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REVIEW OF THE CONCEPTS AND SCOPE OF THE RULE "IDRĀʾ AL-ḤUDŪD BI AL-SHUBUHĀT" (DEFERRAL OF HUDŪD DUE TO DOUBTS)

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Abstract. *In jurisprudential terminology, doubt means confusion and error in religious rulings, in such a way that a matter seems permissible from one perspective and forbidden from another. One of the important types of doubt is doubt of the path, which results from the ijtihadist disagreement of jurists based on conflict or convergence of evidence. In such a case, due to the impossibility of definitively preferring one of the opinions, the issue remains in a state of ambiguity that makes it difficult to apply the Islamic hadd to it. From the perspective of jurisprudential principles, the principles of abolishing the limits in doubt of the path include the principles of precaution, consideration of differences, conflict of evidence, and the principles of ratification and error. The purpose of this research is to examine the concept and scope of the rule of the adre al-hudud based on doubts. The question raised in this research is: What is the concept and scope of the rule of the adre al-hudud based on doubts? It seems that the rule of "adrā' al-hudūd bil-shubahat" is one of the fundamental principles of Islamic criminal jurisprudence, which aims to prevent the implementation of hadīth punishments in case of doubt. This research was conducted using library tools and an analytical-descriptive method. The findings of the research show that whenever jurisprudential opinions on a hadīth issue are formed based on strong but conflicting reasons, this same difference will lead to the removal of the hadīth, because in Sharia, the application of hadīth punishment requires certainty in the verdict. The aforementioned rule, in line with the principle of caution in blood, property and honor, plays an important role in protecting defendants against hadīth punishments.*

Keywords*: hadīth, darā', doubt, punishment.*

Introduction

In the Islamic penal system, criminal sanctions have been classified from different dimensions. One of the most common and, indeed, the most important classifications is the division of punishments into ḥadd and taʿzīr. This categorization is significant in that it examines the responses to crimes in the public domain, while the domain of ḥaqq al-nās (private rights) receives less attention. Islamic jurists have established the criterion for this classification on the basis that, in ḥadd crimes, the type and amount of punishment have already been determined by the Divine Legislator. Therefore, neither the ḥākim al-sharʿ (religious authority) nor the judge has the discretion to alter, increase, or decrease them.

Upon conducting research in this field, the author has found that several works and articles have been written on the principle Idraʾ al-Ḥudūd fī al-Shubuhāt. Among them is the article The Scope of "Shubha" in the Rule of Darʾ authored by Mahmoud Pourbāfarānī and Hamed Rostamī Najafābādī in 2020. The findings of this research show that in jurisprudence there exists a type of doubt called shubhat al-tawbah (doubt concerning repentance), whereby if there is uncertainty about the validity of repentance, the ḥadd is waived. Likewise, doubt at the stage of execution of the sentence is also influential and may result in suspension of the penalty, especially in circumstances where social justice is not fully established. Therefore, in addition to shubuhāt mawḍūʿiyyah (factual doubts) and shubuhāt ḥukmiyyah (legal doubts), other types such as mistake and coercion, doubt of the judge and the accused, doubt regarding repentance, and doubt at the stage of enforcement of judgment are also recognized as new branches within the rule of darʾ. Another article, entitled The Role of Shubhat al-Ṭarīq in the Averting of Ḥudūd from the Perspective of Ahl al-Sunnah authored by Sālim Afsarī and Abūbakr Aḥmadī in 2019, demonstrates that jurisprudential disagreement in ḥadd cases, so long as the existing opinions are supported by sound reasoning, results in the prevention of enforcement of the ḥadd. Similarly, another article that has addressed this subject is An Examination of the Rule of Darʾ from the Perspective of Shīʿa and Sunni Jurisprudence authored by Ḥusayn Khorramdell and Nāder Mokhtārī Afrākītī in 2016. The findings of this study reveal that in the application of the rule of darʾ to factual doubts there is no room for disagreement, while with regard to legal doubts, differences exist between Sunni and Shīʿa jurisprudence. In particular, when ignorance is excusable (jahl quṣūrī), the rule applies; but if ignorance is due to negligence (jahl taqṣīrī) in learning the rulings, then the rule does not apply.

