

## Justifying Contradiction of the Basics of stoning and lashing Punishment Execution in Islamic Jurisprudence and International System of Human Rights

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### **ABSTRACT**

*Some rules of international system of human rights are not in line with Emamiyeh Jurisprudence in stoning and lashing punishment and they contradict with it. Today, multilateral defense of rules of criminal jurisprudence is necessary to criticize evidence of international system of human rights in denying stoning and lashing according to jurisprudence basics and to survey human rights considerations of stoning and lashing in Islamic penal code enacted in 2013. The results of the research shows that correct and perfect picture of stoning and lashing punishments was not presented considering intellectual system of Emamiyeh criminal jurisprudence. Secondly, the preconception that human right has in regards to previous punishment of the west has related it to stoning and lashing in Emamiyeh jurisprudence and requested for its total deletion of the Islamic penal rules. This is while philosophy of stoning and lashing punishment has deterrence and prevention aspects in committing crime. Of course according to rule of life, Islamic penal includes components which make it possible to modify, change or waive the punishments.*

*Keywords: Stoning, Lashing, Torture, Corporal Punishment, Human Rights*

### **Introduction**

Criminal laws have been existing in all eras for achieving social justice. Considerable strategy of Islamic laws in penal has been based on social justice and it considers all the rights of victim and sinner in a way that unjustified violation to sinner has its special judicial rules. International system of human rights negates stoning and lashing considering wrong mentality in regards to Islamic corporal punishments and it has started a multilaterally fight with it. The necessity of rational and universal explanation in era of communication extension demands responding to the posed problems. Expressing the reason of stoning and lashing punishments shall not prevent rational justification of this type of punishments. A punishment which was not easy and simple to be proved and as if it has intimidation and deterrence aspects mostly. And modifying and changing it in special condition is other cases which will be facilitated by rational justification and will show its deterrence aspect mostly. Absence of correct justifying and failure in explaining intimidate and deterrence position have changed to a means for attacking to criminal jurisprudence. The main evidences of the international system of human rights focuses on negates of stoning and lashing punishments which is due to historical background of torture in the west. In Human history and especially in Europe, torture was a usual and common affair. Torture was one of the researching tools in criminal courts. Three-quarter of convicts have been tortured in Frankfurt

city in the 16<sup>th</sup> century. Implementing torture was doing in different forms such as hanging accused of a high place and tying a weight to his/her foot and approximating his/her foot to a shoe full of sulfur fire, keeping awake for four days and other methods of physical and mental harassments. By commencement of the 17<sup>th</sup> century, opposes to these type of tortures were increased and persons like Montesquieu, Voltaire, Roussos, and Beccaria seriously opposed with torture in spite of severe conviction (Martinez, 2003: 85). As a result, torture was banned and removed in Europe and western countries and it transformed to a global issue and it changed to human rights and changed to a law in international scene. In regards to lashing punishment, the same evidence which was explained for negate of lashing considers as substitute penalty of stoning in west. It is possible that damages and losses of the substituted punishment be more than stoning and lashing punishments.

Many researches have been done in the field of stoning and lashing punishments and their relation with human rights. Some have told about stopping punishments such as stoning and lashing and others have focused on executing them. Article "investigation of stoning order from jurisprudence and human rights point of view" is about to proving failure of contradiction between these two attitudes. In this article the writer concluded that many doubts in this field are according to failure in exact imagination of quiddity, reason and condition of stoning. The writer claims that providing condition for stoning execution is exact, rare and strict in a way that its possibility will be minimum practically. The final result of the mentioned research shows that this Islamic rules have not any contradiccion with human rights and violations in this regard are due to anthropological worldviews and attitudes (Kadkhodae and Bagherzadeh, 2011: 39 to 68). The article "execution of stoning at the time of un-innocent government (focusing on contemporary), (Kadivar, 2003, 135 to 160) has accepted principle of stoning by considering Quran and narrations but in current situation that violating human rights is one of them, it has obtained failure in permission of stoning and performing it in the era of absence by declaring verdicts from authorities. The last presented research in this field is "impracticability of stoning punishments from six viewpoints" (Soleimani, 2019, 42 to 72). In this article, the writer has told about impossibility of stoning punishment execution and has discussed about the approach of failure in relation between human rights and Islamic jurisprudence in stoning punishment. None of the above-mentioned articles have studied subject of evidences of human rights in negates of stoning. The focus of the present research is critical investigation of violation evidences of human rights in regards to stoning and lashing. Therefore, the aim of the present article is not to prove stoning and lashing punishments in the current era and discussing in regards to whether they will be legalized or not but we are about to investigate problems of human rights that have universality claims and to make a relation between criminal jurisprudence and international system of human rights.

