

Feasibility of Changing the Punishment for Moharebeh to Ensure the Principle of Acceptability Based on a Reinterpretation of Jurisprudential Foundations

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Examining the legal capacities or the feasibility of modifying the punishment for Moharebeh and aligning it with the principle of acceptability based on jurisprudential perspectives is the primary objective of the present study. The central question is what obstacles exist in modifying the ruling on Moharebeh to make it compatible with the principle of acceptability, and what mechanisms can be employed to achieve such modification? The findings indicate that the ruling on Moharebeh, due to factors such as the imposition of the death penalty and amputation of limbs, has not yielded desirable outcomes in society or in the international arena. From a jurisprudential perspective, ensuring the principle of acceptability necessitates that in the evidentiary phase, the ruling on Moharebeh should be contingent upon proving war against God, the Holy Prophet (PBUH), and the disruption of public security and tranquility through armed violence, so that establishing its occurrence is not easily feasible. During the adjudication phase, in line with the view of Imam Khomeini (RA), the concept of weapon should not be overly broad, and items such as stones, sticks, and canes should be excluded from the definition of a weapon to prevent any public act involving the use of a weapon from being classified as Moharebeh. In the execution phase, employing the principle of discretion (takhyīr), which allows for mitigated punishments in severe crimes when the weapon used by the offender is a stick, stone, or cane, plays a significant role in enhancing the acceptability of the punishment for Moharebeh. Moreover, substituting punishments such as exile (nafy al-balad) for the death penalty, crucifixion, or amputation—penalties that are currently regarded as notorious and uncommon from a human rights perspective—has a crucial role in ensuring the principle of acceptability based on a jurisprudential outlook. The present study is descriptive-analytical in nature and has been conducted based on library sources.

Keywords: Moharebeh, acceptability, Islamic jurisprudence and law, public legitimacy.

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1. Introduction

The new world order is moving toward the unification of laws and increased interaction between countries. A part of legal systems concerns the criminalization of behaviors and the determination of punishments within the jurisdiction of each country,

tailored to its religious, cultural, political, and other contexts. This means that some offenses in a legal system may warrant life imprisonment, while others adopt a more socially oriented and humane approach through alternative punishments. With the expansion of human rights and democracy, such approaches have acquired a



more democratic character. Consequently, in light of the principle of public participation in punishment and the determination of penalties for criminal behavior, the principle of acceptability has entered the realm of criminal justice.

In this regard, new propositions have been introduced in contemporary jurisprudence that may not have existed in previous decades or, if they did, lacked significant representation. Among these is the fundamental principle referred to as the "principle of acceptability in criminal law." This principle signifies the democratization and public acceptance of criminal regulations, both in the phase of proving an offense and interpreting related evidence, as well as in the phase of implementing punishments. In other words, crime and punishment should be structured in a way that aligns with societal needs, ensuring public acceptance, so that citizens endorse the legal system and support its enforcement.

If a legal system lacks these criteria—both in defining crimes and in enforcing punishments—it fails to attain acceptability. In particular, in Iran's criminal justice system, which was codified in the form of the Islamic Penal Code after the Revolution, some criminal and *hadd* (fixed) offenses, such as *Moharebeh* (waging war against God), have been subject to debate and controversy. This is because concerns exist regarding both the evidentiary phase and the determination and enforcement of punishments, which are not fully aligned with the principle of acceptability.

The interpretability of concepts like public security and citizen safety, the expansion of *Moharebeh* from the social sphere to the political domain and national security offenses, the lack of consensus regarding the definition of a weapon in *Moharebeh*, and punishments such as crucifixion (*salb*), amputation of limbs, and execution are all matters that require further scrutiny and alignment with the principle of acceptability.

Thus, significant obstacles exist to modifying the punishment for *Moharebeh*. The primary challenge, whether real or perceived, that complicates the implementation of this principle in *hadd* punishments for *Moharebeh* is the prevailing belief that *hadd* punishments, including *Moharebeh*, reflect the definitive ruling of the *Shari'ah* for all times, without considering the acceptability of proving *Moharebeh* or the related punishments. However, if a reinterpretation of

foundational jurisprudential principles can lead to a shift in this belief, the implementation of this principle will no longer be out of reach.

