

**THE IMPLEMENTATION OF THE RULE OF DAR- AL-HUDUD FI AL-SHUBUHAT
IN SUNNI JURISPRUDENCE AND ITS PENAL CONSEQUENCES IN THE PENAL
CODE OF AFGHANISTAN (A CASE STUDY OF THE THEFT CRIME)**

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Abstract. *One of the categories of Sharia crimes is the Hudud crimes. By consensus among Sunni jurists, theft is classified as a Hudud crime, for which the prescribed punishment is amputation of the hand. However, in certain cases, the implementation of the punishment for theft is suspended, particularly when there is doubt regarding the crime's occurrence. Based on a Hadith of the Prophet Muhammad (peace be upon him), Hudud are not implemented in cases of doubt. In such instances, the offender will be punished according to the Penal Code of Afghanistan, specifically referencing Article 2, Paragraph 1, and Article 699, Paragraph 2. This research aims to clarify the foundation and application of the rule of Dar- al-Hudud in the context of theft according to Sunni jurisprudence and to examine its penal consequences in the Afghanistan's Penal Code. The significance of this research lies in its first step of outlining the applications of this rule, which includes the conditions for the suspension of the punishment for theft in Sunni jurisprudence, and examining the penal consequences for the offender based on the Afghanistan's Penal Code. In the second step, while applying this rule to the crime of theft and the Afghanistan's Penal Code, it aims to free the reader from the need to reference other sources, which are mostly in Arabic. Additionally, it is crucial for defense attorneys when preparing defenses, for prosecutors when drafting charges, and for judges during hearings and rulings. The methodology used in this research is descriptive-analytical, utilizing library resources. This study will clarify the terms used in the title and discuss the applications of this rule, including: wrongful appropriation of property, embezzlement, denial of deposit, theft of the Quran, burial shrouds, low-value items, theft not from a secured location, theft from places of*

worship, etc. In such cases, the punishment for theft is not implemented, and the offender is penalized according to the Afghanistan's Penal Code.

Keywords: Penalty, Dar- Al- Hudud, Theft, Doubt.

РЕАЛИЗАЦИЯ ПРАВИЛА ДАР-АЛЬ-ХУДУД ФИ АЛЬ-ШУБУХАТ В СУННИТСКОЙ ЮРИСПРУДЕНЦИИ И ЕГО УГОЛОВНЫЕ ПОСЛЕДСТВИЯ В УГОЛОВНОМ КОДЕКСЕ АФГАНИСТАНА (ПРИМЕР ПРЕСТУПЛЕНИЯ КРАЖИ)

Аннотация. Одной из категорий шариатских преступлений являются преступления худуд. По единодушному мнению суннитских юристов, кража классифицируется как преступление худуд, за которое установлено наказание в виде ампутации руки. Однако в некоторых случаях исполнение наказания за кражу приостанавливается, особенно когда есть сомнения относительно совершения преступления. Согласно хадису Пророка Мухаммада (мир ему), худуд не применяется в случаях сомнений. В таких случаях преступник будет наказан в соответствии с Уголовным кодексом Афганистана, в частности, ссылаясь на статью 2, пункт 1, и статью 699, пункт 2. Целью данного исследования является выяснение основы и применения правила Дар-аль-Худуд в контексте кражи согласно суннитской юриспруденции и изучение его уголовных последствий в Уголовном кодексе Афганистана. Значимость данного исследования заключается в его первом шаге, который заключается в изложении применения этого правила, которое включает условия отсрочки наказания за кражу в суннитской юриспруденции, и изучение уголовных последствий для преступника на основе Уголовного кодекса Афганистана. На втором шаге, применяя это правило к преступлению кражи и Уголовному кодексу Афганистана, оно направлено на то, чтобы освободить читателя от необходимости ссылаться на другие источники, которые в основном на арабском языке. Кроме того, это имеет решающее значение для адвокатов защиты при подготовке защиты, для прокуроров при составлении обвинений и для судей во время слушаний и вынесения решений. Методология, используемая в этом исследовании, является описательно-аналитической, использующей библиотечные ресурсы. В этом исследовании будут разъяснены термины, используемые в названии, и обсуждены применения этого правила, включая: неправомерное присвоение имущества, хищение, отказ в депозите, кража Корана, погребальных савана, малоценных предметов, кража не из безопасного места, кража из мест поклонения и т. д.

