

## The Rule Prohibition of Disgust from Religion and Its Evidence in the Criminal Law of Islam

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### ABSTRACT

Undoubtedly in the present time, enabling laws to meet new needs and questions arising from the complicated life and technology has the first priority. To fulfill this critical and important mission all factors should be used in addition to what is already named *ijtihad*. Jurisprudential rules are one of the factors that should be considered with a different point of view. The rule prohibition of disgust from religion is one of the rules in the Shiite jurisprudence which Jurists and lawyers have little attention to it. According to this rule, any action which leads people to hatred from religion should be avoided unless that action is so emphasized to the extent that legislator under no circumstances will be satisfied to leave it. Prohibition of disgust from religion has never been studied as an independent rule. But jurist's reliance on its content shows that it has been accepted by its provisions. Quran, Sunnah, consensus and reason are evidence of this rule. There are many sentences in Quran which implies on trying to attract people to religion and avoiding the denigration of religion. With reviewing the lives of the saints (AS) It is understood that they always have emphasized to refrain from committing acts that cause people to turn away from religion. Jurists in many cases are directly invoked to this rule. According to reason, the preservation and survival of religion is more important than commitment and dedication to the provision of religion. So In this article we have tried to explain the notion and evidence of this rule and also the role of public opinion in implementing Islamic punishments. The aim of this article is to review the rule prohibition of disgust from religion to decrease tendency of people about leaving Islam.

**KEYWORD:** Jurisprudential rule, Evidence, Religion, Quran, Prohibition, Punishment.

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### INTRODUCTION

Jurisprudential rule, it is a Religious order which includes its cases and examples. It is also a general principle which the jurists can find sentence of instances using it. Jurisprudential rule give the jurisprudence motion and takes it away from solidity and stillness. [1] In general it can be said that the jurisprudential rule has two properties. First, it is a rule, and has generality and is not specific for one case. Second, It is legal i.e. the legislator has expressed it. So what the holy lawgiver or didn't say or what is a minor cannot be called religious rule. Prior scientists, particularly in reference books on jurisprudence rules, took Steps in order to establish the rules of law which is now in our guide, but it must be said that the efforts of researchers to explain what we need today to achieve our goals Is not only sufficient but also requires new thinking. There are many jurisprudential rules which have a crucial role in the inference of rules. But they have not been considered as a rule. Therefore, we should review and clarify various aspects of the rules through the development of these sciences.

#### 1- Explanation of the rule prohibition of disgust from religion

According to this rule, any action which leads people to hatred from religion should be avoided unless that action is so emphasized to the extent that legislator under no circumstances will be satisfied to leave it. Human in this definition is a fair and equitable person who expresses an opinion about this matter without any prejudices caused by Politics, ethnicity believes, nationality and religion.

Discussion about this rule, begins from the point that if implementation of Sentences of the sharia lead many people adverse to religion, can such hatred be effective in implementing of Sentences?

Some jurists believe that: "jurist and his lawyers should avoid from anything that leads to cynic of Islam and should leave the things that their harm is more than their use. [2] Some jurists who say the form and manner of punishment mentioned in religious texts is an important issue believe that: "where applying the Islamic punishments involves hatred from religion and Muslims, changing the way of applying punishments is necessary". [3] Another jurist believe that: "on assumption which applying punishments named "Had" lead to damage the image of Islam in the eyes of public opinion, the Muslim ruler or judge should leave applying such punishments as long as public opinion is justified. [4]

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Prohibition of turning people away from religion is based on the assumption that religion and its trainings are divine and sacred but applying them in society requires social considerations. Therefore, like other social affairs compelled to follow the social rules. [5] So if implementation of any punishments leads to hatred of people and turning the people away from the religion, it is the duty of the Islamic government to prevent it. Because any interest is not better than interest of maintaining dignity and repute of Islam.

### **1-1: Distinguish disgusting issues**

In continuation of reviewing the rule prohibition of disgust from religion, it is argued that who is responsible to distinguish disgusting issues? In this case there are two points of view. Some jurists believe that the disciple himself is responsible to distinguish disgusting issues where lead to hatred from religion. The disciple is prohibited from doing such matters. [6] In contrast, some jurists have disagreed with the assignment of distinguishing disgusting issues to disciple. They believe that: "this assignment lead to increasing bewilderment and confusion. [7] Others state that although the disciple is responsible to distinguish disgusting issues but damage to religion is an important issue which brings a lot of effects for the Islamic community. So in these cases jurist himself is responsible to distinguish disgusting issues. [8] In order to sum of the two ideas, it should be stated that the second view is consistent with the implementation punishments in Islamic society. All people are not allowed to implement punishment. So they are not responsible to distinguish disgusting issues. But in certain cases in which the right of punishment implementation is assigned to the people, they are responsible to distinguish disgusting issues. For example, some jurists believe that in the implementation of death penalty with sword which victims have the right to carry it out will damage image of Islamic community. [9] Therefore, in such cases they should not use the methods which lead to damage the Islamic religion. By the way in general, Islamic society is responsible for implementation of punishment and the jurist is responsible to distinguish disgusting issues. In such cases, the jurist according to the social conditions and requirements and also with respect to acceptance or rejection of public opinion introduces specific punishment that is really disgusting and he prevents its implementation.

