

Jurisprudential investigation of theft from public treasury and the conditions of its theft

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Abstract

Theft from the public treasury is one of the words that has been common since the beginning of Islam and is used in Persian and Arabic with the same meaning. Of course, according to the progress and development of mankind, the territory of public treasury and the way of theft from it has taken different forms and changes. Public treasury under various titles, such as public property, anfal, treasury, general treasury, etc. has a high position in all legal and civil societies and systems and has various military, governmental, administrative, public and civil responsibilities. Theft from the treasury is one of the jurisprudential issues that occurred since the creation of the public treasury until today, so that in the hadiths, theft from the public treasury and embezzlement has been interpreted in different ways. In this research, theft from the public treasury has been investigated from the juridical and legal aspects. To achieve this goal, the nature of jurisprudence and law is examined first, then the definition of theft and public treasury is discussed. Then the resources and benefits of the public treasury were discussed, and also the goals, origins, factors, effects and effects of theft from the public treasury were examined, and finally the opinion of the jurists regarding the verdict of theft from the public treasury was expressed, which is three sentences: (1) Some believe that if the thief has no right to the public treasury and the conditions of theft are present, the sentence for theft will be definite punishment, otherwise theft will be discretionary punishment. (2) Some believe that there is absolutely no limit to stealing from the public treasury, and (3) the third group has stopped and only quoted scholars. It seems that the promise in detail, which is the same as the first promise, is more correct, comprehensive and according to the jurisprudence rules that we mentioned in the text about the reasons for this promise.

Keywords: Theft, Public treasury, Theft from treasury, Definite punishment, Discretionary punishment

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1. Introduction

Financial corruption, in various forms, is a universal phenomenon that occurs in different human societies in different ways and is investigated as a criminal and punishable phenomenon under the title of crimes against property, one of the financial corruptions is theft. Accordingly, throughout history, in all religions, a heavy punishment has been considered for it. Theft is the "stealth of other's property secretly" for the execution of its punishment, it is necessary to collect all its conditions, one of these conditions is that the stolen property is the property of another. Considering the prevalence of theft in today's society, jurists have examined this issue in various dimensions. But in the meantime, the issue of theft from the public treasury, which is the most important support of the government, has spread widely and has great importance. Public treasury, both in the past and in the contemporary world, are properties that are sometimes used for the benefit of a specific group such as the poor, and sometimes used for the benefit of the public and the interests of society, such as energy such as electricity and gas, etc. Therefore, if the properties have a public aspect or are part of the public treasury, because the interests of these properties are in line with all the people, all of them will have the right to these properties. Public treasury has special and general expenses that form the basis of the country's economic budget. One of the cases of unjust possession in the public treasury is the issue of theft from the public treasury. Controlling the use of public funds and its detailed planning according to the existing needs is one of the most sensitive economic infrastructures of the government. Therefore, it is essential to investigate the issue of theft from the public treasury.

With the expansion of economic channels, the administrative system and the increase of financial exchanges in the country, the embezzlement and theft of financial resources and public property have increased, and this has made the research and investigation of this issue particularly important. According to Islam, public treasury plays a pivotal role in the administration of the country's affairs and is the most important financial support of the government and the basis of the country's economic budget. If this sector gets crooked, the receipts and incomes of public treasury will not be accountable to the country's administration. Public treasury belongs to all Muslims and belongs to all members of the society and no one has the right to occupy it without legal rules and permission, and on the other hand, theft of public property, which is a criminal act, has a difference of opinion among jurists. A group has given a sentence to prove the definite punishment of theft by extending the sentence of theft to theft from the public treasury. Another group, considering points such as the lack of identification of the owners of the public treasury, believes that the definite punishment is not applied to the thief of the public treasury in an absolute manner. On the other hand, in the Islamic Penal Code, one of the conditions for proving the definite punishment for the thief is that the stolen property has a specific owner, so when the property is stolen from the public and government property that is used for public purposes, and in other words, if the theft has taken place from the public treasury, it will not be punishable, but it will be subject to other legal provisions governing other cases of theft.

In this article, while examining the theft from the public treasury from the jurisprudential and legal aspects and its difference in jurisprudence and law, as well as the related verdict and the conditions for proving the verdict, we examine the causes and factors, as well as ways to prove and prevent theft and the opinions of jurisprudence scholars so that a solution can be provided to prevent this big problem affecting the societies, especially the Islamic society of Iran, and this has caused the society's economy to weaken day by day and justice has disappeared from the society.