Accordingly, this study aims to examine the main obstacles to implementing the principle of acceptability within the framework of harmonizing Iranian criminal law with other legal systems, particularly in relation to international legal instruments. It further discusses possible mechanisms for modifying the punishment for *Moharebeh* to ensure compliance with the principle of acceptability. The primary research question is: what are the obstacles to modifying the ruling on *Moharebeh* to align with the principle of acceptability, and what mechanisms can be utilized for such modification? The hypothesis of this study posits that the primary obstacle to implementing the principle of acceptability in the context under discussion is the prevailing belief that the punishment for *Moharebeh*, as prescribed in the Islamic Penal Code, is a fixed *hadd* penalty based on the definitive ruling of the *Shari'ah*, applicable universally and eternally, with no possibility of modification. However, redefining the concept of a weapon, recognizing the lack of independence of *Moharebeh* from *Mofsed-e Fel-Arz* (corruption on earth), and allowing for mitigating punishments in cases of aggravated crimes play a significant role in realizing the principle of acceptability.

2. Criminal Acceptability

The acceptability of criminal laws and regulations refers to considering the demands and needs of citizens and incorporating their perspectives into the formulation and revision of laws. If laws are deemed immutable, eternal, and merely serve as instruments for government control and the violation of citizens' rights, then criminal acceptability loses its meaning. Criminal acceptability entails the linkage and interaction between legal culture and legal norms, which may extend to the implementation of punishments within society. Thus, legal culture cannot be separated from the legal system established for the general public (Oslon, 2014).

For this reason, legislators aim to gain public support and even the backing of different social strata when formulating criminal policy and enacting regulations. The broader the scope of societal groups considered in the legislative process, the greater the legitimacy and acceptability of the law and its corresponding penalties

within the community. In modern legal approaches, public endorsement and enforcement of laws by citizens are of paramount importance, forming an aspiration of every government. Social acceptability is precisely this concept—it serves as a guarantee for the practical enforcement of criminal laws (Danesh Ara & Kazemi, 2022).

The acceptability of legal provisions has also been acknowledged in *Imamiyyah* jurisprudence. Since the fundamental purpose of government is to regulate public affairs at the societal level, the state's authority is limited to matters that lack an existing custodian and pertain to collective concerns. However, in personal affairs or social matters where a non-governmental entity is responsible, and where guardianship has been assigned to others, the state has no right to intervene unless such matters conflict with governmental social necessities. This means that state intervention is justified only when individual rights cause disturbances, conflicts, or societal harm. Therefore, any coercion or infringement upon people's rights and their individual and social freedoms contradicts human nature and the essence of *Shari'ah*, which aligns with human innate disposition (Montazeri, 2009).

Thus, acceptability is a prerequisite for the enforcement and endorsement of laws by the public, which holds true for criminal laws as well. According to this principle, rulers and legislators must understand the demands and expectations of the people and strive to legislate in alignment with those needs. If they fail to do so, they risk losing public trust. Consequently, the establishment of a democratic criminal justice system necessitates a democratic constitution and the development of citizen-centered fundamental criminal rights (Najafi Abrand Abadi et al., 2020).

Accordingly, citizens perceive a criminal justice system as legitimate and acceptable only if it considers their needs, proves efficient, and contributes to solving social problems. However, acceptability is not confined solely to domestic criminal systems within individual countries. In light of the principle of the internationalization of human rights, criminal justice systems must also consider developments and the evolving needs of citizens at a global level.

3. The Ruling on Moharebeh

Moharebeh (*waging war against God*) is defined as "engaging in combat and spreading corruption on earth (*ifsād fī al-arḍ*), which means creating disorder and devastation." Thus, a *mohareb* (one who commits *Moharebeh*) is a person who takes up arms and creates insecurity (*yāghī*), whether inside a city or outside of it (Qorashi, 1992). Consequently, individuals who engage in acts within cities or outside them that endanger societal peace are considered *moharebs*.

