

The Extension of the Principle of Delegation to the Infallible in Mitigating Punishments during the Occultation Era: A Comparison with Other Grounds for Punishment Mitigation in Imāmī Jurisprudence and the Sunni Schools of Law

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Abstract:

The issue of “the implementation of ḥudūd and ta‘zīr punishments during the Occultation” has long been one of the fundamental challenges within Imāmī jurisprudence. This is because transmitted texts explicitly restrict the authority to legislate and enforce such punishments to the Ma‘šūmīn, while direct access to them is impossible during the period of Occultation. This study, employing a descriptive-analytical method and based on an in-depth examination of transmitted sources (the Qur’an and the traditions) as well as the rational foundations of “divine delegation of religion to the Ma‘šūmīn, identifies and analyzes the views both supporting and opposing the permissibility of implementing ḥudūd by fully qualified jurists. The findings

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indicate that the majority of Imāmī jurists, relying on the concept of legislative delegation and certain traditions of the Ahl al-Bayt, uphold the permissibility and conditional necessity of enforcing ḥudūd in the age of Occultation—while emphasizing the principle of leniency based on the possibility of pardon by the Hidden Imam. Conversely, a minority restrict such authority exclusively to the Imam himself or his specific deputies, grounding their opposition mainly in differing conceptions of the political and justice-based qualifications of jurists. This study also conducts a comparative analysis of the doctrinal bases for penal leniency in the Ḥanbalī, Ḥanafī, Mālikī, and Shāfi‘ī schools alongside the Imāmī perspective, and explicates the jurisprudential implications of these findings. Ultimately, it proposes the formulation of a juridical-legal framework for the limited and conditional implementation of penal laws during the Occultation, ensuring both the continuity of Islamic justice and the preservation of the possibility of the Imam’s intended leniency.

Keywords: The implementation of Hudud during the period of Occultation; Jurisprudential reasoning foundations ;mitigation of punishment; divine delegation to the Ma‘ṣūm; comparative study ;Islamic jurisprudence; era of Occultation.

Bibliography

- A Group of Researchers .*Farhang-nāmah-yi Uṣūl-i Fiqh* .Qom :Markaz Ittīlā'āt va Madārik-i Islāmī, 2010. [In Persian]
- Abū 'Abd Allāh, Aḥmad ibn Ḥanbal .*Musnad Aḥmad* .Beirut: Dār al-Kutub al-'Ilmiyyah, 2008. [In Arabic]
- Abū Zahrah, Muḥammad .*Al-'Uqūbah fī al-Fiqh al-Islāmī* .Cairo: Dār al-Fikr al-'Arabī, 1970. [In Arabic]
- 'Alam al-Hudā, Sayyid Murtaḍā .*Al-Rasā'il* .Qom :Dār al-Qur'ān al-Karīm, 1985. [In Arabic]
- 'Alīdūst, Abū al-Qāsim .*Fiqh va 'Aql* .Qom: Pazhūhishgāh-i Farhang va Andīshah-yi Islāmī, 2002. [In Persian]
- 'Āmilī, Muḥammad ibn Makkī .*Ghāyat al-Murād fī Sharḥ Nukat al-Irshād* . Qom: Daftar Tablīghāt-i Islāmī Ḥawzah-yi 'Ilmiyyah, 1993. [In Arabic]
- Buhūtī, Manṣūr ibn Yūnus ibn Idrīs .*Kashshāf al-Qinā'* .Beirut: Dār al-Fikr, 1982. [In Arabic]
- Bukhārī, 'Abd al-'Azīz ibn Aḥmad .*Kashf al-Asrār 'an Uṣūl Fakhr al-Islām al-Bazdawī* .Beirut: Dār al-Kutub al-'Ilmiyyah, 1997. [In Arabic]
- Golpāygānī, Sayyid Muḥammad Riḍā .*Al-Durr al-Manḍūd'* .st ed .Qom: Dār al-Qur'ān al-Karīm, 1991. [In Arabic]
- Ḥillī, Ḥasan ibn Yūsuf ibn Muṭahhar .*Tabṣirat al-Muta'allimīn fī Ahkām al-Dīn* .Beirut: Mu'assasat al-'Alamī lil-Maṭbū'āt, 1990. [In Arabic]
- Ḥurr al-'Āmilī, Muḥammad ibn Ḥasan .*Wasā'il al-Shī'ah ilā Tahṣīl Masā'il al-Sharī'ah* .Qom: Mu'assasat Āl al-Bayt li-Iḥyā' al-Turāth, 1991. [In Arabic]
- Ibn Abī Zayd al-Qayrawānī, 'Abd Allāh ibn Ibrāhīm. 1985 .*Al-Risālah* . Cairo: Dār al-Turāth. [In Arabic]
- Ibn 'Ābidīn, Muḥammad Amīn .*Majmū'at Rasā'il Ibn 'Ābidīn* .Lahore: Dār al-Fikr, 1980. [In Arabic]
- Ibn Idrīs al-Ḥillī, Muḥammad ibn Manṣūr ibn Aḥmad ibn Idrīs .*Al-Sarā'ir al-Ḥawī li-Tahrīr al-Fatāwā* .Qom: Mu'assasat al-Nashr al-Islāmī, 1990. [In Arabic]