В таких случаях наказание за кражу не применяется, и преступник наказывается в соответствии с Уголовным кодексом Афганистана.

Ключевые слова: Наказание, Дар-аль-Худуд, Кража, Сомнение.

Introduction:

In the Islamic penal system, responses to crimes are categorized from various perspectives. One of the most common and significant classifications is the division of punishments into fixed (Hudud) and discretionary penalties. This classification is important as it examines public responses to crimes while less attention is given to private rights or the realm of individual grievances. Islamic jurists have determined that in fixed offenses, the amount and type of punishment have been predetermined by the divine law, thus a legal authority or judge does not have the discretion to alter it. According to Islamic scholars, theft is one of the fixed crimes where, in the presence of doubt, the punishment of theft is abrogated because the Prophet Muhammad (peace be upon him) stated: "Ward off the punishments by means of doubt." This principle is known as the rule of Dar' al-Hudud. The issues and questions addressed in this research are as follows: First, what is the basis of the rule "Dar' al-Hudud fi al-Shubuhah"? Second, in what circumstances is the punishment for theft abrogated in the presence of doubts according to Islamic jurisprudence? Third, is the perspective of Sunni scholars on the abrogation of the punishment for theft due to doubt unanimous or divergent? Fourth, from the perspective of Islamic jurisprudence, if the punishment for theft is abrogated due to doubt, will the perpetrator still face discretionary punishment? Fifth, what is the discretionary punishment for theft according to the Penal Code of Afghanistan?

The basis of the rule "Dar' al-Hudud fi al-Shubuhah" is a hadith from the Prophet (peace be upon him), which Sunni scholars agree upon. In scenarios such as wrongful acquisition of property, embezzlement, denial of trust, theft of the Quran, theft of burial shrouds, theft of low-value items, theft from places of worship, non-theft from secure places, theft of forbidden items, and the denial of the owner of the property, scholars hold that the punishment for theft should be abrogated.

However, there are both agreements and disagreements among Sunni scholars regarding these cases. Furthermore, in cases where the punishment for theft is abrogated due to doubt, they advocate for the discretionary punishment of the thief, who will be penalized according to the Penal Code of Afghanistan, which is a discretionary law.

The significance of this research lies in examining the opinions of Islamic scholars regarding the rule of Dar' al-Hudud fi al-Shubuhah, the instances where the punishment for theft is abrogated due to doubt, and the discretionary penalties based on the Penal Code of Afghanistan, which includes simple, aggravated, and mitigated punishments. This research aims to provide a comprehensive understanding that saves the reader from having to consult scattered sources. Additionally, it assists prosecutors in preparing charges, defense attorneys in preparing defenses, and judges during hearings and rulings.

The goal of this research is to elucidate the rule of Dar' al-Hudud in relation to doubts and its applicable terminology, to clarify instances where the punishment for theft is abrogated in Sunni jurisprudence, and to explore the discretionary punishments for offenders of theft if the punishment for theft is abrogated due to doubt according to the Penal Code of Afghanistan. Independent research on this topic has not been conducted; rather, the issues discussed in this study are reflected in various jurisprudential and legal texts in Arabic and Persian, as well as some scattered articles. The method used in this research is descriptive-analytical, utilizing library resources including jurisprudential and legal texts, as well as the Penal Code of Afghanistan.

The Concept and Scope of the Rule of Dar- al-Hudud fi al-Shubuhah in the Words of Jurists and Explanation of Its Practical Terms

The rule of "Dar (Prevention)" is one of the principles that has been applied in Islamic jurisprudence in various contexts. The foundation of this rule is based on the hadith of the Prophet Muhammad and has been accepted by Sunni jurists. Before examining the applications of this rule in the crime of theft, we will first present the opinions of jurists regarding this rule and then discuss the terms used in it.