### **Universality Quality of International System of Human Rights**

Fundamentals and instructions of human rights punishments, its relation with laws of nationals, its relation with religion, its universality principle and the other related basic issues to human rights have always been the subject for violation. Someone consider basic of human rights as superior values which are due to nature. In this attitude human rights are innate and they are not achievable and violable. This attitude which is known as natural rights has more fans. Theory of natural rights is divided in two groups of traditional and modern. Traditional group believe that there is a superior law that legal norms must be based on them, on the other hand there is modern point of view which knows natural rights as a set of principles that practical rationality is deemed as basis and principle (Finnis, 1980: 81 to 96). Someone explained basis of human rights as a contract. In these type of contracts it is supposed that persons accepted norms without considering personal dependency ad profits and they know them as right. Of course contract-oriented persons are divided to several groups. Considering people without reading dependency of Kant is a belief of this group (Seyed Ghari Seyed Fatmi, 2011: 128).

Someone believe in existence of a single foundation for human rights and they believe in pragmatic attitude for determining basis and fundamental of human rights which means determining legitimacy of human rights itself in international scene and in addition to human operation and a secular attitude are about to establish human rights. For example, Ignatieff knows Holocaust as the origin and basis of human

rights. He stated that absence of unconditional belief is due to Holocaust (Ignatieff, 2001:81) which was an attitude that was criticized strictly (Merli, 2018: 87). Others like Max Stackhouse mentioned religious ethic as the basis of human rights (Stackhouse, 1991: 491). In contrast, some others basically criticize the existence of a single basis and foundation (Merli, 2018: 88). Some researchers have investigated several interpretations in universality principle and according to interpretation of Wittgenstein, they consider a certainty in it or its step which is improving and it causes formation of universal language immediately and it will be as a bridge to the changing language (Seyed Ghari Seyed Fatemi and et al, 2015: 35).

Eventually, principles of religion certainties cannot be removed by these condition and confuse in fundamentals and instructions and theories in universality quality. This is while some researchers believe in a type of common texture for punishment by hermeneutics interpretation and considering current timeliness and by hermeneutics reading they deem the way of stoning punishment basically wrong (Seyed Ghari Seyed Fatemi, 2005: 455 to 456). Although hermeneutics reading of religion is not deniable in its correct meaning which is interfering typical preconception in determining the apparent meaning, but its matching with penalty in the field of Hudud is incorrect because interpreting penalty to its coordination with common texture of time seems to be as interfering of personal preconception rather than typical specially by considering evidences of punishment and whatever including valid evidences and documents are implementing typical preconception in interpretation. Of course it is to be noted that according to theory of having rules it is possible that Islamic penal change or even stop due to some important expedients and quality of punishment with order of governor. Moreover, it is possible to be changed or cancelled due to some expedients and in case that be justifiable (Khomeini: 2000, 452).

### **Evidences to negate stoning and lashing punishments and criticizing it**

International system of human right knows innocent right of stoning and lashing punishments as main rights of human and it provide evidences to negate stoning and lashing that they will be surveyed and criticized in this part according to Emamiyeh jurisprudence and Islamic penalty laws enacted in 2013:

#### **1. Stoning and lashing punishments were executing as torture**

Some resolutions of human rights commission consider lashing as torture. Moreover, clause 9 of resolution No. 38, dated April, 1997 reminded governments that lashing torture can be equal with cruel, inhumane and degrading punishments or even torture (Amir Arjmand, 2007: 72). Stoning penalty in the rules of the Islamic Republic of Iran also has been criticized and torture punishment has been known as a difficult type of punishment that even sinners must not be punished with these types of punishments (Mehrpour, 2007: 175).

Torture has two terms. The first term of torture means direct or indirect physical and mental harassments in person by competent authorities for forcing he/she to declare. Beccaria and Martinzh conception of torture as a preface show that these acts were for obtaining declaration (Beccaria 2006: 53 to 60, Martinzh, 2003: 85).

