An Intrinsic *Sharīʿa*-Based Approach to Reducing *Ḥudūd* Capital Punishments in Iran

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Abstract

*Iran's criminal laws are based on Islamic law (*sharīʿa*) in accordance with its Constitution. In recent years, Iran has been among the countries with the highest execution rates worldwide. Most of these executions are linked to ḥadd-based punishments. This has led some intellectuals and foreign observers to believe that the high execution rate is due to laws grounded in* sharīʿa*. To reduce executions, they have proposed abandoning* sharīʿa*. However, such an approach does not align with the values of an Islamic society. Shīʿa jurisprudence, with its inherent capacity, such as the diversity of* fatwās *and authoritativeness of the consensus provides an opportunity. It allows for a significant reduction in executions without partially or entirely departing from* sharīʿa*.*

Introduction*

For many years, Iran has ranked among the countries with the highest number of executions globally. Based on statistics published by Amnesty International[1] in recent years, despite some legal reforms aimed at reducing the death penalty,[2] Iran has consistently remained among the nations with the highest number of executions. The number of executions relative to the country's population of 85 million confirms that Iran holds the highest execution rate per capita globally. According to Amnesty International, based on reports from official Iranian organizations, there were 972 officially recorded executions in Iran in 2024,[3] 853 in 2023,[4] and 576 in 2022.[5] By contrast, in 2014, the number of executions stood at 289,[6] illustrating a significant increase in recent years. Amnesty International has consistently claimed that the actual number of executions exceeds the figures officially reported.

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1 Amnesty.com.

2 As in the amendment of the Anti-Narcotics Law in 2017.

3 Amnesty International, *Global Report on Death Sentences and Executions 2024*, ACT 50/8976/2025, at 4 (Apr. 8, 2025), https://www.amnesty.ch/de/themen/todesstrafe/dok/2025/amnesty-death-sentences-and-executions-2024-v2-web-1.pdf. In Amnesty International's 2024 report, no distinction is made between *ḥudūd* executions and those carried out as *qiṣāṣ* for murder, and no separate figures for each category are provided. However, another organization, Iran Human Rights, has claimed in its report that at least 975 people were executed in Iran in 2024, of which 43 percent—419 individuals—were executed as retribution (*qiṣāṣ*), while the remaining were carried out under the category of *ḥudūd* punishments.

4 Amnesty International, *Global Report on Death Sentences and Executions 2023*, ACT 50/7952/2024, at 4 (May 29, 2024), https://www.amnestyusa.org/wp-content/uploads/2024/05/Amnesty-International-Global-Report-Death-Sentences-and-Executions-2023.pdf.

5 Amnesty International, *Global Report on Death Sentences and Executions 2022*, ACT 50/6548/2023, at 4 (May 16, 2023), https://www.amnesty.org.au/wp-content/uploads/2023/05/Amnesty-International-Death-Sentences-and-Executions-2022-Report.pdf.

6 Amnesty International, *Global Report on Death Sentences and Executions 2014*, ACT 50/0001/2015 (Mar. 31, 2015), https://www.amnesty.org/en/documents/act50/0001/2015/en/.

A widely held and credible view regarding the Iranian judiciary is that, in the Islamic Republic, politics plays a significant role in judicial processes. This means that political considerations can influence the speed of case proceedings, the type and severity of punishments, and that certain political cases are prosecuted under other criminal charges. Specific examples have also been cited to demonstrate the influence of politics in legal cases.[7] While this perspective cannot be entirely dismissed—and in some instances, such politicization does indeed occur—observations suggest that, although political cases tend to be more prominently represented and publicly amplified, in many cases there is no trace of political motivation, and ordinary individuals are executed. Many of those executed come from impoverished, everyday families and have been sentenced to death for crimes such as possession of narcotics. What is particularly noteworthy is that, whether in cases where political elements are present or in those where they are absent, executions are carried out with reference to Islamic law. Even at the stage of criminalizing political actions, religious justifications are invoked.

Death penalties in Iran are based on two categories of religiously prescribed punishments: *ḥudūd* and *qiṣāṣ*.

Ḥudūd refers to punishments that *sharīʿa* explicitly prescribes for specific offenses.[8,9] These punishments are primarily physical, with executions frequently included in this category. *Qiṣāṣ*, on the other hand, is a system of proportional legal retribution for crimes against bodily integrity, ensuring that the punishment corresponds to the harm inflicted on the victim. It is distinct from personal retaliation or revenge and is carried out through a structured legal process. The principle of "an eye for

7 Arzoo Osanloo, *The Measure of Mercy: Islamic Justice, Sovereign Power, and Human Rights in Iran*, 21 Cultural Anthropology 570, 572–75 (2006) (discussing the case of Morteza Amini Moghaddam).

8 Jaʿfar b. Ḥassan Najm al-Dīn (al-Muḥaqqiq al-Ḥillī), 4 Sharāʾiʿ al-Islām fī masāʾil al-ḥalāl wa-l-ḥarām [The Laws of Islam on Matters of the Permissible and the Forbidden] 136 (2d ed. 1988).

9 Islamic Penal Code art. 15 ("*Ḥadd* punishment is defined as a punishment for which the cause, type, extent, and manner of execution are specified in Islamic law.").

an eye"[10] falls under this category.[11] For instance, if an individual intentionally kills another, they may, under certain conditions, be subject to a legal execution as retribution.

Based on the above categorization, it becomes clear that capital punishments in Iran are carried out for these two reasons. *Qiṣāṣ* is a private right, executed at the request of the victim or the family of the deceased.[12] In contrast, *ḥudūd* is not a private right; the state claims the authority to carry out executions in this category.

The majority of executions in Iran are carried out based on *ḥadd*-based punishments rather than *qiṣāṣ*.[13] The offenses under *ḥudūd* punishable by death in Iran include:

1. adultery by force (*ightiṣāb*);[14]
2. adultery with prohibited kin (*zinā maʿa al-maḥārim*);[15]
3. adultery of a non-Muslim man with a Muslim woman;[16]
4. adultery with one's stepmother, which results in the execution of the adulterer;[17]
5. male homosexual acts, (*liwāṭ*, for the receptive partner, in all cases; and for the insertive partner, if the act is committed by force, if the conditions of *iḥṣān* are met, or

10 This rule, which is found in Qurʾān 5:45 (*Sūrat al-Māʾida*), also exists in Judaism. In Leviticus 24, it is stated as follows: "Anyone who takes the life of a human being shall be put to death. Anyone who takes the life of an animal shall make restitution. Anyone who inflicts an injury on their neighbor is to be injured in the same manner: fracture for fracture, eye for eye, tooth for tooth. The one who has inflicted the injury must suffer the same injury." Furthermore, if we believe that the law of Christ was the same as the law of Moses, then this rule was also enforced in Christianity.

11 Islamic Penal Code art. 16 ("*Qiṣāṣ* is the primary punishment for intentional crimes against life, body parts, and benefits, and it shall be enforced as detailed in Book Three of this Code.").

12 Seyed Ruhollah Khomeini, Taḥrīr al-Waṣīla [The Book of Means] 878 (2d ed. 2005).

13 *See supra* notes 5 & 6 (reporting that, according to Amnesty International, while the 2024 report does not specify the number of executions for *qiṣāṣ*, out of 853 executions in 2023, 292 were for *qiṣāṣ* and 561 for *ḥudūd*; and out of 576 executions in 2022, 279 were for *qiṣāṣ* and 297 for *ḥudūd*).

14 Islamic Penal Code art. 224(t).

15 *Id.* art. 224(a).

16 *Id.* art. 224(p).

17 *Id.* art. 224(b).

if the insertive partner is a non-Muslim and the receptive partner is a Muslim);[18]
6. disturbance of the peace (*moharebeh* or *muḥāraba*);[19]
7. corruption on earth (*ifsād fī al-arḍ*);[20]
8. waging war against the state (*baghī*);[21]
9. insulting the Prophet (*sabb al-nabī*);[22] and
10. committing a *ḥudūd* offense for the fourth time.[23]

Also, the legislator has stated in a general provision that if a *ḥadd* punishment is not specified in this law,[24] reference may be made to Article 167[25] of the Constitution. This means that the judge is given the authority to go beyond the principle of legality of crimes and, by directly referring to Islamic jurisprudence (*fiqh*), punish an act that is not criminalized in the law—such as heresy (*bidʿa*) or apostasy (*ridda*)—and even sentence the accused to execution.[26]

This article addresses *ḥadd*-based offenses punishable by death and proposes strategies for reducing executions associated with these crimes.[27] The central question is whether the high number of death penalties in *ḥadd* offenses is intrinsic to *sharīʿa* itself. If such penalties are indeed inherent to *sharīʿa*,

18 *Id.* art. 234.

19 *Id.* art. 282(a).

20 *Id.* art. 286 (noting that the designation *mufsid fī al-arḍ* (corruptor on earth) or its equivalent appears in numerous other provisions of various laws, including the Anti-Narcotics Law, as discussed below).

21 *Id.* art. 287.

22 *Id.* art. 262.

23 *Id.* art. 136.

24 *Id.* art. 220.

25 This article states: "The judge is required to make every effort to find the ruling for each case in codified laws. If no such ruling is found, the judge must issue a judgment based on reliable Islamic sources or valid *fatwā*s. The judge may not refrain from hearing a case or issuing a judgment on the grounds of silence, deficiency, ambiguity, or contradiction in codified laws."

26 Bahman Khodadadi, *"Nowhere but Everywhere": The Principle of Legality and the Complexities of Judicial Discretion in Iran,* 57 Iranian Stud. 651, 661 (2024); *see also* Sajjad Adelian Tous, Managing Religion and Religious Changes in Iran 9–11 (2024).