### **1-2: The number of people needed to distinguish disgusting issues**

Now that distinguishing disgusting issue is in general duty of jurist, the number of people who their hatred from implementation of some sentences will causes jurist stopping implementation of a sentence should be determined.

Some contemporary writers and scholars believe that Islam does not determine specific provisions for the quality of implementation of punishments and it has been assigned to people. In other words, how to use the right to apply a punishment may be different according to the difference in time and place. For this reason its quality has been assigned to the supreme leader and public opinion of the Islamic community to determine it in accordance with their circumstances and ability. [10] Finally it can be said that the hatred of number of people which is significant from the eyes of tradition and society, can be effective in implementing some punishments.

Surely whatever the advocates of the theory are much more, rationally this theory is less likely to be wrong. About the validity of the majority, in different cases and condition, comments of scholar may be different. For example, in some cases, means half plus one (absolute majority) in other cases, meaning of the majority may be numerical superiority of an opinion rather than other opinions (proportional majority). In more important cases, when we know one opinion as having majority it means that most of opinions, at least eighty to ninety percent accept it. (Specific majority) [11]

However, here are two criteria that should be considered: first, approaching to reality. Second, Avoiding rarity. Absolute majority can be regarded as average of proportional majority and specific majority. So when we discuss the majority of the population, at least half plus one of the population, is desired. So jurists exert the rule prohibition of disgust from religion and stop implementation of some Islamic sentences, when at least half plus one of the members of society hatred from such sentence and turn away from Islamic religion.

## **2- Evidence of the rule prohibition of disgust from religion**

In this section Quran, Sunnah, consensus and reason are introduced as evidence of the rule prohibition of disgust from religion.

## **2-1: Quran**

There are many sentences in Quran which implies on maintaining respect for all religions, trying to attract people to religion and avoiding the denigration of religion. These sentences can be interpreted as an evidence of the rule prohibition of disgust from religion. God says in Quran: "do not say crude words to those who call upon other than Allah, lest they use crude words about Allah in revenge without knowledge". [12] According to the sentences and narrations, a group of believers Due to severe discomfort from idolatry, sometimes curse the idols of the pagans. The Quran explicitly forbids this action and says decorum, dignity and modesty must be observed, Even in Faced with the most superstitious and worst religious. [13] Obviously, everyone would defend his sacred. With The sacrilege to religious followers of other religions, they may get anger and insult Islamic sanctities and get away from it. [14] The reason is clear because with insults and swear we cannot prevent anyone the wrong direction But rather fanaticism mixed with ignorance causes people to be more resolute in their false religion and to insult to God and get away from the religion of Islam. [15] Also, God says in Quran: "it was by that mercy of Allah that you (Prophet Muhammad) dealt so leniently with them. If had you been harsh and hardhearted, they would have surely deserted you. Pardon them and ask forgiveness for them." [16] These sentences were revealed after the battle of Uhud. Those who had fled fighting around the Prophet (PBUH) came back for his pardon. With the revelation of these sentences, God say the prophet pardon them. Obviously, someone who is rough, fierce and uncompromising in leader position soon will fail and the people will dissipate around him. [17] These sentences are addressed to all the Muslims and says that the Prophet (PBUH) from Allah is merciful to people. [18] In these sentences violent behavior of the Prophet (PBUH) and the rulers of Islam are prohibited since they have the dignity in religion and they are located on people's spotlight, any inappropriate behavior from them can lead to getting people away from Islam which are Disagreeable.