By the first concept torture is illegal from Emamiyeh jurisprudence and declaration which is due to torture was deemed invalid (Kashefolghata, 1980, 2/ 48) and according to principle 38 of constitutional law, implementing any type of torture is prohibited (Moradi, 2019: 411). The second term of torture means any type of severe physical and mental annoyance or harassment which government's agents or other authorities implemented in order to gain declaration or obtain information which were implemented for accused or offender with any other purpose (Rahimi Nezhad, 2006: 184). Wil Durants' explanation in regards to "punishing sinners with torture" or explanation of Martinzh in regards to execution with torture are illustrative of these conceptions (Durant, 1992: 894 to 895, Martinzh, 2003: 50) Article 16 of Convention surveyed forbidden penalties and the word behavior which is implemented in this Article includes proceeds such as torture, punishment and other proceeds. These ambiguities have been showed in view point of author of standings that whether punishment considers as torture or not in order to be banned or it is out of idiomatic definition of torture?

Someone believe that according to Clause 2 of Article 1 of Convention against torture, degrading or inhumane and cruel punishments are not forbidden in case that they change to torture (Ebrahimi, 2016:

53). Failure in separation of these two terms caused misunderstanding and wrong judgments. According to the first term which is technical and legal meaning, torture and penalty do not have confluence. And according to the second meaning which is common and illegal meaning, torture includes any type of severe hurt and damage and it caused that stoning and lashing torture and punishments have a historical meaning unity in addition to meaning similarity. According to exception of the second clause of international system of human rights, penalty is not forbidden in order to be transmitted to stoning and lashing penalties. As a result torture is negated as harsh and severe legal punishments. Legal punishments which are exempted are due to removing worry of the Islamic countries. There was fear that some of the Islamic punishments are known as torture according to the concepts which are mentioned in article of association (Kring Sack and Gati Shiayzeri, 2004: 208 to 209). Whatever caused stoning and lashing to be known as torture and as a result to lead deleting and removing all damages especially physical damages is equality of these two which is due to historical memory of the west.

Furthermore, the concept of torture based on international system of human rights is not clear and it includes torture for declaration and punishment. It seems that prohibition of torture as punishment has motto aspect mostly and it is known as populist proceed. Even though prison is a kind of torture itself and it is possible that the kind of torture that sinner will be deal with in prison be more than a punishment like lashing. In most cases lashing punishment is much easier than prison. A sinner who punishes with 100 lashes due to committing a crime and return to his/her family and do his/her family affairs will deal with lessor mental torture. Therefore, definite prohibit of torture is not acceptable and preferring punishments such as prison contrasting stoning is discussable, this is while execution has less torture for sinner contrasting stoning and changing type of punishment in jurisprudence and law is acceptable. According to Article (225) enacted in 2013, court will be issuer of vote by agreement of the head of judiciary and it can substitute execution penalty instead of stoning without any need to obtaining permit from leader.

Prohibition of torture is contradict with field reality of the countries which support human rights. A report has been published in Listverse on 6 April 2017 by Mary Pial, by public prosecutor of America which it pointed to types of prisoners' punishments. She stated that media reflecting a picture of life and life place of prisoners which are not proportion with real condition and behaving type of authorities of prison. Moreover, she mentioned that many unbelievable tortures are implementing in the prisons of America. The performances which encourage the cruelest persons to demand for real amendments in legal system and type of behaving with prisoners. Behaviors such as showering with boil water, Gladiators' battle (forcing prisoners for physical fight with each other), keeping prisoners thirsty and hungry and solitary confinement are among the common tortures in prisons of America. This is one of the real field of the countries which claim for human rights.

## **2. Violating human dignity**

Human dignity has changed to one of the most important discussion in international arena in recent decades by advent of human rights. Principle and basic of human rights have been built based on human dignity. Therefore, not only a right or rights have been undeniable, but also it is known as a basis of human rights and basic and fundamental principle for permanent advancement and development in each society (Rahimi Nezhad, 2006: 17).

Execution, penalties and lashing have been common in the west up to enlightenment era. German has used types of penalties including cutting tongue, boiling and throwing under wheel (Saffari, 2010: 53). By advent of enlightenment era severe penalties such as execution and lashing stopped (Bolk, 1998: 27). Enlightenment revolution was established based on humanity and as a result the most fundamental reasons for removing these types of punishments were necessary for maintaining human dignity (Martinz, 2003: 100). The international system of human rights is requesting tools for innate dignity in the frame of human right and it refuses from focusing on basics and fundamentals of this dignity and its origin (Baderin, 1382: 227). R. J. Winsent believes that this proceed is a tool for extending and thinking in regards to legacy of westerns' conception of a good society (Winsent: 51). In other words imposing west's conception of a good society to other human societies shall be deemed as civilization and advancement.