27 As is evident, *ḥadd* punishments do not necessarily entail execution; other forms, such as flogging and exile, also exist. However, in this article, we focus solely on capital *ḥadd* punishments, while other forms of *ḥadd* will be addressed in separate studies.

there would be no way to reduce or abolish the death penalty in Iran without entirely removing *sharīʿa* as a source of legislation. However, if the prevalence of these punishments is not inherent to *sharīʿa* but rather the result of misinterpretation or selective application by Iranian lawmakers, then strategies could be developed to reduce executions while maintaining *sharīʿa* and Iran's current legislative framework.

Accordingly, we aim to explore methods for reducing *ḥadd*-based executions within Iran's existing legislative structure. We argue that the high prevalence of *ḥadd*-based capital punishments is not an inherent feature of Iran's legal system. Furthermore, without departing entirely or partially from *sharīʿa*, significant reductions in such punishments can be achieved through intra-religious solutions.

The Historical Conflict Between Tradition and Modernity in Iranian Legislation

The debate over the relationship between Islamic jurisprudence (*fiqh*) and law *(qānūn)*—an extension of the broader issue of the relationship between tradition and modernity—has persisted in Iran and other Islamic countries for decades.[28] This discourse began roughly 120 years ago with the introduction of constitutionalism and the establishment of a legislative assembly[29] in Iran.[30,31] Over time, three main perspectives emerged: some strongly

28 Numerous books have been written on the relationship between Islamic jurisprudence (*fiqh*) and law. *See, e.g.*, Wael B. Hallaq, An Introduction to Islamic Law (2009); Wael B. Hallaq, Sharīʿa: Theory, Practice, Transformations (2009); Islamic Law and the Challenges of Modernity (Yvonne Yazbeck Haddad & Barbara Freyer Stowasser eds., 2004); Islamic Law and International Human Rights Law (Anver M. Emon, Mark S. Ellis & Benjamin Glahn eds., 2012).

29 Regarding the Iranian Constitutional Revolution, see Edward G. Browne, The Persian Revolution of 1905–1909 (1910).

30 Davood Feirahi, Fiqh va siyāsat dar Īrān-i muʿāṣir [Jurisprudence and Politics in Contemporary Iran] 348–59 (2012).

31 This dispute has deeper historical roots and can also be observed during the early Qajar era and the Safavid period. For further analysis, see Farzin Vejdani, Private Sins, Public Crimes: Policing, Punishment, and Authority in Iran (2024).

advocating for modernity and its hallmark, modern legal systems;[32] others adamantly defending tradition and its foundation;[33] and those seeking a middle ground to reconcile the two.[34]

We can see a clear trace of this conflict in the Supplementary Fundamental Law of Iran during the Constitutional Era,[35] which established a five-member council of religious scholars (*mujtahid*) tasked with supervising the compatibility of laws passed by the National Assembly with Islamic principles.[36] This debate persisted for decades, but it reached its peak 74 years later, following the Islamic Revolution of 1979. With the establishment of a Shīʿī theocratic state, the Islamic Republic of Iran, and the formal initiation of lawmaking based on *sharīʿa*, the intensity and prominence of this conflict escalated significantly.

Advocates of modernity were also among the supporters of the Islamic Revolution in Iran,[37] and the revolution itself was an attempt to reconcile tradition and modernity.[38] However, during that period, traditionalists[39]—who led the revolution—held greater power. While the traditionalists dominated the legislative institutions and remained deeply committed to tradition, they could not entirely ignore the realities of the modern international world and human rights principles.[40] As a result, the balance did not

32 Among the early Iranian secularists, examples include Mirza Aqa Khan Kermani, Mirza Fath Ali Akhundzadeh, and Seyyed Hassan Taqizadeh.

33 The most prominent examples among the early figures were Sheikh Fazlullah Nouri and Seyyed Kazem Yazdi.

34 For example, Mirzaye Naeini, Mirza Hossein Khan Sepahsalar, and Malkam Khan.

35 The Constitutional Law was enacted in 1906, followed by the Supplementary Law in 1907.

36 In the first amendment to the constitution, due to pressure from traditionalists, a five-member council of top clerics was established to supervise the religious legitimacy of the laws.

37 For example, one can refer to Mehdi Bazargan and the National Front of Iran *(Jibha Melli Iran)*.

38 For efforts to reconcile Islam and modernity, see Mohsen Kadivar, Ḥaqq al-nās: Islām-i nawandīsh va ḥuqūq-i bashar [The Rights of the People: Reformist Islam and Human Rights] 112–23 (2023).

39 The Shīʿī clerics and their leading figure who was Ayatollah Khomeini.

40 Extensive discussions have taken place regarding the relationship between Islamic rulings and principles and human rights, and several valuable works have been published on the subject. *See, e.g.*, Hossein-Ali Montazeri, Mujāzathā-yi Islāmī va ḥuqūq-i bashar [Islamic Punishments and Human Rights] (2003); Rahim Nobahar, Islām va mabānī-yi ḥuqūq-i bashar [Islam and the Foundations of Hu-

entirely tip in favor of tradition. The conflict between tradition and modernity persisted and even intensified.[41]

For the first time, Shīʿī jurists assumed official roles as lawmakers, tasked with drafting legislation that was both rooted in religious principles and compatible with the needs of modern society. Post-revolutionary Iranian legislators faced relatively few challenges in civil law, as these laws had been aligned with *sharīʿa* even before the revolution. The primary challenges arose in criminal law, particularly concerning *ḥudūd* punishments.[42]

Some *ḥudūd* punishments are explicitly outlined in the Qurʾān,[43] leaving little room for interpretation or flexibility. However, these laws were not well-received by either domestic society or the international community.[44] In a world where the abolition of capital punishment was increasingly seen as a moral virtue, a political system emerged in Iran with the intent of reviving *ḥudūd* punishments—resulting in a significant increase in capital punishments.[45]

Such a situation naturally brought about its own challenges, marking this period as one of the most contentious eras in Iranian legislative history. Some post-revolution jurists also argued that there is no direct correlation between an Islamic government and the enforcement of *ḥudūd* punishments. They

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man Rights] (2010); Abdullah Saeed, Human Rights and Islam (2018); Abdulaziz Sachedina, Islam and the Challenge of Human Rights (2009).

41 Examples of escalation include the socio-political conflict in June 1981 following the introduction of the Qiṣāṣ Bill, the protest by legal scholars and the expulsion of many from universities, as well as the reinstatement of flogging as a punishment in the *ḥudūd* law.

42 Discretionary punishments (*taʿzīrāt*) are also one of the Islamic punishments, but they are under the discretion of the ruler (*ḥākim*), and the legislator had complete freedom. However, the *ḥudūd* punishments were completely clear and defined, and the legislator had little room for maneuver or change.

43 The *ḥadd* of adultery (*ḥadd al-zinā*), the *ḥadd* of theft (*ḥadd al-sariqa*), the *ḥadd* of false accusation (*ḥadd al-qadhf*), and the *ḥadd* of disturbance of the peace (*ḥadd al-muḥāraba*).

44 Some have attempted to show that there is no contradiction between *sharīʿa* punishments and human rights. For example, see Matthew Lippman, *Islamic Criminal Law and Procedure: Religious Fundamentalism v. Modern Law,* 12 B.C. Int'l & Comp. L. Rev. 29, 55–57 (1989).

45 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 612 (2016).

contended that an Islamic government could be established without necessarily implementing *ḥudūd*.[46] However, this perspective did not gain much traction, and ultimately, *ḥudūd* punishments were incorporated into Iran's criminal laws. Others maintained that in the absence of the Imam (*Imām al-Zamān*), the enforcement of *ḥudūd* should be suspended—an opinion with longstanding roots in Shīʿa jurisprudence. However, after the Islamic Revolution, this view was rejected in favor of the opposing position, which advocated for the application of *ḥudūd* even during the Imam's occultation.[47] Three years after the Islamic Revolution, in 1982, the first post-revolution criminal law, titled the "Law on Islamic Punishments," was enacted. This law consisted of 41 articles and 38 notes and addressed only general provisions. However, in the same year, two other laws, the "Bill on Ḥudūd and Qiṣāṣ"[48] (containing 215 articles and 50 notes) and the "Bill on Diyah"[49] (containing 211 articles and 9 notes), were also passed. Together, these three laws revealed the structure of the new criminal justice system.[50]

As their titles suggest, *ḥudūd*, *qiṣāṣ*, and *diya* were explicitly incorporated into these laws. Despite multiple amendments to the law over the years, *ḥudūd*, *qiṣāṣ*, and *diya* remain integral components of Iran's criminal code. In fact, the most recent Islamic Penal Code, enacted in 2013, reflects an increase in the number of *ḥadd*-based offenses punishable by death. Additionally, several

46 Seyed Mostafa Mohaghegh Damad, Qawāʿid al-fiqh [Principles of Jurisprudence: Criminal Section] 291 (2000) (criminal section).

47 Bahman Khodadadi, On Theocratic Criminal Law: The Rule of Religion and Punishment in Iran 128 (2024).

48 At the time when the Qiṣāṣ Bill was introduced, opposition emerged from within Iran, including some political parties, lawyers, and judges, who objected to the bill and faced severe repercussions. Mohsen Kadivar has examined this issue in detail. *See* Mohsen Kadivar, *Chirā ḥūqūqdānān muntaqid-i lāyiha-yi qiṣāṣ budand?* [*Why Were Legal Experts Critical of the Qiṣāṣ Bill?*], Kadivar (Nov. 22, 2020), https://kadivar.com/16173/.