The purpose of Islamic law is to establish justice, ensure the equality of all people in their humanity (regardless of race, ethnicity, wealth, or social status), and provide security for society. Achieving these objectives necessitates the full implementation of divine *ḥudūd* (fixed punishments) to protect people's lives, properties, and assets from harm and to punish criminals. Regarding the punishment for such individuals, the Qur'an states:

"The punishment of those who wage war against God and His Messenger and strive to spread corruption on earth is none but that they be killed or crucified, or that their hands and feet be amputated from opposite sides, or that they be exiled from the land. That is their disgrace in this world, and for them in the Hereafter is a great punishment" (Qur'an, 5:33).

The historical context (*sha'n al-nuzūl*) of this verse relates to the time of the Prophet Muhammad's governance in Medina when a group of bandits attacked people and shepherds, committing brutal murders. As a result, verse 33 of Surah Al-Ma'idah was revealed, mandating their execution or exile (Najafi, 1981). Accordingly, a specific social behavior of that period led to the formulation of legal provisions that are now recognized as *Moharebeh*.

With the emergence of political governance and the establishment of an Islamic state, *Moharebeh* took on a political dimension. Since the state represents the people and enforces laws, any act that disrupts political stability and security was also classified under *Moharebeh*. Consequently, if an individual uses weapons to threaten public security, they may be subject to the punishment for *Moharebeh*.

According to the aforementioned verse, a *mohareb* is someone who unsheathes and prepares a weapon to terrorize people, disturb security, and cause corruption in society—whether on land, at sea, in cities, on roads, at night, or during the day, and regardless of gender. In all such cases, the individual is classified as a *mohareb*, and

the prescribed punishment for *Moharebeh* applies to them (Mousavi Khomeini, 2000). However, some jurists contend that in addition to being armed and causing insecurity, the element of *intent to instill fear* must also be established for an act to be considered *Moharebeh* (Kadivar, 2008).

Based on this verse and the views of Islamic jurists, Article 279 of the Islamic Penal Code defines *Moharebeh* as:

"Moharebeh is defined as drawing a weapon with the intent to endanger lives, property, or the honor of individuals, or to instill fear in such a manner that disrupts public security. If a person uses a weapon with personal motives against one or more specific individuals without causing public fear, or if an individual brandishes a weapon but, due to incapacity, fails to instill insecurity, they shall not be deemed a mohareb."

Elsewhere, *Moharebeh* and *ifsād fī al-arḍ* (corruption on earth) are jointly addressed in certain crimes. Article 286 of the 2013 Islamic Penal Code states regarding *ifsād fī al-arḍ*:

"Anyone who extensively commits crimes against bodily integrity, offenses against national or international security, dissemination of falsehoods, disruption of the national economic system, arson, destruction, distribution of toxic, microbial, or hazardous substances, or operates centers of corruption and prostitution, or assists in such activities in a manner that severely disrupts public order, security, or causes significant harm to persons or public and private property, or leads to widespread corruption or prostitution, shall be considered a mofsed fī al-arz (one who spreads corruption on earth) and shall be sentenced to death."

Regarding the punishment for *Moharebeh*, Article 282 of the Islamic Penal Code prescribes one of the following four punishments:

- a) Execution;
- b) Crucifixion (*ṣalb*);
- c) Amputation of the right hand and left foot;
- d) Exile (*nafy al-balad*).

4. Assessing the Feasibility of Modifying the Punishment for Moharebeh from a Jurisprudential Perspective

Aligning criminal laws with the principle of acceptability requires examining the scope and specific applications of punishments in the context of social behaviors. Issues such as the type of weapon used to establish *Moharebeh*, the independent or interdependent nature of *Moharebeh* and *ifsād fī al-arḍ*, and the necessary conditions for the realization of *Moharebeh*—as explicitly stated in the Qur'anic verse—require reconsideration, which will be elaborated below.

4.1. Establishing the Three Conditions for the Punishment of Moharebeh

Some legal scholars criticize Article 279 of the 2013 Islamic Penal Code, arguing that separating *ifsād fī al-arḍ* from *Moharebeh* and recognizing them as distinct crimes is incorrect. However, the enactment of Article 286, which differentiates *ifsād fī al-arḍ* from *Moharebeh*, has resolved certain ambiguities in legislative practice and clarified the distinction between these offenses. By distinguishing between these two crimes, the death penalty was assigned to *Moharebeh*, while a broad range of criminal behaviors could be categorized under *ifsād fī al-arḍ*, provided that specific conditions were met (Nasiri, 2024).

