

## **A Critique of Documentations of Discretionary Death Penalty in Jurisprudence and Afghanistan Penal Code**

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**Abstract:** Discretionary execution is one of the challenging issues in jurisprudence and Penal Code. Afghanistan Penal Code includes this penalty and Sunni jurists have recommended such an execution in the cases like action against public interests and treason against the government. The jurists have discussed about discretionary execution in the cases like causing corruption on the earth, forbidding the wrong, repeatedly committing a crime and authority of the ruler. However, nobody has presented sufficient evidence from the Holy Quran and traditions regarding the issue. It is not permitted to record discretionary execution in jurisprudence and Penal Code and deprive somebody of the right to life without a strong legal reason. In addition, the Holy Quran, the traditions, the Universal Declaration of Human Rights (UDHR) and the Constitution of Afghanistan consider the right to life as the most basic right of every human being and discretionary execution is in counter to this right. Thus, discretionary execution is under question and there is no satisfactory evidence from jurisprudence and law to accept it.

**Key words:** Discretionary execution, Penal Code, jurisprudence, the right to life, UDHR

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### **INTRODUCTION**

Since, the beginning of legislation in 1302 SH, a wide range of discretionary executions has been enacted in the Penal Code by Afghanistan government. "General Criminal Code" (Nizamnamih Jaza-e Umum) (public penalty policy) in 1306 SH/1927AD has submitted hudud (religiously prescribed punishments), qisas (retaliation) and diyat (blood money) to Hanafi jurisprudence while it has assigned discretionary execution to the government (Aziz and Islamiyah, 1977). Article 45 of the code justifies discretionary execution for the murderer who is famous as a corrupter as well someone who disturbs public order. According to Article 46, a bandit who is not suffered from hadd (religiously prescribed punishment) will be sentenced to discretionary execution. As the context shows, a bandit is the same as a muharib (combatant); then it overlaps with jurisprudence.

The codes that were codified later justify many kinds of executions. Only Askari (military) Criminal Constitution includes about forty discretionary execution sentences. The present Penal Code includes many executions, too. Article 1 of the Penal Code calls its all sentences discretionary; however it includes more than forty cases of execution.

Shi'a and Sunni jurisprudences can be considered as the sources of criminal sentences in Afghanistan. Discretionary execution is among those sentences which

are presented in the jurisprudential texts of both sects. The study is to examine and criticize existing evidences of discretionary execution and its cases.

### **STATEMENT OF THE PROBLEM**

Is discretionary execution justifiable according to jurisprudential documentations? What is the logic of Afghanistan Penal Code behind discretionary execution?

The researchers of this study believe that there is no any critical document about discretionary execution in Islamic jurisprudence; thus, discretionary executions legalized in Afghanistan Penal Code are not on jurisprudential basis.

Considering the jurisprudential documents based upon the holy verses and traditions it is difficult to validate discretionary executions, except in the cases of hadd and qisas. Hanafi jurists have justified discretionary execution in some particular cases but Shi'a jurists have not issued a clear fatwa concerning this case which might be for lack of the evidence.

### **JURISPRUDENTIAL STUDY**

Although, it has not directly mentioned but Afghanistan Penal Code takes advantage of jurisprudential documents. Islamic jurists have discussed about discretionary execution under four titles: "Ifsad

(corruption on the earth)", "authority of the ruler", "ordering the right and forbidding the wrong" and "repeatedly committing a grave sin".

The evidence of above mentioned titles are studied to find out whether it is possible to demonstrate discretionary executions under these titles.

**Ifsad (corruption on the earth):** Indeed the requital of those who wage war against Allah and His Apostle and try to cause corruption on the earth is that they shall be slain or crucified or have their hands and feet cut off from opposite sides or be banished from the land. That is a disgrace for them in this world and in the hereafter there is a great punishment for them (Fazil and Rumuz, 1996). This verse provides the jurisprudential base for sentences concerning "ifsad".

**Cause of revelation:** "The Holy Prophet (SAW) sent some people of Bani Zabbah tribe outside the Medina to make a recovery by residing in a temperate place and using the milk of camels that were a portion of poor-rate. After getting better, instead of acknowledging the Prophet (SAW) they killed camel-drivers while cut their hands and legs and put out their eyes; then they stole the camels and renounced the Islam. The Prophet (SAW) ordered to chase and arrest them and then he punished them with retaliation."

