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The Quarterly Journal of «A New Probe in Fiqh» is cited in the Islamic World Science Citation Center (ISC), State Journals Database (www.magiran.com), Noor Specialized Magazines (www.noormags.ir), and The Magazines Portal of the Islamic Propagation Office (www.daft-armags.ir).

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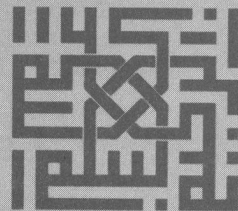
Circulation Phone: +98-25-37116666

Email: jf@isca.ac.ir

Web: jf.isca.ac.ir

Publication Manager: Seyyed Hossein Moosavi

Price: 6000 Tomans.

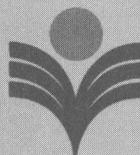


فقه
کودش نور

A New Probe in Fiqh

A Quarterly Scientific-Research Journal

Volume 90, Issue 2, summer 1396



پژوهش علوم و فقه اسلامی

Publisher: Islamic Propagation Office, Qom Seminary

Islamic Science and Culture Academy

Director-in-Charge: Abdorreza Eizadpanah

Editor-in-Chief: Seifollah Sarraimi

Journal's expert: Alireza Fajri

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Jurisprudential feasibility study of transition from corporal punishment

Rahim Nobahar

Abstract

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

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

الإمكانات الفقهية لتحاشي العقوبات البدنية

رحيم نوبهار

الخلاصة:

يهدف هذا المقال إلى البحث عن أسس فقهية يمكن من خلالها اكتشاف مناهذ شرعية لتحاشي العقوبات البدنية الواردة بعنوان الحد أو التعزير.

ويستند المقال إلى بعض المباني - كإمضائية كافة العقوبات المذكورة في النصوص الدينية، وعدم موضوعية شكل وأسلوب تنفيذ العقوبات وأهمية الغايات المقصودة من تنفيذ العقوبة لدى عقلاء العالم، وعدم عبادية الأحكام الخاصة بأنواع العقوبات، وباختصار وجوب فهم النصوص الخاصة بتعيين العقوبة من منظار التغيير والتطورات العقلانية - ليخلص إلى القول بعدم الإشكال في تحاشي كافة أنواع العقوبات البدنية، سواء جاءت بعنوان الحد أو التعزير، باعتبار ذلك واحداً من النظريات الفقهية، مع التأكيد على انفتاح باب البحث حول هذه النظرية.

كما يتطرق المقال إلى العناوين الثانوية والآثار الجانبية غير المرغوب فيها المرافقة لتنفيذ العقوبات البدنية، مثل الاستياء العام في المجتمعين الإسلامي والعالمي، واتساع صلاحيات الحكومة الإسلامية، باعتبارها عناصر يمكن الاستناد عليها لتسويغ تجنب العقوبات البدنية.

بل إن بعض العناوين الثانوية ربما أثارت بعض الإشكالات أمام تطبيق العقوبات البدنية. أما اقتراح البدائل للعقوبات البدنية - في حالة جواز العدول عنها - فلم يتطرق له الكاتب في المقال الحالي، إذ يحتاج إلى فرصة أخرى مستقلة.

المفردات الأساسية: فقه العقوبات، العقوبات البدنية، الرجم، السوط، قطع العضو.