Reassessing *Baghy* in Islamic *Fiqh*: Legislative Discrepancies and Normative Alternatives

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Abstract

The 2013 Islamic Penal Code of Iran marked a notable shift by categorizing baghy (armed rebellion) as a ḥadd crime for the first time, imposing the death penalty for acts perceived as undermining the Islamic Republic's foundation. Nonetheless, this legislation presents considerable legal ambiguities and strays from well-established Shīʿa fiqh *principles. The existence of conflicting* fiqhī *interpretations regarding similar actions has exacerbated the difficulties in legal understanding. This essay utilizes a normative approach rooted in ethical and* fiqhī *principles—such as exercising caution regarding life and property (*iḥtiyāṭ-i dar dimāʾ*) and safeguarding human dignity (*karāmat-i insānī*)—to advocate for reforms. It posits that baghy should no longer be classified as a ḥadd crime and calls for alternative strategies focused on negotiation, reconciliation, and leniency. By aligning the penal code with* sharīʿa *and human rights standards, these proposed reforms seek to address the legal and ethical dilemmas posed by the current laws.*

Introduction*

The concept of *baghy*,[1] referring to armed rebellion against the Islamic ruler,[2] has a long-standing tradition in Shīʿa *fiqh*. Although foreign legal scholars have primarily concentrated on practices like stoning within Iranian criminal law,[3] it is both valuable and essential to examine the crime of *baghy*. This offense, classified as a *ḥadd* (Islamic fixed penalties) crime against the state in the 2013 Islamic Penal Code, warrants a thorough and critical exploration of its legal and Islamic jurisprudential underpinnings. Scholars within the Shīʿa tradition have developed this concept by examining various Qurʾānic verses and narrations (*riwāyāt*) attributed to the Shīʿa Imams, particularly through the lens of Imam Ali's confrontations with his internal opponents in Islamic lands. Though the concept of *baghy* historically has been present in Shīʿa legal discussion, it was only formally integrated into the penal laws of the Islamic Republic in 2013. After the formation of the Islamic Republic of Iran, a new set of criminal laws was introduced, significantly replacing earlier statutes. This legislative process commenced in 1982 with the enactment of the "Law on Islamic Punishments." In the same year, complementary legislations were enacted, notably the "Law on *Ḥudūd* and *Qiṣāṣ*" and the "Law on *Diyat*." Following this, in 1983, lawmakers approved the "Law on the *Taʿzīrāt* and Deterrent Punishments." In 1991, the legislator unified the "Law on Islamic Punishments," the "Law on *Ḥudūd* and *Qiṣāṣ*," and the "Law on *Diyat*" into a cohesive legal structure known as the "Islamic Penal Code," which was organized into four distinct volumes.[4] Ultimately, in 2013, a revised edition of the "Islamic Penal Code" was enacted, preserving the original

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1 In this essay, the term "*baghy*" is used to specifically describe the offense, while "*baghī*" refers the individual committing the act of *baghy*.

2 Ibn Idrīs al-Ḥillī, 2 al-Sarāʾir al-ḥāwī li-taḥrīr al-fatāwī 15 (1989).

3 Antonia F. Fujinaga, *Islamic Law in Post-Revolutionary Iran*, *in* The Oxford Handbook of Islamic Law 630 (Anver Emon & Rumee Ahmed eds., 2018).

4 Bahman Khodadadi, On Theocratic Criminal Law: The Rule of Religion and Punishment in Iran 91 (2024).

four volumes—General Provisions, *Diyat*, *Ḥudūd*, and *Qiṣāṣ*—while significantly expanding its content, increasing the number of articles from 497 to 728.

Prior to the enactment of the Islamic Penal Code on Sunday, April 21, 2013, the legislator of the Islamic Republic often blurred the lines between the terms *baghy* and *muḥāraba* (waging war against God and His Messenger) in various sections of the legislation. While Articles 287 and 288 of the 2013 Islamic Penal Code explicitly categorize *baghy* as a separate crime, numerous activities that ought to be classified in this way are still prosecuted as offenses associated with *muḥāraba* under the 1996 Book Five of the Islamic Penal Code (*Taʿzīrāt* and Deterrent Punishments). This illustrates a prevailing inclination to classify certain criminal actions under the category of *muḥāraba* despite their distinct legal nature. For example, the provision in Article 675 of Book Five of the Islamic Penal Code, which was enacted on May 22, 1996, stipulates that committing arson with the intention of opposing the Islamic government is deemed punishable as *muḥāraba*. Likewise, Article 22 of the 2003 Law on the Punishment of Armed Forces Offenses operates on the premise that there is no difference between *muḥāraba* and *baghy*, declaring: "Any military personnel who engages in armed actions against the Islamic Republic of Iran shall be classified as *muḥārib* (the perpetrator of the crime of *muḥāraba*)."

The Islamic Penal Code mandates the death penalty for those who commit *baghy*. However, it is important to note that Shīʿa *fiqh* typically does not categorize *baghy* as a *ḥadd*, which refers to fixed religious punishments.[5] This distinction holds great importance because in Shīʿa thought, *ḥadd* punishments are viewed as divine mandates. As such, their definitions and implementations cannot be modified by any authority.[6] Nevertheless,

5 Abolfazl Chehreʾi, Mafhūm-i fiqhī va ḥuqūqī-yi jarāʾim-i ḥaddī ʿalayh-i amniyyat va ḥākimiyyat (muḥāraba, ifsād fī al-arḍ, va baghī) 238 (2020).

6 Since the adoption of the initial penal code after the Islamic Revolution—the Law on Islamic Punishments, approved on October 13, 1982—until the approval of the Islamic Penal Code on April 21, 2013, the legislators of the Islamic Republic have maintained a consistent definition of *ḥadd* punishments. These punishments are classified as offenses with their definitions, designated penalties, and meth-

certain *fatāwā* (religious opinions) in Shīʿa *fiqh* liken *baghy* to the offense of *muḥāraba*, reinforcing the idea that *baghy* might be considered among the *ḥudūd* punishments.[7] It is evident that both before and after the enactment of the Islamic Penal Code in 2013, the Islamic legislator adopted the most stringent interpretations of *baghy*. In some instances, the lawmaker has even broadened the definition of *baghy* beyond the limits set by *fiqh*, applying it to actions that, by the standards of Shīʿa tradition, do not fundamentally qualify as *baghy*.