Although this distinction prevents overlap between offenses, deriving severe crimes from Qur'an 5:33 and linking *Moharebeh* and *ifsād fī al-arḍ* remains incompatible with the principle of acceptability. Some scholars argue that *ifsād fī al-arḍ* should not be recognized as an independent crime. This perspective suggests that such an interpretation could lead to excessive severity in prosecuting crimes related to *Moharebeh* and *ifsād fī al-arḍ*, thereby undermining the principle of acceptability.

The primary legal foundation for the ruling on *Moharebeh* is Qur'an 5:33, which simultaneously references three crimes: *Moharebeh*, spreading corruption on earth, and general *ifsād*. This reflects a strict judicial approach. A more conventional interpretation of this verse that integrates these three components could align with the principle of acceptability. Some scholars maintain that *Moharebeh* and *ifsād fī al-arḍ* are independent crimes (Habibzadeh, 1991).

Critics of this view argue that the apparent meaning of the verse refers to both *Moharebeh* and *ifsād fī al-arḍ*. Linguistically, the verse suggests that waging war against

God and His Messenger and spreading corruption on earth are interlinked concepts, as indicated by the coordinating conjunction (*wa*). Thus, all elements must be present for the punishment to be enforced (Mousavi Bojnourdi, 2005).

If this interpretation is adopted by the judicial system, it could better support the principle of acceptability from a jurisprudential standpoint. A more rational and humane interpretation of the conditions required for *Moharebeh* would necessitate proving both widespread corruption and an act of war against God and His Messenger.

Supporting this perspective, it can be argued that merely brandishing a weapon or interpreting it as a threat to national security or public order does not sufficiently establish the crime of *Moharebeh*. From a jurisprudential standpoint, *Moharebeh* and *ifsād fī al-arḍ* are not separate rulings derived from this verse. The use of the relative pronoun (*alladhīna*) followed by the phrase (*yuḥāribūna Allāha wa Rasūlahu*) and its subsequent connection with (*yas'awna fī al-arḍ fasādan*) implies a unified concept rather than two distinct rulings (Emami Kashani, 1993; Fadhil Lankarani, 2001).

Therefore, from a jurisprudential perspective, treating these punishments as interconnected is defensible. If the legal system adopts this view, it will enhance the principle of acceptability by requiring *ifsād fī al-arḍ* as a condition for establishing *Moharebeh*.

4.2. Limiting the Definition of a Weapon in the Punishment for *Moharebeh*

Regarding the ruling on *Moharebeh*, if the use of a weapon in determining its punishment, as stipulated in Article 279 of the Islamic Penal Code, is accepted, then from a jurisprudential perspective, it necessitates an interpretation of what constitutes a weapon. This ensures that any tool used by an offender is not automatically classified as a weapon leading to a *Moharebeh* charge. Some Shi'a jurists have not restricted the definition of a weapon to a specific type and have considered any tool used in the commission of this crime as a weapon without addressing its specific nature (Ameli, 2004; Ameli, 2002).

This broad interpretation has resulted in a sweeping application of the concept of "drawing a weapon" for *Moharebeh*, which could lead to severe punishments even for minor offenses. In other words, using a stick or cane—representing a less severe act—could be

classified as weapon use and could potentially result in a death sentence. However, there have been some flexible interpretations regarding what qualifies as a weapon for *Moharebeh*. Notably, in the rulings of Imam Khomeini (RA) in *Tahrir al-Wasilah*, he did not consider every weapon sufficient for establishing *Moharebeh*. He explicitly excluded items such as whips, canes, stones, and wooden sticks from the definition of a weapon (Fadhil Lankarani, 2001; Mousavi Khomeini, 2000).