- Ibn Manzūr, Muḥammad ibn Mukarram .*Lisān al-‘Arab* .rd ed .Beirut: Dār al-Fikr, 1993. [In Arabic]
- Ibn Mufliḥ al-Maqdisī, Muḥammad ibn Mufliḥ .*Al-Mubdi‘ Sharḥ al-Muqni‘* . Beirut: Dār al-Kutub al-‘Ilmiyyah, 2003. [In Arabic]
- Ibn Nujaym, Zayn al-Dīn ibn Ibrāhīm .*Al-Baḥr al-Rā‘iq Sharḥ Kanz al-Daqā‘iq* .Beirut: Dār al-Ma‘rifah, 1997. [In Arabic]
- Ibn Qayyim al-Jawziyyah, Muḥammad ibn Abī Bakr .*I‘lām al-Muwaqqi‘īn ‘an Rabb al-‘Ālamīn* .Beirut: Dār al-Jīl, 1991. [In Arabic]
- Ibn Qudāmah, ‘Abd Allāh ibn Aḥmad ibn Muḥammad. 1968 .*Al-Mughnī* .rd ed. Cairo: Maktabat al-Qāhirah. [In Arabic]
- Ibn Rushd, Muḥammad ibn Aḥmad .*Bidāyat al-Mujtahid wa-Nihāyat al-Muqtaṣid* .Ed. Muḥammad Ḥajjī. Beirut: Dār al-Kutub al-‘Ilmiyyah, 1997. [In Arabic]
- Ibn Taymiyyah, Aḥmad ibn ‘Abd al-Ḥalīm .*Majmū‘ al-Fatāwā* .Medina: Dār al-Wafā’, 1997. [In Arabic]
- Kāsānī, Abū Bakr ibn Mas‘ūd .*Badā‘i‘ al-Ṣanā‘i‘ fī Tartīb al-Sharā‘i‘* . Beirut: Dār al-Kutub al-‘Ilmiyyah, 1982. [In Arabic]
- Kāshif al-Ghiṭā’, Ja‘far .*Kashf al-Ghiṭā’ ‘an Mubhamāt al-Sharī‘ah al-Gharā’* .Qom: Daftar Tablīghāt-i Islāmī Ḥawzah-yi ‘Ilmīyah Qom, 2001. [In Arabic]
- Khoei, Abū al-Qāsim .*Mabānī Takmilat al-Minhāj* .Baghdad :Manshūrāt Bābil, 2001. [In Arabic]
- Khomeini, Sayyid Rūḥ Allāh .*Tahrīr al-Wasīlah* .Qom: Dār al-‘Ilm, 2011. [In Arabic]
- Kulaynī, Muḥammad ibn Ya‘qūb .*Furū‘ al-Kāfi* .Beirut: Dār al-Ḥadīth, 1984. [In Arabic]
- Maāli, Mahdie. Alishahighalehjough ,Abolfazl. “Feasibility of Invoking Cultural Norms in Mitigating or Modifying Hudud Punishments (According to Imāmī Jurisprudence, Iranian Criminal Law and Hanafi Jurisprudence ”.(*Journal of Comparative Studies on the Schools of Jurisprudence and its Principles* 7, no. 1 (Spring & Summer 2024 :(105-126. [In Persian]