The 2013 Islamic Penal Code takes a more varied approach to *ḥudūd* compared to its 1991 predecessor. Notably, the list of specified *ḥudūd* offenses has expanded from eight to twelve.[8] Additionally, Article 220 in the 2013 Penal Code clearly asserts for the first time that the offenses listed are not exhaustive; judges must refer to *sharīʿa* for any other *ḥudūd* offenses recognized within Islamic law: "Regarding the *ḥadd* punishments that are not mentioned in this law, Article 167 of the Islamic Republic of Iran's Constitution shall be applicable." For instance, although the 2013 Islamic Penal Code does not classify apostasy (*irtidād*) as a criminal offense, Article 220 refers the courts to *sharīʿa* for guidance. As Bahman Khodadadi notes in *On Theocratic Criminal Law*, this provision has not only generated theoretical tensions with certain constitutional principles but has also introduced practical complications in criminal procedures.[9]

It is worth noting that Shīʿa *fiqh* does not provide a uniform definition of apostasy, and the religious opinions of jurists

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ods of enforcement strictly outlined in *sharīʿa*, offering no flexibility for modification by legislative bodies.

7 Al-Sayyid al-Sharīf al-Murtaḍā, 1 al-Intiṣār fī infirādāt al-Imāmiyya 478 (1994).

8 The evolution of Iran's Islamic Penal Code between 1991 and 2013 reveals a notable reorganization of specific *ḥadd* offenses. This is particularly evident in the separation of previously combined crimes like *muḥāraba*, *baghy*, and *ifsād fī al-arḍ*. Additionally, the Code formally acknowledges new offenses such as *tafkīdh* and *sabb al-nabī* as distinct categories with clearly defined penalties. This shift reflects a wider movement toward increased codification and legal clarity within Islamic criminal law.

9 Khodadadi, *supra* note 4, at 59–66. For further critical discussion on Article 167 of the Iranian Constitution, see Bahman Khodadadi, *Nowhere but Everywhere: The Principle of Legality and the Complexities of Judicial Discretion in Iran*, 57 Iranian Stud. 651 (2024).

on this matter vary considerably. Article 167 of the Constitution of Iran addresses the judicial process and identifies the legal sources judges must consult when issuing their rulings. It mandates that judges ground their decisions in established codified laws. When specific legislation is absent, they must refer to authoritative Islamic sources (*sharīʿa*) and valid *fatāwā*. This provision affirms the central role of Islamic law as a key component of the legal framework in Iran. The ruling discussed in this essay has encountered considerable criticism, primarily due to its conflict with the principle of legality concerning crimes and punishments. While some interpretations suggest that Article 167 ought to be excluded from discussions of criminal matters, particularly regarding crimes and their corresponding penalties, as supported by Article 36 of the Constitution, Article 220 of the Islamic Penal Code of 2013 has clarified this ambiguity by invoking Article 167.[10] Article 220 appears to subtly suggest a policy that permits the sentencing of individuals for all Islamic *ḥudūd* as described in Islamic jurisprudential authorities, yet it does not explicitly list them all. This omission likely stems from various considerations, the most significant of which are the concerns related to socio-political issues and human rights at both the national and international scales.

This essay recognizes the variety of *fatāwā* and the numerous schools of thought within the *fiqhī* system. The goal is to demonstrate that by acknowledging the equal religious significance of various *fatāwā*, it becomes possible to highlight how certain *fiqhī* perspectives can justify the prioritization of some *fatāwā* over others, particularly in the context of criminal law and human rights, all while remaining faithful to the traditional *fiqhī* framework. Unlike the conventional approach, the notion of "end-oriented Islam" emphasizes the importance of contextualizing religious rulings by taking into account the specific time and place in which they are applied.[11] This approach, despite lacking *fiqhī* authority, advocates for a broad methodological revolution in Islamic legal thought. Conversely, this essay aims to illustrate how it is possible to stay true to the fundamental

10 Khodadadi, *supra* note 9, at 660–61.

11 Mohsen Kadivar, Human Rights and Reformist Islam 11 (2008).

interpretations of *fiqh* while navigating the selection of various *fatwā*s—an inherently non-*fiqhī* decision. It emphasizes the importance of prioritizing those *fatwā*s that align with human rights all while maintaining harmony within political and religious frameworks. The process of selecting from a variety of *fatāwā* is fundamentally a matter of broader policy and governance rather than a simply religious endeavor.[12] Nonetheless, this approach should not be perceived as entirely secular or devoid of religious context. In the absence of Imam Mahdi, a functioning Islamic government must navigate various *fatāwā*, which can occasionally contain conflicting principles and regulations. Consequently, the prioritization of certain principles and rules to guide the selection of *fatwā* is not only permissible (*mubāḥ*) under *sharīʿa* but is also beneficial, as it fosters the structural coherence and predictability that are vital for a well-functioning legal system. Thus, it seems that if lawmakers were to adopt principles like caution in Muslim property matters, moderation in the use of bloodshed (*iḥtiyāṭ-i dar dimāʾ*),[13] and respect for human dignity (*karāmat-i insānī*),[14] while choosing *fiqhī* opinions, there would be considerable potential for reform in Islamic criminal law, especially concerning *ḥadd* offenses.

The discussion begins with an exploration of the legal notion of *baghy* as defined by the 2013 Islamic Penal Code. It delves into the key components of this concept while addressing any legal and *fiqhī* uncertainties that arise. The aim is to evaluate the implementation of judicial practices and, in cases where ambiguities or legislative voids are identified, to reference established religious views for added clarity. Subsequently, the essay

12 Mathias Rohe, in referencing Imam Tareq Oubrou, interprets that Muslim jurists in the West must adhere to a specific policy when issuing *fatāwā*, such as the idea that "the application of the *fatwā* has to fit into the ruling legal framework." Mathias Rohe, *On the Applicability of Islamic Rules in Germany and Europe*, 3 Eur. Y.B. of Minority Issues Online 193 (2003).