A: The Concept of the Rule According to Jurists

The phrase "Adra al-Hudud bil-Shubuhah" has been narrated in various forms in the hadith sources of both Sunni and Shia sects. In this article, we will focus solely on the basis of this rule according to Sunni sources:

1. Tirmidhi, in his book which is one of the reliable hadith sources of Sunnis narrates from Aisha the following: "Prevent the implementation of hudud as much as you can. If you find a way for a Muslim to escape, let him go; for it is better for a ruler to make a mistake in pardoning than to make a mistake in punishment." (Mohaqiq Damad, 2007: 44).

2. Ibn Majah (Muhammad ibn Yazid ibn Majah Qazwini) in "Sunan al-Mustafa" narrates from Abu Huraira: The Messenger of Allah (peace be upon him) said: "Prevent the hudud as long as you find an escape." (Mohaqqiq Damad, 1386: 44).

3. Jalal al-Din al-Suyuti narrates from the Prophet Muhammad (peace be upon him): "Adra' al-Hudud bil -Shubuhah." This hadith has also been narrated in other forms such as: "Adra' al-Hudud" or "Adra' al-Hudud bil-Shubha" (Mohaqqiq Damad, 2007: 44).

4. Ibn Mas'ud narrates that the Prophet (peace be upon him) said: "Adra' al-Hudud bil-Shubuhah." (Al-Wadani, 1418 AH: 60).

5. Ibn Mas'ud, Mu'adh ibn Jabal, and Uqbah ibn Amir narrate from the Prophet (peace be upon him) that he said: "If the hudud becomes ambiguous to you, prevent it as much as you can." (Al-Wadani, 1418 AH: 60).

B: Examination of Terms Used in the Rule Dar- al-Hudud fi al-Shubuhah

As the title suggests, this rule incorporates several specific terms that serve as key concepts. A precise understanding of this rule requires careful attention to the meanings and interpretations of these terms. Thus, this section provides a brief overview of the specific terms used in this rule:

1.Dar'

The term "dar'" comes from the root (Dar) and means to ward off, reject, or repel. In the Holy Quran, it is stated: "And they repel evil with good" (Surah Ar-Rad, 22). Additionally, it appears in another context: "Say, 'Ward off death from yourselves'" (Surah Al-Imran, 168). The concept of repelling punishment is also present in the Quran: "And they will avert from it the punishment if they bear witness four times by Allah that indeed he is among the liars" (Surah An-Noor, 8). The translation suggests that giving four testimonies and swearing by Allah that the man is certainly among the liars will ward off punishment from her. The author of Majma- al-Bahrain, referring to the above verses and the hadith "adar' al-hudud bi al-shubuhah," states: "adar'" means 'ward it off.' Thus, the term "dar'" means that through doubts, punishment is repelled from individuals.

2.Hudud

In linguistic terms, "hudud" means prohibition, as these types of punishments prevent individuals from committing crimes again. The characteristic of these punishments is that their measure and extent are predetermined, and no one can exceed that limit. In Islamic penal law, "had" refers to punishments whose measure and type have been determined by the sacred law.

This means that the type and amount of punishment are specified by the lawgiver, and the judge is prohibited from altering it, replacing it with another punishment, or suspending its execution. Some jurists believe that "had" refers to those punishments that God uses to prevent people from committing sins and prohibited behaviors while encouraging them to perform righteous and good deeds.

3.Doubt (Shubha)

In Arabic, "shubha" means doubt, suspicion, confusion, and ambiguity between truth and falsehood (Mohaqqiq Damad, 2007: 51). Islamic jurists have provided various definitions of "shubha." Some Hanafi scholars define it as: "What resembles the truth but is not clear" (Kasani, 1406 AH, Vol. 3: 180; Ibn Abidin, 1412 AH, Vol. 4: 18). This means that a shubha is something that appears similar to a clear and established matter but is not actually clear. Al-Mawardi, a Shafie scholar, defines shubha as: "The matter whose ruling is confused due to differing opinions on its permissibility" (Al-Mawardi, 1419 AH, Vol. 33: 219). According to the Hanbali scholars, it is defined as: "The presence of the permit in form even though its ruling or reality is absent" (Ibn Qudama, 2009 AH, Vol. 9: 55).