## **2-2: Sunnah**

With reviewing the lives of the saints (AS) It is understood that they always have emphasized to refrain from committing acts that cause people to turn away from religion. Saints (AS) never introduced Islam as a way that people feel it is difficult to have religion and being a Muslim. Generous and being easy are features of Islam. Perhaps fluency of Islam and tolerance of the Prophet (PBUH) and the Imams (AS) is one of the factors which cause attracting people to Islam. The Prophet (PBUH) said: "As I have a mission to promote religion, I have a mission to compromise with people." [19] He always advised his missionaries that never take hard to people and do not turn them away from Islam. Imams were also tolerant with people and order their followers to take things easier. Imam Ali (AS) has stated: "I do not run hodud in the enemy territory, because I fear that a person in this situation get nervous and join to the enemy". [20] In the narratives state that if in this assumption punishment is enforced, Guilty person will became Zeal and turns away from Islam and joins the enemy. [21] In such cases, the implementation of punishment Instead of reforming the offender makes him enemy of Islam. [22] In the narratives it is expressed that if non-Muslims see the enforcement of such punishment, perhaps they regret converting to Islam. That is why the penalty is considered Disagreeable in enemy territory. For this reason the implementation of punishment is prohibited in enemy territory. [23] The purpose of Islamic punishment is to reform the offender and deter him and others from doing such things. If implementation of punishment causes to Offender and others turning away from Islam, in these cases, the Supreme Leader could prevent the punishment. [24] It doesn't mean the revocation of sentence of sharia but it means that Failure to fulfill such sentence, to compliance better interests in changing social conditions.

## **2-3: consensus**

One of the most important reasons for the rule prohibition of disgust from religion is a consensus among jurists on this subject. This rule have been not referred separately in religious texts But jurists as an answer to the questions, in many cases, are directly invoked to this rule. Here are some of the issues that jurists have directly invoked this rule is expressed: Some jurists have expressed in the mourning ceremonies doing actions such as sticks, being barefoot, walking on lighted charcoal is banned Because of denigrating Islam and escaping from Religion. Shia would not take any action that causes turning away from the religion. [25] These actions led to disenchantment from the Islamic laws and Shia may be accused to be exaggerating and violent. Some jurists believe that, sale of alcohol and other prohibited things is forbidden to religious minorities. They believe such dealing would tarnish the image of Islam. [26] Also, jurists believe that the sale of weapons and buying misleading book and buying grapes from which the wine is made is prohibited. Because such actions will causes to stigmatization of religion. [27] Considering the above, we can say that despite the rule prohibition of disgust from religion has not been

referred independently but the consensus and jurists invoked on the decision in the various chapters of jurisprudence, Implies on Existence and the ability to invoke the rule prohibition of disgust from religion.

#### 4-2: reason

Religious Teachings emphasis on the importance of reason and tendency to the wisdom is one of the miracles of Islam. Imam Sadiq (AS) says: "a person who can only distinguish between good and bad is not wise; but Wise is the person who knows best among the bad things" [28] Quran says: Hellions will then say: "if only we had listened and understood we should not now be among the inhabitants of the blaze". [29] This means if humans use reason they can be bliss. Provisions of the religion of Islam are quite consistent with the provisions of reason. So if the reason recognizes the harm in doing a practical task since reason and religion are consistent with together, the practice is also prohibited from the perspective of Sharia. [30] In order to confirm this theory it can be said that all human actions have a judgment from God and gauge the sentences is existence of loss or benefit in these actions. If the reason become sure about loss or benefit, and understand it; Based on the Wisdom of God He will also be able to Command or prohibit from it otherwise incompatible with the Wisdom of God. There are many hadiths to the proving Correspondence between reason and Sharia. On the contrary, some jurists have denied the power of the reason to understand the basis of religious rulings for example, Sheikh Ansari believe that reason about detection of religious commandments is more likely to be error. Although people may not understand this error, But many hadiths has been implied on this subject. [31] In response to this scenario one can say that with Accuracy in the hadiths it is specified that God Introduces reason as an Internal Guider, God has given reason to recognize good and bad and Has appointed that Recognize of reason is criteria for rewards and punishments. All of this demands that loss and benefit are understood by the reason Accepted by God. So, if some of the rules of religion cause people turning away from religion, whether they are Muslims or non - Muslims, Islam does not accept these judgments, based on reason. According to reason, the preservation and survival of religion is more important than commitment and dedication to the provision of religion.

### CONCLUSION

Provisions of criminal jurisprudence are Imperative. It does not mean that they are difficult to be regularized because this concept is not compatible with general principle that provisions of Sharia follow loss or benefit. It can be said that if religious branches in various chapter of jurisprudence is scattered, we need more rules. Undoubtedly criminal jurisprudence is the meaning of this fact. Rulemaking in the criminal law may be possible through two methods: First - by reviewing the special rules that the text of the letter indicates them. Second - rule making through research in various branches, and speeches of the jurists of documentation to obtain a reliable and common general criteria. Undoubtedly, many rules of law formed in this way and gradually spread. The rule prohibition of disgust from religion has not referred separately in religious texts but, jurists invoked the prohibition of disgust from religion in a variety of fields, a practical consensus on this ruling and prove the rule. In other words, rule is not different in principle, but there is disagreement on the scope of its implementation. One of the Applications of rule prohibition of disgust from religion is to implement Islamic punishments. Considering the main objective of criminal law legislating is to protect life, honor, property and rights of the individual and society and methods to achieve this goal due to the increasing transformation of human societies in cultural, economic and social will Not identical and It could be implementation of some punishment for not explaining it properly or lack proper implementation of it, causes to Pessimism to the principle of Sharia. In such cases, though temporarily, the implementation of punishment until explaining its philosophy and making the environment ready must be avoided.

