Al-Hadūd Jam'e Al-Had wa Howa Loqah: Al-Man'e Wa Minho Akhz Al-Hadd Al-Shar'ei Li Kawnehi Zari'eh El ā Man'e Al-N ās An Fe'el Mawjebahū Khashiyah Min Woqū'ehi Wa Shar'an: Oqūbehi Khaseh Tata'allaq Bi Ayl ām Al-Badan Bi w āsetah Talbes Al-Mokallaf Bi Ma'asiyah Kh āsseh Ayn Al-Sh āre'e Kammiyyatoh ā Fi Jami'e Afr ādehi" (Ameli, 1993: 325).

The author of *Riyadh Al-Mas āyel*, as well, states in a similar definition that "Al-Hodūd Wa Jam'e Al-Hadd Howa Loqah Al-Man'e Wa Shar'an Oqūbahū Khassah Tata'allaq Bi Ayl ām Bain Al-Mokallaf Bi W āsetah Talbesahū Bi Ma'asiyah Khasseh Ayn Al-Sh āre'e Kammiyyatoh ā Fi Jami'e Afr ādehi" (Tabataba'ei, 1998: 433).

The author of *Al-Tanfih Al-R āye'e*, as well, has expressed similar expressions (Saywari, 1984).

As for the enforcement of the limits [Hadd Punishments] during the occultation era, there are discrepancies amongst the jurists. Of course, it has to be stated that a group of jurists who disagree with the enforcement of Hadd punishment during occultation time do not mean that

the Hadd punishments can be absolutely left unenforced rather they believe that the Hadd punishments are transformed into Ta'azir punishments and differ based on the general regulations of Ta'azir in respect to the temporal and spatial conditions as well as crime type and the criminal's personality.

He believes that only the immaculate Imam (may Allah hail on him) or a person installed by him has the right to enforce Hadd punishments; he continues his statements with expressing the ideas of the proponents through the use of the term "they say": "Wa Qila Yojawwez Li Al-Foqah ā Al- ārefin Eq āmah Al-Hodūd Fi H āl Qaibeh ā Al-Imam (Alayhe Al-Salam)" (Ibid, p.313). Amongst the contemporary jurists, Ahmad Khansari, as well, agrees with Mohaqqueq Helli (Khansari, 1985: 412).

In the book "Al-Bay'e", Ansari points in this regard to two sets of affairs, namely those the legitimacy of which is externally sure and those the legitimacy of which is doubted. He states that the first set includes the obligations the fulfillment of which by a person makes it unnecessary for the others to perform them even in the absence of a jurist; in these affairs, the jurisprudential guardianship has the guardianship right. As for the second set like the enforcement of the Hadd punishments, he expresses that "Ez ā Arrafat H āz ā Fanaqūl Moqtazi Al-Asl Adam Thobūt AL-Wel āyah Li Ahad-Bi Shay'en Min Al-Omūr Al-Mazkūrah Kharrajn ā An H āz ā Al-Asl Fi Khosūs Al-Nabi Wa Li A'emmah Salaw āt Allah Alayhem Ajma'ein Bi Adellah Al-Arba'ah" (Ansari, 1991: 81).

However, the author of Jawaher is atop of the proponents and he believes that most of the Imamiyyeh jurists believe in the enforcement of Hadd punishments during the occultation time (Mohaqqueq Damad, 2004: 284).

Amongst the proponents is Imam Khomeini who has the following words in this regard: "Fi Asr Qaibeh Wali Al-Amr Wa Sultan Al-Asr Ajjal Allah Farajahū Al-Sharif Yaqūm Nawwabehi Al- āmmeh Wa Hom Al-Foqah ā Al-J āme'un Li Shar āyet Al-Fitw ā Wa Al-Qaz ā'a-Maq āmahū Fi Ejr ā'a Al-Si ās āt Wa S ā'er M ā Li Al-Em ām Alayhe Al-Salam Ella Al-Bed āh Bi Al-Jihad" (Khomeini, no date: 482).

In the above expressions, Imam Khomeini explicitly realizes the performance of all the political affairs except the preliminary jihad during the occultation era as the duty of the jurisprudential guardianship.