1. Theoretical research literature

2-1 Theft

Theft is an Arabic word which means taking property secretly and cunningly (Sayyah, 2005); Lexical definitions of theft:

- Ahmad Bin Faris (1404 AH): The word "theft" means taking something secretly.
- Ibn Manzoor (1410 AH): According to Arabs, a thief refers to someone who secretly takes something illegally.
- Ragheb Esfahani (1412 lunar year): Theft means taking something secretly without permission.
- Sheikh Tarihi (1416 lunar year) also in *Majma al-Baharin*, after bringing the verses in which there is the article of theft under the verses, he considers a thief to be someone who comes secretly and takes another's property after that.

According to the lexical definitions of theft, it can be concluded that theft, from the point of view of lexicographers, has three pillars and if one of the three pillars is missing, the literal concept of theft will not be realized. Therefore, if the removal is not secret, the act performed will not be theft (Qomashi, 1998):

- The first pillar: removing the object
- The second pillar: belonging to someone else
- The third pillar: being secret

Theft in the Holy Qur'an: The sentence that the Holy Qur'an says for the thief is a general sentence and includes the sentence for thieves of public property. In verse 38 of Surah Ma'idah, it says: Cut off the hands of the male thief and the female thief as punishment for what they have done, as a divine punishment, and God is Mighty and Wise.

Theft in hadiths: Considering the importance and position of theft from the public treasury, there are many narrations in this regard, some of them are mentioned to clarify the truth of the matter and to express the nature and rulings of stealing from the public treasury in the language of the hadiths. Of course, other hadiths are also included in this chapter, but because they have problems from the point of view of the document, we did not include them here.

- Musamee bin Abdul Malik narrates that Imam Sadiq (peace be upon him) said: A man who had stolen from the public treasury was brought to Amir Al-Momenin. Hazrat Ali (peace be upon him) said: The definite punishment of cutting off hands does not apply to this person, because this person had a share in the public treasury (Kelini, 1407 AH).
- Muhammad bin Qays narrates that Imam Baqir, peace be upon him, said: Amir Al-Momenin, peace be upon him, about two people who had stolen God's wealth, one of them was a slave belonging to God and the other was belonging to people. Hazrat said, "but this one belongs to God and nothing is on him." Some of God's property has eaten others. But he brought another one and cut off his hand. After that, the Prophet ordered to feed him oil and meat until he recovers (Tusi, 1407 AH).

Theft in jurisprudence: it is carefully determined in jurisprudence books that the jurists have defined the subject first in most chapters of jurisprudence and then entered the main topic, but in the discussion of the crime of theft, without dealing with its definition, they stated the conditions of theft requiring definite punishment and only some jurists have defined theft, including:

- Sheikh Tusi (2008): Theft is the secret taking of another's property that is in an amulet.
- Ibn Idris: A thief is someone who secretly steals another's property from his amulet.
- Seyyed Qutb: theft is the secret taking of another's property that is in amulet (Al-Sharabi, 1408 AH).
- Kashif Al-Latham: Theft is the act of taking someone else's property secretly from amulet without any explicit permission or implied permission or a circumstantial evidence of someone else's permission (Fazel Hendi, 1416 AH).

Therefore, by following the expressions of the jurists, we can conclude that the great jurists have defined the word "theft" according to the Shari'a ruling and its limitations and conditions, and these definitions are also incomplete to some extent, so either we should define theft which is dedicated to limited theft, or to follow the literal meaning in its definition, which also includes criminal theft, and the conditions and limitations of limited theft are mentioned separately. (Dehghan, 2000). It seems that theft does not have a special Shari'i meaning, but only a literal meaning, probably because the vast majority of jurists, without addressing the definition of theft, have only dealt with the conditions of theft that is subject to the limit. As Mr. Meshkini "Ra" says in "Terminology of Jurisprudence": It appears that the word theft does not have a specific Sharia or Sharia meaning, but is used in its literal and customary meaning, and Sharia rules such as sanctity and guarantee are also related to it. Yes, the Shariah definite punishment that is fixed for theft is different from literal and customary theft because this theft (theft subject to the definite punishment) is bound by certain restrictions (Meshkini, no date).