The aim of this research is to examine the concept and scope of the principle Idraʾ al-Ḥudūd fī al-Shubuhāt. The research questions posed are as follows: first, what is the jurisprudential basis of this principle? Second, under what circumstances is ḥadd averted on the basis of doubts in Islamic jurisprudence? Third, is the view of Sunni jurists regarding the averting of the ḥadd of theft in cases of doubt one of consensus or disagreement? Fourth, from the perspective of Islamic jurisprudence, when ḥudūd such as theft, qaḏf (false accusation of fornication), ḥirābah (armed robbery), or other ḥudūd are averted by doubts, is the offender still subject to taʿzīr? The basis of the principle Idraʾ al-Ḥudūd fī al-Shubuhāt is the Prophetic ḥadīth: «ٱدۡرَءُوا ٱلۡحُدُودَ بِٱلشُّبُهَاتِ», upon which Sunni jurists have consensus. They maintain that in cases such as the acquisition of property by usurpation, embezzlement and denial of deposits, theft of the Qur'an, theft of burial shrouds, theft of items of low value, theft from places of worship, theft outside of secure custody (ḥirz), theft of prohibited items and instruments of amusement, denial by the owner of the stolen property, and similar cases, the ḥadd punishment for theft is averted. However, regarding the aforementioned cases, both consensus and disagreement exist among Sunni jurists. This research has been conducted through library-based resources and by using an analytical–descriptive method.

1- The Concept and Scope of the Rule in the Words of Jurists and the Explanation of Its Applied Terminology

The rule of tadrāʾ ("darʾ") is among the principles frequently applied in Islamic jurisprudence and has acquired wide jurisprudential usage. The foundation of this rule is formed by the ḥadīth of the Holy Prophet ,(ﷺ) and it has been accepted by Sunni jurists. Before examining the applications of this rule in the crime of theft, this section will first present the statements of jurists concerning this rule, and then analyze the terminology employed within it.

1-1- The Foundation of the Rule

The foundation of this rule is the noble Prophetic ḥadīth, narrated by Imām al-Tirmidhī from ʿĀʾishah ,(رضي الله عنها) in which the Prophet (ﷺ) said «ٱدْرَءُوا ٱلْحُدُودَ عَنِ ٱلْمُسْلِمِينَ مَا ٱسْتَطَعْتُمْ، فَإِن كَانَ لَهُ مَخْرَجٌ فَخَلُّوا سَبِيلَهُ، فَإِنَّ ٱلْإِمَامَ أَنْ يُخْطِئَ فِي ٱلْعَفْوِ خَيْرٌ مِّنْ أَنْ يُخْطِئَ فِي ٱلْعُقُوبَةِ»:

Meaning: "Avert the prescribed punishments from the Muslims as much as you can; if there is a way out for him, then let him go, for it is better for the Imam (ruler) to err in granting pardon than to err in imposing punishment".

Imām al-Tirmidhī stated that a group of the Companions of the Prophet (ﷺ) narrated similar opinions and held the same view. In Sunan Ibn Mājah, it is narrated from Abū Hurayrah (رضي الله عنه) that the Prophet (ﷺ) said «ٱدْفَعُوا ٱلْحُدُودَ مَا وَجَدتُّمْ لَهُ مَدْفَعًا» :Meaning: "Ward off the prescribed punishments as long as you can find a way out".

Moreover, Imām al-Suyūṭī, in his al-Ashbāh, transmitted another noble ḥadīth «ٱدْرَءُوا ٱلْحُدُودَ بِٱلشُّبُهَاتِ» : meaning: "Avert the prescribed punishments on the basis of doubts." (Zaydān, n.d.: 115–116). Part of the narration of Ibn ʿAdī from the ḥadīth of Ibn ʿAbbās ,(رضي الله عنهما)

1-2- The Concept of the Rule from the Perspective of Jurists

The phrase « «ٱدْرَءُوا ٱلْحُدُودَ بِٱلشُّبُهَاتِ» has been narrated in various forms in both Sunni and Imāmī ḥadīth sources. In this article, considering the title, the foundation of this rule will be examined solely based on Sunni sources:

1. Al-Tirmidhī, in his Sunan, which is one of the reliable ḥadīth sources among the Sunnis, narrates from ʿĀʾishah ((رضي الله عنها that the Messenger of Islam ((ﷺ said:

«ٱدْفَعُوا ٱلْحُدُودَ مَا ٱسْتَطَعْتُمْ فَإِن وُجِدَ لِلْمُسْلِمِ مَخْرَجٌ فَخَلُّوا سَبِيلَهُ، فَإِنَّ ٱلْإِمَامَ لَأَنْ يُخْطِئَ فِي ٱلْعَفْوِ خَيْرٌ مِّنْ أَنْ يُخْطِئَ فِي ٱلْعُقُوبَةِ»

Translation: "Ward off the prescribed punishments from the Muslims as much as you can. If you find a way of escape for him, then let him go; for the ruler's mistake in granting pardon is better than his mistake in imposing punishment." (Muḥaqqiq Dāmād, 1386: 44).

2. Ibn Mājah (Muḥammad ibn Yazīd ibn Mājah al-Qazwīnī), in Sunan al-Muṣṭafā, narrates from Abū Hurayrah (:(رضي الله عنه

قَالَ رَسُولُ ٱللَّهِ (ﷺ): «ٱدْفَعُوا ٱلْحُدُودَ مَا وَجَدتُّمْ لَهُ مَدْفَعًا» (Muḥaqqiq Dāmād, 1386: 44).

3. Jalāl al-Dīn al-Suyūṭī reports from the Prophet (ﷺ): «ٱدْرَءُوا ٱلْحُدُودَ بِٱلشُّبُهَاتِ»

This ḥadīth has also been transmitted in other forms, such as: « «ٱدْرَءُوا ٱلْحُدُودَ», «ٱدْرَءُوا ٱلْحُدُودَ بِٱلشُّبْهَةِ», and (« ٱدْرَءُوا ٱلْحُدُودَ وَٱلْقَتْلَ عَنْ عِبَادِ ٱللَّهِ مَا ٱسْتَطَعْتُمْ» Muḥaqqiq Dāmād, 1386: 44).

4. Ibn Masʿūd ((رضي الله عنه narrates from the Prophet ((ﷺ that he said: «ٱدْرَءُوا ٱلْحُدُودَ بِٱلشُّبْهَةِ» (al-Wadānī, 1418 AH: 60).

5. Ibn Masʿūd, Muʿādh ibn Jabal, and ʿUqbah ibn ʿĀmir ((رضي الله عنهم narrate from the Prophet ((ﷺ that he said: «إِذَا ٱشْتَبَهَ عَلَيْكَ ٱلْحَدُّ فَٱدْرَأْهُ مَا ٱسْتَطَعْتَ»(al-Wadānī, 1418 AH: 60).

1-3- Examination of the Terminologies Used in the Rul

As the title indicates, this rule contains several specific terminologies that function as its key concepts. A precise understanding of the rule requires careful attention to the meanings and implications of these terms. Therefore, in this section, we shall briefly review the particular terminologies employed in this rule.

1-1-3 Darʾ

The word tadrāʾ, derived from the root ,درا linguistically means to avert, repel, or ward off (Khorramdell & Mokhtārī Afrākītī, 1395: 100). In the Holy Qur'an, it appears in the verse:

«وَيَدْرَءُونَ بِٱلْحَسَنَةِ ٱلسَّيِّئَةَ» Sūrah Raʿd, 13:22)

Meaning: "They repel evil with good."

In another verse, it is stated:

«قُلْ فَادْرَءُوا عَنْ أَنْفُسِكُمُ الْمَوْتَ» (Sūrah Āl ʿImrān, 3:168)

Meaning: "Say, avert death from yourselves," indicating the averting of punishment or calamity.

Additionally, the concept of averting punishment is mentioned in:

«وَيَدْرَءُوا عَنْهَا الْعَذَابَ إِن تَشْهَدْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ أَنَّهُ لَمِنَ الْكَاذِبِينَ» (Sūrah Nūr, 24:8)

Translation: "By testifying four times and swearing by God that that man is indeed among the liars, the punishment is averted from her."

The author of Majmaʿ al-Baḥrayn, commenting on the above verses and referring to the ḥadīth « ,«ٱدْرَءُوا ٱلْحُدُودَ بِٱلشُّبُهَاتِ» states: "Avert ((ٱدْرَءُوا means ward off (".(ٱدْفَعُوا بِهَا Therefore, linguistically, tadrāʾ (darʾ) means that through doubts, the punishment is prevented or removed from individuals (Muḥaqqiq Dāmād, 1386: 71).