13 For an analysis of the impact of this principle on the reduction of capital punishments, see Mohsen Borhani & Mohammadamin Radmand, *Taḥlīlgarāʾī nisbat ba mujāzat-hā-yi sālib-i ḥayāt dar ḥuqūq-i kayfarī-yi Īrān*, 26 Faslnāma-yi ʿIlmī-yi Rahbard 308–28 (2017).

14 For an article that examines the concept of human dignity in *fiqh* and the Constitution of the Islamic Republic of Iran, see Hamidreza Asimi, *Human Dignity in the Islamic Republic of Iran: An Analysis from a Constitutional and Fiqhi Perspective*, 27 Quaderni di Diritto e Politica Ecclesiastica (Speciale) 131–46 (2024).

places *baghy* within the context of traditional Islamic *fiqh*, highlighting how carefully selected *fatāwā* from this tradition can be integrated into Iran's Islamic Penal Code.

Baghy in the 2013 Islamic Penal Code

In the 2013 Islamic Penal Code, the legislator of the Islamic Republic addresses the offense of *baghy* along with its corresponding penalties in Articles 287 and 288. Article 287 stipulates: "A group that engages in armed rebellion against the foundation of the Islamic Republic of Iran is considered *baghī*, and if they use a weapon, the individuals involved shall face the death penalty." In the meantime, Article 288 states that If individuals belonging to a *baghī* group are captured before they begin to combat and utilize weapons, they will face a *third-degree taʿzīrī* imprisonment, provided that the group's structure and leadership are still active. Conversely, if the organization and its leadership have been dismantled, they will receive a *fifth-degree taʿzīrī* imprisonment. Although Article 288 concerns an attempted crime, its inclusion under the discussion of *baghy* and within the chapter on *ḥudūd* necessitates an examination of both provisions here.

1. The Elements of the Crime of Baghy *in the 2013 Islamic Penal Code*

The actus reus of the crime outlined in Article 287 is a positive act. Therefore, omissions, such as a refusal to pledge loyalty to the Islamic government or the ruler (*bayʿa)*, cannot constitute *baghy*. This offense is characterized by armed rebellion carried out by a group, targeting the governmental system of the Islamic Republic of Iran. Additionally, *baghy* is a conduct crime, meaning that it does not require a particular result for it to occur. While the statute does not explicitly mention the required specific intent, it appears that it is to overthrow the ruler or the Islamic government, regardless of any particular motive. While Article 287 is regarded as ambiguous in several ways, Article 288—dealing with the non-*ḥadd* and *taʿzīrī* elements of

baghy—presents even greater uncertainty. This essay addresses the circumstances in which members of a rebel group are apprehended prior to any combat or weapon usage. It distinguishes between two specific scenarios: a) when the group's leadership and structure have been dismantled, and b) when the leadership and organization remain unbroken. Following this analysis, the essay recommends appropriate *taʿzīrī* punishments based on these differing situations.

Alongside the conduct of rebellion, certain conditions must be fulfilled regarding the circumstances of the actus reus. These circumstances, however, may appear somewhat ambiguous and open to varying interpretations. Firstly, it must be committed by a "group," secondly, the rebellion must be "armed," and lastly, the armed rebellion of the group must be against the "foundation of the Islamic Republic of Iran." Additionally, phrases such as "before engaging in combat and using weapons" also lack clarity. To address these ambiguities and offer more clarified interpretations, it is essential to consult other Articles of the Penal Code as well as Shīʿa *fiqh*.

2. Legal Ambiguities

The first ambiguity pertains to the requirement of "group armed rebellion," indicating that the crime of *baghy* cannot be committed by an individual acting alone. Nevertheless, the legislator does not specify the minimum number of participants necessary to constitute the offense of *baghy* within this provision. To clarify this issue, one can look to other legal statutes for guidance. Specifically, Article 130 of the 2013 Islamic Penal Code, Article 498 of the 1996 Book Five of the Islamic Penal Code (*Taʿzīrāt* and Deterrent Punishments), and Article 19 of the 2003 Law on Punishments for Armed Forces Personnel all establish that a minimum of three individuals is required to form a criminal group. Consequently, one can conclude that, according to Article 287 of the 2013 Islamic Penal Code, the crime of *baghy* requires a minimum of three individuals who collectively intend to participate in an armed rebellion against the foundation of the Islamic Republic of Iran. Even though, in Articles 610 and

611 of the 1996 Book Five of the Islamic Penal Code, the law stipulates that the involvement of two individuals is adequate to establish a conspiracy. Additionally, in a related context, if the actions of these individuals do not fulfill the requirements for *muḥāraba*, their offenses are categorized as *taʿzīrī*, subject to discretionary punishment.[15]

Another area of ambiguity relates to the phrase "the foundation of the Islamic Republic." Within the framework of *fiqh*, alternative terms like "armed rebellion against a just (*ʿādil*) Imam" are frequently employed. As a result, some scholars have interpreted "the foundation" of the system to signify the protected position of the guardianship of clergy (*wilāyat-i faqīh*) in this Article. Notably, this interpretation—restricting the definition of the crime of *baghy* to armed insurrection specifically against the guardianship of clergy—appears consistent not only with *fiqh* but also with Article 5 of the Constitution. This essay assigns governance during the absence of Imam Mahdi to a just *faqīh*. Furthermore, this viewpoint effectively excludes a range of actions, such as armed rebellion against other branches of government—like the executive—or threats to the nation's territorial integrity from being subject to the death penalty associated with the crime of *baghy*.

