The Provisions of Human Dignity in Implementing the Islamic Penalty on Theft

S.M. Lavasani
Seyed Mohammad Kalantarkousheh

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Sayyid Mohammadhasan Lavasani
Kashan Branch, Islamic Azad University, Kashan, Iran
E-mail: hasanmohammad72@yahoo.com
Tell: +989127502630

Seyed Mohammad Kalantarkousheh
Karaj Branch, Islamic Azad University, Karaj, Iran
E-mail: Kalantar_mofide@yahoo.com

Abstract

Islam places human dignity as a prime consideration in all human affairs, even in dealing with a person sentenced to a penalty. However, the Islamic penalty on theft, which is to cut off the thief’s hand, does not at first obviate any consideration of human dignity. Consequently, some authorities are inclined to reject the Islamic penalty of theft as inapplicable in the modern and postmodern world. This paper aimed to conduct a discussion based on received Islamic traditions that reveal that Islamic codes related to the theft penalty, as they were implemented in the early days of Islam, were actually heavily inclined towards critical considerations of human dignity, as reflected from a number of considerations towards amnesty and the preservation of the thief’s dignity and religious duties. Further, there were several conditions that had to be met before a theft was established in court, wherein any unmet condition would accord amnesty to the thief. The findings of the study suggest that this kind of the penalty was, in essence, intended to serve as a preventive mechanism to deter theft crimes, and not as an unquestioned execution that imparts a permanent and cruel impairment of a life.

Keywords: Human dignity, Theft Laws, Theft penalty, Shariah, Islamic codes

1. Introduction

In our present times, the institutionalization of human dignity in humanistic societies, and the simultaneous imperative to honor humanity, is a ubiquitous norm driven by wide consensus. Any civic or judicial act contrary to such premises of human honor would be strongly condemned, denounced or unconditionally cancelled. Among such judicial acts that have come under fierce debates are some of the Islamic penalties such as the penalty for theft. According to the Quranic verse: “As for thief, man or woman, cut off their hands as requital for what they have earned, [That is] an exemplary punishment from Allah, and Allah is Almighty, All-Wise” (Q.5:38) — the hand of a thief must be cut off as a necessary retribution for the crime of theft.

Several studies on the subject over the past decades have pressed forward strong opposition to such rules under Islamic Jurisprudence, arguing that such rules ignore priorities of human honor, and promulgates a negative view of the Islamic religion. In other words, from the viewpoint of legal bodies of developed nations, amputation of the hand as a penalty for theft is an act of disdain towards human
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2. Conditions Proving Theft Penalty
The Shi'ah jurisprudence defines theft as picking up something that is lawfully owned by someone else, or was being hidden [2]. Such an offense might lead to amputation of the thief’s hand subject to some conditions in the thief, the petitioner and the stolen property. Famous Imamiyyah Jurists [3-5] specified that for this decree of theft to be implemented: (i) the thief must be mature and wise, (ii) the theft must entail stealing the property/goods from its covered place/shelter that is destroyed after the crime, (iii) the thief must have no doubt that this property belongs to its owner, (iv) the stolen property must at least cost 1/4 of a dinar or of equivalent value, (v) the theft was committed secretly, (vi) it is not from the thief’s own property, and (vii) the theft must not entail food and in the year of dearth. Further, there are some more conditions such as: (a) no one has threatened and forced the thief towards the theft; (b) he has intended towards the theft (i.e., the theft is premeditated); (c) he knows that the theft is Haram (unlawful); (d) he is not distressed; (e) the covering and the storage of the property was not taken from the thief by force; (f) the stolen property was kept in proper covering; (g) the stolen property does not belong to endowed, governmental property and the like [3,6]; (h) the owner of the stolen property/estate must launch a complaint against the theft before a judge; (i) the owner of the property/goods had not donated the property to the thief before theft/complaint; (j) the thief has not owned the property through purchasing and the like before its removal (or its alleged theft) is brought before a judge; and (k) the thief has not repented from his sin before proving the crime [3,5-6].

With regards to the retribution of a theft, if all the abovementioned conditions are met then enforcing the penalty is only possible through one of the two ways, namely: (1) the thief himself confesses his act, or (2) just witnesses testify to the committing of this crime [3,5,7].