The majority of jurists, including Hanafi, Maliki, Shafi'i, some Hanbalis, and Imami scholars, have paid special attention to categorizing doubts. To avoid prolonging the discussion, we will focus on the Hanafi perspective: "The doubt of action," which is recognized by Hanafi scholars, may share meaning with other types of doubts. This doubt applies to someone for whom the permissibility or prohibition of an action is unclear, and there is no evidence to indicate its permissibility. For instance, this could apply to someone who has relations with a woman after three divorces or a woman who has received a divorce in exchange for payment (Marghinani, Vol. 2: 344).

Hanafi scholars also refer to "doubt of location," sometimes called "judicial doubt" or "ownership." Other jurists may refer to it as "doubt of action." This type of doubt occurs when someone believes they have the right to act in a certain place, but in reality, that place does not belong to them; for example, someone might take property under the impression that it belongs to their father, only to find out it belongs to someone else (Ibn Hajar Haythami, 1357 AH, Vol. 9: 103). "Doubt of the actor" refers to confusion in the mind of the doer of an action, such as someone who engages in relations with a stranger, believing her to be his wife (Ibn Shas, 1423 AH, Vol. 3: 1146)

4.Theft

Theft is a crime that deprives the owner of their property. The term "serqat" is derived from the Arabic root "serqah," meaning to take something from someone secretly without the right to do so. Theft has specific elements, including stealing or abducting, taking property without the owner's permission, being movable property, being valuable, not belonging to the thief, intending to possess the stolen item, stealing in secrecy, and the value reaching a certain threshold, with the punishment being the amputation of the hand (Wasil, 2019: 198-178). Theft is defined as taking movable property belonging to another without consent with the intention of ownership (Afghanistan Penal Code: Article 699).

Implementing the Rule of "Dar al-Hudud fi al-Shubuhah" in the Theft Crime Based on Sunni Jurisprudence

As discussed in previous sections, the basis of the rule "Dar al-Hudud" is the Hadith of the Prophet (PBUH) and the views of Sunni jurists. The Prophet (PBUH) stated: "Repel the implementation of hudud with doubts." Since theft is among the crimes subject to hudud, the implementation of the penalty for theft is suspended in certain cases. These cases include obstacles, causes for the repeal of the penalty, and doubts regarding the theft. Therefore, we will examine the implementation of this rule based on Sunni jurisprudence:

1. Taking Property through Usurpation, Embezzlement, and Denial of Deposit: The majority of jurists (Hanafi, Maliki, and Shafiei) state that if property is taken through embezzlement, usurpation, or denial of a deposit, amputation of the hand which is the religious punishment for theft is annulled (Al-Wadaei, 1418 AH: 287-283).

2. Doubts Regarding the Theft Threshold: There are five instances of doubt regarding the threshold of theft. According to Imam Malik and one opinion from Imam Ahmad, the threshold for gold is a quarter of a dinar and for silver three dirhams. If the stolen property is not gold or silver, it will be evaluated in dirhams if its value does not equal three dirhams or a quarter dinar. Imam Abu Hanifa considers the threshold to be ten dirhams, equivalent to one dinar; thus, if the stolen property does not reach this threshold, the penalty for amputation is annulled (Awda, 2011 AH: 260). The threshold of theft is assessed when removing the property from its place of safekeeping, not before or after. Therefore, if the property does not meet the threshold at the time of removal, the penalty is annulled (Al-Wadaei, 1418 AH: 296). If a thief has stolen more than once but the total amount taken does not reach the threshold, according to Imam Abu Hanifa, the penalty is annulled (Al-Wadaei, 1418 AH: 300).