The following ambiguity relates to the necessity for the rebellion to be deemed "armed." For the offense of *baghy* to occur, it must include the use of a weapon. Nevertheless, the precise meaning of "weapon" within this context remains uncertain. The legislator has not provided a broad or comprehensive definition of a weapon applicable across all laws and articles, either in the Islamic Penal Code or in special laws. For example, in the 2008 amendment to Article 651 of the 1996 Book Five of the Islamic Penal Code (*Taʿzīrāt* and Deterrent Punishments) regarding theft, the legislator defines "weapon," but restricts its application solely to "this clause." Moreover, the definition of a weapon outlined in this clause is quite expansive, covering a diverse array of tools, including "knives" to "firearms crafted specifically

15 In a less widely recognized *fatwā* by Shahīd-i Thānī, the presence of even a single individual is considered sufficient to constitute *baghy*. *See* Al-Ameli Shahīd Thānī, Zayn al-Dīn b. ʿAlī, 2 al-Rawḍa al-bahiyya fī sharḥ al-Lumʿa al-Dimashqiyya 407 (1989).

for tranquilizing animals" and guns designed for hunting aquatic creatures. Similarly, Article 2 of the 2011 Law on the Punishment for Trafficking of Arms and Ammunition, as well as the Possession of Unauthorized Arms and Ammunition, confines the definition of "weapon" specifically to the scope of that law. However, the majority of legal scholars in Iran tend to favor a broad interpretation of what constitutes a weapon, as outlined in the note to Article 651 of Book Five of the 1996 Islamic Penal Code (*Taʿzīrāt* and Deterrent Punishments). In addition to the conventional understanding of a weapon, which includes items such as knives and swords, their rationale is also supported by *fiqhī* texts that make specific mention of swords. Nevertheless, if we postulate that there exists a logical connection between "armed rebellion" and the capacity to jeopardize or topple a government, it is challenging to comprehend how a revolt led by merely three individuals equipped only with swords could feasibly pose a threat to the stability of the government. Alternatively, some legal scholars, focusing primarily on the intent to overthrow the Islamic Republic, interpret the "armed" aspect of *baghy* in a broader, figurative sense. They argue that by referencing instances from various Eastern European nations and the concept of "color revolutions," even a "soft overthrow (*barāndāzī-yi narm*)"—which refers to a cultural and ideological challenge aimed at undermining the fundamental principles and values of the system—might fulfill the requirements of *baghy*, as long as it is executed with the intentional goal of overthrowing the government.[16]

The forthcoming challenge revolves around defining what qualifies as "armed rebellion." Does a group need to be actively involved in military operations for it to be governed by Article 287 of the 2013 Islamic Penal Code, or is simply declaring an armed conflict or openly expressing an intention to engage in such actions adequate, provided the group is organized? Regarding this matter, some lawyers contend that direct participation in military action is not an essential requirement for the classification of armed rebellion. They maintain that

16 Mohammadsadegh Iran-Aghideh, Alireza Saberian & Seyyed Ali-Jabbar Golbaghi-e Masule, *Imkān-sanji-yi jurm-angāri-yi barāndāzī-yi narm-i niẓām-i Islāmī ba ruykard ba mahfhūm-i baghī*, 69 Faslnāma-yi pajūhash-hā-yi fiqh va ḥuqūq-i Islāmī 29–51 (2022).

simply declaring a war or expressing opposition with armed intentions is adequate to satisfy the standards for being considered as *baghy*.[17] Therefore, even if these individuals are apprehended before any actual conflict, they would still be considered *baghī*; however, their punishment would differ from those who have actively participated in armed confrontations. The opposing view maintains that the use of weapons and direct confrontation with government forces is crucial for defining the crime of *baghy*.[18] This perspective aligns with the dominant view in Shīʿa *fiqh*, as most Shīʿī jurists hold that the Islamic state should not initiate hostilities against rebels and does not have the right to engage with them until they have actively taken up arms.[19]

An additional point of uncertainty could emerge concerning the classification of a group if certain individuals resort to the use of weapons. Specifically, the question arises as to whether all members of the group should be labeled as *baghī* and face the death penalty. If we interpret "armed rebellion" as a defining trait of the entire group rather than attributing it solely to individual participants, we must acknowledge that, under these circumstances, every member of the group would be deemed *baghī* and could be subjected to the death penalty. Conversely, another viewpoint, which relies on *fiqhī* texts and appears to diverge from a strict interpretation of the law, posits that according to *fiqh*, there is a consensus (*ijmāʿ*) among Islamic jurists that only those individuals who are actively engaged in combat on the battlefield and are armed should be classified as *baghī*. This perspective has occasionally been endorsed by judges in Iran. For instance, during a judicial assembly convened by the Kamyaran judiciary in Kurdistan Province on December 5, 2019, the High Judicial Council stated that the *ḥadd* penalty of execution would apply exclusively to those who have engaged in the use of weapons.[20] This

17 Mohammad Mosaddegh, Sharḥ-i qānūn-i mujāzāt-i Islāmī ḥudūd 405 (2018).

18 Hossein Mir-Mohammad-Sadeghi, 2 Ḥuqūq-i jazā-yi ikhtiṣāṣī (3): jarāʾim ʿalayh-i maṣlaḥat-i ʿumūmī-yi kishvar 163 (2020).

19 Hasan b. Yusef Allame Helli, 1 Tadhkirat al-fuqahāʾ 452 (1993).

20 The statement can be accessed at https://neshast.eadl.ir/Home/GetPublicJSessionTranscript/cbdcc9a4-2962-4d79-ce65-08d7b819ef72 (last visited May 29, 2025).

stance was reaffirmed by the High Judicial Council at a gathering of judges in Anzali, Gilan Province, on August 11, 2020.[21] As a result, it seems that judicial trends are increasingly favoring the imposition of the death penalty solely for individuals who have directly engaged in the use of weapons.[22]

The implications of this interpretation raise uncertainties about how the law addresses the leader of a *baghī* group. If we assert that only individuals who take part in armed conflict are subject to the death penalty, then the leader would only be liable for this punishment if they directly engaged in the fighting. Conversely, Article 130 of the 2013 Islamic Penal Code does allow for the potential imposition of *ḥadd* punishment on the leader of a criminal organization. It states:

> Any individual who takes on a leadership role within a criminal organization will face the maximum penalties associated with the most serious offenses committed by the group's members in pursuit of their goals. This is applicable unless the offense in question warrants a *ḥadd*, *qiṣāṣ*, or *diya*, in which case the leader will receive the maximum sentence designated for accomplices in that crime. Furthermore, in instances of *muḥāraba* or *ifsād fī al-arḍ* (corruption on earth), if the leader is labeled as a *muḥārib* (one who wages war against God and His Messenger) or *mufsid fī al-arḍ* (a perpetrator of widespread corruption on earth), they will be subjected to the appropriate penalties associated with those titles.