The existence of such an extensive number of preconditions for the amputation-penalty for theft reveals two crucial matters. Firstly, that the boundary of enforcement of this penalty is more restrictive and it only applies to those cases that are considered to be as an all-out and remorseless threat to the security of society. Secondly, that it is reflective of the general policy of penalty rulings towards establishing the relevant law and deterring the crime, and not to compulsively execute the penalty. In other words, the very fear (regarding the consequences of the crime) established by this decree serves as an effective control mechanism, and serves the purpose of deterring theft [8]. This purport of and understanding of this ruling would be supported by records that indicate only 6 amputations within the first 400 years of Islamic history [9].

3. How to Carry Out the Penalty
The aforementioned preconditions to the theft penalty in question raise many concerns regarding the execution of this penalty, such as regarding the extent to which a hand should be cut off. The Shia interpretation of the Quranic verse that establishes the penalty stipulates that: the right hand should be cut off, wherein ‘cutting’ implies a slash or an incision rather than the severing amputation of the whole of hand [4,7,9]

4. Conditions Influencing the Ruling
In this context, it must be noted that the Islamic Punishment Code has some characteristic, special factors that prevent the actual and full implementation of the penalty which is another reflection of how the Islamic judicial system and punishment is different from the corresponding rulings of other judicial systems in the world in that the former emphasizes on the preventive roles of retributive rulings rather than the final extent of the execution of rulings. These factors are as follows:
I. Corrupt Repentance

The Holy Quran and the ‘received traditions’ from the Ahl al-Bayt, as well as the famous Imamiyyah Jurists, have consensus on the clause of ‘repentance to avoid punishment’ upon seizing and establishing the crime of a thief [4]. The Quranic verse on the premises of theft and its penalty states: "But whoever repents after his wrongdoing, and reforms, then Allah shall accept his repentance. Indeed, Allah is All-Forgiving, All-Merciful" (Q.5:38). This clause and provision for repentance to prevent punishment stems primarily from two Divine attributes, namely: Ghufran (Forgiveness) and Rahmat (Beneficence). Further, the Quranic verse on theft also describes God in terms of two more attributes, namely: Azzat (Glory) and Hekmat (Wisdom). The implication of these verses is that God, who possesses all glory and power in [and over] all affairs of the universe, and who commands the ultimate wisdom regarding all human affairs, had ordained the subject penalty for theft with a simultaneous reminder on the supreme role of and need for wisdom and forgiveness in all human affairs. Herein, such a reminder implies that the penalty is a cruel act that is triggered as a last resort in cases where a thief does not repent and the provisions of mercy/forgiveness does not bring about a profound reformation of the criminal or his proclivity towards the crime. Thus, the said Quranic verse may be interpreted stipulate that a thief’s profound repentance leads to the forgiveness of his act and the waiver of his penalty by the judge. Further, such an interpretation would conclude that the said Quranic legislation of theft is more of a preventive measure to deter theft-crimes, with mercy as a primary provision, repentance as an initial opportunity towards pardon, and the amputation-penalty as a last resort where the said opportunity is rejected by the thief.

Additionally, and in support of the abovementioned interpretation, the arrived traditions from Ahl al-Bayt clearly stipulate the opportunity of ‘cancellation of penalty through repentance’. In a narrative, Imam Baqir was asked about the appropriate ruling for: a man who steals or drinks wine or commits adultery, unbeknownst to all, is found and captured, whereby he repents and decides to reforms himself. The Imam stated: "If he corrects himself and does good deeds, we can't carry out Had (penalty) for him"[10].

II. Amnesty by Petitioner

As mentioned earlier, one of the pre-conditions for the applicability of the said theft penalty is the complaint of the owner of the property against the thief before a judge, provided that he neither forgives the thief nor donates the stolen property to him. However, if the owner forgave the thief and donated the property to him, the penalty will become inapplicable.

In this regard, the Ahl al-bayt have recommended forgiving and ignoring the evil-deeds of a thief even when a petitioner has the right to complain of thief. Further, in case the petitioner chose to forgive the thief, such forgiveness was applauded and considered an act of greatness. A narrator asked Imam Sadiq for the rulings on about the best courses of action for a person who seizes a thief. the Imam answered: “If he forgives him, before taking him to a judge, that would be excellence in behavior [10]. In another narrative, a man named Muhammad ibn Muslim asked Imam Baqir regarding the best course of action when someone committed a crime against him, and asked “Should I forgive him, or should I go to the judge to launch a complaint? The Imam replied: “If you go to a judge, you have asked [for] your right, for that is your right. However, if you forgive him that is most beautiful” [10].

