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Rethinking Jurisprudential Evidences for the Death Penalty in Relation to Repeatation of Specific Crimes (Hudud)

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Abstract

According to a seemingly well-known opinion between Shi'ite jurists, if someone commits a prescribed crime (hadd) four times, he would be convicted to the death penalty if the punishments for the three previous crimes have been carried out. This article critically re-reads the evidences and arguments supporting this opinion. Due to the weakness of some narrations in the field, serious conflict between them and the possibility of historical interpretation of them, the author comes to the conclusion that implementing the death penalty for repeating prescribed crimes (hudud) is not a mandatory prescribed punishment.

Alternatively, the article suggests providing a preventive punishment instead of the death penalty particularly when the offender is repentant and/or the society can be protected from the evil and harm of the offender by other ways. The idea is consistent with the foundations of Islamic law particularly with the principle of precaution (ihtiyat) in human life which has been insisted in the Holy Legislator's teachings in various ways.

Key words: *Islamic Criminal Jurisprudence, Shi'i Islam, Recidivism, Death Penalty, Habitual Offenders.*

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