Some jurists draw "discretionary execution" from this verse. However it is not true; for according to Qur'anic verses, traditions and logic; execution is not applicable under the title of "ifsad" while "ifsad" is the subject of the sentence. Since, sentences are established on particular titles; so a concept as a concept cannot be considered as the subject of a sentence. For example, a "mufsid" (corrupter) who is wizard, adulterer or muharib (combatant) can be the subject of a sentence not "mufsid" (corrupter) in absolute terms. Nowhere in the jurisprudence "mufsid" in absolute terms is subject of a sentence; if so this sentence would not be legally and canonically applicable.

Even if we accept that "corruption" as "corruption" could be the subject of a sentence in some cases it is not true about above-mentioned verse; otherwise, the word "muharib" (combatant) would be pointless. Because if there are two things as the subject of a single sentence that is one of them is absolute and other one is conditional then that sentence will be nullified for the conditional one. If the sentence for "muharib corrupter" and "corrupter" was same then, the conditional of muharib would be nullified. In addition, imposing the sentence of muharib for "ifsad" is against the consensus of jurists and Qur'an exegetes. No one has presented

such interpretation for the verse; and considering that the Holy Legislator is extremely cautious about the right to life it is not allowed to present such wide-ranging interpretation of "ifsad" (Ardibili and Fa'idah, 1982). Therefore it is not possible to demonstrate execution sentence for "ifsad" as it is in the case of muharib. "It is of our basic religious principles that executing a person is not allowed without a certain jurisprudential reason." Some scholars believe that death sentence is justifiable referring to the word (corruption) in this verse:

Whoever kills a soul, without (its being guilty of) manslaughter or corruption on the earth is as though he had killed all mankind

However, interpreters believe that this verse relates to verse 33 of Al-Maeda chapter and infer from "killing" to enforce hadd to "corruptive muharib" while interpreting the verse. Thus, Qur'anic documentation to justify execution in the case of "ifsad" is verse 33 of Al-Maeda. "Muhariba" (combat against Allah and His Apostle) here means any kind of rebellion and opposing God and His messenger's order. Using weapons publicly, murdering, terrorizing people, taking their property and enslaving them are the instances of "ifsad" and such actions are verily fighting against God and His messenger.

"Muhariba", just like "ifsad", cannot be titled as a subject, without a conditional (Brujirdi and Fiqh-e Shi'a, 2007). In this verse, both titles of "muhariba" and "ifsad" are mentioned for a single subject of sentences while each of them by itself is a component of that subject; thus, these sentences do not refer to absolute muharib, rather refer to "corruptive muharib". Whereas relative pronoun is not repeated in this phrase acts as the conditional. Therefore, the sentences mentioned in this verse are applicable to a "corruptive muharib".

"Fisad" means exceeding the moderation limit". These sentences were the Holy Prophet's reaction to the unbelievers who used to fight with him. The phrase indicates that "ifsad" refers to "any action which disorders people's normal life, violates security, disturbs moral or economical safety or destroys social system". It refers to banditry and terrorism which happens using deadly weapons to frighten people. That is why "ifsad" is interpreted as drawing weapons and suchlike.

Practically, there is a correspondence between "ifsad" and "muhariba" and the offender can be condemned to death in both cases if there was bloodshed. Consequently, execution for "ifsad" can be justified only if there is bloodshed and it is protection of right to life. In the verse "and there is life for you in (the law of) retaliation", the Holy Quran talks about advocating the right to life by bleeding. However when a human life is not

under threat, the offender's right to life and the necessity of precaution against spilling of blood prevent us from condemning an offender to execute for "ifsad".

So only in a special case "ifsad" can validate execution. For there are many verses (Al-Baqara: 27, 30, 205; Al-Araf: 56, 85; Al-Qesas: 77; Al-Yousof: 73) which have addressed "ifsad" but have not defined the sentence of death for the offenders. Some may consider "muhariba" and "ifsad" as hudud (religiously prescribed punishments) then it is out of our discussion. But many jurists have not talked over "ifsad" in the chapter of hudud and have mentioned it in an added part which indicates that it is practically different from hudud. Moreover, prescribed punishment is a basic part of hudud while the punishment of "ifsad" and "muhariba" is assigned to the ruler and judge which inclines it to ta'zir (discretionary punishments). Consequently, imposing discretionary execution in the case of "ifsad" is not demonstrated by this verse.