### REFERENCES

1. Keshvari, I. (1995). Application of jurisprudence rules in law, 1<sup>st</sup> edition, qias publishers, p: 13.
2. Hussein Shirazi, M. (1988). Al feghh, Vol 88, 2th Edition, Dar al olum publishers, p: 88.
3. Roohani, M. Sadegh, (1999). Judicial question of institute of international Lawyers, 1<sup>st</sup> edition, Ayatollah roohani publishers, p: 40.
4. Montazeri, H. Ali, (2005). Resale esteftaat, Vol 2, 1<sup>st</sup> edition, Saye publishers, p: 510.
5. Nobahar, R. (2011). Purposes of punishment in the sexual offenses, 1<sup>st</sup> edition, Institute of Islamic Sciences and Culture, p: 309.

6. Moosavi Khomeini, R. (1992). *Sahife Noor*, Vol 15, 1<sup>st</sup> edition, Ministry of Culture and Islamic Guidance publishers, p: 306.
7. Ansari, M. (2011). *Faraed al osul*, 2th Edition, Association of Islamic thought publishers, p: 261.
8. Fazel Lankarani, M. (2008). *Jame al masael*, Vol 2, 11<sup>th</sup> Edition, Amir olum publishers, p: 69.
9. Husseini Shirazi, M. (1988). *Al feghh*, Vol 89, 2th Edition, Dar al olum publishers, p: 136.
10. Ode, A. (1967). *Islam and our political situation*, 1<sup>st</sup> edition, p: 200.
11. Hashemi, M. (2007). *Constitutional rights of the Islamic Republic of Iran*, 11<sup>th</sup> Edition, Mizan publishers, p: 32.
12. Quran, Al Anam, 108.
13. Tabarsi, F. Hasan, (1999). *Majam al Bayan*, Vol 4, 1<sup>st</sup> Edition, Farahani publishers, p: 132.
14. Tabaatabaee, M. (2008). *Al mizan*, Vol 14, 25<sup>th</sup> Edition, Islamic Office of publishers, p: 434.
15. Makarem Shirazi, N. (2006). *Tafsir nemoone*, Vol 5, 27<sup>th</sup> Edition, Al eslamie publishers, p: 487.
16. Quran, Al Imran, 159.
17. Makarem Shirazi, N. (2006). *Tafsir nemoone*, Vol 3, 27<sup>th</sup> Edition, Al eslamie publishers, p: 184.
18. Tabaatabaee, M. (2008). *Al mizan*, Vol 7, 25<sup>th</sup> Edition, Islamic Office of publishers, p: 86.
19. Majlesi, M. (1982). *Behar al anvar*, Vol 75, 3th Edition, Al eslamie publishers, p: 151.
20. Helli, M. (1982). *Sharye al Islam*, Vol 4, 1<sup>st</sup> Edition, Dar al azva publishers, p: 156.
21. Ameli, M. Hasan, (no date). *Vasayel al shi'e*, Vol 18, 7<sup>th</sup> Edition, Dar al ehya al toras al arabi publishers, p: 24.
22. Najafi, M. (1983). *Javaher al kalam*, Vol 41, 7<sup>th</sup> Edition, Dar al ehya al toras al arabi publishers, p: 344.
23. Helli, M. Abdollah, (2004). *Kanz al erfane*, vol 2, 1<sup>st</sup> Edition, Mortazavi publishers, p: 218.
24. Hashemi shahroodi, M. (1998). *Necessitate the Criminal Jurisprudence*, Mizan publishers, p: 203.
25. Montazeri, H. Ali, Ibid, p: 258.
26. Safi golpaygani, L. (1999). *Jame al ahkam*, Vol 2, 4<sup>th</sup> Edition, Masoome publishers, p: 320.
27. Hosieni haeri, K. (2000). *Feghh al oghood*, Vol 1, 2th Edition, Association of Islamic thought publishers, p: 400.
28. Majlesi, M. (1982). *Behar al anvar*, Vol 77, 3th Edition, Al eslamie publishers, p: 6.
29. Quran, Al Molk, 10.
30. Sabzevari, A. Ali, (No date). *Tahzib al osool*, Vol 1, 1<sup>st</sup> Edition, Al menar publishers, p: 145.
31. Ansari, M. Ibid, P: 12.