2-1-3 Ḥadd

The term ḥadd linguistically means restriction or prohibition, as this category of punishments prevents individuals from committing the same crime again. A distinguishing feature of these punishments is that their measure and extent are fixed, and no one may exceed them (An-Nawawī, 1997, vol. 3: 20).

In the Islamic penal system, ḥadd refers to a punishment whose type and measure have been explicitly determined by the Divine Legislator. The meaning of specifying the measure in Sharʿ is that: "The Legislator Himself has determined the type and amount of the punishment; the right to determine its type and measure is removed from the judge, who cannot reduce or increase it, substitute it with another punishment, or suspend its execution" (ʿAwdah, 1390: 149).

Some jurists further hold that ḥadd applies to those punishments by which God restrains humans from committing sins and prohibited behaviors, while encouraging the performance of virtuous and commendable deeds (Al-Māwardī, 1994, vol. 13: 390).

3-1-3 Shubhah (Doubt)

Linguistically, shubhah means doubt, suspicion, error, and the confusion between right and wrong, truth and falsehood (Muḥaqqiq Dāmād, 1386: 51). It also refers to ambiguity or resemblance (Afsarī & Aḥmadī, 1398: 228). Jurists from different Islamic schools have provided diverse definitions of the concept of shubhah. Some Ḥanafī jurists define it as: « ما يشبه الثابت و ليس بثابت» (Kāsānī, 1406 AH, vol. 3: 180), meaning "something that resembles an established and clear matter, yet is not actually established or clear." Al-Māwardī of the Shāfiʿī school defines it as: «الشبهة ما اشتبه حكمه بالإختلاف فى اباحته» (Al-Māwardī, 1419 AH, vol. 33: 219), meaning "shubhah is that whose ruling becomes doubtful due to disagreement regarding its permissibility." The Ḥanābilah define it as: «وجود المبيح صورة مع انعدام حكمه او حقيقته» (Ibn Qudāmah, 1388 AH, vol. 9: 55), meaning "the presence of an appearance of permissibility while its actual ruling or reality does not exist." In other words, shubhah denotes the mixture or concealment of the truth in such a way that a person cannot recognize it (Pūrbāfarānī & Rustamī Najafābādī, 1399: 109). Shubhah therefore refers to the existence of an apparent cause of permissibility despite the absence of its actual ruling or reality.

The majority of jurists—including Ḥanafī, Mālikī, Shāfiʿī, some Ḥanābilah, and Imāmī—have paid particular attention to classifying types of shubhah. To avoid lengthy discussion, here we examine shubhah from the perspective of Ḥanafī jurists:

Shubhah fiʿl (act-related doubt): This classification is recognized among Ḥanafī jurists, though in its meaning and instances it may coincide with other types of shubhah.

It applies to a person when the permissibility or prohibition of an act is doubtful to them, and there is no evidence confirming the permissibility of the act. For example, someone engaging in sexual intercourse with a thrice-divorced wife or with a woman who has received a bā'in divorce through the transfer of property (Marghīnānī, n.d., vol. 2: 344).

Shubhah maḥall (place-related doubt): The Ḥanafīs also refer to this type as shubhah ḥukmiyyah or milk, while other jurists call it shubhah mafʿūl. It occurs when a person believes they have a right of control over a certain place, whereas in reality they do not; for example, taking property believing it belongs to one's father and exercising control over it, while it actually belongs to someone else (Ibn Ḥajar Haythamī, 1357 AH, vol. 9: 103).

Shubhah fāʿil (actor-related doubt): This type occurs when the doer of an act is mistaken or confused in their mind. For instance, someone engaging in sexual intercourse with a woman thinking she is his lawful wife, when she is not (Ibn Shāsh, 1423 AH, vol. 3: 1146).

1-4- Shubhah in Qiṣāṣ

Qiṣāṣ (retaliatory punishment) is affected by doubt in the same way as ḥudūd. Just as a ḥadd may be nullified due to doubt, qiṣāṣ may also be nullified. For example, if a person slaughters someone who is asleep and claims that the act was performed while the victim was in a state of unconsciousness or effectively dead, qiṣāṣ does not apply—nor does it apply in cases where someone kills another by their own command (Zaydān, n.d.: 118).