#### **NARRATIVE EVIDENCE OF "IFSAD"**

The jurists like Sheikh Tusi have referred to a tradition about embezzlement in order to demonstrate discretionary sentence of cutting hands for "ifsad". However, Shahid Thani defines the act of the tricky man mentioned in that tradition as "hypocrisy and trick" and says the punishment of the robber and tricky man is depended on the ruler's decision.

If we consider Sheikh Tusi and Shahid Thani's words as a criterion for cutting the hands of an imposter, this will be an analogy (qiyas) and many crimes could be interpreted as "ifsad" and sentenced to death. According to Shahid Thani's point of view, someone who snatches other's property by deceiving them is not a robber but his hand will be cut. This goes in counter to the well-known viewpoint and clear hadiths which have specified the conditions of robbery and cutting hand. The content of this tradition is in contrary to other traditions. Shedding the blood just according to a single narration is dangerous and the validity of an isolated hadith about blood shedding is in question, even if it holds a reliable chain of narrators. When there is some doubt as in the case of isolated narration about shedding blood it is not possible to recognize someone as a criminal.

According to the narration, someone went to a seller and said: "your friend sent me to you to bring some goods for him". The seller accepted and gave him those goods. After a while he met his friend and said: "your man came to me and I sent those goods you wanted". But his friend said: "I have sent you no one and have received nothing". The seller thought his friend is lying. When

Imam Sadiq (AS) was asked about the issue he said: "if seller's friend presented any evidence to prove that he has not sent that tricky man, the hand of that imposter will be cut". This tradition is considered "acceptable" for some of its narrators (Lankarani *et al.*, 2007).

According to this tradition, Imam (AS) said that if that man presented some evidence indicating that he has not sent any one, the hand of the man who snatched the goods must be cut. But the point is that not an embezzler nor a tricky man is a robber so that his hand should be cut. Thus, Imam's judgment might be a discretionary punishment for "ifsad". If so it is possible to justify discretionary execution in some cases too.

But as mentioned before this tradition for some of its narrators is considered as "acceptable" not a "reliable". In addition its content is questionable because, first, presenting evidence for not sending any one is irrational and second, the narration quoted in "Wafi" shows that the phrase "he did not send the imposter" is not in the original text.

From what was said so far, delivering discretionary execution for "ifsad" is not demonstrable on the strength of above-mentioned verse and hadith.

#### **SUNNI JURISTS**

Some Sunni jurists have justified execution for "muhariba" and "ifsad" but they have allocated "ifsad" to a few cases like, "the bandits that cause insecurity and oppression and the trespassers who disturb social order will be killed". There is no death sentence for absolute "ifsad" in Sunnis jurisprudential and narrative sources. So basically there is no way to include discretionary execution in Sunnis jurisprudence. However, Afghanistan Penal Code has overstepped the limits by including numbers of discretionary execution with no jurisprudential basis.

**The rules of "discretionary punishments are assigned to the ruler and "discretionary punishments are not prescribed in jurisprudence":** Some jurists have justified discretionary execution on the strength of the rules "discretionary punishments are assigned to the ruler" and "discretionary punishments are not prescribed in jurisprudence". Although, it is not directly mentioned in Afghanistan texts of law but these rules are practically utilized in legislating discretionary execution which is perceivable in "General Criminal Code", "Askary (military) Criminal Constitution" and "Penal Code". Clause 1 in Afghanistan Penal Code says: "this law authorizes discretionary crimes and penalties". Clause 97 defines execution as the main penalty and clause 98 describes execution as "hanging the offender until he dies".

According to Shi'a jurisprudence, "the severity of discretionary punishment depends on infallible Imam or his successors opinion, like any punishment which is not specified in jurisprudence". The rule "discretionary punishments are assigned to the ruler" is not mentioned in Shi'a hadith sources. However, there are phrases such as and which refer to infallible Imam while the word "ruler" refers to the judge or governor. The question is that does a ruler have such extended authority that he decrees a discretionary execution?

According to jurisprudence and law in all cases of discretionary execution, both rules are combined together; because discretionary punishment has two factors: the crime has no prescribed punishment and the authority of the ruler and execution is a kind of discretionary punishment. "In the case of crimes which result in discretionary punishment, the penalty is not predetermined; rather it is assigned to the ruler or his deputy who can panelize the offender with... even execution". According to Sunnis jurisprudence, "discretionary punishment is a penalty issued by the ruler... whoever commits a sin that has no prescribed punishment, retaliation or compensation; the ruler should punish him by his own judgment". According to the text of Constitution and Sunni jurists, the ruler has such authority.