49 *Diyah* (*diya*) is a financial compensation that the offender or their representative must pay in cases of murder, injury to the soul, or harm to a body part. It must be paid to the victim or their legal heirs. In legal terminology, *diya* is the financial compensation determined by *sharīʿa* for certain criminal offenses.

50 Mohammad H. Tavana, *Three Decades of Islamic Criminal Law Legislation in Iran: Legislative History Analysis with Emphasis on the Amendments of the 2013 Islamic Penal Code*, 2 Elec. J. Islamic & Middle E. L. 24–28 (2014).

other laws reference *ḥudūd* punishments, the most notable being the Anti-Narcotics Law passed in 1997.

Forty-five years after the revolution and 42 years since the first *sharīʿa*-based criminal legislation, the trend in lawmaking demonstrates an increase in the number of offenses carrying the death penalty. Most of these punishments are based on *ḥudūd* offenses. In recent years, even widespread acts such as facilitating abortion or broadly promoting unveiled appearances on a large scale have been met with the imposition of capital punishment.[51]

Today, Iranians face a legislative framework in which, under Article 4 of the Constitution, lawmakers are obligated to legislate in accordance with *sharīʿa* and are prohibited from enacting laws contrary to it. This gives rise to the perception that the high number of executions in Iran stems from the application of *sharīʿa* in legislation and that the current execution rates are the inevitable and direct consequence of *sharīʿa*-based lawmaking. But how accurate is this claim? Is the high number of executions an intrinsic outcome of Islamic jurisprudence (*fiqh*), and is the only way to reduce executions to abandon *sharīʿa*?

The Perspective of Advocates for Transitioning from the Existing Jurisprudence to an Ideal Jurisprudence

What approaches have religious intellectuals and scholars adopted toward *sharīʿa* in general and capital punishment in particular? Among various scholars and religious intellectuals, differing perspectives on engaging with Islamic jurisprudence (*fiqh*) have emerged. Broadly speaking, these perspectives can be categorized into two main approaches: the traditional approach to *sharīʿa* and *fiqh* and the deconstructionist approach to *sharīʿa* and *fiqh*.

In other words, the discussion can be framed in terms of *fiqh* as the "existing reality" versus *fiqh* as the "ideal state," presenting a form of the "is versus ought" dichotomy. The approach defended by us advocates for preserving the existing *fiqh* while

51 These punishments have been prescribed as a *ḥadd* for corruption on earth (*ifsād fī al-arḍ*) and the validity of this *ḥadd* will be examined later.

utilizing its internal capacities to reduce the number of executions.[52] However, other approaches, which were sincere and intended to respect the religion, aimed at addressing the challenges posed by capital punishment and other aspects of *sharīʿa* in the modern world, seek to reform the existing *fiqh* and transition toward an ideal *fiqh*.[53]

The second group, which could be called deconstructionists, dismisses *sharīʿa* and all jurisprudential rulings in the social sphere—including those related to crimes and punishments—arguing that none of them are obligatory in today's world. Proponents of this view assert that these rulings, including the penal laws of Islam, were not intended for the present era but were historically specific and temporally bound, designed for a particular society with unique characteristics. While they may have been binding for individuals in that historical context, they are no longer applicable to contemporary times.

According to this perspective, *fiqh* represents the history of legal systems in Iran and other Islamic countries rather than a body of knowledge from which actionable behavioral norms can be derived. How can the tribal and rudimentary society of the Arabian Peninsula compare to the semi-modern or even partially modern society of contemporary Iran? Faith, they argue, has no intrinsic connection to *fiqh* and *sharīʿa*. One can maintain faith without adhering to these rulings, either in theory or practice.[54]

52 The reason we have chosen this approach is that it offers a solution that achieves much of the desired outcome of the opposing view without requiring a transformation of the political system, fundamental changes to existing legislative institutions and structures, or a departure from the established framework of Shīʿa jurisprudence.

53 There has also been an effort to abolish *ḥudūd* punishments based on intra-religious references within Sunnī Islam. For example, in an article published in 2023, the views of six prominent scholars from Al-Azhar University in Egypt—Sheikh Muḥammad ʿAbduh, ʿAlī Gomʿah, Ṣadraddīn al-Ḥilālī, Shawqī ʿAllām, Abdelazehra, and ʿAbd al-Muṭaʿal Ṣaʿīdī—were examined. It was concluded that they, too, have made efforts to abolish *ḥudūd* punishments through methods such as *fiqh al-maqāṣid* (the objectives of Islamic jurisprudence). *See* Salah al-Ansari, *Contextualising Islamic Criminal Law: An Analysis of Al-Azhar Scholars' Contributions*, 19 Manchester J. Transnat'l Islamic L. & Prac. 2 (2023).

54 Mohammad Mojtahed Shabestari, Harmanautik, kitāb va sunnat [Hermeneutics, the Book, and the Tradition] 56–66 (6th ed. 2005).

This approach seeks to abandon jurisprudential rulings using various methods and justifications. The four most significant methods are as follows:

The first method is the distinction between foundational (*taʾsīsī*) and endorsed (*imḍāʾī*) rulings. According to this method, Islamic rulings are divided into two categories: *taʾsīsī* rulings, which were originally introduced by the Prophet Muḥammad (peace be upon him) and had no precedent in the Arabian Peninsula, and *imḍāʾī* rulings, which were customary practices in the Arabian Peninsula that the sacred lawgiver approved and allowed to continue.[55] In this approach, jurisprudential rulings are further categorized into two types: acts of worship (*ʿibādāt*) and transactions (*muʿāmalāt*). The argument is that rulings related to acts of worship are foundational (*taʾsīsī*), while rulings related to transactions are endorsed (*imḍāʾī*). Since the latter category is based on customary practices, they were legislated in accordance with societal norms. From this perspective, capital punishment for certain crimes was a customary practice during that era, which Islam endorsed. However, since such practices are no longer customary today, the argument follows that these crimes and their associated punishments no longer hold validity under the principle of *imḍāʾī* rulings.[56]

The second method emphasizes the centrality of justice and rationality. This approach posits that the concepts of justice and rationality are pre-religious and supra-religious, meaning that these two principles bind Islamic rulings. In essence, justice and rationality are both conditions for the origination (*ḥudūth*) of rulings and for their continued validity (*baqāʾ*). Accordingly, any religious ruling that is deemed unjust or irrational in the contemporary era cannot be considered Islamic and cannot be attributed to *sharīʿa*. This method operates on the assumption that Islamic rulings have always been aligned with societal rationality and the principles of justice. Thus, the validity of an Islamic ruling depends on this alignment; if the alignment no longer exists, the ruling in question ceases to be an Islamic or

55 Liyakat Takim, Shiʿism Revisited: Ijtihad and Reformation in Contemporary Times 126–46 (2022).

56 Mehdi Haeri Yazdi, *Hikmat-i Aḥkām-i Fiqhī (The Wisdom of Jurisprudential Rulings)*, 46 Kiyan 2–4 (1999).

sharīʿa-based provision. Based on this approach, capital punishment and certain forms of criminalization must be abandoned because they conflict with contemporary notions of justice and rationality. Consequently, such rulings can no longer be prescribed in today's context.[57]

The third method emphasizes the primacy of ethics. This approach argues that ethics, as a concept, is distinct from rationality and, like rationality, is both pre-religious and supra-religious. Consequently, Islamic rulings are bound by ethical principles. According to this perspective, the issue lies in the fact that jurists have not considered ethics as a basis for legal rulings. If ethics were regarded as a pre-religious concept and ethical principles were considered from this perspective, many religious rulings could no longer be attributed to *sharīʿa*.[58] Based on this approach, capital punishment is deemed unethical, and therefore, religious texts that prescribe the death penalty for certain offenses are no longer relevant. Such rulings are abandoned due to their inconsistency with ethical principles.

The fourth method relies on the concept of *maqāṣid al-sharīʿa* (objectives of *sharīʿa*).[59] Advocates of this approach argue that every prescribed punishment in Islamic law has an underlying philosophy and specific purpose, and it is these objectives that hold true significance. The prescribed punishments in *sharīʿa* were merely meant to achieve these objectives during the time of the Prophet and shortly thereafter. Today, alternative methods that fulfill the same objectives and goals must be sought, even if they differ entirely from the punishments mentioned in *sharīʿa*.[60] Proponents of this view assert that the state

57 Mohsen Kadivar, Az Islām-i tārīkhī ba Islām-i maʿnavī dar sunnat va sakularism [From Historical Islam to Spiritual Islam in Tradition and Secularism] 426–31 (2d ed. 2003).

58 Abū al-Qāsim Fanaei, Akhlāq-i dīn shināsī [The Ethics of Religious Knowledge] 94–106 (2010).

59 For the precise definition of *maqāṣid al-sharīʿa* and its historical development over the centuries, see Felicitas Opwis, *Islamic Law and Legal Change: The Concept of Maṣlaḥa in Classical and Contemporary Islamic Legal Theory*, *in* Sharīʿa: Islamic Law in the Contemporary Context 62–82 (Abbas Amanat & Frank Griffel eds., 2007); *see also* Mohammed Fadel, *Public Reason as a Strategy for Principled Reconciliation: The Case of Islamic Law and International Human Rights*, 8 Chi. J. Int'l L. 1, 1–20 (2008).