2.1. Proofs of the Proponents: Enforcement

Hadd (pl. Hodūd) punishments have been enacted in respect to the public expediencies and prevention of depravities and inhibition of transgressions

and mutiny amongst the people and the dedication of the time of Hadd punishments' enforcement to a given time contradicts the foresaid goals. And, surely, the presence of the Imam himself does not bring about any change in such enforcements. So, the wisdom leading to the canonization of the Hadd punishment still exists at the time of occultation and renders the Hadd punishments' enforcement expedient (Mohaqqeq Damad, 2004).

2.1.2. Narrations

Omar Ibn Hanzaleh's Approved Quotation

An Omar Ibn Hanzaleh, Q āl Sa'alto Ab ā Abdullah (Alayhe Al-Salam) An Rajolain Min Ash āben ā-Bainahom ā Mon āze'ah Fi Dain Aw Mir āth Fat-han Kam ā El ā Al-Sultan Wa El ā Al-Qaz āh Ayahella Z āleka Q āl Min Tah ākom Elayhem Fi Haqq Aw B ātel Fa Ennam ā Tah ākom El ā Taqūt wa ... Q āl Yanzor ān Man K āna Minkom Mimmān Qad Rawaya Hadithan ā wa Nazara Fi Hal ālen ā Wa Arrafa Ahk āmen ā-Fa Liyazū Behi Hokman Fa Anni Qad Ja'altahū Alaykom H ākeman Fa Ez ā Hakama Bi Hokmen ā Fa Lam Yaqbal Minho Fa Ennam ā Estakhaffa Bi Hokm Allah Wa Alayn ā Radda Wa Al-R ādda Al ā Allah- Wa Howa Al ā Hadd Al-Sherk Bi Allah (Horr Ameli, 1989).

In this narration, Imam Sadeq (PBUH) realizes requesting a tyrant judge and sultan for judgment as being equal to requesting demon's judgment and his highness orders that one should go for judgment to a person who expresses our words and considers our prohibited and permitted things and knows our verdicts so you should be satisfied with what he rules and he who does not accept his sentences has humiliated the divine verdicts and rejected us and he who rejects us has rejected the God and this is equivalent to polytheism".

Narration by Hafas Ibn Qi āth:

An Hafas Ibn Qi āth, Q āl Sa'alto Aba Abdullah (Alayhe Al-Salam) Man Yotayyem Al-Hodūd Al-Sultan Aw Al-Q āzi Fa Q āl Eq āmah Al-Hodūd El ā Man Elayhe Al-Hokm" (Saduq, 1993).

In response to Hafas Ibn Ghi āth and in regard of the question as to who is qualified for enforcing Hadd punishment, Imam Sadeq (PBUH) ordered that enforcement of Hadd punishment is in the hands of the person who has the command in his hands.

2.1.3. Generalization of the Hadd Punishments' Proofs

Proofs of Hadd punishments (ĀYĀT and narrations) are absolute and not specific to a certain time such as the ĀYA related to the Hadd punishment for fornication as ordered by the God: “Al-Z āniyah Wa Al-Z āni Fa Ejladū Kolla W āhedeh Minhom ā Me’ata Jaldaten” as well as the ĀYA related to the Hadd punishment of the robber as commanded by the God “Wa Al-S āreq wa Al-S āreqah Fa Eqta’ū Aydiyahom ā”. Based on these proofs, the enforcement of Hadd punishments is obligatory without it being specific to the time of the immaculate imams’ presence or, in other words, these proofs do not imply the individuals who can enforce the Hadd punishments (Mohaqqeq Damad, 2004; Haji Dehabadi, 2018).

2.2. Proofs by the Opponents

The opponents firstly answer to the proponents’ proofs and then express their own proofs.

Quoting the author of “Mab āni Takmelah Al-Minh āj” and in an answer to the proofs by the proponents, Mohaqqeq Damad has reasoned in the following words: “the prerequisite to these proofs is that the enforcement of the canonical Hadd punishment should be absolutely obligatory in every era without it being in need of an individual’s installment by the immaculate Imams (may Allah hail on them). Enforcement of Hadd punishment is the canonical duty of the jurisprudents even if the quotation by Omar Ibn Hanzaleh had not been issued. If the expediencies of the wisdom for the canonization of Hadd punishments pivot about the axis of the deserved individuals with no role being given to the enforcers of them, even the lewd persons should enforce the canonized Hadd punishments assuming the unavailability of the well-qualified exegetes and inaccessibility of the just believers like the preservation of the properties of the absentees and incapacitated persons that the lewd persons are also obliged to perform such a canonical duty in the absence of the canonical ruler (Mohaqqeq Damad, 2004).