III. Amnesty by the Leader of an Islamic Government

The leader of an Islamic state, or a judge within such a government, reserves the right and provision of pardon and clemency/amnesty towards theft crimes. The prominence of amnesty in the rulings of a leader is so appraised (in Islamic Jurisprudence) that a judge’s errors in amnesty is deemed better than his errors in punishment. The Holy Prophet once stated that: “If a leader makes a mistake in forgiveness wherein he forgives those who are not deserving of it, that is better than if he had made a mistake in punishment wherein he punishes one/some unjustly [11].
Such provisions and options of criminal amnesty are also applicable to theft crimes. It is reported from Imam Sadiq that a young man once went to the Commander of the Faithful, Imam Ali, and confessed his theft. The Imam said: “I see a young man who may well deserve pardon [from the penalty of theft]. Can you read something from the Quran?” The young man replied: “Yes, I can read the chapter Baqarah.” The Imam then said: “I donate your hand [back] to you (viz., in amnesty from the amputation-penalty of the theft committed) for the sake [and honor] of the chapter Baqarah.” [5].

The aforementioned tradition/ narrative illustrates the legislative provisions and proceedings on theft from the viewpoint of a higher rationale and spirit of amnesty and human reformation, as prescribed in the rule of Eqhrare Al–Uqhala-Ala-Anfusehem-Jaez (viz., “The wise are permitted to confess”), which also offers the provision of a second confession for the thief. Exemplarily, in the aforementioned tradition, the Commander of the Faithful (who is the Imam and the leader of the society, and whose actions serve as an example for the rest of society) not only forewent a second confession from the thief but also offered amnesty to the crime (and its severe penalty). Such acts of grace and clemency had undoubtedly offered the possibility of a profound change in the thief, and the appreciation of [the beauty and sanctity of] grace, faith and the Quran. It is understood, however, that the thief would still be subject to the duty of returning/ refunding the stolen property to the owner, despite the amnesty ruling.

IV. Prosodic Doubt

One of the defining Islamic Jurisprudence rules is the rule of Dare : Todrae al – Hudud Bel-Shubahat (viz., “Penalties are deleted by doubts”). Based on this rule, whenever one of such penalties are triggered, but with any degree of doubt in the details that establish the crime, the execution of the penalty will be rescinded. In a narrative by Tirmidhi, the Holy Prophet commanded that: “As long as you can, avoid imposing ultimate penalties upon a human being and try not to punish him/her. And if you can't find a way to punish him/ her, let them be, for a judge's error in forgiveness is better than his error in punishment.” [11].

In further support to this clause in penalty rulings is the narrative from Al-Makki [3] who stipulated that the realization and execution of a penalty depends largely upon the non–existence of doubt. Thus, any doubt establishing in a theft crime will effectively annul its penalty.

Summarily, all the above mentioned factors that must be satisfied to trigger the amputation-penalty upon a thief, and their provisions, clearly suggest that Islamic law–makers actually employ the law and the penalty as a preventive / dissuading mechanism (e.g., against theft crimes), and they strive to apply various strategies/ provision to avoid implementing/ executing the full extent of Had (penalty) in the process of uprooting crime from society.

5. Human Dignity and Theft Penalty

Any person who comes across the amputation–penalty of theft might have the first impression that this decree is dismissive of human dignity, and that it dishonors the thief’s life and person at large. However, a closer look at the penalty, and the manner in which the Ahl Al-Bayt embarked upon issuing the decree against some perpetrators/ thieves, draws attention to a number of other aspects related to the enforcement of this penalty that are discussed below.

6. Integrating Dignity and Penalty in Thief

The details of the very manner in which Islamic legislators and the Ahl Al-Bayt dealt with a thief — prior to, during and after implementing the theft-penalty — are indicative of the close attention they paid to the dignity of thief. Prior to implementing the penalty, every strategy and avenue was considered to prevent the execution of the penalty, such as elements of doubt as well as amnesty. From records of such instances, it is evident that there were cases when such law–makers both ordained a
penalty and at the same time actively sought exceptions/clauses to prevent its execution — rather than ruling an unavoidable penalty. This is reflective of certain distinct values that characterized the government and legislation of an Islamic State at the time, whereby for instance reform and not punishment was the primary goal in governing human affairs. It only followed suit that even criminals on trial were accorded due considerations with regards to their dignity.