Therefore, actions such as causing public disturbances in the streets or cities and using stones, canes, or wooden sticks cannot be considered sufficient to establish *Moharebeh* and its corresponding punishment. In such cases, the principle of "mitigation of severe punishments" can be applied. The concept of *takhyīr* (discretion) allows judges to select the least severe punishment from the four prescribed penalties under the principle of acceptability. If tools such as wooden sticks, stones, whips, and similar objects are excluded from the broad definition of weapons for *Moharebeh*, and if *ifsād fī al-arḍ* (corruption on earth) and *Moharebeh* are not treated as independent crimes under Article 279 of the Islamic Penal Code—requiring the fulfillment of all three conditions outlined in the verse—the ruling would achieve a higher level of public acceptability.

Additionally, aligning with the principle of acceptability necessitates a jurisprudential interpretation of *Moharebeh* as defined in Article 279 and Qur'an 5:33. This interpretation should focus on the social dimension of *Moharebeh*, ensuring that not every act falling under Article 279 is automatically classified as a political or national security offense. Otherwise, offenders could face excessively harsh penalties, such as execution or lengthy imprisonment, for actions that do not meet the true threshold of *Moharebeh*.

4.3. Considering the Consequences of Criminal Acts

Outcome-based considerations play a significant role in determining punishments for offenders in many legal systems. This modern approach requires an acknowledgment of temporal and spatial changes and the evolving needs of citizens over time. In general, *Imamiyyah* jurisprudence presupposes that all *Shari'ah* rulings are based on underlying benefits, whether explicitly stated by the *Shari'ah* or not (Momeni & Rostami Najaf Abadi, 2015; Montazeri, 2021).

Legal reformists, emphasizing customary law and the evolving nature of social behavior over time and place, argue that *Shari'ah* rulings should be adaptable to societal needs (Malekian, 2009). They assess the criminal policies of the Prophet Muhammad based on the specific societal and circumstantial contexts in which they were implemented, viewing them as devoid of mystical or esoteric elements. Instead, they argue that these policies should be aligned with contemporary social interests, much like how retributive justice (*qisās*) is regarded as a rational legal principle (Malekian, 2009). Thus, adapting legal rulings to present-day conditions and modifying punishments in response to contemporary realities are evolving tools that should be incorporated into criminal jurisprudence. Advocates of aligning *hudūd* (fixed punishments) and *qisās* with customary law and rationality argue that penal laws should not remain unchanged indefinitely. Maintaining rigid punishments risks violating citizens' rights, disregarding rationality, and hindering legal progress in Islamic societies, ultimately fostering "alienation from religion."

In analyzing the ruling on *Moharebeh*, one of the necessary conditions for its acceptability is an outcome-based approach to the crime. Some scholars, interpreting *Moharebeh* broadly in light of Article 279 of the Islamic Penal Code, argue that the primary criterion for *Moharebeh* is whether the act has the potential to disrupt social peace and instill widespread fear (Habibzadeh, 1991). This perspective, however, disregards the actual consequences of the act, applying an overly rigid and incompatible approach to the principle of acceptability. To uphold the principle of acceptability in the punishment for *Moharebeh*, the crime must be conditioned upon achieving a specific outcome—namely, the disruption of public peace and security (Goldouzian, 2014). Thus, in determining whether *Moharebeh* has occurred, both the type of weapon used and the actual outcome of the act must be considered. If the primary result is not the disruption of public peace, then even if an interpersonal conflict occurs, it does not constitute *Moharebeh* under Article 279 (Moghimi & Rostami, 2019).

This interpretation eliminates certain punishments that, based solely on an individual's presence in a particular location or their involvement in an act perceived as a national security threat, could be categorized as

Moharebeh. Instead, criminal penalties should be based on clear, substantiated, and concrete evidence of public insecurity.

4.4. Considerations in the Enforcement of Punishments

Some jurists argue that there is no justification for the immutability of non-ritualistic Islamic rulings, meaning they can change over time and according to circumstances. The validity of *Shari'ah* rulings should be evaluated based on rational principles (Montazeri, 2009, p. 704). A comprehensive understanding of religion requires assessing it through rational criteria (ibid., p. 705).

The Prophet Muhammad is reported to have said: "Excuse those with honorable status for their missteps, except in matters of *hudūd* (fixed punishments)". This emphasis on leniency and ease in Islam extends to followers of other religions, as evidenced by Qur'an 2:285: "We make no distinction between any of His Messengers." This principle of religious tolerance underscores Islam's rational foundation, which is particularly relevant in legal and judicial matters.