But, a tradition narrated from the Holy Prophet (SAW) rejects this authority: "Shedding the blood of a Muslim is not permitted, except in three cases: killing, adultery and apostasy". By Sunni narrator, how is discretionary execution permitted while the Prophet (SAW) has not allowed it except in these three cases? Validating the sentence of death is difficult and in question, except in the case of murder.

Jurists' accounts are to say that discretionary punishments are those that are not prescribed in jurisprudence and are assigned to the ruler. But not being prescribed and being assigned to the ruler does not show its limits; which has confused jurists and made some of them to extend ruler's authority to the extent that he can issue death penalty. In addition, the validity of discretionary execution is not verified; let alone to be issued by a ruler who is not infallible legislator. The principle of prudence in blood and lives requires excluding execution from discretionary punishments.

Without critical evidence permitting the discretionary execution these two rules do not present such meaning. Moreover, since the ruler has no guardianship over people it is not possible to expand his authority to doubtful cases. The rule which justifies discretionary punishment as authority of the ruler, just talks about assigning it to the ruler but it is silent on whether the title

of discretionary punishment includes the execution or not. Meanwhile, many traditions narrow the domain of discretionary punishments down to less than prescribed punishment (hadd) which means that the execution cannot be included in discretionary punishments. A tradition like "the discretionary punishment must be lower than a hadd".

Consequently, none of these two rules proves that discretionary punishment includes execution, neither individually nor together.

**The rule of "ordering the right and forbidding the wrong":** Is it possible to develop the rule of "ordering the right and forbidding the wrong" as the basis of discretionary penalties to the extent that forbidding the wrong ends in killing?

In Shi'a jurisprudence, most of the former and contemporary jurists say, yes but some of them believe that Imam's permission is necessary in the case of execution. Jurists such as Muhaqiq Helli, Imam Khomeini, Sheikh Tusi, Fakh al-Islam, Shahid, Miqdad and Kurki believe that the execution is allowed by Imam's permission. They argue that "in the case of forbidding the wrong if everyone is allowed to kill others without Imam's permission it will result in anarchy and major corruption in the society". Some jurists realize it as a well-known theory and there is a consensus about it according to Sheikh Tūsī's statement in "al-Muntaha". Some others such as Sheikh Tusi in "Economics" and Sayid Murtaza, believe that Imam's permission is not necessary.

Those jurists who justify the discretionary execution referring to "forbidding the wrong", believe that forbidding the wrong ended in wound or execution is allowed if it was by permission of Imam or a well-informed jurist. When forbidding the wrong by heart and tongue does not work... then there is a third way which is taking tough action against corrupter that is it must be done step by step to the extent that it is not possible to stop the wrong except by injuring or killing. In this theory, recognizing the effectiveness of "forbidding the wrong" is assigned to law in the absence of infallible Imam (AS).

Sunni jurists have not permitted execution for "forbidding the wrong". "In the case of committing wrongs, the wrongdoer must be punished to the extent that it is lower than hadd".

The rule of "ordering the right and forbidding the wrong" presented in jurists' statements and narrations, does not indicate that execution is permitted. "Because, injuring and killing are not the instances of ordering and forbidding and it is questionable whether ordering the right and forbidding the wrong indicate to something more than merely ordering and forbidding. "Meaning, the

nature and essence of “ordering the right and forbidding the wrong” indicates that it is less than killing and should result in improving, guiding and enlightening the wrongdoer and society”.

There is no reason to develop the “forbidding the wrong” to the extent that ends in murder; there are some reasons only to order and forbid but injuring and killing are neither ordering nor forbidding. Without a reason for killing it is not possible to demonstrate “discretionary execution” through the rule of “ordering the right and forbidding the wrong”. When permission of murder and injuring for forbidding the wrong is in question, the basic principle requires avoiding it. Meanwhile, ordering the right and forbidding the wrong is obligatory if it results in improving and impressing so when it does not produce such outcome, ordering the right and forbidding the wrong is not obligatory. By murdering, the wrongdoer will be killed and there would be no improvement.

**Repeating the crime:** Repeating some crimes for three or four and in some cases for five, times result in discretionary execution. These crimes are titled as “grave sins”. Jurists have accepted this issue completely as they have established a rule named “the committers of grave sins will be killed in third or fourth time”. (Tabataba’i and Al-Masa’il, 1997).