1-5- Results of Applying this Rule

Applying the rule ((إِدْرَاءُ الحُدُودِ بِالشُّبُهَاتِleads to the nullification of the ḥadd from the perpetrator in certain cases, though the perpetrator may still be subject to taʿzīr (discretionary punishment). For example, if a person steals property from their child, although the ḥadd of theft is nullified, they are still subject to taʿzīr. Similarly, if someone engages in sexual intercourse with their spouse under conditions of doubt regarding place, the ḥadd is nullified, yet taʿzīr applies. The same ruling applies if the spouse is in a state of menstruation, meaning taʿzīr is still imposed (Zaydān, n.d.: 117).

1-6- Applications of this Rule

Among the applications of this rule, as discussed in the context of shubhah and its types, is the nullification of the ḥadd of qadhf (false accusation of adultery). For instance, if four witnesses testify to a woman's adultery and a fifth witness claims that the woman is still a virgin and her chastity has not been violated, the ḥadd is nullified due to the doubt regarding her virginity. Similarly, if a person claims ownership of stolen property, the ḥadd is nullified even if their claim is not proven. Another example is when a person retracts their confession to adultery; the ḥadd is affected by this retraction (Zaydān, n.d.: 117-118).

2- Types of Shubhah in Islamic Jurisprudence

The majority of jurists—including Ḥanafī, Mālikī, Shāfiʿī, some Ḥanābilah, and Imāmī scholars—have paid particular attention to classifying shubhah and explaining its types as well as the resulting legal effects. Among these, the roles of Ḥanafī and Shāfiʿī jurists are more prominent, while other schools primarily focus on identifying what constitutes shubhah and why it is considered as such. Overall, all agree that shubhah cannot be fully enumerated or confined, as it generally arises based on specific events and occurrences, which cannot be exhaustively listed.

1-2- Shubhah al-Fi'l (Doubt Concerning the Act)

This type of shubhah is specifically recognized by Ḥanafī jurists, although in its meaning and instances it may overlap with other types of shubhah.

It applies to a person whose understanding of the permissibility or prohibition of an act is uncertain, and there is no evidence indicating that the act is lawful. For example, this occurs when someone engages in sexual intercourse with a thrice-divorced wife or a woman whose divorce has been effected through the payment of property (ṭalāq bā'in) (Marghīnānī, n.d.: 3/344).

2-2- Shubhah al-Maḥall (Doubt Concerning the Place)

The Ḥanafīs also refer to this type of shubhah as ḥukmiyya or mulk, while other jurists call it shubhah mafʿūl (doubt concerning the object). Shubhah al-maḥall occurs when someone mistakenly believes they have the right to control or dispose of a particular place or property, whereas in reality they do not. For example, if a person takes a property believing it to belong to their father and exercises authority over it, while the property actually belongs to another individual (Afsarī, Aḥmadī, 1398: 230).

2-3- Shubhah al-Fā'il (Doubt in the Actor)

This type of shubhah occurs when the actor performing an action experiences confusion or error in their mind regarding the act. For instance, if someone engages in sexual intercourse with a woman mistakenly believing her to be his lawful wife (Ibn Shāth, 1423 AH: 3/1146).

4-2- Shubhah al-'Aqd (Doubt Concerning the Contract)

Some Ḥanafī jurists, in addition to the two types of shubhah—al-fi'l and al-maḥall—have added another type called shubhah al-'aqd (doubt concerning the contract), and they believe that Abū Ḥanīfah himself accepted this type (Ibn ʿĀbidīn, 1412 AH: 4/25). However, most followers of Abū Ḥanīfah do not accept shubhah al-'aqd and, regarding this matter, have adopted views similar to those of other jurists (ʿUdah, 1394: 2/241).

This type of shubhah is established through the existence of a valid contract, even if jurists unanimously consider the contract impermissible or the contract-maker fully aware of its prohibition. Consequently, no ḥadd applies to someone who has intercourse with a woman who is legally permissible for him through a valid marriage contract, as the existence of the contract itself constitutes a permissive circumstance preventing the application of ḥadd. Many scholars have strongly criticized Abū Ḥanīfah for endorsing such a shubhah, with some even claiming that he considered zina (adultery) to be permissible.