60 Kadivar, *supra* note 57, at 426–29.

must determine whether punishments such as capital punishment (*qiṣāṣ*), *ḥudūd*, stoning (*rajm*), and discretionary punishments (*taʿzīr*) are effective tools for achieving justice and promoting social welfare. If a punishment conflicts with the values of justice, humanity, or human rights, the state—acting as both God's representative and the representative of society—should identify alternative forms of punishment that are beneficial to the community.[61] For example, monetary fines might achieve the same objectives of criminalization and punishment for offenses such as adultery (*zinā*) as those originally intended by *sharīʿa*.

As discussed above, some scholars turn to the tools of textual interpretation and attempt to utilize contemporary interpretative theories to reinterpret religious texts in ways that differ from traditional juristic understandings. This group believes that the possibility of multiple interpretations of texts allows for a rereading of the sources, enabling an alternative understanding of the texts.

In this context, jurists are often accused of failing to comprehend or engage with modern interpretative theories. It is argued that, had they considered modern interpretative theories, they would not have interpreted the texts in this manner. Consequently, these rulings are attributed to what is perceived as a flawed interpretative framework employed by the jurists.

Even if these perspectives are methodologically precise and well-reasoned, the fundamental issue with the four aforementioned approaches is their lack of jurisprudential authority among Muslims. While some proponents of these views are regarded as leading intellectuals,[62] they do not hold religious authority in issuing legal opinions (*fatwā*s) in the eyes of the general public. In contrast, the majority of *sharīʿa* specialists—who possess scholarly and social influence and hold authoritative positions in the field of *fiqh*—do not adhere to such approaches.

61 Nur Rofiah & Imam Nāhe'i, The Study of Law and Punishment in Islam: The Ideal Concept of Hudūd and Its Practice 227 (2016).

62 Among these prominent intellectuals are Dr. Abdolkarim Soroush and Mohammad Mojtahed Shabestari. For an examination of their views, refer to Kadivar, *supra* note 57. Additionally, see Mohsen Kadivar & Niki Akhavan, Human Rights and Reformist Islam (2021).

Consequently, these perspectives have little acceptance among Muslims and adherents of *sharīʿa*.

For a predominantly Muslim society like Iran, such interpretations are not widely accepted, and their proponents do not hold intellectual authority among the general public. However, recent studies indicate that adherence to *sharīʿa* among Iranians has been gradually declining, suggesting that circumstances may change in the distant or near future.[63] Nonetheless, for now, official jurists and religious authorities continue to hold more influence among the people than secular intellectuals. For instance, a public opinion poll conducted in October 2023 showed that more than 50% of respondents still identified with a *marjaʿ al-taqlīd* (source of emulation).[64]

In any case, the authors of this article seek to propose a solution for reducing executions within the existing legal framework and institutional structures of Iran, without advocating for fundamental structural changes—while acknowledging that the views of other scholars are worthy of consideration and respect. From a realistic point of view, even if a majority of the population were to demand the abolition of *ḥudūd* punishments, Iran's current legislative framework, particularly the existence of the Guardian Council, would prevents structural changes in the sources and foundations of legislation. Moreover, the establishment of institutions such as the Expediency Discernment Council has not led to any substantive changes regarding *ḥudūd*.[65]

The Diversity of *Fatwā*s and Authoritativeness of The Consensus: A Unique Capacity

Under the Iranian Constitution, the legislature is obligated to draft laws based on Islamic principles, specifically Twelver

63 Ministry of Culture & Islamic Guidance, The Fourth Wave of the National Survey on Iranian Values and Attitudes (2024).

64 *Id.*

65 Antonia F. Fujinaga, *Islamic Law in Post-Revolutionary Iran*, *in* Oxford Handbook of Islamic Law 618 (Anver Emon & Rumee Ahmed eds., 2018).

Shīʿa jurisprudence (*fiqh*).[66,67] In the realm of criminal law, the primary source for deriving Islamic rulings is the writings of Shīʿī jurists. Naturally, the foundation for legislation is traditional *fiqh* and the prevailing interpretations in Shīʿa Islamic centers, rather than the deconstructionist approaches mentioned in the previous section.

Although divine *sharīʿa* is immutable, the interpretations of Islamic sources by jurists are highly diverse. Pluralism is inherent to the discipline of *fiqh*, and it is impossible to impose a uniform understanding of the Qurʾān and *ḥadīth* upon all jurists or to expect unanimous rulings on every issue. Throughout Shīʿa history, numerous jurists have analyzed Qurʾānic and narrational evidence and, based on their independent reasoning (*ijtihād*), have offered differing opinions on the definition of crimes, methods of proving crimes, punishments for crimes, and the means of their implementation.

An examination of these writings reveals a variety of opinions on any given issue, with few instances in which all jurists, across all periods, have arrived at a single, unanimous ruling. This raises a fundamental and unresolved question, which has persisted throughout 42 years of criminal and non-criminal legislation: Which *fatwā* or interpretation of *sharīʿa* should be incorporated into law?

Specifically in the context of this article, if one *fatwā* holds that an individual who commits a particular crime should be executed, while another *fatwā* states that this individual should

66 In Shīʿa Islam, there are several sects, the most important of which are the Twelver Shīʿa, Ismāʿīlī Shīʿa, and Zaydī Shīʿa. Since the official sect in Iran's constitution is Twelver Shīʿa, whenever we refer to Shīʿa jurisprudence, we are specifically referring to Twelver Shīʿa.

67 Within Twelver Shīʿa jurisprudence, there are also various sub-schools such as the Akhbārī, Uṣūlī, Neo-Muʿtazilī, Shaykhī, and others—each with its own distinct characteristics. However, the school of jurisprudence adopted by the Iranian legislator is the traditional Uṣūlī school, or as Ayatollah Khomeini described it, the Jawāhirī jurisprudence. Therefore, any reform in the path of legislation in Iran—regardless of whether we consider it right or wrong—must be based on the Uṣūlī branch of Shīʿa jurisprudence. To see the opinion of the founder of the Islamic Republic regarding his preferred jurisprudential method, consult Ruhollah Khomeini, 21 Ṣaḥīfa-yi imām 289 (1999). To explore the various sub-schools within Twelver Shīʿa jurisprudence, see Jaʿfar Subhani, Tārīkh al-fiqh al-islāmī wa-adwāruhu [The History of Islamic Jurisprudence and its Periods] (1997).

not be executed, which of these two interpretations should be enshrined in law?

For example, regarding the punishment for the crime of *sabb al-nabī* (insulting the Prophet), some jurists explicitly consider *sabb* (insulting) Ḥaḍrat Fāṭima[68] to be punishable by execution.[69] However, others express doubt about whether Ḥaḍrat Fāṭima should be equated with the Prophet or the Imams in this ruling; they hold that such an insult warrants execution only if it ultimately constitutes an insult to the Prophet himself.[70]

Regarding the *sabb* of other prophets, there is significant juristic disagreement. Some scholars do not consider insulting them to be punishable by execution,[71] while others rule that sabb directed at any prophet entails capital punishment.[72]

Another example pertains to *zinā* (fornication or adultery) with *maḥram sababī* (in-laws) and *maḥram riḍāʿī* (relations through nursing). Some jurists consider a man's *zinā* with these categories of *maḥram* to be punishable by execution.[73] However, others do not regard such cases as warranting the death penalty.[74]

From an external perspective, rather than the viewpoint of jurists, one might argue that there is no inherent preference among the various interpretations of *sharīʿa*, nor is there any tool to definitively determine which interpretation is superior or aligns most accurately with the will of God. This uncertainty regarding the correspondence of these interpretations to the true *sharīʿa* represents one of the unique capacities of *fiqh* to adapt to the modern world.

Unfortunately, the Iranian legal framework has failed to capitalize on this capacity. Despite the passage of many years, it remains unclear what criteria are used to select a *fatwā* for incorporation into the law.

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68 The daughter of the Prophet and the mother of two Shīʿī Imams.

69 Seyed Abolqasem Khoei, Mabānī takmīlat al-Minhāj [Foundations for Completing al-Minhāj] 321 (2001).

70 Khomeini, *supra* note 12, at 878.

71 Khoei, *supra* note 69, at 321.

72 ʿAbd al-Aʿlā al-Mūsawī al-Sabzawārī, 28 Muhadhdhab al-aḥkām fī bayān ḥalāl wa-l-ḥarām [The Refinement of Rulings in Explaining the Permissible and the Forbidden] 32 (4th ed. 1992).

73 Khoei, *supra* note 69, at 233.

74 Khomeini, *supra* note 12, at 867.

The diversity of *fatwā*s is such that if a legislator adopts a pro-execution stance, operating under the assumption that executions can resolve societal problems, reduce crime rates, and deter others, they can easily justify capital punishment for dozens of criminal behaviors based on the plurality of *sharīʿa* interpretations. Conversely, if a legislator adopts a more humane perspective, seeking to minimize executions as much as possible and believing that executions neither bring about societal change nor serve as a deterrent, they can likewise reduce the number of capital punishments in the law to the bare minimum and attribute this reduction to *sharīʿa*.

The question then arises: based on the theory proposed by the authors, how can executions be reduced while preserving *sharīʿa* and adhering to traditional methods of jurisprudential reasoning? Furthermore, to what extent can this reduction be practically implemented to remove the death penalty from a significant percentage of criminal offenses?