If multiple individuals participate in the theft and the amount stolen by each does not meet the threshold, but the total does, both Imam Abu Hanifa and Shafi'i state that there is no penalty for any of them (previous source, 308-303). If there is an intention to steal an item that does not meet the threshold, but due to an error, the thief steals an item that does, the penalty is annulled according to Hanafi and Hanbali jurists (Al-Wadaei, 1418 AH: 311-309).

3. Withdrawal of the Thief from Their Confession: Scholars except for the Zahiri and some Shafies, agree that if the only evidence for proving the crime of theft is the confession, and the thief explicitly or implicitly withdraws their confession, the penalty for theft is annulled.

However, if two thieves confess to their joint theft and later one withdraws their confession, according to Imam Abu Hanifa, the penalty is annulled for both because the theft is considered a single act and both participated in it. Thus, the withdrawal of one confession creates doubt regarding the other. If one of the two initially confesses to the theft and the other denies it, and there is no other evidence against the denier, the scholars except for Abu Yusuf, agree that the penalty applies to the confessor and is annulled for the denier (Mansouri & Taheri, 2019 AH: 34).

4. Theft of Shrouds: Imam Abu Hanifa does not consider the theft of a shroud to be punishable by amputation, supporting his view with two reasons. First, a shroud is of little value; second, it is not owned by anyone because the deceased lacks legal capacity. It does not belong to the heirs either, as the shrouding and burial of the deceased take precedence over the rights of the heirs. However, Imam Malik, Shafi'i, Ahmad, and Abu Yusuf, who do not accept the notion of "triviality," rule that the hand of the thief should be amputated. They argue that anything that can be bought and sold is considered property of value, and stealing it warrants amputation.

Thus, a shroud is property that has been stolen from its place of safekeeping, the grave, and if it is considered the property of the deceased (Kashani, Vol. 7: 76).

5. Theft of the Quran: According to some Hanafi scholars, stealing the Quran does not warrant the amputation of the hand because the Quran contains the words of God, and selling it is not permissible. In contrast, some scholars, including Malik and Shafiei, argue that amputation is obligatory because the Quran is a property that can be bought and sold. If the Quran contains embellishments that increase its value beyond the threshold, those who do not consider the theft of the Quran punishable also do not regard the theft of its embellishments as punishable.

Nonetheless, according to jurisprudential and narrational texts, theft of the Quran necessitates amputation of the thief's hand (Awda, 2011: 231, citing Al-Mughni, Vol. 10: 247).

6. Theft of Water, Salt, Ice, Soil, and Animal Droppings: From Imam Abu Hanifa's perspective, stealing water, salt, ice, ordinary soil, and animal droppings does not warrant amputation, each having its own justifications (Awda, 2011: 230-231). To avoid prolonging the discussion, we will refrain from detailing these justifications.

7. Theft by underage, Insane Persons and under Compulsion: Theft committed by these individuals, or from this group under certain conditions, results in the annulment of the penalty according to Islamic jurists. Therefore, we will not elaborate on other doubts related to the penalty for theft (Al-Wadaei, 1418 AH: 432-397). Imam Abu Hanifa and Zafar state that if two individuals jointly commit theft and one of them is among those whose hand will not be cut (such as an undistinguishing child with an adult, or an insane person with a sane adult), the penalty is annulled for both. This is because the act of theft is considered singular, and since one is subject to amputation while the other is not, neither will be punished. A similar view exists in Ahmad's school (Awda, 2011: 287).

8. Denial by the Victim: Since Imam Abu Hanifa required the victim's complaint to apply the penalty for theft, he argued that if the victim denies the thief's confession or the testimony of witnesses, whether before or after the complaint, the penalty for theft is annulled. Imam Shafi'i and Ahmad hold that if the denial occurs before the complaint, it leads to the annulment of the penalty. Imam Malik believes that if the victim intended to assist the thief, their denial does not annul the penalty (Mansouri & Taheri, 2019: 34).

9. Theft of Forbidden (illegal) Items and Instruments: Stealing forbidden items, such as alcohol, pork, carrion, etc. whether the thief is a Muslim or a dhimmi, does not incur a penalty.