21 The affirmation can be accessed at https://neshast.eadl.ir/Home/GetPublicJSessionTranscript/f7b6197d-17a0-4430-9ae0-08d853a62b1d (last visited May 29, 2025).

22 The questions are first directed to the judges within the respective county. The responses gathered are then categorized into majority and minority opinions before being forwarded to the Central Secretariat in Tehran. In judicial meetings, the term "High Judicial Council" refers to a group of senior judges, who work within the Judicial Training Center. This Council is responsible for reviewing the decisions from judicial meetings across the country and issuing final opinions on them. In both cases mentioned in this section, the High Judicial Council embraced the minority opinion of the judges to be correct. However, while these opinions are influential, they do not create binding obligations for judges to follow.

Before 2013, the legislation of the Islamic Republic adopted a more expansive interpretation of *baghī* in the context of *muḥārib* and *mufsid fī al-arḍ*. In certain instances, it also outlined specific punishments for those who led criminal organizations. For example, Article 198 of the 1982 Law on *ḥudūd* and *qiṣāṣ* pertains to those who take part in armed insurrection against the Islamic government. It specifies that "any individuals and their supporters who are aware of the activities of such a group or organization and actively assist in achieving its objectives, even if they are not involved in its military operations, are classified as *muḥārib*." According to this provision, the group's leader would also face the death penalty. Furthermore, Article 200 of the same law states that anyone who puts themselves forward for a significant role in a conspiracy to topple the Islamic government, and whose actions contribute in any way to the success of the coup, will be sentenced to death.[23] From a straightforward interpretation of existing laws, it seems that if the actions of a leader in a *baghī* group do not fulfill the material elements for the crime of *baghy*, they cannot be subjected to the death penalty, even if their subordinates are sentenced to execution. Additionally, by a similar line of reasoning, supporting members and, broadly speaking, anyone who has not engaged directly in combat but is still associated with the *baghī* group would also be spared from the death penalty. However, the prevailing opinion holds that, at the very least, all participants in an armed conflict, regardless of whether they directly engaged with a weapon, could face the death penalty. Some legal scholars, moving away from conventional *fiqhī* texts and leaning toward a discourse centered on national security that targets enemies, have sought to redefine *baghy* as an action that excludes an individual from the sphere of citizenship.[24]

23 The 1991 Islamic Penal Code reiterated the above two articles in Articles 186 and 188. The key distinction in this updated code was the clarification that *ḥadd* punishment would be enforced only if the core organization of the group remained cohesive.

24 Mahdi Rajaei & Abbas Kaʿbī, *Māhiyyat-i fiqhī-yi jarāʾim-i amniyyatī va sāzmānyāfta va nisbat-i ān bā aṣl-i barāʾat-i kayfarī*, 16 Faslnāma-yi muṭālaʿāt-i fiqh va ḥuqūq-i Islāmī 80 (2024).

According to Article 288 of the 2013 Islamic Penal Code, the penalties for individuals belonging to a *baghī* group—who are not subjected to the death penalty—vary based on the group's organizational integrity. In cases where the group's structure and leadership continue to exist, the members face third-degree *taʿzīrī* imprisonment, which may extend from over ten years to a maximum of fifteen years. Conversely, if both the organization and its leadership have disbanded, the punishment is mitigated to fifth-degree *taʿzīrī* imprisonment, with a duration of more than two years but not exceeding five years.[25] The difference in sentencing related to the status of a *baghī* group's structure and leadership finds its roots in Shīʿa *fiqh*. Nonetheless, in this case, the lawmaker seems to move beyond the *fiqhī* framework, imposing a higher level of liability on the members of the group. The expansive wording of the statute encompasses situations in which individuals may not have participated in any form of armed conflict. *Fiqhī* sources indicate that once the central organization and backing of such a group have been dismantled, there is no justification for pursuing or punishing those who desert the battlefield, effectively eliminating any reasons for their punishment.[26] Jurists often highlight Imam Ali's approach during the Battle of Jamal,[27] where rather than chasing down those who had retreated, he prioritized the safety of Aisha, the Prophet's wife, and a key opposition leader, ensuring their protection from retribution.

25 According to Advisory Opinion of the Judiciary No. 7/95/2364–2016/12/13, simply expressing ideological support or aligning oneself with such groups, without engaging in any tangible actions, does not amount to a crime.

26 For example, after Imam Ali's battle with *khawārij-i baghī* group and the subsequent disbanding of their group, he remarked: "Refrain from combating the *khawārij* in my absence (do not kill them), for the one who earnestly pursues the truth but fails to find it is not to be equated with someone who chases after falsehood and succeeds." The report can be accessed at https://www.hadithlib.com/hadithtxts/view/301581 (last visited May 29, 2025). The *khawārij* were a group that, after initially accepting the leadership of Imam Ali, eventually took up arms against him for various reasons.

27 For an account of this battle, refer to *Battle of the Camel*, Encyclopaedia Britannica, https://perma.cc/3H99-EURN.

Referring to Minimalist *Fatāwā* in *Fiqh*

Had the Islamic legislator adopted the approach advocated in this essay—emphasizing caution in handling Muslim property, moderation in bloodshed, human dignity, and human rights values to limit the scope of criminalization and, notably, to avoid capital punishment—diverse *fiqhī* alternatives would have emerged. These alternatives could encompass a complete decriminalization of *baghy* in the Penal Code or significant alterations to the criteria that define *baghy* and its related penalties.