Encouraging leniency in various issues concerning non-Muslims fosters positive international and social relations. The non-imposition of Islamic penal laws on *Ahl al-Kitāb* (People of the Book)—except in cases of *hudūd*—ensures that Islam is perceived favorably by the global community and that Islamic punishments are accepted by non-Muslims.

Regarding *Moharebeh*, the Qur'an prescribes alternative punishments, meaning multiple penalties are legislated concurrently, with varying degrees of severity—from execution to one-year exile (Mohibi & Riazat, 2016). This range of punishments between execution and exile can be utilized to align Islamic criminal laws with international legal standards and enhance their global acceptability.

However, exile (*nafy al-balad*) should not serve as an incentive for the proliferation of *Moharebeh* in society. Instead, in cases where the primary consequence of *Moharebeh*—public insecurity—has not been realized, exile may be an appropriate punishment. The term *nafy al-balad* (exile) means that the offender is prohibited from residing in their city or habitual residence and is sentenced to live in another location for a specified period, a punishment that is supported by jurists (Ameli, 2004; Ameli, 2002).

If this approach is incorporated into judicial practices, it would uphold the principle of criminal acceptability while mitigating strict interpretations that equate *nafy al-balad* with execution. Some jurisprudential and legal perspectives define *nafy al-balad* as the elimination of the *mohareb*, which may conflict with international legal norms (Hosseini Pasandi & Arjomandian, 2023).

Thus, despite the various punishments prescribed for *Moharebeh* in domestic laws, considering the contextual conditions of the crime, defining weapons narrowly (excluding stones, sticks, and canes), and rejecting the independent classification of *Moharebeh* and *ifsād fī al-arḍ* are crucial in ensuring the acceptability of the ruling.

4.5. Consideration of Human Rights Principles and Human Dignity in Jurisprudence

The principle of criminal acceptability places special emphasis on the humane nature of crimes and punishments. Legal scholars define human dignity as the entitlement to respect based on the inherent nobility and purity of human nature. Consequently, human dignity serves as the foundation of human rights (Omidi, 2015). The Universal Declaration of Human Rights also stresses the inherent dignity of human beings and the prohibition of torture (Universal Declaration of Human Rights, 1948).

If a person's instinctive tendencies develop excessively and without regulation, they may hinder their rational development. Although individual obligation and cultural awareness can help uphold norms and foster intellectual growth, when such measures are insufficient at the individual level, broader legal punishments are necessary to ensure compliance at the societal level (Qamashi, 2012). Human dignity encompasses moral virtues and religious values. Since crimes and sins threaten these values, punishment is necessary to counter them. The criterion for determining human dignity is the essence of human existence—referred to as natural disposition (*fīṭrah*) (Qamashi, 2012).

One of the legal implications of human dignity is the prohibition of torture and the prohibition of cruel and degrading punishments (Omidi, 2015). These principles have also been acknowledged in the Cairo Declaration on Human Rights in Islam. In Islamic philosophy, human dignity is analyzed from two perspectives. The first, *intrinsic dignity*, pertains to the fundamental creation of humankind, requiring universal respect as an inherent

right. This respect is upheld unless an individual, through their actions, violates the rights and dignity of others. The second, *divinely bestowed dignity*, is acquired through an individual's moral and religious conduct.

Islamic law prohibits excessive punishment as a violation of human dignity (Jafari Tabrizi, 1991). However, this principle should not be undermined by permanent, unchangeable punishments or interpretations of laws that are based on power dynamics. Therefore, ensuring proportionality between crime and punishment in the ruling on *Moharebeh* is another essential factor in strengthening the principle of acceptability. One of the main reasons for disproportionate punishments in both international human rights law and domestic legal systems is the prohibition against instrumentalizing human beings and the necessity of respecting their inherent dignity.