Innate dignity and acquisitive dignity are two kinds of dignity that international system of human rights considers them for human. Innate respect or innate dignity of human mean considering human since he/she is human and as a result he/she is dear, honorable and respectful (Javedan, 2005: 282). Therefore, human has a special position and respect against acquisitive dignity which is type of dignity that human achieves by obtaining ethical wisdom without considering positive and negative behavioral aspects (Rahimi Nezhad, 2008: 30).

In surveying the mentioned point of view, it is to be noted that: prohibit of violating dignity is definitely and intensely critical. Dignity of a sinner who raped 10 persons during 10 years and butchered them after killing and burning must not be observed. This dignity observing for sinner shall be deemed as violating dignity of all human beings and especially it will be as violating victim and future victims. By these type of dignity observing, innate dignity of sinner will be violated because limiting he/she of a suitable and deterrence punishment in order to respecting his/her dignity shall be as encouragement for him/her to commit more crime. Secondly, it seems that this reason is a claim only and since observing dignity in any sinner is not possible completely, undoubtedly any affair that is considers as punishment includes degrading and breaking dignity and as a result it is not different with its substitute punishment. Punishment by prisoning for years shall violate dignity more than punishment like lashing. Prisoning in most cases and common punishment in most cases in the west is degrading than Islamic punishments by far. Considering this fact that lashing directly shall target human's body is easier by far contrasting penalty that directly targeting soul and mental, personality and destination of human in prison during long time. While lashing punishment has less insult and offence contrasting prison punishment, these type of common penalty in the west cause degrading soul and mental in lieu of respecting body. And body will be respected in return for breaking respect of soul and mental. Islam is about to reviving and supporting human dignity of human and respecting real personality of human unlike whatever is common in the west. From Islamic point of view, human dignity is action and whatever it is shall not violate human dignity and any type of criminal behavior is not contradict with human dignity (Rahimi Nezhad, 2008: 40) and implementing apparent punishment is in line with its innate dignity. Islamic punishment is for providing greater dignity. Failure in punishment of sinner caused obtaining baseness for him/her and losing the granted dignity.

Many human considerations in all cases of Islamic punishment enacted in 2013 including the following cases show effort of criminal laws in observing human dignity. According to clause A to T of Article 501 of law of criminal procedure, stoning and lashing is prohibited during pregnancy and breastfeeding. According to Article 29 of punishment laws of implementing execution, stoning, murdering and lashing orders must be performed in moderate temperature and weather temperature must not be very cold or hot. In these cases that have many examples, effort severity of the Islamic republic for observing justice and human dignity is shown (Moradi, 2019: 344).

In Article 91 of Islamic penalty law enacted in 2013, if the mature person is below 18 years and has committed a sin and there is doubt in growing his/her wisdom, he/she will be convicted to predicted penalties according to his/her age. The legislator has accepted in Article 91 of Islamic penalty of laws that the mature persons below 18 years may not be reached to the needed grow intellectually and cannot comprehend nature of the act or there may be doubt in their wisdom growing. Therefore, predicted punishments have been determined for them according to their age instead of heavy and difficult penalties such as execution (Haman: 117).

### **3. Violence Extension**

Stoning and lashing punishments not only do not have deterrence effect over the years, but also they extend violence because implementing violence in its sever aspect is a type of teaching of violence for people and as a results sinners will commit more sin and these commitments will increase antisocial acts (Safari, 2010: 55). Wil Durant says that: brutality in penalty causes producing brutality in ethical characteristics even non-criminal persons (Durant, 1992: 436, Perdal, 2002: 81, Gholami, 2006: 136) and on the one hand it may leads failure in implementing which is due to security. Montesquieu mentioned that: Roman Senates were opposed with offer of implementing severe punishments for conspirators. Kesen

says that cruelty of laws in most cases will prohibit implementing it. When penalty does not have any limitation, refraining from punishment will be offered mostly (Montesquieu, 1983: 205). Stoning and lashing punishments for violence persons are without effect and they have unfavorable results. Medical results are agree in this case that if a person has offence and violence components in his/her body structure, body corporal and punishment will cause increase of crime and sin mentality in he/she.