However, stealing instruments of entertainment, such as a tambourine or flute—even if their value reaches the threshold after being broken—will not lead to amputation because these items are unanimously considered tools of sin, similar to alcohol, and their theft does not invoke a penalty. Additionally, the thief has the right to take them to break them, creating doubt that prevents the implementation of the penalty (Awda, 2011: 232, citing Al-Mughni, Vol. 10: 283-284).

10. Theft from a Debtor's Property: According to Malik, if a creditor takes property equivalent to their claim from a debtor who denies their debt, whether the stolen property is of the same type as their claim or not, their hand will not be cut off. Shafiei states that if the creditor takes more than their rightful claim and it equals the threshold, their hand will not be cut off.

Ahmad's stronger opinion aligns with Shafiei on this matter. However, according to a weaker opinion, since the creditor has no right to take more than their due, their hand should be cut off if they take more than their rightful claim, especially if the excess equals the threshold. Abu Yusuf states that if a creditor takes property that is not of the same type as their claim, their hand will not be cut off.

However, the Hanafi school disagrees with this; if the accused steals from their father's or son's property, their hand will be cut off unless they provide evidence of their mandate or guardianship (Awda, 2011: 272-273; Kashani, n.d.: 71-72).

11. Restitution of Stolen Property before Filing a Complaint: Imam Abu Hanifa believes that if the stolen property is returned to its owner before a complaint is filed, the penalty for theft is annulled because the claim becomes invalid. However, the majority of jurists, including Abu Yusuf, argue that returning the stolen property before filing a complaint does not nullify the penalty for theft, as the penalty becomes obligatory as soon as the theft is committed (Mansouri & Taheri, 2019: 35).

Penal Sanctions for Theft According to the Afghanistan Penal Code

The Afghanistan Penal Code, enacted in 1396 AH, regulates penal sanctions and refers the handling of hudud, qisas, and diya crimes primarily to Islamic jurisprudence. Article 2 of the aforementioned law states: (1) This law regulates penal offenses and sanctions. (2) Those who commit hudud offenses, qisas, and diya offences shall be punished according to the rulings of Hanafi Islamic law." Article 2 of the Afghanistan Penal Code combines the principles of Sharia adherence and law adherence" ensuring alignment with Islamic law while also moving with the collective reasoning of the world's rationalists (Asia Foundation, 2019: 19). Paragraph 2 of Article 699 of the Afghanistan Penal Code states that if the conditions for applying the penalty for theft are not met or if the penalty is annulled for any reason, the offender will be punished according to the Penal Code. The provision specifies: "If the conditions for applying the penalty for theft are not fulfilled or if the penalty is annulled in any way, the offender shall be punished according to the provisions of this chapter. Based on the aforementioned reasons from the Afghanistan Penal Code, if the implementing of the hudud is not feasible, the offender will be punished under Afghanistan penal code. The following discusses the implementing of the "Dar' al-Hudud" rule concerning theft based on the Afghanistan Penal Code, which includes various penalties or responses.

1. Simple Penalties for Theft

The simple penalties for theft according to the Afghanistan Penal Code are briefly reviewed below:

1.1. Theft from a Residential Place

According to Article 700 of the Afghanistan's Penal Code, a medium-term imprisonment penalty is considered for anyone who enters a residential place or a location prepared for habitation. This article states: "A person who commits theft by entering a residential place or a location prepared for habitation or any of its annexes shall be sentenced to medium-term imprisonment." This article outlines one of the instances of theft that carries a relatively severe penalty because a home is a place of security, comfort, and rest, and no one has the legal right to enter without permission. If any of the conditions mentioned in this article occurs during a theft from private locations, the penalty for the perpetrator is medium-term imprisonment. The commission of this crime is possible under the following conditions: a person enters another's residence with the intent to steal, such as a home actively used by its inhabitants or a school where its chairman lives is also considered their residence and also entering a place prepared for living but not yet occupied, like a newly completed house that hasn't been used yet. The annexes of a residential place refer to areas considered part of it such as the yard, storage room, kitchen, parking, etc. (Asia Foundation, 2019: 16-17).