1. Complete Ḥadd *Decriminalization*

The classification of *baghy* as a crime within the *ḥudūd* provisions of the 2013 Islamic Penal Code seems to be largely influenced by a minority *fatwā* issued by certain notable scholars. Shahīd-i Thānī (d. 965/1557), who upheld a stringent interpretation of *baghy*, argued that even the mere presence of one person could be enough to define the act of *baghy*. He advocated for the death penalty for those found guilty, particularly in the context of warfare.[28] The majority opinion among Shīʿī jurists does not consider *baghy* to be a *ḥadd* offense. This leads to the argument that there is not only a lack of persuasive reasons for classifying *baghy* as a *ḥadd* crime, but also several grounds for either decriminalizing it or reclassifying it under *taʿzīrāt*.[29] Seyyed al-Murtaḍā (d. 436/1044), another prominent Shīʿī scholar, examines the concepts of *baghy* and *muḥāraba* alongside each other, aiming to soften the intensity of confrontation with a *baghī* group by citing narrations from the Prophet of Islam. For instance, he notes that the Prophet instructed his followers to take up wooden swords when dealing with *baghī* groups. In another example, he recounts a narration from a companion of the Prophet, in which the Prophet recommended crafting a sword from the branch of a date palm for use in times of discord among Muslims.[30] Alternatively, one might view *baghy* and its regulations not as elements

28 Thānī, *supra* note 15, at 407.
29 Al-Ḥillī, *supra* note 2, at 15.
30 Al-Murtaḍa, *supra* note 7, at 478.

of penal law, but as issues concerning behavior in the context of internal strife or civil war between a group of Muslims and the ruling authority.

The general framework governing Shīʿa *fiqh* further reinforces the notion that the dominant *fiqhī* view does not seek to define *bagy* as a *ḥadd* offense. For instance, while *ḥudūd* punishments are typically viewed as non-negotiable, with *fuqahāʾ* often emphasizing the *ḥudūd* obligatory nature based on sacred texts without assigning additional rationale, the approach to *baghy* is markedly different. In situations involving a *baghī* group, jurists highlight the importance of dialogue and addressing the uncertainties expressed by the rebellious group. The main aim is to eliminate division (*rafʿ-i fitna*) within the Muslim community, with the use of force considered a measure of last resort. Sheikh Ṭūsī (d. 460/1067) distinctly states that confronting a *baghī* group is intended to prevent harm rather than to exact punishment.[31] This viewpoint resonates more strongly with the Qurʾānic foundation for *baghy* found in verse 9 of Sūrat al-Ḥujurāt. In this verse, engaging in warfare against a rebellious armed faction is considered necessary and justifiable, but only as long as that faction continues its hostilities.[32] After the end of hostilities, the Qurʾān calls for peace and the pursuit of justice. For this reason, certain Shīʿī scholars have explicitly opposed the use of heavy weaponry, such as catapults and fire, arguing that the objective of engaging with rebels is not their annihilation but rather the restoration of order.[33] Allameh Helli, elsewhere, prohibits launching surprise night raids against *baghī* groups and forbids the involvement of non-Muslim soldiers in the Islamic ruler's army, reasoning that they might kill retreating members of the *baghī* group and act mercilessly toward them.[34]

31 Abū Jaʿfar al-Ṭūsī, 7 al-Mabsūṭ fī fiqh al-Imāmiyya 274 (2008). Sheikh al-Ṭūsī subsequently draws a parallel between combating a *baghī* group and the principle of legitimate self-defense. *Id.* at 279.

32 Verse 9 reads: "If two groups of believers find themselves in conflict, strive to mediate and bring about peace between them. However, if one group is unjustly harming the other, then take a stand against the oppressor until they adhere to the commands of Allah. If they do return to righteousness, then reconcile between them fairly and with justice. Truly, Allah cherishes those who uphold fairness and justice."

33 Helli, *supra* note 19, at 455.

34 *Id.* at 457.

This perspective clearly suggests that individuals belonging to a *baghī* group are not subject to *ḥudūd* crimes and their corresponding penalties. The *fatāwā* in question clearly weaken the enforcement of Article 288 of the 2013 Islamic Penal Code, which outlines the punishments for individuals who are detained prior to any armed conflict.

According to Shīʿa *fiqh* sources, the crime of *baghy* is mainly associated with events that occur on the battlefield. Notably, Imam Ali consistently sought to engage in discussions with rebels prior to resorting to warfare. Specifically, in situations where Imam Ali initiated negotiations, the rebels were already prepared for conflict. This raises an important point: if their mere readiness for battle was considered a violation of religious law or deserving of punishment (*ḥadd or taʿzīr*), then an Islamic ruler's initiative to negotiate and advocate for peace would appear to be contradictory. Therefore, the prevailing *fatwā* maintains that the actions of a *baghī* group do not fall under the category of *ḥadd* punishment. Additionally, it implies that if members of the *baghī* group refrain from participating in combat for any reason, they would be exempt from criminal liability.

2. Additional Religious Conditions for the Realization of Baghy

The majority of Islamic jurists perceive *baghy* as an act of resistance against a just ruler. This perspective differs from certain *fatāwā* that limit the concept of *baghy* to situations involving an infallible (*maʿṣūm*) Imam or an individual designated by him.[35] As a result, an armed uprising against an oppressive leader would not fall under the category of *baghy*.[36] However, when compared to the Islamic Penal Code of the Islamic Republic of Iran, Shīʿī jurists have stipulated further requirements for an act to be considered *baghy*. Essentially, three additional *fiqh*-related conditions can be identified that differentiate

35 The embrace of this viewpoint by Shīʿī jurists during the time of Imam Mahdi's occultation indicates that the enforcement of *sharīʿa* punishments in his absence is considered forbidden.

36 Helli, *supra* note 19, at 451.

the concept of *baghy* from the criteria established in the 2013 Islamic Penal Code:

(a) Having adequate strength to present a threat to the Muslim ruler: Numerous Islamic scholars assert that the *baghī* faction must have a substantial number of supporters and resources, to the extent that the danger they represent can only be addressed through warfare and significant expense.[37] Thus, if the *baghī* group is small in number or lacks sufficient resources to challenge a just Muslim ruler, they cannot be classified under *baghy* regulations. This situation directly influences the criteria that determine what constitutes armed rebellion and the use of weapons in the context of *baghy*. As a result, the definition of a criminal group outlined in the 2013 Islamic Penal Code seems to diverge from the religious criteria related to the ability to instigate an overthrow. The *baghī* group must possess a substantial size that poses a credible threat to the stability of the government through armed insurrection. Moreover, the concept of "armed rebellion" cannot be applied to all types of weaponry; it is unrealistic to think that one could successfully overthrow a modern state using outdated weapons like swords or even basic firearms such as pistols.

