

Analytical Study of the Crime of Moharebeh in Iranian Law

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Abstract

The crime of Moharebeh is specifically defined in Islamic jurisprudence and Iranian Islamic Penal Code and includes two fundamental elements: drawing a weapon and the intent to terrorize people. According to Article 183 of the Islamic Penal Code, for Moharebeh to be realized, the individual must draw their weapon against others and intend to create fear and intimidation. This crime is particularly related to the public security of individuals and is distinguished from the crime of "Baghy" (rebellion), which concerns opposition to the government. Under the law, Moharebeh is a crime that requires the achievement of a tangible result, such as the creation of fear and panic among the people. From the perspective of the mental element, the offender must have the intention and will to commit the crime. This study examines the components of the material and mental elements of the crime of Moharebeh and emphasizes the importance of accurately defining the scope of this crime. Additionally, the article analyzes the role of general and specific mens rea in the commission of Moharebeh.

Keywords: Moharebeh, mental element, material element, specific intent, Islamic Penal Code

Extended Abstract

The crime of Moharebeh (warfare against God and the public) in Islamic jurisprudence and Iranian criminal law is a serious offense, defined by two essential elements: the act of drawing a weapon and the intent to create fear or terror among people. Article 183 of the Iranian Islamic Penal Code defines Moharebeh as the act of drawing a weapon with the intent to create fear or harm people, with the crime deeply tied to public security. This paper presents a detailed analytical study of the elements involved in Moharebeh, including its material and mental components. It examines the legal implications and distinctions between Moharebeh and related crimes like Baghy (rebellion), and critiques the Iranian legal framework for potentially overextending the boundaries of this offense.

The study first discusses the legal elements of Moharebeh, as defined in the 1370 Penal Code, and critiques the treatment of offenses such as "corruption on earth" (Efsad fil Ardh) as independent from Moharebeh. The paper argues that such expansions blur the distinction between Moharebeh and other crimes that do not involve the use of weapons or the intent to terrorize the public. Moreover, it critiques the Iranian legal practice of classifying actions against the state, such as economic crimes, as Moharebeh, regardless of the lack of terror-inducing elements. This misapplication, the paper contends, conflicts with Islamic jurisprudence, which

reserves the label of Moharebeh for acts that directly threaten the security of people, not the state.

The paper provides a nuanced discussion on the material component of Moharebeh, highlighting that the mere act of drawing a weapon is insufficient to establish the crime; rather, the weapon must be drawn with the intent to instill fear. The study also compares the application of this definition in Iranian criminal law and Islamic jurisprudence, noting that interpretations of this crime have varied historically. Furthermore, the analysis delves into the mental element of the crime, emphasizing that Moharebeh requires both specific intent (to induce fear) and general intent (to commit the act voluntarily).

In conclusion, the study advocates for a more precise definition and application of the crime of Moharebeh in Iranian law, with a clear separation between crimes aimed at public security and those aimed at political rebellion. It suggests that the current legal approach risks undermining the integrity of both the concepts of Moharebeh and the Islamic Penal Code, potentially leading to excessive legal punishments for crimes that do not meet the specific criteria of public terror or threat.

References

Aghababaei, Hossein, 2005, "Legal Discourse and Criminalization in the Area of Crimes Against National and State Security", *Journal of Jurisprudence and Law*, Issue 5, Summer 2005.

Ibn Idris al-Hilli, Muhammad, 1990, "Al-Sara'ir", Vol. 2, 2nd Edition, Qom, Islamic Publishing Institute.

Imami Kashani, Muhammad, 1993, "Review of Jurisprudential Views of the Guardian Council", *Rahnamun Quarterly*, Issues 4 and 5, Spring and Summer 1993.

Habibzadeh, Mohammadjafar, 2000, "Moharebeh in Iranian Criminal Law", 1st Edition, Tehran, Tarbiat Modares University Press.

Khoei, Seyed Abolghasem, 1975, "Mabani Takmila al-Minhaj", Vol. 1, Najaf Ashraf, Adab Press.

Rawandi, Qutb al-Din Abi al-Hussein, 1986, "Fiqh al-Quran", Qom, Ayatollah Marashi Library Publications.

Shakeri Golpaygani, Tooba, 2006, "Islamic Criminal Policy", 1st Edition, Tehran, Office for Islamic Culture Publishing.

Sheikh Tusi, Muhammad Ibn Hassan, 1972, "Al-Mabsut", Vol. 8, Qom, Maktabah Mortezaei Publications.

Sheikh Tusi, Muhammad Ibn Hassan, 1987, "Al-Khilaf", Vol. 5, Qom, Society of Seminary Teachers Publications.

Tabatabai, Mohammad Hossein, No date, "Al-Mizan", Vol. 5 and 9, Qom, Society of Seminary Teachers Publications.

Allama Hilli, Hassan Ibn Yusuf, 1995, "Tazkirat al-Fuqaha", Qom, Ahl al-Bayt Institute Publications.

Allama Hilli, Hassan Ibn Yusuf, No date, "Tahrir al-Ahkam", Mashhad, Toos Institute.

Ouda, Abdul Qader, 1968, "Islamic Penal Legislation Compared with Positive Law", Vol. 1, 5th Edition, No Publisher.

Ouda, Abdul Qader, 2011, "Comparative Study of Islamic Penal Law and Customary Laws (Crime and its Elements)", Translated by Hassan Farhoodinia, Vol. 1, 1st Edition, Tehran, Yadavaran Publishing.

Fadhil Lankarani, Mohammad, 2001, "Tafseel al-Shari'a (Book of Hudud)", 2nd Edition, Qom, Imam Ali Publications.

Qurtubi, Muhammad Ibn Ahmad, No date, "Al-Jami' Li Ahkam al-Quran", Vol. 16, Beirut, Dar al-Fikr.

Muhaqqiq Hilli, Abul Qasim, 1984, "Sharaye' al-Islam", Vol. 4, Beirut, Dar al-Adwa'.

Marashi, Seyed Mohammad Hassan, 1991, "Corruption on Earth in the View of Quran, Narrations, and Reason", Journal of Legal and Judicial Studies, Issue 2, Winter 1991.

Marashi, Seyed Mohammad Hassan, 1994, "New Perspectives in Islamic Criminal Law", Vol. 1, 1st Edition, Tehran, Mizan Publishing.

Makarem Shirazi, Nasser and others, 1984, "Tafseer Namuneh", Vol. 4 and 8, 8th Edition, Tehran, Dar al-Kutub al-Islamiyyah.

Mansourabadi, Abbas, 1996, "Study of Moharebeh Crime", Judicial Review, Pre-issue 2, Azar 1996.

Mousavi Bejnourdi, Seyed Mohammad, 2005, "Comparative Jurisprudence (Criminal Section)", 1st Edition, Tehran, Samt.

Mir Mohammad Sadeghi, Hossein, 2007, "Special Criminal Law (Crimes Against Security and Public Comfort)", 10th Edition, Tehran, Mizan Publishing.

Najafi, Mohammad Hossein, 1988, "Jawaher al-Kalam", Vol. 42, 3rd Edition, Tehran, Dar al-Kutub al-Islamiyyah.

Najafi, Mohammad Hossein, No date, "Jawaher al-Kalam", Vol. 21, 7th Edition, Beirut, Dar Ihya' al-Turath al-Arabi.

Yahya Ibn Saeed, Abi Zakariya, 1990, "Al-Jami' Li al-Sharay'a", Vol. 25, 1st Edition, Dar al-Turath.

Abou El Fadl, Khaled, 2001, "Rebellion and Violence in Islamic Law", Cambridge, Cambridge University Press.