As for the substantiation on the narration by Hafas Ibn Ghi āth, as well, the opponents believe that this narration is faulty in its document as well as in its implications hence non-substantiable (Haji Dehabadi, 2018).

Besides substantiating on a narration from Imam Ali (PBUH) who orders that “issuing a decree and enforcing the Hadd punishments and saying the Fridays’ group prayers cannot be carried out except by Imam, the opponents express that the enforcement of the Hadd punishments is

specifically done under certain conditions which are not currently available hence there is no room for the enforcement of the Hadd punishments (Haji Dehabadi, 2018).

However, the point that has been made by Mohaqqueq Damad in the summarization of the materials is of a great importance in such a way that it has been exactly expressed by Haji Dehabadi: Islam is a collection with various dimensions, namely educational, ethical, social and managerial aspects and, more importantly, a canonical and legal system which is commonly termed canon. A perfect coherence and solidarity are sensed amongst all the various abovementioned aspects.

Now, assuming the absence of all the required conditions the most of which is the existence of the perfect human beings atop of the society's management with their effective roles in the society's instruction being well evident and clear according to the right beliefs of the Twelver Shiites, the enforcement of the canonical punishments is most likely to face dubiousness and, put differently, such punishments are to be enforced under the such conditions and statuses that the believers should immediately regret the sins they have perpetrated by the Satan's temptations as they were occasionally so fearful of the otherworldly chastisement that they asked to prove presence before the great prophet (may Allah bestow him and his sacred progeny the best of His regards) and confess to their sins so that the divine chastisement can be mitigated for them.

In such a society, the perpetrators of the crimes suffer the pain of punishment with utmost heartfelt satisfaction and without any doubt about the issuance of the sentence (Mohaqqueq Damad, 2004; Haji Dehabadi, 2018). Now that the two perspectives were investigated, it has to be stated according to those believing in the impermissibility of the enforcement of Hadd punishments in the occultation period that the transformation of Hadd to Ta'azir punishments is justifiable in regard of the idea that the criminal cannot be left alone and s/he has to be punished; but, according to those believing in the permissibility of the divine punishments during the occultation time, the transformation of Hadd punishments can be done under certain circumstances.

3. Foundations of the Ruler's Role in Transformation of Hadd to Ta'azir Punishments

The ruler can cease the enforcement of Hadd punishments or transform them to Ta'azir punishments under certain conditions. The followings are some foundations of such a role and authority:

3.1. Elimination of the Hadd Punishment Enforcement's Goal and Intention

The enforcement of the Hadd Punishment can sometimes cause the elimination of its goal and intention. The goal of Hadd punishments' enforcement is correcting the criminal and preventing him or her and others from perpetration of crime. Now, is it necessary to enforce Hadd punishment if the enforcement of Hadd punishment causes the criminal to fall in more transgressions and increasingly distance away from the religion and make him or her join the opponents and enemies?

Hashemi Shahroudi believes that the ruler can in such cases prevent or postpone the enforcement of Hadd punishment. He realizes narrations like the credible ones quoted by Qi āth and Abi Maryam indicating that Hadd Punishments are not imposed onto anyone in the lands of enemies as the reason for such a claim (Hashemi Shahroudi, 1999).

Of course, it has to be reminded that the use of the enemies' territories here is devoid of any special characteristics rather it has been used to signify the fear of joining the enemies in case that the individual is subjected to Hadd punishment.

3.2. Axiom of Priority

When two binding verdicts are found interfering with one another meaning that it is not possible for both of them to include the oblige for such a reason as their relative equality, the original principle is making a choice between them otherwise the superior verdict should be selected and the other should be deserted; in other words, the most important is superior to the more important and the obliger's perpetration of a violation by leaving the most important undone results in the actualization of the more important as ruled in the axiom of priority.