Another notable capacity of Shīʿa jurisprudence is its authoritativeness of the consensus (*ḥujjīyat-garāʾī*), which supports its pluralistic nature. The foundation of this pluralism lies in the understanding that the divine will does not always perfectly align with a jurist's interpretation of *sharīʿa*, even after extensive scholarly effort. This difference occurs because jurists attempt to discern the divine will (*Lawḥ Maḥfūẓ*) based on jurisprudential sources. However, their conclusions may or may not align with the *Lawḥ Maḥfūẓ*. Most Shīʿī jurists and some Sunnī scholars adhere to this view.[75]

In contrast, an alternative theory, supported by some Sunnī scholars, suggests either that the *Lawḥ Maḥfūẓ* and divine preordainment on specific issues do not exist, or that the *Lawḥ Maḥfūẓ* changes based on the jurist's interpretation.[76] Under both theories, *fiqh* is recognized as a discipline characterized by multiplicity. This means that instead of a single jurisprudence, there are multiple valid interpretations. This pluralism is inherent to the process of interpreting *sharīʿa* and cannot be eliminated.

75 For Sunnī views, see Abū Ḥāmid al-Ghazālī, 1 al-Mustaṣfā fī ʿilm uṣūl al-fiqh 352 (1993). For Shīʿa views, see Muḥammad Kāẓim al-Khurāsānī, Kifāyat al-uṣūl 88 (1409 [1988]).

76 Al-Ghazālī, *supra* note 75, at 352.

Therefore, diverse interpretations, if derived through rigorous scholarly methods, are considered authoritative before God and valid as jurisprudential and *sharīʿa*-based opinions.

Proposed Solutions, Intra-*Sharīʿa* Reductionist Approach

Our proposed solution involves establishing a new framework—not for the methodology of deriving Islamic rulings (*aḥkām al-sharīʿa*) but for setting a clear and definitive criterion for selecting *fatwā*s to be incorporated into legislation and applying this standard consistently across all relevant laws. This approach is entirely rooted in *sharīʿa* and simultaneously addresses the issue of the high number of executions. It is not a jurisprudential theory but rather a supra-jurisprudential concept grounded in the philosophy of *fiqh*.

Under this framework, *fiqh*—or more precisely, the various schools of *fiqh* and the differing interpretations of jurists—remains unchanged. There is no alteration to the traditional methods of deriving rulings. Jurists in Islamic seminaries (*ḥawza*) will continue to engage in the derivation of *sharīʿa* rulings, with each jurist issuing rulings (*fatwā*s) that are binding for themselves and their followers. This theory applies specifically to the point at which one of these *fatwā*s is selected for incorporation into legislation, focusing on the criteria for such selection.

The key strength of this theory lies in its realism. The complete elimination of capital *ḥudūd* punishments from Iran's legal system is neither feasible nor desirable. It is not feasible because, according to several constitutional principles—most notably Article 4—all laws in Iran must be based on *sharīʿa*, and some of the existing capital punishments are derived from Islamic law. Eliminating the death penalty entirely would require abandoning the Constitution itself. It is also not desirable, as Iran is a majority-Muslim society where the belief prevails that one of God's attributes as the Divine Legislator is *ḥikma* (wisdom). If God has prescribed the death penalty for certain offenses, then this punishment carries divine wisdom, and failing to implement it would constitute disobedience to divine command. While some studies claim that public attitudes in

Iran have shifted in recent years,[77] unless such changes are definitively and officially established, the traditional stance must still be regarded as valid.

What can serve as a practical solution to the issue of *ḥadd*-based capital punishment is the establishment of a robust, definitive, and transparent criterion for selecting *fatwā*s and legislating based on that criterion.

According to this theory, when legislators face cases where jurists differ in their rulings—such that some prescribe capital punishment for a crime while others prescribe a non-capital punishment—the legislator must codify the *fatwā* that does not endorse capital punishment. In this process, it makes no difference whether this opinion aligns with the majority view (*qawl mashhūr*),[78] the jurisprudential opinion of the Guardian Council's jurists,[79,80] or the jurisprudential view of the Supreme Leader (*walī al-faqīh*),[81,82] nor does it matter whether this opinion is consistent with societal interests (*maṣlaḥa*).

Furthermore, in cases where one jurisprudential opinion requires stricter conditions for implementing capital punishment

77 *See* GAMAAN Public Opinion Research Group, *Iranian Attitudes Toward the Death Penalty* (Oct. 2020), https://gamaan.org/wp-content/uploads/2020/10/GAMAAN-Iran-Death-Penalty-Survey-2020-Persian.pdf (reporting that less than fifty percent of participants (43%) supported the complete abolition of the death penalty from criminal laws).

78 For the opinion of those who support the necessity of following the majority view, refer to Mohammad Ebrahim Jannati, Sources of Ijtihad from the Perspective of Islamic Sects 118 (1991).

79 In Iran, there is an institution called the Guardian Council, which is composed of six jurists and six legal experts. All parliamentary legislation must be approved by this council to ensure that it does not contradict *sharī'a* or the Constitution. The review of compliance with *sharī'a* is the responsibility of the six jurists, while the review of compliance with the Constitution is the responsibility of all 12 members.

80 For the opinion of those who support the necessity of following the views of the jurists in the Guardian Council, refer to Abdolrahim Cheghini Zadeh, The History of Legislation in the Islamic Republic of Iran with Regard to the Role of the Guardian Council and with Reference to Article 2 of the Amendment to the Iranian Constitutional Law 103 (1998) (Master's thesis, University of Tehran).

81 The Supreme Leader (*walī al-faqīh*) is a political-religious position in the Iranian legal system, and the duties and powers of this position are defined in the Constitution. The Supreme Leader must be a jurist (*mujtahid*).

82 Hadi Hajizadeh, *A Look at the Dimensions of Constitutional Law in Iran: The Fatwa as a Criterion in Legislation 18, No. 12044*, Legal Rsch. Ctr. of the Islamic Consultative Assembly (2011), https://rc.majlis.ir/fa/report/show/800660.

and another prescribes simpler conditions, the legislator must incorporate the opinion that establishes stricter conditions for its implementation. As a result of these stricter requirements, the frequency of capital punishment would naturally decrease. Traces of this approach can, albeit unintentionally and in a very limited manner, be observed in earlier periods as well. For instance, under the previous Islamic Penal Code, the punishment for both the active and passive participants in the crime of *liwāṭ* was execution under all circumstances.[83] However, in the current Islamic Penal Code, the death penalty for the active party applies only if the condition of *iḥṣān* is met.[84] In drafting the new law, the legislature adopted a more lenient jurisprudential view—one that exists in the writings of certain jurists.

According to this theory, in cases where overarching principles and higher-level rules exist, the legislator is obligated to adhere to them. These principles and rules hold a position above the specifics of individual *fatwā*s and serve as a guiding light, offering a roadmap for lawmakers.

These overarching principles and rules assist legislators in navigating between differing *fatwā*s, enabling them to make methodical and logically sound decisions grounded in clear reasoning.

This theory asserts that in the context of capital punishment, there exists a category of fundamental and overarching principles that serve as both *sharīʿa*-based and rational criteria for prioritizing certain *fatwā*s over others. Therefore, if two conflicting jurisprudential opinions exist on a single issue—one advocating for execution and the other opposing it—the legislator is obligated to codify the opinion that rejects execution.

83 Islamic Penal Code art. 110 (1991).

84 Islamic Penal Code art. 234 (2013). *Iḥṣān* for a man means that he is married to a permanent wife who is of legal age, has had vaginal intercourse with her while both were mature and sane, and still has access to her for intercourse whenever he wishes.

Evidentiary Basis for Intra-*Sharīʿa* Reductionist Approach

To substantiate and justify this theory, it is essential to explore several principles and rules found in jurisprudential and foundational Islamic texts. These principles emphasize the profound significance and meticulous care that *sharīʿa* assigns to matters of human life (*dimāʾ*), and serve as a guiding light, illuminating the path through other challenges. Before elaborating on these principles, it is important to note that their content may sometimes overlap, and at first glance, they might appear redundant. However, given that jurists have referred to these principles using different terminologies in their works, this discussion addresses them separately, preserving the distinctions found in those sources.

*I. The Principle of Precaution in Matters of Human Life (*Dimāʾ*)*

In Islamic jurisprudence (*fiqh*), two matters are considered of paramount importance: human life (*dimāʾ*) and honor (*ʿirḍ*).[85] While the general principle of exoneration (*barāʾa*) applies to all cases of doubt, both doubt concerning the subject and doubt concerning the ruling, caution (*iḥtiyāṭ*) is specifically emphasized in these two areas. This study is particularly concerned with the principle of caution in matters of *dimāʾ*.

Caution in *dimāʾ* implies that individuals in society, and particularly judges, must approach issues involving human life with the utmost care and precision. They should refrain from issuing judgments against *dimāʾ* unless complete certainty is achieved. This principle can be likened to the doctrine of interpreting the law in favor of the accused. Under this doctrine, judges are obligated to adopt interpretations of the law that benefit the accused in cases where the law allows for multiple interpretations. Similarly, in the principle of caution in *dimāʾ*, texts

85 Shaykh Murtaḍā Anṣārī, Farāʾid al-uṣūl [The Pearls of Principles] 376 (5th ed. 1996); al-Khurāsānī, *supra* note 75, at 355.

must be interpreted, as far as possible, in a manner that minimizes any harm to *dimāʾ*.

If this well-established principle of jurisprudence is to be applied to legislators, it mandates that lawmakers adopt a cautious approach when drafting laws related to matters of life. In cases of doubt or when conflicting juristic opinions exist, the principle of caution in *dimāʾ* necessitates a restrained approach, avoiding the enactment of laws that authorize capital punishment.