- Māwardī, ‘Alī ibn Muḥammad ibn Ḥabīb al-Baṣrī al-Baghdādī *Al-Ḥāwī al-Kabīr fī Fiqh Madhhab al-Imām al-Shāfi‘ī wa-Huwa Sharḥ Mukhtaṣar al-Muzanī* .Ed. ‘Alī Muḥammad Mu‘awwaḍ and ‘Ādil Aḥmad ‘Abd al-Mawjūd. Beirut: Dār al-Kutub al-‘Ilmiyyah, 1994. [In Arabic]
- Māzandarānī, Muḥammad Ṣāliḥ *Sharḥ Uṣūl al-Kāfi* .Ed. Abū al-Ḥasan Sha‘rānī. Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, 2000. [In Arabic]
- Mo‘īn, Muḥammad *Persian dictionary Moin* .Tehran: Sorāyesh, 2002. [In Persian]
- Muṭṭazirī, Ḥusayn ‘Alī *Mabānī-yi Fiqhī-yi Ḥukūmat-i Islāmī* .Tehran: Intishārāt-i Sarāyī, 2000. [In Persian]
- Muẓaffar, Muḥammad Riḍā *Uṣūl al-Fiqh* .Qom: Markaz Intishārāt Daftar Tablīghāt-i Islāmī Ḥawzah-yi ‘Ilmīyah, 1991. [In Arabic]
- Najafī al-Jawāhirī, Muḥammad Ḥasan *Jawāhir al-Kalām* .Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, 1983. [In Arabic]
- Nawawī, Yaḥyā ibn Sharaf *Rawḍat al-Tālibīn wa-‘Umdat al-Muḥṭin* .Ed. ‘A. Muḥammad Muḥyī al-Dīn ‘Abd al-Ḥamīd. Beirut: Al-Maktab al-Islāmī, 1991. [In Arabic]
- Qarāfī, Aḥmad ibn Idrīs *Al-Furūq* .Beirut: Dār al-Ma‘rifah, 1994. [In Arabic]
- Rāghib al-Iṣfahānī, Ḥusayn ibn Muḥammad *Mufradāt Alfāz al-Qur‘ān* .Ed. Ṣafwān ‘Adnān Dāwūdī. Beirut: Dār al-Shāmiyyah, 1995. [In Arabic]
- Sabziwārī, Ḥāj Mīrzā Ḥasan *Wasīlat al-Wuṣūl* .Qom :Mu’assasat Nashr al-Islāmī, 1989. [In Arabic]
- Ṣadūq, Muḥammad ibn ‘Alī *‘Uyūn Akhbār al-Riḍā* .Beirut :Mu’assasat al-‘Ilmī lil-Maṭbū‘āt, 1984. [In Arabic]
- Ṣāfi Golpāygānī, Luṭf Allāh *Wilāyat-i Takwīnī, Wilāyat-i Tashrī‘ī* .Qom: Masjid-i Muqaddas-i Jamkarān, 2011. [In Persian]
- Sallār al-Daylamī, Ḥamzah ibn ‘Abd al-‘Azīz *Al-Marāsīm al-‘Alawiyyah* . 1st ed. Qom: Manshūrāt al-Ḥaramayn, 1984. [In Arabic]
- Sarakhsī, Muḥammad ibn Aḥmad *Uṣūl al-Sarakhsī* .Beirut: Dār al-Ma‘rifah, 1953. [In Arabic]

Shāfi'ī, Muḥammad ibn Idrīs .*Al-Umm* .Beirut: Dār al-Ma'rifah ,1990.
[In Arabic]

Shātibī al-Mālikī, Ibrāhīm ibn Mūsā .*Al-Muwāfaqāt fī Uṣūl al-Sharī'ah* .Ed.
Mashhūr Ḥasan Āli Salmān. Cairo: Dār Ibn 'Affān, 1997. [In Arabic]

Subḥānī, Ja'far .*Muḥāḍarāt fī al-Ilāhiyyāt* .Qom: Mu'assasat Imām Ṣādiq,
1988. [In Arabic]

Ṭabāṭabā'ī, Muḥammad Ḥusayn .*Al-Mīzān fī Tafsīr al-Qur'ān* .Qom: Daftar
Intishārāt-i Islāmī vābastah bi Jāmi'ah-yi Mudarrisīn-i Ḥawzah-yi
'Ilmīyah, 2004. [In Arabic]