In the interfering cases, when the recognition of the interference and the preferring of the most important is found with no social and public consequences, the oblige to whom interference has occurred is responsible for recognizing the interference as well as the distinguishing of the most important from the others. Although the canonical ruler has expressed criteria for making the foresaid distinction, it is the Islamic ruler who is responsible for determining the interferences and the preference of the most important whenever it is found having social and public outcomes.

For example, if the preservation of the Islamic government is found suspended on banks and the existent banking system is found usurious, the necessity of the preservation of the Islamic government and forbiddance of usury will be interfering; here, the Islamic government temporarily lifts the forbiddance of the banks' usurious practices for such a reason as the importance of the preservation of Islamic government so as to design non-usurious banking system in the light of the Islamic government and, upon the actualization of the non-usurious banking system, the interference is dismissed and the verdict allowing the usurious banking is also subsequently lifted (Masjedsara'ei and Kabiri, 2015).

In the discussions on the Hadd punishments' enforcement, as well, the Hadd punishments' enforcement is occasionally interfering with the other regulations, including the preservation of the Islamic system, and it is by the ruler's recognition that the most important, i.e. the preservation of the system, is preferred to the more important, i.e. enforcement of the Hadd punishments.

3.3. No-Loss Axiom

One of the most well-known jurisprudential regulations is the axiom of no-loss which is applicable in most of the jurisprudential topics. This axiom holds that no loss is legitimate in Islam and the illegitimacy of the losses includes both the legislation and law enforcement stages (Mohaqqeq Damad, 2004).

This axiom features a general nature and it includes worships and transactions whether by the canonical ruler or the individuals; in other words, the expediencies of its general originality is that all the losses are rejected (Mohammadi, 2003).

In addition, the fundamentalists believe that the axiom of no-loss governs the proofs of the verdicts. However, a group of the fundamentalists do not consider no-loss axiom as governing the verdicts' proofs but they all consider it as superior; hence, no-loss axiom precedes the proofs of the verdicts even if it is not considered as governing them. Therefore, the divine verdicts, including the situational and obligational, have been enacted based on the denial of any losses to the people. Additionally, if the social rules and regulations' inclusion causes losses in some special cases to some by some others, those regulations are to be removed (Mohaqqeq Damad, 2004).

Based thereon, when the ruler finds out that the enforcement of Hadd punishments is accompanied by losses and mischiefs to which the canonical ruler would never agree such as the people's turning of their

faces away from Islam in its essence, outbreak of inability and looseness in the government and/or ignition of the fire of mutiny and war amongst the Islamic states with another state, he can refrain from the enforcement of Hadd punishment (Hashemi Shahroudi, 1999).

3.4. Axiom of No Hardship

Haraj [Hardship] literally means difficulty and austerity and it commonly is expressive of the idea that the difficult and hard obligations are aborted whether this hardship is suffered by a special person or group and/or by the community and the general public. There is occasionally contradiction between the axiom of no hardship and the proofs of the verdicts in which case the axiom and the proofs should be summed up either in terms of their specificities or allocations. This is while some believe in the axiom's governance in this regard, i.e. they give superiority to the aforesaid axiom over the proofs of the verdicts (Mohammadi, 2003).

Imam Khomeini, as well, has taken this axiom into account for the enforcement of the verdicts and expressed that a verdict's enforcement is avoided if it causes difficulty and hardship. In this regard and in response to the questions by the then attorney general, his highness orders that "in cases that the manager and the official in charge happen to figure out a sort of hardship, the country's attorney general can prevent the enforcement of the verdict but following the recognition and approval of the majority of the judicial Supreme Council (Khomeini, 1999).

Therefore, the Hadd punishment's enforcement can occasionally cause hardship to the people or even the Islamic system as determined by the Islamic government; thus, in such cases, the ruler can transform such verdicts. Of course, it must be stated that the ruler's verdict is limited to the expedencies.

3.5. Conditions and Expedencies of the Time and Place

Exegesis is a process carried out in the grounds of time and place. Therefore, the changes in these grounds bring about evolutions in the exegete's understanding and inference. Since the jurisprudent's job is inferring verdicts which are per se functions of the subjects, it has to be stated that the temporal and spatial expedencies are effective in the recognition of the subjects hence issuance of the verdicts.