1-2. Theft in Places of Worship

The legislator criminalizes the theft of property belonging to places of worship in Article 701 of the Penal Code. This article protects the belongings of individuals who enter places of worship for prayer or other purposes. Therefore, if someone enters a place of worship and steals the property of worshippers, they must be punished according to Article 708 of the Penal Code. However, if they steal property belonging to the place of worship itself, they will be punished under article 701. The article states: "A person who commits theft by entering a place of worship shall be sentenced to medium-term imprisonment, which shall not be less than three years."

1-3. Theft of Telecommunication Equipment

The legislator defines the theft of electrical, gas, and water equipment in paragraph (1) of article 701, while illegal use of electricity, gas, and water is addressed in paragraph (2) of the same article. These instances are also referred to as crimes equivalent to theft. Article 701 states (1) A person who unlawfully takes public property or property designated for public use, or property belonging to places of worship, historical artifacts, or equipment related to electricity, gas, water, or vehicles shall be sentenced to medium-term imprisonment. (2) A person who

unlawfully takes electricity, gas, or water shall be deemed to have committed theft and shall be sentenced to short-term imprisonment." Additionally, article 705 of the Penal Code protects tools and devices used for telecommunication, electricity, gas, or oil. It states: "A person who steals tools or devices used in telephone or internet communications, or those used for transmitting electricity, gas, or oil, shall be sentenced to medium-term imprisonment."

2. Aggravated Theft

Aggravated theft refers to theft that involves one or more factors considered by the legislator as reasons for increasing the penalty. Article 210 of the Penal Code obligates the court to consider special circumstances when determining penalties in addition to the general aggravating conditions outlined in article 218. (Mansouri and Taheri, 2019: 42). Article 702 specifies the material and mental factors that aggravate theft. It states:

A. "The commission of theft under any of the following conditions is considered aggravated, and the offender shall be sentenced to long-term imprisonment:

1. Between sunset and sunrise;
2. By two or more persons;
3. With the use of a weapon;
4. By entering a residential place or a location prepared for habitation, by climbing over a wall, drilling through a wall, breaking down a door or window, or by using forged keys or any other means;
5. By using military uniform or the uniform of public service employees, or through a fraudulent claim that it was issued by qualified government authorities, or by means of deception from a resident, or using other cunning methods;
6. By a worker intending to harm the employer.

B. If, as a result of committing the offenses outlined in paragraph (1) of this article, another crime is committed, the offender shall receive the maximum penalty for the more serious crime."

Article 704 addresses the conjunction of aggravating circumstances, stating that if four or more aggravating factors listed in Article 702 are present together, the offender shall be sentenced to long-term imprisonment of more than seven years. It specifies: "If two or more persons commit theft between sunset and sunrise, while one of them carries a weapon, either concealed or visible, in a residential place or a location prepared for habitation, they shall be sentenced to long-term imprisonment of more than seven years."

3. Minor Thefts

The penalties for minor thefts are less severe than for simple thefts and include the theft of vehicle license plates, agricultural products, and low-value items, which are discussed below:

3-1. Theft of Vehicle License Plates

The term "vehicle" refers to the definitions provided in paragraphs 6, 7, 8, and 9 of article 2 of the Road Traffic Law. Paragraph (6) defines a general vehicle, paragraph (7) defines a motor vehicle, paragraph (8) refers to public transport vehicles, and paragraph (9) defines trailers. The subject of this crime is the theft of vehicle license plates. The material element of this crime involves taking and stealing a vehicle license plate according to article 5 of the Road Traffic Law, which refers to the official license plate that identifies the vehicle by a combination of numbers and letters. Each motor vehicle must have one license plate at the front and another at the back when in motion on the road (Asia Foundation, 1398: 29). Article 706 of the Penal Code states: "A person who steals a vehicle license plate shall be sentenced to short-term imprisonment."