The mentioned reason for denying stoning and lashing does not have enough reason and evidence and it shows failure in correct imagination in type of punishment. Extending violence may lead impunity, but violence does not have this consequence and it does not ban implementing them (Kesen, 2006: 51). In case that boundary and scope of punishment is determined, and criminalization and consequently logical punishment have been determined, it won't lead impunity.

Family foundation is an important issue that the world of west and east have mentioned its importance and know its health and safe related to health and safeness of family. Adultery which is due to indecency is one of the most important issues in Emamiyeh criminal jurisprudence which stoning punishment will be considered for it so that have deterrence and intimidate effects in few cases.

Islam has explained severe punishments with the most difficult proving reasons in position of forging judicial laws, and specified its cases to limited evidences and it seems that proving it will be hard, but in some cases it may be obtained among hundreds of cases. This hard punishment is for deterrence so that strength family foundation and prevent from social damages. Unlike whatever seems, judge is symbol of mercy and kindness from Islamic point of view, and he is not symbol of passive violence which must not show punishment in public. For this reason, public execution of punishment is forbidden in criminal law except in the needed legal cases or in case that court itself recognizes or based on suggestion of judge he recognizes public execution of punishment is necessary which is due to effect and social consequences of committing crime and type of crime commitment and records of crime commitment (Moradi, 2019: 344).

This act will be increased in case of implementing unfair punishment. This is while in the Islamic criminal code justice has been observed completely and has been considered in legislative laws. For this reason in execution of body corporal for defendant who suffers from disease or madness, it will be performed according to Articles 502 and 503. These cases show effort of legislator in fairly execution of punishment. Society includes guilty and innocent people and it is needed to perform at least some of violence and harsh punishments in secondary form in a way that any affairs could not to substitute it. Harsh behaviors and punishments have been secondary and minimum in Islam and in these cases public affection toward all people in society will necessitate to implement severe violence in some cases (Motahari, 1988: 222). In other words violence is for extending affection and kindness in friendship (Bandarchi, 2004, 313). Therefore, in a nutshell, whatever deniable are maximum violence and maximum harsh punishments and it is not only violence or harsh punishments. At last, it is to be noted that although stoning and lashing punishments are consider as definite criminal orders, but legislator of the Islamic republic of Iran enacted rules in executing these type of punishments that minimums of human rights are observing based on it.

### **Adjusting execution of stoning and lashing punishments**

One of the important and challenging discussions that recently explain in regards to Islamic penalties by some philosophers inside and outside the country and especially by the defender organizations of human rights is issue of punishments including stoning and substituting punishments and quality of performing religious provisions. Thus, stoning and lashing are opposite with human rights and affection and they must change to prison and financial fines, etc. (Rohami: 2005: 17). Minimal use of deprivation of life and also deprivation of freedom punishments and using substitute and social methods are the most important issues in human rights and it has been clear in in criminal laws of the Islamic Republic of Iran and it can be removed or changed to substitute punishment by adducing legal articles of stoning punishment.

One of the changes that is observable in punishment laws enacted in 2013 in regards to sexual offences is changing in regards to adultery in Article 225. According to the above-mentioned article, in case that adultery has been proved by testifying of witnesses, punishment of adulterer and adulteress shall

be stoning. But in case of impossibility of performing and observing expedient, executing adulterer and adulteress will be substituted instead of stoning penalty by offer of the issuer court of definite order and agreement of head of judiciary and without any need to obtain permission from the leader and in case of proving crime by declaration of accused person, one hundred lashes will be substituted.

A question which we will have in this regard and its answer will be important is that what can be reason for failure in executing the order? And which basis it will be occurred for? What is supporting competent authorities to have this authority? Basically, this proceed of legislator does not have any jurisprudence background and none of the Juris consults have mentioned it and it is possible that someone resort to rule of sanctity of hatred and or damage against rule and want to interpret this proceed of legislator as stepping in line with this rule (Moradi, 2019: 376). It seems that the necessity of changing stoning punishment in this article originated from time and place requirements and considering human rights and so on. For example, resolution of general assembly of the United Nations which was presented in October of 2009 and was enacted by 74 votes of the third committee of general assembly on Nov. 20, 2009, has pointed to condition of human rights in Iran. According to the second clause of this resolution, general assembly expresses its deep worry in regards to serious violating of human rights which is exists in the Islamic republic of Iran and it will explain some violating divisions in Iran in this way: A. torture and punishment or harsh, inhumane or degrading punishments such as cutting body organs and lashing. B. execution is continuing severely and increase of number of executions which are out of international known protections will be performed including public execution and execution of teenagers, P. stoning as a method of execution, in spite that head of judiciary has issued circular of prohibiting stoning, there are persons in prison who are receiving execution orders as stoning.