Some texts reference the opposite of this principle, referred to as the rule of avoiding recklessness with regard to *dimāʾ* (*qāʿidat ʿadam tahajjum ʿalā al-dimāʾ*). This rule has been cited in several contexts as a basis for issuing jurisprudential rulings.[86] By *tahajjum*, jurists mean recklessness and the failure to observe necessary precautions. Consequently, not only is adherence to caution in *dimāʾ* considered essential, but failure to observe it is deemed reprehensible and unacceptable.

II. The Principle of Leniency in the Application of Ḥudūd

One of the issues highlighted in Imāmī jurisprudence (*fiqh*) is the principle that divine *ḥudūd* (punishments) are founded upon leniency and flexibility.[87] This means that in matters of *ḥudūd*, efforts should be directed toward leniency rather than pursuing the establishment of guilt or the imposition of punishment. As can be inferred from prophetic traditions (*nuṣūṣ riwāʾī*), the Shariʿah's approach to *ḥudūd* is based on moderation and ease. Wherever possible, the removal of punishment is preferred over its enforcement.[88]

86 Hassan b. Yūsuf al-Ḥillī (ʿAllāma al-Ḥillī), 9 Mukhtalaf al-Shīʿa fī aḥkām al-sharīʿa [The Disagreements of the Shīʿa on the Rulings of Islamic Law] 314 (2d ed. 1993).

87 Fāḍil Ābī, Kashf al-rumūz fī sharḥ Mukhtaṣar al-Nāfiʿ [Unveiling the Mysteries in Commentary on the Mukhtaṣar al-Nāfiʿ] 496 (3d ed. 1996).

88 The Islamic rule of lenity is a shared principle with American law, where the rule of lenity also exists. For a comparative study of this principle, see Intisar A. Rabb, *The Islamic Rule of Lenity: Judicial Discretion and Legal Canons,* 44 Vand. J. Transnat'l L. 1299 (2021).

*III. The Principle of Preserving Human Life (*Ḥaqqn al-Dimāʾ*)*

One of the established principles in Shīʿa jurisprudence (*fiqh*) is the preservation of human life (*ḥaqqn al-dimāʾ*). This principle asserts that human blood must remain protected, and no one has the right to infringe upon it except in cases where *sharīʿa* explicitly permits taking a life. Therefore, the default assumption is that blood is sacrosanct (*maḥqūn*), and anyone seeking to justify the shedding of another's blood must provide sufficient evidence to substantiate their claim.

For example, in matters of dissimulation (*taqiyya*), jurists have stipulated that dissimulation (*taqiyya*) is valid as long as it does not involve issues related to bloodshed. Once it pertains to matters of blood, the validity of dissimulation (*taqiyya*) ceases. Jurists have attributed this exception to the principle of preserving human life (*ḥaqn al-dimāʾ*).[89]

IV. Avoiding Ḥudūd *due to* Shubha *(*Qāʿidat al-Darʾ*)*

The *qāʿidat al-darʾ* is among the most significant principles in Islamic criminal jurisprudence (*fiqh*) and has been widely discussed in legal scholarship. Linguistically, *darʾ* refers to warding off, repelling, or averting. The principle is defined as follows: divine *ḥudūd* (punishments) are nullified when doubt or ambiguity exists.[90] This principle is supported by traditions found in both Imāmī[91] and Sunnī sources.[92]

However, some Sunnī scholars argue that the Prophetic origin of this narration is not definitive, and the approximately 12 related *aḥādīth* lack reliable chains of transmission. Despite

89 ʿAbbās b. Ḥasan b. Jaʿfar al-Najafī (Kāshif al-Ghiṭāʾ), al-Fawāʾid al-Jaʿfariyya [The Jaʿfarī Benefits] 86 (1994).

90 The most significant example of the *qā'idat al-dar'* (principle of doubt) is the case of *Mā'iz*. For an analysis of the *Mā'iz* case, see Intisar A. Rabb, '*Reasonable Doubt' in Islamic Law*, 40 Yale J. Int'l L. 41 (2015).

91 Muḥammad b. Ḥasan al-Ḥurr al-ʿĀmilī, 28 Wasāʾil al-Shīʿa [The Means of the Shīʿa] (1995).

92 For all Sunnī *ḥadīth*s and their chains of narrators, see the chart in Intisar A. Rabb, Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law 332 (2015).

this skepticism regarding its Prophetic authenticity, the principle is widely applied in practice.[93] Others have dismissed the principle entirely.[94] For example, they reason that if God explicitly prescribed severe punishments such as flogging or amputation in the Qurʾān, it would be contradictory to allow leniency.

Critics of this argument often point out the failure to distinguish between the severity of the punishment itself and the difficulty of proving the crime. These are two distinct aspects. For instance, in the context of punishment for adultery, the Qurʾān explicitly states in the subsequent verse that anyone accusing another of adultery without presenting four witnesses will themselves be subject to eighty lashes (Qurʾān 24:4). This distinction highlights a deliberate separation between the policy of determining punishments and the policy of establishing guilt.

There is a difference of opinion regarding what constitutes "doubt" (*shubha*) in the traditions underpinning the *qāʿidat al-darʾ* (avoiding *ḥudūd* due to *shubha*).[95] Some scholars argue that the doubt must reside in the mind of the judge, while others believe it must be present in the mind of the accused.[96] Still, others hold that doubt in either party is sufficient to nullify the *ḥadd* punishment.[97] It appears that, under this principle, the obligation to avoid punishment is intrinsically linked to the very essence of doubt itself, without being confined to a specific type of doubt (whether it arises in the judge's or the accused's mind).

93 *Id.* at 318.

94 For a comprehensive report on all arguments made by opponents, see *id.* at 229–59. Among Iranian Shīʿī scholars, some interpret the *qāʿidat al-darʾ* (principle of doubt) very narrowly. For an example, see Ahmad Haji Deh Abadi, *Qāʿidat al-darʾ dar fiqh-i Imāmī-yi va ḥuqūq-i Īrān* [*The Principle of Darʾ in Imami Jurisprudence and Iranian Law*], 6 Fiqh & L.J. 60 (2005).

95 This difference also exists among the various Sunnī sects. For example, see Nasimah Hussin & Majdah Zawawi, The Application of the Rule of "Avoiding Hudud Due to Shubhah" as a Mechanism for Ensuring Justice in the Determination of Punishments in Islamic Criminal Law 5–7 (2013).

96 On the intent of the perpetrator, see Zayd b. ʿAlī al-ʿĀmilī, 14 Masālik al-ifhām 329 (1423 [2002]). On the intent of the judge, see Muḥammad Fāḍil Lankarānī, Tafsīl al-sharīʿa (al-ḥudūd) 34 (2d ed. 1422 [2001]).

97 Mahmoud Pourbafrani & Hamed Rostami Najafabadi, *Shumūl-i shubh-i dar qāʿidat al-darʾ* [*The Scope of Doubt in the Principle of Darʾ*], 12 J. Islamic Juris. & L. Stud. 108–10 (2020).

Therefore, the doubt in question could originate in the mind of the judge, the accused, or both.[98]

It can be argued that the concept of doubt in the *qāʿidat al-darʾ* has not deviated from its literal meaning. *Shubha* means ambiguity or the lack of clarity about reality.[99] If we accept that doubt in this principle retains its literal meaning, there is no reason to limit its application to the stage of proving guilt. Instead, this principle can also apply during the stages of issuing legal opinions (*iftāʾ*) and legislation (*taqnīn*). As noted earlier, the obligation to avert punishment is linked to the very nature of doubt itself. Consequently, at the legislative stage, this principle also encompasses doubts faced by lawmakers. For instance, when a legislator is confronted with multiple juristic opinions and is uncertain about which to incorporate into the law, the *qāʿidat al-darʾ* applies. In such cases, the legislator must act in accordance with the principle and refrain from enacting laws that impose capital punishment on offenders.

V. The Principle of Preferring Errors in Clemency Over Errors in Punishment

If an Imam (judge) finds themselves in a situation where they have not reached certainty or valid conjecture regarding a matter, and they must either issue a ruling of clemency or impose punishment—knowing that only one of these rulings aligns with the objective reality—they face the possibility of error in either case. The judge may choose clemency and risk erring in doing so, or they may choose punishment and risk erring in that decision.

The principle under discussion asserts that if the judge errs by issuing a ruling of clemency, this is preferable to erring by imposing punishment. Therefore, in such cases, the judge is obligated to rule in favor of clemency.

Regarding the evidence for this principle, it should be noted that in foundational legal texts (*kutub uṣūl*), references are

98 Seyed Mustafa Mohaghegh Damad, 4 Qawāʿid fiqh [Principles of Jurisprudence] 72–73 (12th ed. 2004).

99 Aḥmad Haji Deh Abadi, Qawāʿid fiqh-i jazāʾī [Principles of Criminal Jurisprudence] 57 (2d ed. 2008).

made to evidence from Sunnī sources in the context of discussions related to the *qāʿidat al-darʾ*.[100] One such reference is a *ḥadīth* that explicitly addresses this principle. The text of the *ḥadīth* is as follows: "From ʿĀʾisha: The Messenger of Allah (peace be upon him) said, 'Avert the *ḥudūd* punishments from Muslims as much as you can. If there is any way out for them, let them go free, for it is better for the Imam to err in granting clemency than to err in imposing punishment.'"[101] This narration provides direct support for the principle, emphasizing the preference for clemency over punitive measures, particularly in cases of doubt or uncertainty.

The concluding part of this *ḥadīth* refers to a general principle: if the Imam (judge) errs in granting clemency, it is better than erring in imposing punishment. This reflects the overarching perspective of Islamic law.[102] Although this *ḥadīth* is not found in Shīʿa sources, its content can be accepted based on supporting evidence and reasoning. On one hand, it aligns with other principles and rules in Imāmī jurisprudence (*fiqh*), particularly the *qāʿidat al-darʾ*. The very possibility of error in a punitive ruling constitutes a form of doubt, and punishment is nullified in the presence of doubt.