(b) Physical departure from the domain of government authority: Certain jurists, upon examining the historical interactions of Imam Ali with rebellious factions, have reasoned that an armed group must initially detach itself from the authority of the ruler. This involves moving to a location that lies beyond the government's influence, where they can organize and prepare their forces for an attack aimed at usurping power from the ruler.[38] In fact, each of Imam Ali's battles with *baghī* groups—namely, the Battle of Ṣiffīn[39], the confrontation with the *khawārij*,

37 Al-Ḥillī, *supra* note 2, at 15.

38 Helli, *supra* note 19, at 452.

39 *See Battle of Siffin*, Encyclopaedia Britannica, https://perma.cc/9MFA-YBT6.

and the Battle of the Jamal—took place outside the Islamic capital, at a point when these adversaries had actively gathered their armies with the intent to march on and seize the center of the caliphate.[40]

(c) Requirement of negotiation and the Muslim ruler's obligation to address doubts: Certain jurists have posited that the rationale behind a *baghī* group's armed rebellion lies in their religious interpretations or justifications. Imam Ali, when speaking about the *baghī* group, characterized them as those who, in their quest for righteousness and truth, ultimately strayed from the right path. Considering Imam Ali's actions, certain jurists have argued that before launching an offensive against a rebellious group, it is essential to engage in dialogue with them and address their misconceptions.[41] Furthermore, if any of their rights have been wrongfully violated, their concerns must be addressed.[42] This viewpoint likely explains why jurists have also forbidden ambushes against these groups.[43]

3. Handling of Captives and Those Who Flee

The established *fatāwā* within Shīʿa *fiqh* outline specific guidelines for managing individuals who desert a battle and those who are detained. The prevailing view is that, in general terms, if the support system, leadership, and organizational framework of a rebellious group are dismantled, no member of that group should be executed. Alongside the consensus of prominent Shīʿī jurists, Allame Helli issued a *fatwā* stating that, upon the defeat of a *baghī* group, captives must be released even if they refuse to pledge allegiance to the Islamic ruler. Additionally, many Islamic jurists believe that, aside from *qiṣāṣ*, no further liability rests upon members of a *baghī* group. However, some jurists,

40 Sheikh Ṭūsī refers to a narration where a man, standing outside the mosque and insulting Imam Ali while he was delivering a sermon, held a sword. Imam Ali addressed those present, saying that the individual's life was safe and his share from the public treasury remained secure. *See* Ṭūsī, *supra* note 31, at 264.

41 Helli, *supra* note 19, at 455.

42 Ṭūsī, *supra* note 31, at 264.

43 Helli, *supra* note 19, at 457.

referencing Imam Ali's conduct, have expressed doubts on this matter, considering the end of hostilities as the conclusion of all enmities, thereby ruling out any further punishment for members of the *baghī* group.[44] However, if support remains or there is leadership capable of reorganizing them, the captives are to be executed, and those who flee are to be pursued and killed.[45] Despite the latter opinion, there are *fatāwā* in *fiqh* that advocate for a more lenient approach towards captives taken while the war is still ongoing or while the leadership and support structure of the rebellious group remain intact, which will be discussed in greater detail below.

a) Absolute Prohibition on Executing Women, Children, and the Elderly

There is consensus among jurists regarding the prohibition of executing women, children, and the elderly. The main point of contention lies in whether it is permissible to imprison them. In his work *al-Khilāf*, Sheikh Ṭūsī cites a narration from the Prophet of Islam stating that imprisoning these individuals is not allowed, even if they have actively participated in combat.[46] Moreover, Allame Helli issues a *fatwā* stating that the capacity to fight is a determining factor, and anyone who, if released, would lack the ability to fight must be set free in all cases.[47]

b) Prohibition of Execution and Killing of Captives

Sheikh Ṭūsī, in his work *al-Mabsūṭ*, asserts that individuals captured from a rebellious group should be freed if they discontinue their armed resistance against the government,[48] a view similarly

44 *Id.*

45 In *Riyāḍ al-Masāʾil*, Seyyed ʿAlī al-Ṭabāṭabāʾī (d. 1231/1815) acknowledges that the narrations supporting this *fatwā* are historically weak in terms of authenticity but argues that the longstanding endorsement of these narrations by Islamic jurists compensates for their weak chains of transmission. Sayyid ʿAlī al-Ṭabāṭabāʾī, 7 Riyāḍ al-masāʾil fī bayān aḥkām al-sharʿ bi-l-dalāʾil 461 (1991).

46 Abū Jaʿfar al-Ṭūsī, 5 al-Khilāf fī al-aḥkām 341 (1963).

47 Helli, *supra* note 19, at 456.

48 Ṭūsī, *supra* note 31, at 271.

held by Allame Helli.[49] Sheikh Ṭūsī further issues a *fatwā* that if the captives do not agree to disarm and the Islamic ruler has not yet secured victory over the rebels, they are to remain in prison until the war comes to an end. Nevertheless, once the ruler prevails, these individuals must be released, irrespective of their affiliations.[50] Furthermore, in his works *al-Mabsūṭ*[51] and *al-Khilāf*,[52] Sheikh Ṭūsī states that individuals who have fled from the *baghī* faction should not be pursued if they do not plan to return to their support network. He further argues that an Islamic ruler should refrain from including soldiers in his forces who are inclined to harm these escaping rebels.[53]

The multiplicity of jurists' *fatāwā* regarding the execution or non-execution of captives in situations where the outcome of the war remains uncertain likely arise from differing interpretations of religious texts. Consequently, Seyyed Abū al-Qāsim al-Khoei (d. 1992) has stated that there is no conclusive evidence in *sharīʿa* that dictates whether captives should be killed or spared. Ultimately, he argues that the authority to make such decisions lies with the Muslim ruler.[54] This viewpoint implies a permissibility and authorization for the Islamic government to issue a death sentence, which conflicts with the *sharīʿa* principle that cases warranting capital punishment must be explicitly stipulated (*manṣūṣ*) in *sharīʿa*. Furthermore, it contradicts the principle that the Islamic state has no guardianship over its subjects.[55]

49 Helli, *supra* note 19, at 455.

50 It should be noted that sometimes Islamic jurists have issued conflicting *fatāwā* across their various writings. This divergence may arise from factors such as shifts in belief or the influence of political motivations. Nonetheless, when it comes to their religious opinions, their authority holds equal weight for an outside observer. For instance, Sheikh Ṭūsī, in *al-Nihāya fi mujarrad al-fiqh wa-l-fatāwā*, aligns with the predominant view among Shīʿī jurists, advocating for the death penalty for captives if the support network of the *baghī* group remains intact. Abū Jaʿfar al-Ṭūsī, 1 al-Nihāya fī mujarrad al-fiqh wa-l-fatāwā 269 (1979).