Another reflection of such Islamic values is epitomized in the behavior of the Commander of the Faithful, Imam Ali, which was ever indicative of an unfailing and profound respect and love for human beings — ever cautious to never humiliate people and to safeguard their position and dignity in society. The Imam’s principle therein was such that when anyone committed an obscene deed that incurs an Islamic penal code and came to him to confess the miss deed, the Imam tried to prevent any disclosure and hearsay of the crime and, instead, paved the way for the dissolution of penalty. Once a young man went to Imam Ali and told him that he has committed theft. In reaction to his confession, the Imam tried to doubt the details of his confessions [5]. It could be well understood that the Imam, after hearing this confession, was already leaning towards establishing the grounds and provisions that would absolve the thief from eventually bearing the full brunt of the theft-penalty. In another narrative, Imam Sadiq rejected the punishment of a theft based on a single confession from the thief [5]. Herein, the wisdom of Islamic Values mandates that “if a person says a word against himself, his word will be accepted even if he himself rejects it later.” In the same vein, when a thief confesses to his theft, his realization is honored and applauded through amnesty. Imam Sadiq, in all his rulings, emphasized confidentiality and the conservation of the human dignity and social position of the offender, despite his confession, and emphasized on the opportunity to forego a second confession on the same grounds.

Additionally, even in the recorded instances of unavoidable penalties, the dignity of the thief was regarded with maximal care. In such unavoidable cases, where all efforts to prevent or pardon the crime failed, the execution of the penalty was undertaken with utmost consideration the perpetrator’s religious duties. For instance, the Ahl Al-Bayt would minimize the degree of hand-cutting to the least extent possible (such as an incision) under the justification and consideration that the thief would need both hands functional to perform Wudu (ablution) and to prostrate in Salat (prayer), wherein the an extreme amputation would forever deprive him of being able worship God. In a supporting narrative, Imam Ali indicated that when a thief's hand is subjected to the theft-penalty, his palm and thumb should not be cut off to retain the aforementioned and requisite functionality for religious duties. When some people protested to the Imam for this ruling, the Imam stated: “If a thief repents after punishment, how would he make Wudu to pray and repent?” [5].

In a historical [judicial] convention at the city of Mutaseem, during the Abbasid Caliphate, various Sunni jurists expressed their opinions about the amputation-penalty of theft. One mentioned cutting up to the carpal-joint while another mentioned cutting up to the elbow. Imam Javad recalled the saying of the Holy Prophet that: “Prostration is true for 7 limbs”, and then reminded all that the right hand is one of those 7 limbs. If this hand is cut off at the carpal-joint or up to the elbow, no hand will be left for him to prostrate to God. Further, Imam Javad went on to mention that God Himself stated that: “the places of prostration are from God,” which implies that the very 7 limbs of prostrating are for our duty to God, and should thus not be cut off [5]. Summarily, thus, these traditions lay the basis and foundation of the Ahl Al-Bayt’s judicial inclination towards honoring the dignity and religious duties of a thief, and towards ensuring that no penalty should permanently impede a thief from fulfilling his religious rites adequately.

7. Conclusion and Discussion
From all the aforementioned discussions on theft, the conditions for establishing it, the real intent and aim of its Islamic penalty, and the conditions and provisions in preventing the implementation of the penalty — it is evident that the Islamic law-maker functions under strong and Ahl Al-Bayt tradition-driven premises of grace and amnesty that emphasizes on individual reform and repentance, and
emphasizes on preserving the honor and dignity of the thief as it strives to ensure the same for society at large.

Clearly, the Islamic penalty for theft essentially and primarily serves as a preventive mechanism that tries to establish a safe and quit society in order that all honor of men to be honored and sanctuary of their property will not be transgressed. Additionally, if any person committed a sin in society and stole the property of others, it is far more graceful and beneficial if he is allowed the opportunity to repent before God sincerely and in private and reforms himself to become a valuable citizen than the cruel disclosure of the theft and the denunciation and amputation of the perpetrator. Although the full extent of the extreme punishment for theft is sometimes necessary to ensure the security of individuals, property and dignity of society at large, the penalty should nonetheless be carried out within the framework and special boundaries of the religious etiquette detailed earlier.

In light of the above-mentioned, it may be recommended that legal bodies that are endowed with the authority to order the Islamic penalty for theft undertake a revision of the grounds, provisions, rulings and intent pertaining to this penalty, wherein the ruling should be carried out with close attention to teachings and values of human honor and dignity.

References