In this regard, a criticism can be directed at Article 610 of the Islamic Penal Code, which stipulates that the minimum statutory punishment for conspiracy to commit a crime against national security (which includes *baghy* [armed rebellion] and *ifsād fī al-arḍ* [corruption on earth]) is greater than the minimum punishment for many other crimes against national security (Jafari et al., 2019). This approach is inconsistent with the principle of human dignity and the proportionality of crime and punishment, thereby undermining the principle of acceptability.

Furthermore, with advances in criminal punishment and the discretionary authority of judges to impose diverse sentences, amputating limbs as a penalty for *Moharebeh*, due to its impact on the acceptability of Islamic criminal law, should either be reconsidered or replaced with alternative penalties. Judges, when adjudicating *Moharebeh* cases, should apply the principle of *takhyīr* (discretion) and prioritize lighter, more socially acceptable punishments that do not damage the credibility of Islamic law.

5. Conclusion

Acceptability is one of the fundamental criteria for assessing the legitimacy, humaneness, and public responsiveness of a criminal justice system. A system based on justice must ensure that the process of proving crimes and punishing offenders not only upholds justice but also steers the criminal justice system toward humane and democratic approaches.

However, the principle of *Moharebeh*, both in terms of proving the crime and in the adjudication and execution of its associated punishment, suffers from deficiencies that undermine its acceptability. The findings of this study indicate that achieving the principle of acceptability in the punishment for *Moharebeh* requires a reconsideration of the criminal interpretation of Qur'an 5:33. This verse originally addressed a social issue during the early Islamic period, but its application has since been transformed into a political and national security matter, leading to restrictions on citizens' freedoms and the categorization of certain offenses under *Moharebeh*, resulting in severe judicial rulings such as execution, crucifixion, amputation, or exile.

To align the ruling on *Moharebeh* with the principle of acceptability, it is first necessary to examine the historical and social context in which the ruling was established and to avoid its application to political crimes. Rejecting the independence of *ifsād fī al-arḍ* from *Moharebeh* and requiring the fulfillment of all three conditions—war against God, the Prophet (PBUH), and corruption on earth—are crucial in preventing an overly broad application of *Moharebeh*. By making these conditions more stringent and requiring tangible evidence of these acts, the application of *Moharebeh* and its associated severe punishments, such as execution, lengthy imprisonment, and amputation, can be reduced. Additionally, in support of the principle of acceptability in the punishment for *Moharebeh*, it is essential to ensure that not all weapons automatically lead to its classification. This means that objects like wooden sticks, canes, and stones should not be considered weapons in the legal definition of *Moharebeh*. Furthermore, all three elements of *Moharebeh*—war against God, war against the Prophet (PBUH), and spreading corruption on earth—must be established to meet the necessary evidentiary threshold.

At the sentencing and enforcement stages, the principle of *takhyīr* should be applied so that judges, considering the principle of acceptability, select the least severe punishment from the four prescribed penalties. Exile (*nafy al-balad*) should be preferred over execution, crucifixion, or amputation, as the latter punishments lack public and international legitimacy. Additionally, by emphasizing the principle of proportionality, severe punishments should not be imposed for lesser offenses. Instead, judicial efforts should focus on applying lenient

penalties for severe crimes, thereby creating a more acceptable legal framework.

Based on these findings, the following recommendations can be made:

- To establish and prove the crime of *Moharebeh*, the offense must be committed on a large scale, fulfilling all three conditions mentioned in Qur'an 5:33—war against God, war against the Prophet (PBUH), and spreading corruption on earth. Furthermore, objects such as stones, wooden sticks, and canes should not be considered weapons in proving *Moharebeh*.
- The criminal act of *Moharebeh* should result in severe disruption of public order, insecurity, or significant harm to individuals' physical integrity or private and public property, or lead to widespread corruption or immorality. One of these consequences must be present for an individual to be convicted of *Moharebeh*. An outcome-based approach should be prioritized over intent-based considerations.
- Adopting a moderate legal approach, revising certain punishments such as amputation, and promoting alternative and less severe penalties—particularly prioritizing exile over execution—can better safeguard the principle of human dignity within the framework of criminal acceptability.

Authors' Contributions

Authors contributed equally to this article.