On the other hand, from a rational perspective, it is self-evident that punishing an innocent person is far more reprehensible than granting clemency to a guilty one. Many wrongdoers exist who, in reality, are guilty but are never brought to trial or punished.

In Shīʿa jurisprudential texts, discussions also address whether the *qāʿidat al-darʾ* applies to discretionary punishments (*taʿzīrāt*). One of the arguments supporting its application is the general nature of the *ḥadīth*: "It is better for the Imam to err in granting clemency than to err in imposing punishment."[103]

100 Mohaghegh Damad, *supra* note 98, at 44.

101 Muḥammad b. ʿĪsā al-Tirmidhī, 2 Ṣaḥīḥ sunan al-Tirmidhī 238 (Mustafa al-Babi ed., 1937).

102 Sadiq Reza, *Due Process in Islamic Criminal Law*, 153 Geo. Wash. L. Rev. 22 (2013).

103 Mohammad Mousavi Bojnourdi, 1 Qawāʿid fiqhiyya [Jurisprudential Principles] 185 (3d ed. 2022).

VI. The Principle of Non-Punishment as a Preferential Criterion

In most foundational legal texts (*kutub uṣūl*), there is a section titled *taʿāḍul wa tarājiḥ* (Equilibrium and Preferential Criteria) or *kitāb al-taʿāruḍ* (The Book of Contradictions). This section addresses the issue of what should be done when two (or more) conflicting, credible, yet conjectural pieces of evidence come to light. Some scholars, relying on *riwāyāt ʿilājiyya* (narrations providing solutions), argue that preference (*tarjīḥ*) should be applied.[104] However, others reject the validity or reliability of such narrations, instead resorting to practical principles (*uṣūl ʿamaliyya*).[105] Among this group, some believe in *tasāquṭ* (mutual invalidation of the conflicting evidence) and apply the principle of *barāʾa* (exoneration), while others advocate for *takhyīr* (choosing one of the conflicting options).[106]

Regarding preferential criteria (*marājiḥ*), the predominant view is that such criteria are exclusive and must be limited to those explicitly mentioned in narrations. The explicitly stated preferential criteria include the sequence of issuance, the characteristics of the narrator, widespread acceptance (*shuhra*), consistency with the Qurʾān, and opposition to the general consensus of the *ʿāmma*.[107]

However, a review and thorough investigation of jurisprudential texts reveal instances where jurists, when faced with two pieces of evidence—one advocating punishment and the other negating it—have considered non-punishment as the preferred option and deemed punishment as less favorable. For example, the late Mujāhid Ṭabāṭabāʾī (d. 1242/1826) in his work *Mafātiḥ al-uṣūl* states:

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104 Mohammad Reza Muzafar, 2 Uṣūl al-fiqh [The Principles of Jurisprudence] 575 (2007).

105 Al-Khurāsānī, *supra* note 75, at 443.

106 On the view of discretionary choice, see *id*. at 443. On the view of mutual nullification, see Sayyid Abū al-Qāsim al-Khūʾī, 4 Dirāsāt fī ʿilm al-uṣūl 388 (1420 [1999]).

107 Muzafar, *supra* note 104, at 198.

> When two conflicting reports exist, one affirming the enforcement of a *ḥadd* and the other negating it, jurists differ on which is preferable. The first group believes that the evidence negating the *ḥadd* is preferable, while the second group considers the evidence affirming the *ḥadd* to be superior.[108]

The late Mujāhid sides with the first group. In explaining the rationale for prioritizing the negation of the *ḥadd*, he refers to the harm caused by enforcing a *ḥadd*, the obligation to prevent harm, the *qāʿidat al-darʾ*, and the principle of preferring errors in clemency over errors in punishment.[109]

VII. The Principles of Ease and Leniency

Islamic sources emphasize both the ease (*suhūla*) of religion and tolerance (*tasāhul*). The implications of these two concepts differ. Ease refers to the inherent simplicity of religion, while tolerance pertains to leniency in its application. The ease of religion primarily addresses the essential and fixed nature of Islamic law and is more evident in the legislative process within an Islamic government that considers itself committed to Islamic rulings. In contrast, tolerance and leniency are more related to the implementation phase and reflect the conduct of law enforcers.[110]

Several verses in the Qurʾān highligh the principle of ease in religion.[111] Additionally, there are narrations that convey similar meanings.[112] This collection of Qurʾānic verses and narrations reflects the overarching spirit of Islamic law, which is fundamentally rooted in ease and simplicity.

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108 Muḥammad b. ʿAlī al-Ṭabāṭabāʾī al-Mujāhid, 1 Mafātiḥ al-uṣūl [The Keys to the Principles of Jurisprudence] 713 (1879).

109 *Id.*

110 Jalāl al-Dīn Qiyāsī, Uṣūl-i sahūlat va mudārā dar siyāsat-i jinā-yi ḥukūmat-i Islāmī [The Principles of Ease and Leniency in Islamic Penal Policy] 20 (7th ed. 2006).

111 For example, see Qurʾān 2:185, 2:286, 5:6, 22:78.

112 Muḥammad Ṭāqī Majlisī, 68 Biḥār al-anwār [Seas of Light] 211 (1983).

The seven aforementioned principles are not merely isolated and independent rules. Instead, as the Gestalt theory suggests, the combination of these individual components creates a holistic picture. This overarching image underscores the extraordinary emphasis that Islamic law places on the sanctity of human life. This focus represents a general approach in Islamic criminal law, which lawmakers are also expected to follow.

The implication of this approach is that criminal laws, especially those concerning *ḥudūd* punishments, must be designed with the utmost caution, prioritizing the protection of human life to the greatest extent possible. Naturally, in cases where, despite all precautions, a crime still warrants a punishment involving the deprivation of life, such a punishment must undoubtedly be carried out. This theory does not claim to reduce capital punishments under *ḥudūd* to zero. Eliminating capital punishments altogether would imply the abandonment of a portion of *sharīʿa* —an outcome that, as previously discussed, is neither feasible nor desirable and would not be accepted by Muslims in an Islamic society.

A significant feature of this theory is that it is entirely intra-religious and grounded in legitimate *sharīʿa* evidence. Therefore, the citizens of an Islamic society would not perceive it as contradictory to *sharīʿa* and would not oppose it.[113] This foundation for selecting juristic opinions not only preserves the sanctity of *sharīʿa* but also claims to adhere to it more rigorously than other theories. This is because it aligns with both the detailed rulings of *sharīʿa* and its overarching spirit, which emphasizes maximum caution in matters related to *dimāʾ* (human life).

113 According to a Pew Research Center survey conducted in the United States between February 24 and May 3, 2012, an overwhelming majority of Iranians (83%) stated that they support the application of *sharīʿa*. Although this number has likely declined over time, it remains significant. See Pew Research Center, *Iranians' Views Mixed on Political Role for Religious Figures* (June 11, 2013), https://www.pewresearch.org/religion/2013/06/11/iranians-views-mixed-on-political-role-for-religious-figures/.

Application of Intra-*Sharīʿa* Reductionist Approach to Iran's Current Law

Now that the proposed theory for the maximal reduction of *ḥudūd*-based capital punishments has been presented, it is time to examine the potential effects and outcomes of implementing this theory within Iran's legal framework.

A meticulous examination reveals that Iran's current laws include 72 instances of capital punishment. If this theory were implemented, 60 instances of capital punishment would be entirely removed from the legal framework. In three additional cases, the enforcement of capital punishment would be significantly curtailed due to the increased difficulty in proving and executing such sentences—similar to the punishment for *moharebeh* (or *muḥāraba*), is discretionary or sequential.

Eliminating 60 out of 72 instances is undoubtedly significant. This importance becomes even more apparent when we consider that the majority of *ḥadd*-based executions in Iran pertain to drug offenses—505 out of the 972 total executions in 2024,[114] and 481 out of the 561 *ḥudūd* punishments involving the deprivation of life in 2023.[115] Notably, the *ḥadd* punishment for drug offenses is among the 58 instances that would be eliminated under the theory proposed in this article. This is because such punishments are rooted in the *ḥadd* of *ifsād fī al-arḍ* (corruption on earth), a punishment that is highly debated and not widely recognized as an independent *ḥadd* by Shīʿī jurists.

In Shīʿa jurisprudence (*fiqh*), extensive discussion have taken place regarding this *ḥadd*, with 99% of Shīʿī jurists maintaining that it does not exist as an independent punishment and is instead a subset of the *ḥadd* for *moharebeh*, which applies under very specific conditions, such as bearing arms.[116] Only a small minority—around 1% of jurists[117]—recognize it as an indepen-

114 Amnesty International, *supra* note 3, at 10.

115 *See supra* note 2.

116 Seyed Maḥmūd Hashemi Shahroudi, *Baḥth fī taḥdīd ḥadd al-muḥārib* [*Discussion on Defining the Ḥadd for Muḥārib*], 9 Fiqh Ahl al-Bayt J. 73 (1997).

117 Muḥammad Muʾmin, Kalimāt sadīda fī masāʾil jadīda [Sound Words on New Issues] 410 (1994).

dent *ḥadd*.[118] Unfortunately, the opinion of this small group of jurists has been incorporated into Iranian law and is cited in multiple statutes. However, this approach clearly contradicts the principles of precaution regarding human life and conflicts with the overarching principles of *sharīʿa*. According to the theory proposed in this article, it should be eliminated.

