

Hodud in the Light of the Principle of Legality with a Comparative View of Shiite and Sunni Jurisprudence

*Hossein Soleimani**

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Abstract

In the Islamic Penal Code of 1392, in correct expressions and in accordance with various principles of the Constitution, the principle of legality of crime and punishment, in general, has been accepted and in addition, the full validity of this principle has been emphasized in Taazitat, Qisas and Diyat. Despite this, it seems that the legislator has denied the principle of legality within the Hodud and, according to some principles of the Constitution, has tried to issue a license to refer to jurisprudence regarding the Hodud not mentioned in the penal law.

Despite this, it should be noted that in Islamic jurisprudence, there is a great deal of disagreement about the number of Hodud and their rules and conditions, which in practice both confuses the judge in referring to jurisprudence and causes problems for citizens. In this article, with a brief look at the limitation of behaviors in the words of jurists, we seek to prove that first of all, citing Article 220 of the Islamic Penal Code to Article 167 of the Constitution to justify the permission to refer to jurisprudence in criminalizing illegal behavior is wrong and unprincipled. It is explicit of the constitution, and secondly, if we consider article 220 in the sense of the permission to refer to the applicable jurisprudence, we must suffice with a certain degree of consensus behavior. The author believes that Article 220 is against the principles of the Constitution and should be abrogated.

Keywords: Principle of Legality; non-Mentioned Hodud; Constitution Article 167; Article 220; Sunni Jurisprudence; Shiite Jurisprudence.

* Assistant Professor, Law of Department, Mofid University, Qom, Iran.
Email: soleimani_h@mofidu.ac.ir



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