The recognition of the subjects depends on various issues such as the environmental and sustenance-related, cultural, economic, and political properties of every time.

In this regard, Reza'ei states that "when the jurispudent refers to the canonical texts and the concepts applied in them for the recognition of the subjects, paying of attention to the temporal and spatial conditions and expediencies and consideration of the environment of the narrations' issuance and scrutinizing the differences between the places of the narration issuance and the narrator who has asked an Imam and knowledge of the text's revelation whereabouts contribute to the gaining of a more perfect elaboration of the subject and it is by consideration of elements like time and place and their expediencies following referring for a second time to the canonical texts that the jurispudent is quite likely to find constraints and conditions that might have remained latent till that time from his and other exegetes' eyes" (Reza'ei, 2003).

Time and place are also effective in the preservation of the social system and supply of public security and justice as Imam Khomeini believes that all the canonical verdicts are variable in respect to the verdict on the necessity of the Islamic system's preservation. The preservation of the system is amongst the most obligatory of the obligations; put it another way, there is one fixed obligatory verdict and that is the necessity of the preservation of Islam and all the situational and obligational verdicts are variable in respect thereto (Khomeini, 1999).

Now, considering the importance of the system's preservation, if it is recognized by the Islamic ruler that the enforcement of Hadd punishments causes essential disruption in an epoch of history in the Islamic system, he can rule the transformation of that punishment.

4. An example of Transforming the Hadd Punishments in the Islamic Penal Code of Law

The example that confirms the transformation of Hadd punishments is the article 225 of the Islamic Penal Code of Law, passed in 2013; in this article, the stoning is a sort of Hadd punishment hence not changeable and transformable by the implications of the jurisprudential regulations and based on the rulings of article 219 of the Islamic penal code of law but it has been transformed to execution or lacing a person's naked body. In regard of the basis for the transformation of the stoning to execution or a hundred whips of lace, the jurists believe that:

The expression indicating the impossibility of enforcing stoning is ambiguous and it seems that the term “impossibility” here introduces a sort of absolute impossibility for such a reason as the human right and international right restrictions or for the exclusive reason of the legislator’s consideration of the expedencies in line with prevention of insolence to the Islamic system and human right topics (Shokri, 2017: 60).

Conclusion

Concerning the role of ruler in the transformation of Hadd to Ta’azir punishments, it must be stated that a well-qualified jurisprudent capable of issuing decrees is firstly intended by ruler. Secondly, considering the discrepancies regarding the permissibility of the enforcement of the divine Hadd punishments during the occultation era and the absence of any consensus in this regard, the role of the ruler in the transformation of Hadd to Ta’azir punishments can be elucidated based on both these perspectives as explained below:

1) Based on the perspective of the jurisprudents who believe in the impermissibility of the enforcement of Hadd punishments during occultation period, the ruler can replace the punishment cases explicitly mentioned in the text by the punishments that are more in proportion to the time and place’s expedencies because the goal of enforcing Hadd punishment is correcting the criminal and deterring him and others from such crimes and this is not exclusively achieved by the enforcement of Hadd punishments rather Ta’azir punishments are capable of accomplishing such a goal.

2) Based on the perspective of the jurisprudents who believe in the permissibility of enforcing the divine Hadd punishments in the occultation era, the ruler considers the expedencies and rules the transformation of the Hadd to Ta’azir punishments not based on the preliminary verdicts but the secondary verdicts under special conditions if the enforcement of the divine Hadd punishments is found incapable of accomplishing their goals or if it results in the criminals’ fall into more transgressions or if it is found interfering with such sure axioms as no-loss and no-hardship and Islamic system’s preservation; an example of such a transformation can be found in article 225 of the Islamic penal code of law in the transformation of stoning. The foundation for the transformation of stoning to execution or a hundred whips of lace is laid on the expedencies thought for the preservation of the system and prevention of the insolence to the Islamic system as well as the human right issues in the international circles.

3) The difference between the first and the second perspectives can be summarized in the following words: the first group opines the impermissibility of the Hadd punishments' enforcement based on the preliminary verdicts but the second group opines so based on the secondary verdicts..

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