The classifications mentioned above sometimes overlap in meaning, or one type may be equivalent to other types in a different school of thought. In other words, the essence may be agreed upon while the terminology differs, or vice versa. Additionally, a single shubhah may have multiple terms in one school of thought. For example, what the Shāfiʿīs and others refer to as shubhah al-fā'il is called shubhah al-fi'l al-ikhtiyā' or shubhah al-mushābahah by the Ḥanafīs. All schools agree on the terminology of shubhah al-maḥall, although the Ḥanafīs also refer to it as ḥukmiyya or mulk. Moreover, shubhah al-fi'l in the Ḥanafī school closely resembles shubhah al-ṭarīq (doubt concerning the manner) in the Shāfiʿī school, while Abū Ḥanīfah remains unique in his acceptance of shubhah al-'aqd.

3- Legitimacy of the Rule of Darr

In this section, the reasons for the legitimacy of the rule of Darr as a general principle will be presented, which encompasses the concept of shubhah al-ṭarīq (doubt concerning the manner). Islamic jurists have cited the following reasons in support of the legitimacy of this rule.

3-1- Prophetic Hadiths

Jurists of the Islamic schools have relied on the following hadith to justify the legitimacy of the rule of Darr: "Adfaʿū al-ḥudūd mā istaṭaʿtum fa-in wajadtum lil-muslim makhrajan fakhallū sabīlah; fa-inna al-imām li-an yakhṭiʾa fī al-ʿafw khayrun min an yakhṭiʾa fī al-ʿuqubah"

“Repel the ḥudūd from the Muslims as much as you can. If you find a way for a Muslim to escape the ḥadd, let him go, for the ruler’s error in pardon is better than his error in punishment” (Dār Qaṭnī, 1424 AH: 4/62). This hadith has also been transmitted via other chains of narration (Ibn Mājah, 1430 AH: 3/579). Each of these narrations on its own may be weak, but the multiplicity of transmission routes, the consistency of their content, and their alignment with the Prophet’s methodology and the practices of his companions have collectively established the rule of Darr and the abrogation of ḥudūd in cases of doubt. Consequently, this rule is widely accepted and justified among the jurists of different Islamic schools.

Within the Imāmī school, the weakness of supporting evidence is also acknowledged. In the Imāmī hadith collections, except for the report by Shaykh Ṣadūq, which is transmitted bi-naw‘ al-irṣāl without specifying the chain of narrators, there is no explicit report indicating the abrogation of ḥadd due to doubt (Moqaddam Dāmād, 1395 SH: 47). Nevertheless, the rule of Darr and adherence to its provisions have gained general acceptance among the Imāmīs, with no apparent opposition. The consensus among the Imāmī jurists, and indeed across the broader spectrum of Islamic jurists, indicates that whenever doubt arises in criminal matters, the Imāmī scholars have stated: “li-annahu min al-shubhah al-dāriʾah” (Shahīd Thānī, 1410 AH: 9/117; Ṭabāṭabāʾī, 1382: 15/523). This general agreement is considered higher than ijmāʿ (consensus) (Mūsavī Bajnurdī, 1385: 1/135).

The Ẓāhirī school, however, does not accept the authenticity of the transmitted narration from the Prophet (“adrū al-ḥudūd bi-l-shubhāt”) and maintains that if a ḥadd is established, it should not be abrogated due to doubt, nor should doubt be used as a reason to enforce a ḥadd.

The ḥadd is considered ḥaqq Allāh (a right of God) and transgression is impermissible.

Thus, if a ḥadd is not established, it cannot be validated through doubt. As the Prophet said: “Your blood, property, and honor are forbidden to others” (Bukhārī, 1422 AH: 9/50). Once a ḥadd is established, it cannot be abrogated by doubt, as God commands: “Tilka ḥudūdu Allāh falā taʿtadūhā” – “These are the limits set by Allah; do not transgress them” (al-Baqarah, 2:229).

2-3- Leniency in the Implementation of Ḥudūd

Another reason for the legitimacy of the rule is that the divine ḥudūd punishments are based on leniency (musāmaḥah), because the Lawgiver (Shāriʿ) has shown tolerance and flexibility in many cases of ḥadd crimes. For example, in proving the ḥadd of adultery, which usually occurs in secret, the Lawgiver requires the testimony of four just witnesses. However, the simultaneous presence of four witnesses in the same place and time is practically impossible unless the fornicator openly commits the act of adultery. This method of the Lawgiver in proving the ḥadd of adultery indicates that mere emergence of doubt should not lead to the enforcement of ḥadd (Subkī, 1416 AH: 3/241).