All Shi’a jurists agree on killing the person who refrains from ritual prayer after repeatedly receiving discretionary punishment but they hold different views about its repeating times if three or four. Ibn Idris believes that killing such person is a religious principle of Imamiyah and he claims that there is a consensus about it. But “most jurists have justified the sentence of execution in 4th time for they believe that it should be treated with caution if there is any doubt”.

It is quoted from the books like al-Mughni yah, al-Nihayah, al-Mabsut, al-Kafi, al-Jami’, al-Wasilah, al-Intitar and al-Ghunyah that a person who refrains from the prayers must be killed in his fourth time. Some have objected the consensus claimed by Ibn Idris. There is a consensus stated in the books “al-Intisar” and “al-Ghunyah” that the person who refrains from the prayers will be killed in the 4th time and it contradicts the consensus narrated by Ibn Idris but this one is preferable.

Usurer will be killed when he repeats that crime after two times receiving discretionary punishment. “The person who knows that usury is unlawful and two times have been punished for it must be killed while committing that for 3rd time”; Sheikh Tusi continues: “if someone says that usury is lawful, killing him is obligatory”. The question is that what is the reason for death sentence;

boldness, denying ban on usury or repeating the crime? Although, there were some cases in which the person was killed because of denying its unlawfulness.

In Islam, trading deadly poisons is not permitted. Whoever has such business must be punished and if he continues that must be killed. However, repeating times are not mentioned in this case but it is stated that killing poison seller is obligatory if he repeats it for times. This case may raise a doubt that repeating the crime is not the reason of the death penalty; rather it is prohibited trade which leads to death. Considering these ambiguities and doubts, repeating the crime cannot be a critical reason for imposing execution. In Holy Ramadan if someone breaks his fast on purpose and repeats it three times he will be killed.

Every one of above-mentioned verdicts has its own demonstrating sources but Sheikh Tusi, Amin al-Islam Tabarsi and some other jurists substantiate their viewpoint by the rule of “the committers of grave sins will be killed in third or fourth time” and Ibn Idris claims that there is a consensus. If we accept this viewpoint then we must accept discretionary execution in the case of repeating the crime. But considering followed reasons, discretionary execution is not demonstrable by these documentations:

In some traditions, the word “considers the sin lawful” is mentioned which does not refer to repeat and anyone who claims that a Divinely prohibited act is lawful will be killed, even though that crime is not repeated; here, repeating the crime is the form of issue not its nature and actual reason.

Some resorted traditions are interrupted and incorrect and even if we accept them as reliable traditions they are isolated and administering the execution is not possible according to an isolated tradition.

Some traditions justify murder for three times repeating the crime and some of them for four times repeating the crime and it makes some problems that which one is supposed to be our criteria to issue death penalty. As mentioned before in uncertain cases we should ignore that sentence to take the precaution of blood. On the other hand grave sins have prescribed punishments which prevent from issuing discretionary punishments for them. “Those traditions indicating to killing the usurer or fast breaker in their third repetition, cannot be used to extend the meaning of committing grave sins, because of their weak and unreliable chain of transmission”.

Some jurists believe that in crimes with discretionary punishment, the sentence is performed for offender in his 1st and 2nd times but in the third time, full punishment (hadd) related to that crime, some specified lashes will

take place instead of repeating the discretionary punishment... According to the researcher of "Riyaz" he and some other jurists believe that the offender of crimes with discretionary punishment never face death penalty for repeating the crime. The offender will be suffered by discretionary or full punishment even if he repeats that crime for many times.

Some may raise the objection that leaving death penalty brings God's boundaries to a halt but the researcher of "Riyaz" answers "in the uncertain case, killing a respectful human being is worse than stopping God's boundaries.

The phrase that says the offenders of grave sins will be killed in their 3rd or 4th time is not a tradition; rather it is a rule deducted from the traditions.

### **REPEATING THE CRIME IN SUNNI JURISPRUDENCE**

This issue is not studied in Sunni jurisprudence, since they do not believe discretionary execution as it is stated in Shi'a jurisprudence. According to Sunnis jurisprudence, "discretionary punishment must be lower than hadd". This could be a determining principle to those who believe the discretionary execution. It is mentioned in some Sunni sources that if someone commits a crime frequently and has not suffered a hadd, the ruler is allowed to punish him by life sentence.