3-2. Theft of Unharvested Agricultural Products

The subject of theft in this provision pertains to unharvested or unpicked agricultural products. Crops such as wheat, rice, barley, and corn are considered essential products primarily used for human and sometimes animal food. Agricultural products like fruit trees, potatoes, and similar items are fundamental goods crucial for sustaining life. Moreover, early harvesting of grains or fruits can lower their quality and market value. For these two reasons, grains and other agricultural products receive special protection under the law (Mansouri & Taheri, 1398: 49; Asia Foundation, 2019: 30). Article 707 of the Penal Code states: "A person who steals grains or agricultural products that have not yet been harvested or picked shall be punished with a fine equivalent to twice the value of the stolen property."

3-3. Theft of Low-Value Items

Article 709 of the Penal Code outlines thefts that do not involve any aggravating circumstances and where the value of the stolen property is less than five thousand Afghanis. It states: "If none of the aggravating circumstances listed in this chapter are present in a theft, or if the value of the stolen property is less than five thousand Afghanis, the offender shall be sentenced to short-term imprisonment or a fine ranging from ten thousand to sixty thousand Afghanis."

Note: Restitution of Stolen Property or Its Value: In all the above cases, in addition to the penalty, the thief is also required to return the stolen property or its equivalent value at current market prices. Article 710 of the Penal Code states: "In all cases mentioned in this chapter, the court shall order the thief to return the stolen property or its equivalent value, at current market prices, in addition to the determined penalty."

Conclusion

This research yielded the following results:

1. Rule of Dar' al-Hudud: The rule of Dar' al-Hudud is one of the important principles in the area of hudud crimes, based on the hadith of prevention, where the Prophet Mohammad (PBUH) stated that hudud should be avoided in cases of doubt. Islamic jurists agree on this principle, although they differ in their definitions and types of doubt.

2. Classification of Crimes: All crimes can be broadly categorized into religious and punitive crimes. One of the most significant religious crimes is hudud crimes, with theft being one such crime that targets individuals' property.

3. Condemnation of Theft: Theft is condemned and criminalized in both Islamic jurisprudence and the Afghanistan's Penal Code. The material elements of this crime in Sunni jurisprudence include the unlawful taking of property, that the property is movable and valuable, the act being done secretly, the value reaching the threshold, the theft occurring from a secure place, and without the owner's consent. These elements are also reflected in the Afghanistan's Penal Code with slight variations.

4. Punishment for Theft: According to Islamic law, based on the Quran, the punishment for theft is the amputation of the hand. In Islamic jurisprudence, in addition to amputation, the thief is also required to return the stolen property or provide compensation.

5. Application of Dar' Rule: In certain situations, theft falls under the rule of Dar' al-Hudud, causing the application of hudud to be suspended. This occurs when there are obstacles to applying the hudud for theft or if the limit is annulled for specific reasons. In such cases, the penalty for theft is waived due to doubt, and the offender is punished under the Afghanistan's Penal Code based on provisions (1) of article 2 and article 699. In general, articles 699 to 710 of the Afghanistan's Penal Code specifically address penalties for theft.

6. Examples of the Dar' Rule in Theft: According to Sunni jurisprudence, examples of the Dar' rule in theft include taking property through usurpation, embezzlement, denial of trust, doubts regarding the threshold for theft, the thief retracting their confession, stealing water, salt,

ice, soil, and animal droppings, theft by children, the insane, or under duress, theft from a slave, from combatants who fight with Muslims, dhimmis, or protected individuals, theft of shrouds, the Quran, theft from unsecured locations, theft of forbidden items, and instruments of entertainment. In these cases, the offender will be subject to punitive measures. The penalties for theft in the Afghanistan's Penal Code include simple, aggravated, and minor punishments. The simple punishment for this crime has three instances, resulting in medium-term imprisonment.

The aggravated punishment consists of six instances, leading to long-term imprisonment based on the circumstances. Minor theft also includes three instances, with penalties of short-term imprisonment or fines. In all cases where penalties are applied, the offender is also required to return the stolen property or its equivalent value.

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