The implementation of this theory results in the removal of ḥadd-based capital punishment from the following legal provisions:

Name of Law	**Article Number**
Law on Preventing Hoarding	6
Law on Punishing Disruptors in the Iranian Oil Industry	1
Law on Regulating the Distribution of Essential Goods and Punishing Hoarders and Overcharges	1
Amendment to the Law on Combating Narcotics	Clause 4 of Article 2; Clause 4 of Article 4; Note to Article 4; Clauses 4, 5, and 6 of Article 5; Article 6; Clause 6 of Article 8; Articles 9, 11, 18, 35
Law on Punishing Economic Disruptors	2
Law on Punishing Offenses by Armed Forces	Articles 17, 20, 21; Clause A, C, and E of Article 24; Note 2 to Article 24; Articles 29, 30, 31, 32, 34, 35, 37; Clause A of Article 42; Article 43; Clause A of Article 44; Clause A of Article 51; Articles 71, 72, 73, 74, 87, 92

118 For an overview of jurists' opinions on this issue, see Mohsen Borhoni, *Ifsād fī al-Arḍ: Conceptual Ambiguity and Practical Corruption*, 2 Crim. L. & Criminology Stud. 19, 21–27 (2015).

Name of Law	Article Number
Islamic Penal code	Article 130; Note 1 to Article 234; Note 1 to Article 236; Article 262 (regarding other prophets); Articles 286, 304, 350, 357, 423
Law on Intensifying Punishments for Bribery, Embezzlement, and Fraud	4
Law on Intensifying Punishments for Forgers and Distributors of Counterfeit Banknotes	Single Article
Law on Punishing Individuals Engaging in Unauthorized Activities in Audiovisual Matters	Clause A of Article 3
Law on Combating Smuggling of Goods and Currency	31
Law on Countering Hostile Actions of the Zionist Regime	6
Law on Supporting Families and Population Growth	61
Law on Supporting Families Through Promoting the Culture of Modesty and Ḥijāb	37

To gain a clearer understanding of the implications of applying this theory, one may consider several high-profile cases from recent years in Iran's judicial system.

Case One: In 2018, due to severe economic crises, the price of gold coins and foreign currency rose sharply in Iran. Two individuals, Vahid Mazloumin—known as the "Sultan of Coins"—and his associate Mohammed Esmail Ghasemi, known as Mohammed Salem, were executed.[119] They were charged with corruption on earth (*ifsād fī al-arḍ*) through disrupting the

119 Full text of the Verdicts Issued in the Case of Vahid Mazloumin, Ekhtebar (Nov 28, 2018), https://www.ekhtebar.ir/متن-کمال-دادنامه های-صادره-در-پرونده/.

country's economic system. The sentence was carried out in November 2018.[120] However, based on the theory endorsed in this article, there exists a juristic opinion in Shīʿī jurisprudence that does not recognize corruption on earth as an independent crime warranting the death penalty. Thus, had the theory proposed in this article been implemented, a death sentence would not have been issued in this case.

Case Two: In April 2018, Imam Hosseini Moghaddam was executed on the charge of corruption on earth due to assaults against forty women and girls.[121] He reportedly posed as a postal worker and gained entry into residential buildings under the pretext of delivering packages, then assaulted the victims using threats and force.[122] The case was originally filed in 2012, and no incidents of proven rape by force (*zinā bi-l-ʿunf*) were established during the proceedings.[123] Nevertheless, the defendant was executed under the charge of corruption on earth.[124]

Case Three: An individual named Rastgouye Kandelaj was arrested in 2017.[125] His alleged crime involved riding a motorcycle through city streets and, using a sharp tool, suddenly striking women from behind on their buttocks, thereby causing fear and public panic.[126] In 2024, he was executed on the charge of corruption on earth.[127]

In all three cases above, the individuals were executed based on the charge of corruption on earth (*ifsād fī al-arḍ*). However, as discussed earlier in this article, there is significant disagreement among Shīʿī jurists regarding the validity of such a charge and

120 *Id.*

121 *Imam Hosseini-Moghadam, Known as "Fake Postman," Executed, Iran Human Rights*, Iran Human Rights (Apr 30, 2018), https://iranhr.net/fa/articles/3306/.

122 *Id.*

123 *Id.*

124 *Id.*

125 *Execution of Rasstgouyi Kandlaj, Tehran Women's Harasser*, Fararu (Dec. 19, 2024), http://fararu.com/fa/news/810757/راستگویی-کندلجآزارگر-زنان-تهرانی.

126 *Id.*

127 *Id.*

its corresponding punishment. If the theory put forth in this article had been adopted, such a criminal classification would not have been incorporated into the legal code, and consequently, these individuals would not have received death sentences. Notably, the majority of ḥudūd-based executions in Iran are carried out under this very charge. Therefore, the elimination of this criminal classification would result in a significant reduction in the country's annual execution rates.

Case Four: The fourth case, still ongoing at the time of writing and surrounded by considerable controversy, concerns a rap singer named Amirhossein Maqsoodlou (known as Tataloo). In his case, a death sentence was issued on the charge of insulting the Prophet's daughter (*sabb al-nabī*), which has been finalized and is on the verge of implementation (though, at the time of writing, it has not yet been carried out).[128] However, according to the theory adopted in this article, the appropriate sentence would not be death but, at most, five years of imprisonment. This is because, in the case of *sabb al-nabī*, the inclusion of the Prophet's daughter under the same legal category as the Prophet himself is a matter of dispute among Shīʿī jurists. Some do not consider insulting her to warrant the death penalty.[129]

In addition to preserving the lives of a significant number of individuals, another outcome of implementing this theory is the establishment of a unified and consistent foundation across all *ḥadd* punishments. This would eliminate the current disorder and confusion prevalent in the laws.

Conclusion

Since the 1979 Islamic Revolution, Iranian legislators have been constitutionally mandated to draft all laws in accordance with *sharīʿa*, specifically Twelver Shīʿa jurisprudence. Among the laws influenced by *sharīʿa*, those concerning *ḥadd* crimes and

128 *Can Tataloo Avoid Execution for Blasphemy? This Is Not His Only Crime*, ʿAṣr-i Īrān (May 27, 2025), https://www.asriran.com/fa/news/1059475.

129 Khomeini, *supra* note 12, at 921.

punishments hold particular significance. At the same time, in recent years, Iran has consistently ranked among the countries with the highest execution rates worldwide. This has led to the perception that the high number of executions is a direct consequence of *sharīʿa*-based legislation. The assumption follows that since Iranian laws are grounded in Islamic jurisprudence, a high execution rate is an inevitable outcome.

Some argue that reducing executions in Iran requires moving beyond the existing jurisprudential framework and have sought justifications for such an approach. This group, which may be referred to as deconstructionists, has proposed various strategies for transitioning from the current jurisprudence to an idealized one. Their methods include distinguishing between foundational and endorsed rulings, prioritizing justice and rationality, emphasizing ethics, and invoking the objectives of *sharīʿa* (*maqāṣid al-sharīʿa*). Their argument is that through these four approaches, one can conclude that traditional punishments in Islamic law are no longer applicable in the modern era, necessitating a shift away from the explicit rulings of religious texts towards alternative forms of punishment.

However, such efforts do not align with the realities of Iranian society, which remains deeply religious, nor with the prevailing standards of Islamic jurisprudence (*fiqh*). (The discussion on intellectual perspectives on *fiqh* is a separate matter.) First, these views lack jurisprudential authority. Second, their proponents do not hold positions of influence within society. Third, their conclusions ultimately call for the elimination of significant aspects of *sharīʿa*, a prospect that the majority of Iranian Muslims find unacceptable. Historical precedent has demonstrated that Iranian authorities have never acted upon the views of deconstructionists. The most effective path for legal and social impact lies in a reformist and conciliatory approach rather than in a confrontational or radically deconstructive stance.

The authors propose an alternative solution that significantly reduces executions while remaining entirely within the framework of *sharīʿa*. This approach acknowledges that, under the Constitution, all laws in Iran must be based on Shīʿa

jurisprudential principles. The primary source for accessing these principles is the body of juristic texts written by Shīʿī scholars. An examination of these texts reveals that on many legal issues, differing opinions exist. This raises a crucial question: among the range of juristic opinions, which should be incorporated into law?

Our response to the question, "Which *fatwā*?" is that in cases of jurisprudential disagreement—where one opinion mandates capital punishment and another does not—the legislator must adopt the opinion that does not prescribe capital punishment. This approach, too, holds authoritative legitimacy before God. It is also supported by multiple jurisprudential principles in *sharīʿa*, including the preference for erring in clemency over punishment, the principle of avoiding *ḥudūd* in cases of doubt (*qāʿidat al-darʾ*), the principle of precaution in matters of life, the sanctity of human life (*ḥaqn al-dimāʾ*), the prohibition against recklessness in capital cases, the principle that *ḥudūd* should be applied with leniency, the principle of non-punishment as a jurisprudential preference, and the overarching principles of ease and leniency in Islamic law.

Implementing this theory has several critical advantages. First, it upholds the right to life, which is the most sacred gift from God. Second, it significantly reduces the number of capital punishments in Iranian law, decreasing the number of legal provisions mandating execution from 72 to 12, thereby removing Iran from the ranks of the world's highest executioners. Third, rather than retreating from *sharīʿa*, this approach further strengthens its jurisprudential foundations. Most importantly, it is entirely practical and can be implemented within Iran's current legal and political framework without requiring fundamental structural changes to the legislative system or political order.