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In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

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References

- Ameli, M. B. M. (2004). *Al-Lam'ah al-Dimashqiyyah* (Vol. 17). Dar al-Fikr Publications, Qom.
- Ameli, Z. B. A. (2002). *Masalik al-Afham ila Tanqih Sharaye al-Islam* (Translated by A. Mohammadi ed.). Maaref Islamic Publications, Qom.
- Danesh Ara, S., & Kazemi, S. S. (2022). The metamorphosis of criminal law in the balance of tradition and modernity; with emphasis on Iranian criminal law. *Legal Studies Quarterly*, 14(4), 183-211.
- Emami Kashani, M. (1993). A study of the jurisprudential theories of the Guardian Council. *Rahnamoon Quarterly*(4 & 5).
- Fadhl Lankarani, M. (2001). *Tafsil al-Shari'ah fi Sharh Tahrir al-Wasilah*. Center for Jurisprudence of the Imams of the Ahl al-Bayt (AS), Qom.
- Goldouzian, I. (2014). *Commentary on the Islamic Penal Code*. Majd Publications, Tehran.
- Habibzadeh, M. J. (1991). *A study of the crime of moharebeh and ifsad fil-ard*. Kayhan Institute Publications, Tehran.
- Hosseini Pasandi, S. S., & Arjomandian, B. (2023). The judicial role in determining appropriate punishment in moharebeh, considering international challenges. Proceedings of the Eighth International and National Conference on Management, Accounting, and Law,
- Jafari, M. J., Ghasemi, M., & Torabi, M. (2019). Examination of violations of criminal law principles in the criminalization of baghi and ifsad fil-ard. *Journal of Jurisprudence, History, and Civilization*, 5(2), 15-24.
- Jafari Tabrizi, M. T. (1991). The right to human dignity. *Journal of the Faculty of Law and Political Science*, 26(1).
- Kadivar, M. (2008). *Haq al-Nas*. Kavir Publications, Tehran.
- Malekian, M. (2009). *A path to liberation: Essays on rationality and spirituality*. Negah-e Mo'aser, Tehran.
- Moghimi, A., & Rostami, J. (2019). The extension of moharebeh to maritime piracy from the perspective of Shia jurisprudence and Iranian criminal law. *Parliament and Strategy Quarterly*, 27(101), 243-269.
- Mohibi, J., & Riazat, Z. (2016). Foundations and models of punitive measures (case study in crimes against security). *Horizons of Security*, 9(33), 33-63.
- Momeni, A., & Rostami Najaf Abadi, H. (2015). The role of expediency in the implementation of hudud punishments. *Comparative Jurisprudence*(5).
- Montazeri, H. A. (2009). *Islam is the religion of nature*. Saye Publications, Tehran.
- Montazeri, H. A. (2021). *Kitab al-Hudud*. Dar al-Fikr, Qom.
- Mousavi Bojnourdi, S. M. (2005). *Comparative jurisprudence*. SAMT Publications, Tehran.
- Mousavi Khomeini, R. (2000). *Tahrir al-Wasilah*. Dar al-Ilm Publications, Qom.
- Najafi Abrand Abadi, A. H., Janidi, L., & Niazpour, A. H. (2020). The internationalization of fundamental principles of criminal law.
- Najafi, M. H. B. (1981). *Jawahir al-Kalam fi Sharaye al-Islam*. Dar al-Ahya al-Turath al-Arabi, Beirut.
- Nasiri, M. (2024). Evaluating the criminal policy of the Islamic Republic of Iran in the criminalization of moharebeh; foundational and executive challenges. *Quarterly Journal of Jurisprudence and Principles*, 1-20.
- Omidi, J. (2015). *Interpretation of the law in criminal law*. Mokhatab Publications, Tehran.
- Osion, G. (2014). Narration and Narrative in Legal Discourse. <https://www.lhn.uni-hamburg.dehttps://doi.org/10.1515/9783110316469.371>
- Qamashi, S. (2012). Human dignity as an obstacle to the expansion of criminalization. *Quarterly Journal of Criminal Law Research*, 1(1).
- Qorashi, S. A. (1992). *Qamus al-Quran* (Vol. 2). Dar al-Kutub al-Islamiyyah, Tehran.
- Universal Declaration of Human Rights. (1948). Universal Declaration of Human Rights.