Regarding the issue of proving ḥudūd or abrogating them due to doubt, two distinct views exist. The Ẓāhirī school holds that if a ḥadd is established, it should not be abrogated by doubt, because ḥudūd constitute ḥaqq Allāh (a right of God) and transgression is impermissible. In contrast, the majority of jurists, relying on textual and rational evidence, have used doubts—provided that these doubts are acceptable according to their standards—to abrogate ḥudūd. The rule of Darr derives from the Lawgiver’s abstentionary approach in defining and implementing severe corporal punishments in the domain of ḥaqq Allāh.

Therefore, the view of the majority of Islamic jurists regarding the abrogation of ḥudūd through doubt aligns with the Lawgiver's approach of mitigation in punishments, especially in ḥudūd penalties.

In response to objections raised by the Ẓāhirī school, it can be argued that the intended shubhah (doubt) that leads to the abrogation of ḥudūd is the doubt that arises during the process of establishing and attributing an act to a person. Once the crime is fully established, no further doubt can be invoked to annul the ḥadd.

Conclusion

The rule of "Idrāʾ al-Ḥudūd bi al-Shubuhāt" (abrogation of ḥudūd due to doubts) is one of the fundamental principles in Islamic criminal jurisprudence, grounded in Prophetic tradition and widely accepted among Sunni and Imāmī jurists. This rule embodies the principle of precaution in the enforcement of ḥudūd, meaning that if there is any doubt regarding the occurrence of a crime or the entitlement to a ḥadd punishment, the execution of that ḥadd is nullified.

The abrogation of ḥudūd by doubts constitutes a core tenet in Islamic criminal law, with its foundations rooted in the texts of the Shariʿah, the objectives of Shariʿah (maqāṣid al-sharīʿah), and principles of jurisprudential reasoning (ijtihād). The classification and categorization of doubts are matters of juristic discretion and can be approached from multiple perspectives. Doubts vary in origin, degree, and effect, which is why their types, classifications, and terminology differ across jurisprudential sources. In Islamic jurisprudence, the rule of Darr intersects with the principle of presumption of innocence and the rule of interpreting doubts in favor of the accused in contemporary statutory criminal law.

Shubhat al-Ṭarīq (doubt concerning the means or process of committing a crime) is one of the most significant types of doubts abrogating ḥudūd, receiving particular attention from the Mālikī and Shāfiʿī schools. The purpose behind abrogating ḥadd in such cases is the observance of differences among schools, analysis based on the objectives of Shariʿah, and strict adherence to precaution. From the perspective of ijtihād, the rationale behind observing differences (murāʿāt al-khilāf iḥtiyātī) reflects the fact that the correctness of one school cannot fully guarantee the incorrectness of opposing views, even if one is confident in their own opinion.

Similarly, this approach aligns with the Shariʿah's objectives of securing benefit and preventing harm.

The legitimacy of this rule is supported by Prophetic traditions, the principle of leniency in ḥudūd, and attention to the principle of idrāʾ. The diversity of juristic opinions, especially in cases of evidentiary conflict or convergence, illustrates that in situations lacking certainty, ḥudūd cannot be implemented. Accordingly, doubts are classified into categories such as shubhat al-fāʿil (doubt of the actor), shubhat al-maḥall (doubt of the place), shubhat al-ʿaqd (doubt of the contract or lawful relation), and shubhat al-ṭarīq (doubt of the method), each of which has a specific impact on determining criminal liability.

Jurisprudential analysis indicates that in the presence of doubt regarding the commission of a crime or the entitlement to punishment, the execution of ḥadd is nullified. Differences among Sunni jurists regarding certain forms of doubt highlight the complexity of determining definitive cases for ḥudūd enforcement. In some cases, although the ḥadd is abrogated, the implementation of discretionary punishments (taʿzīr) remains possible. Ultimately, the principle of idrāʾ in Islamic jurisprudence reflects a cautious and justice-oriented approach to ḥadd punishments, emphasizing the prevention of harsh penalties under conditions of uncertainty.

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