Considering change and justification of stoning punishment which have been occurred in line with timeliness and according to dynamic character of Shia jurisprudence in laws of the Islamic republic of Iran enacted in 2013, we will notice that changes were not performed in one hand and according to one basis. It seems that one of the basis of legislator's fundamental in adjusting or removing stoning punishment is considering attitude that Islamic punishments have rules in addition to this express that in study of philosophy of punishment from Islam's point of view we will have several discussible issues.

The first assumption: from Islam point of view, punishment does not means punishing sinner and achieving justice and as a result implementing punishment itself considers as purpose and it is justifiable and for this reason it must be exactly conforms to entitlement of offender and rate of negative effects which are due to his/her action. According to this assumption there is no possibility for altering and changing stoning punishment.

The second assumption: from Islam's point of view, punishment is a tool for achieving special individual and social purposes in a way that the main purpose is basically achieving that purposes and punishment is considered only as a tool. Therefore, in case of possibility for gaining that purposes in other ways except punishment, there will be possibility for changing punishment. From Islam's point of view, sinner is entitled to be punished and he/she must be punished considering the committed sin. Therefore, this punishment in its special type will follow social expedients and it will be determined considering them and moreover, Article 225 was enacted following these points.

According to Article 136 of Islamic punishment laws enacted in 2013, in all hadd offences which offender have committed the same offence three times and hadd of that offence was performed for he/she, execution punishment will be implemented (Moradi 2019: 411) but in all offences which lead to hadd, in case that the accused person repentance before proving offence in court and his/her real repentance is identified, the investigating court will be obliged to issue exemption order for he/she from the mentioned punishments meanwhile accepting his/her repentance and any type of substitute punishment will be determined for he/she unless the accused offence be adultery or sodomy by force, reluctance or deception. In this case, by decreasing punishment of execution in lieu of these offences, prison and 6 grade Taziri lashing or both of them will be substituted the main penalty according to Note 2 of Article 144 of Islamic penal code enacted in 2013. Substitute punishment won't be determined and the offender won't release in case of his/her repentance in lieu of the other hadd offences that have stoning or execution penalty

## Conclusion

Stoning and lashing punishments have logical and accepted fundamentals in Emamiyeh jurisprudence and according to convention of human rights, torture penalty has been accepted. Punishing offender is necessitated violating dignity of offender. In criminal jurisprudence is conditioned on a situation that achieving it will be difficult and it has deterrence aspect mostly. An act which has been deemed as a constitutional principle in punishment philosophy. Lashing punishment also has less damages on soul and mental of offender contrasting punishments such as prison or waiving other rights. Moreover, it is proved that even harsh punishments are better than long term punishments and its effect on society and security will be more. International system of human rights has prohibited and removed such punishments of rules which is due to torture nature of stoning and lashing and violating human dignity and extending violence and contradicting freedom and being irrecoverable. But confusing in fundamentals of human rights, and governing oppositions on its article and failure in presenting a unit and logical solution are strong reasons in its universality quality that removing definite punishment in Emamiyeh jurisprudence shall not be possible based on them. Although, type of stoning punishment have total coordination with hermeneutic reading with punishment of human right by hermeneutic interpretation and specifying conventional texture for punishment, but hermeneutic reading of religion is not deniable in public form and punishment in its specified way which means interfering typical preconception in a special boundary. Since evidence of punishment will not accept such interpretations by implementing preconceptions, matching it with the mentioned case is incorrect. Moreover, it is concluded that according to theory of having rules in Islamic punishment in a period, quality of performing punishment will be justified or changed with other punishments which is due to some important social expedients. And according to theory of having rule it is possible that they change or justify according to the existing condition and some expedients. The result will be providing relation between Islamic criminal law and international system of human rights by this way in this field.

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