In Sunni jurisprudence, the person who refrains from the prayers because of lying idle will not be killed while in the Shi'a jurisprudence this person must be killed if he repeats it three or four times. Abu Hanifa offers that if someone is lazy to do the prayers, beat him until he does not give the prayers up but if he refrains from the prayers for denial, he must be killed in the 1st time.

So, a lazy man must be beaten whenever he gives up an obligation but someone who leaves it for denial must be killed in the 1st time.

### **EXECUTION AND THE RIGHT TO LIFE**

From Islamic point of view, human life is the most valuable thing in the world which must be respected and supported and nothing is allowed to endanger it.

**The Holy Quran and the right to life:** God is proud of creating the human as He says: "Congratulation! The Best Creator" (al-Mu'minin: 14); He declared this pride when the creation of human became perfect by inspiring the soul.

According to the Quran if any one saves a life it will be as if he saved the life of the whole people and if any one kills an individual it will be as if he killed all human beings:

"Nor take life-which Allah has made sacred - except for just cause" (al-Isra: 33). "Nor kill (or destroy) yourselves: for verily Allah hath been to you the Most Merciful!" (Al-Nisa: 29)

God forbids from killing others and threatens killers with retaliation and gives authority to the heirs. (Al-Isra: 33) God threatens those who violate others' right to life with retaliation, in order to protect the right to life of humankind (Al-Baqara: 179).

**Universal declaration of the human rights:** Article 3 of the declaration (Article 3: Everyone has the right to life, liberty and security of person) counts the right to life as a basic right for humankind. Afghanistan Constitution has justified this declaration: "The government... observes the universal declaration of human rights" (Criminal Code, Article 7, 1388/2009) and discretionary execution is in contradiction to the right to life stated in this declaration.

"Life is a divine gift and natural right of human. No one will be deprived of this right without legal grounds" (Criminal Code, Article 23, 1388/ 2009). This law justifies the execution indirectly and discretionary execution is a kind of the executions. This indicates a direct contradiction between 7th and 23rd Article. The legislator's deficiency to predict this contradiction has caused disability and ambiguity in the constitution; since, the constitution must be accurate and definitive.

### **CONCLUSION**

Discretionary execution for the corruption on the earth is not demonstrable according to the verse, except in some cases of "muhariba" accompanied by "ifsad". The punishment is not demonstrable by the tradition, too; because it is an isolated tradition with disordered text, which is incompatible with basic principles.

Not being prescribed and being assigned to the ruler do not show the range of discretionary punishments; which has led to different opinions among jurists concerning the issue. Some jurists believe that the ruler's authority is restricted by the rule of "discretionary punishment must be lower than had" and some of them stretch his authority to the extent that he can issue death sentence. So, the validity of discretionary execution, itself, is not verified; let alone to be issued by a ruler who is not infallible legislator. The principle of prudence in blood and lives requires excluding execution from discretionary

punishment. Therefore, without critical evidence permitting the discretionary execution, these two rules cannot prove legitimacy of such punishment.

The nature and essence of “ordering the right and forbidding the wrong” indicates that it must be less than execution, and should result in improving, guiding and enlightening the wrongdoer and society. There is no reason to develop forbidding the wrong to the extent that includes killing. There are reasons to order and forbid, but injuring and killing are neither ordering nor forbidding. Without a reason for executing, it is impossible to demonstrate discretionary execution through the rule of “ordering the right and forbidding the wrong”. In the case that the permission of executing and injuring for “forbidding the wrong” is in question, the basic principles require to avoid it. In addition, “ordering the right and forbidding the wrong” is obligatory if it results in improving and impressing but there is no improvement after killing.

Difference of fatwas about repetition times makes the problem that which one is supposed to be our criteria to issue death penalty. In uncertain cases, we should ignore death penalty to take precaution of blood. Grave sins have prescribed punishments which prevent from issuing discretionary punishments for them. Those traditions indicating to killing the usurer or fast breaker in their third repetition cannot be used to extend the meaning of committing grave sins because of their weak and

unreliable chain of transmission. However, according to Sunni jurisprudence, repeating the crime does not lead to execution.

The Holy Qur’an strongly prohibits from killing, through various means. The universal declaration of human rights does not justify execution. If Afghanistan government validates execution, it would be against the universal declaration of human rights and Article 7 of the constitution.

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