51 Ṭūsī, *supra* note 31, at 262.

52 Abū Jaʿfar al-Ṭūsī, 1 al-Khilāf fī al-aḥkām 269 (1963).

53 Ṭūsī, *supra* note 31, at 274.

54 Seyyed Abū al-Qāsim al-Khoei, Minhāj al-Ṣāliḥīn 389 (1989).

55 It appears that imposing the death penalty constitutes the highest form of authority exercised by the state over its subjects. Thus, it is evident that delegating the discretion to administer capital punishment to the ruler not only risks arbitrary

It seems that the 2013 Islamic Penal Code is potentially subject to various amendments. On one side, certain *fatāwā* entirely oppose the enforcement of the death penalty for prisoners who participate in armed rebellions against the Islamic government. Moreover, the majority of jurists hold that even when weapons have been used, under certain conditions—such as when the individual detainee agrees to lay down arms or in the event of the *baghī* group's defeat—those convicted of *baghī* against the Islamic government should be released.

Conclusion

The Islamic Penal Code 2013 adopts a stricter approach in the realm of offenses related to national security or ideological dissent. It adds new crimes to the list of *ḥudūd*, such as *sabb al-nabī* (insulting the prophet), *baghy*, and the novel concept of acts of *ifsād fī al-arḍ*. Previously, the offenses of *muḥāraba* and *ifsād fī al-arḍ* were considered under a single classification. Concerning the rationale behind the expansion of *ḥadd* punishments in the 2013 Islamic Penal Code, particularly those related to national security offenses, no official justification has been provided by governmental authorities. Furthermore, there is a lack of specific scholarly research on this matter, and no clear correlation can be established between the increase in capital punishment and the introduction of new *ḥadd* offenses. However, the two decades of legislative experience since the enactment of the last *ḥadd*-related law may be regarded as a foundational basis upon which efforts have been made to further Islamize the relevant legal provisions to the greatest extent possible.

In addition, the differentiated or selective criminal policy adopted in the 2013 Islamic Penal Code may provide an explanation for the broadening scope of *ḥadd* punishments. On the one hand, the legislator has sought to establish a principle of leniency, tolerance, and forbearance about moral *ḥadd* offenses, to the extent that any investigation or prosecution of such offenses has been expressly limited. On the other hand, a more stringent

treatment of citizens but also conflicts with the human dignity and the spirit of *sharīʿa*. Asimi, *supra* note 14, at 136.

approach has been pursued by expanding *ḥadd* offenses against national security, thereby rejecting a conciliatory stance in favor of a coercive enforcement model. Furthermore, given that each *ḥadd* offense related to national security possesses its own unique structural and substantive framework, this expansion serves to prevent judges from arbitrarily applying Islamic *fiqhī* principles at their discretion. Instead, each *ḥadd* offense is to be examined based on its specific material and mental elements. For instance, in the offense of *baghy*, the continued existence of the armed group at the time of the defendant's arrest constitutes a fundamental element in determining the appropriate punishment. In contrast, no such requirement exists in the offense of *muḥāraba*. Furthermore, while repentance (*tawba*)[56] for a *muḥārib* is subject to certain restrictions, no such limitations have been imposed in the case of *baghy*.

The legislative authority of the Islamic Republic of Iran is obliged, under various provisions of the Constitution, to refrain from enacting laws that are inconsistent with *sharīʿa*. Nonetheless, Islamic scholars have issued a range of differing, and sometimes conflicting *fatāwā* on comparable issues. Hence, while some jurists have permitted the death penalty for individuals affiliated with *baghī* groups, others have strongly condemned the use of capital punishment in such cases. Consequently, the Islamic legislator is unable to merge all these divergent *fatāwā* into one unified law and must carefully choose from the various available interpretations. In practice, it would be both forbidden (*ḥarām*) to dismiss all existing *fatāwā*, and equally impractical to embrace every one of them. To ensure a more coherent legislative approach and to better resonate with human rights standards, we can emphasize particular *sharīʿa* principles—or even non-religious ones—within a broader policy-making framework.

56 The institution of repentance is an innovation introduced in the 2013 Islamic Penal Code, which, according to some scholars, reflects the Islamic Republic's human rights concerns by promoting a reduced reliance on corporal punishment and a greater emphasis on rehabilitation. Hussein Gholami & Bahman Khodadadi, *Criminal Policy as a Product of Political and Economic Conditions: Analyzing the Developments in Iran Since 1979*, 128 Zeitschrift für die Gesamte Strafrechtswissenschaft 624 (2016).

The inclusion of *baghy* as a *ḥadd* offense in the 2013 Islamic Penal Code marks a significant departure from the conventional Shīʿa *fiqhī* perspective, which prioritizes negotiation and caution in matters concerning life and property rather than focusing on punitive measures. To align Iran's penal code with Islamic law and contemporary human rights principles, this essay proposes a range of reforms. A central recommendation is to decriminalize *baghy* as a *ḥadd* crime, alongside advocating for non-punitive approaches such as negotiation and reconciliation. This method not only honors the principles of Shīʿa *fiqh* but also enhances the equity and compassion inherent in the legal framework. By connecting traditional *fiqh* with contemporary legal requirements and necessities, these reforms facilitate a more just and consistent application of Islamic law.