2-2 Theft orders

2-2-1 mandatory sentence

Theft and embezzlement is one of the major sins for which the definite or discretionary punishment is considered in jurisprudence. In this topic, we will discuss the reasons for respect and punishment for theft.

❖ **Quranic proofs of the sanctity of theft:**

- In verse 29 of Surah An-Nisa, it says: O you who have believed, do not waste each other's property among yourselves unless a business is done between you out of consent.
- And also in verse 188 of Surah Al-Baqarah, it says: And do not take your property unjustly among yourselves and do not pour it to the judges "as a bribe" so that you take part of the people's property wrongfully and unjustly, while you know the sanctity of your work.

Ayatollah Yazdi says in the book *Fiqh al-Qur'an*: "The prohibition in the above verses is due to sanctity, and the verse is about any wealth that is taken by falsehood, including embezzlement. It is certainly one of the cases of unlawful ownership, because "unlawful ownership" in these verses means possession and financial investment, because the need for wealth is considered important and the stability of human society depends on it, and in the hadiths, the name "property" is used for this reason and it has been attributed to make it clear that the property of Muslims is at their disposal when they need it. So, if a person's property is respected and protected, it will be a means to be used, shared and promoted. Therefore, trespassing on the property of the nation, whether it is in the form of trespassing on the property of an individual or in the form of trespassing on the property of the state "public property", is considered a sin. (Yazdi, 1995).

❖ **Proofs of the sanctity of theft:** According to the mentioned traditions and other traditions, it is clear that the principle of sanctity and punishment of the thief has been established and it is certain that if theft or embezzlement were not forbidden, no punishment would be imposed on it, for this reason and due to the obligation of sanctity, the act of a thief and a miscreant is proven:

- Sama'a narration: Sama'a narrates that Imam (peace be upon him) said that whoever steals someone else's property quickly and at the right time will not be cut off, but will be severely punished (Ibn Babouyeh, 1413 AH).

Abi Basir's narration: Abu Basir says that I heard Imam Baqir or Imam Sadiq (peace be upon him) saying: Ali (peace be upon him) said that in the case of taking something as embezzlement as an "open attack", I do not apply the definite punishment of cut off, but punish the perpetrator. (Al-Hur al-Amili, 1412 AH)

❖ **Intellectual reasons for the sanctity of theft:** one of the reasons for the sanctity of embezzlement is reason; That is, if there was no proof from the Book and Sunnah that embezzlement is a crime, human reason would still acknowledge that this act is a crime, as all the countries of the world consider this act as a crime, even if this act causes social and

individual corruption. Regarding embezzlement, because there is a three-way relationship, that is, the relationship between the government and the employee, the relationship between the people and the employee, and the relationship between the employee and each of the government and the people, it makes the government employees more strict and if the basis of this relationship is not strong, the economic, social, cultural and political foundations of the society will be weakened and on the other hand, people's trust will be taken away from the government, which will bring very bad consequences (Ramazani, 2000).

The ruling of sanctity of wrongdoing is proved by the intellect through the independence of the intellect; for this reason, the minor and major of the analogy should be a rational issue. This analogy is:

- Minor term: Embezzlement, which is a part of theft, is a disgusting and ugly act for intellect.
- Major term: Whatever the intellect dictates, Sharia also dictates it.
- Conclusion: embezzlement is an obscene and forbidden act in Sharia law.

Therefore, it can be said that embezzlement is abominable in terms of the ruling of reason, and through the connection between the ruling of reason and the ruling of Sharia, the Shariah sanctity of embezzlement is also proven (Maqdadi Davoudi, no date).

2-2-2 Positive rule (refusal of property)

Positive rules are not directly related to the mandatory verb; Rather, it stipulates a special situation that has an indirect effect on human behavior; Such as the law of marriage, property, validity and nullity, which was legislated by God (Sadr, M: Islami, 2008). The positive rule in theft is to return the property to its true owner; Of course, the owner of the credit of theft from different places is different, for example, in theft from individuals, the stolen property must be delivered to the same person from whom it was stolen, and in the case of theft from government property and public treasury, to the same place and company or office that the property stolen from there must be given. Because Islamic property has not been realized in the stolen property, and it is not permissible to take possession of it, and the verse prohibits taking possession of other people's property. The most important evidence that can be argued for the necessity of rejection is the warranty documents. These documents include the rule of liability of usurpur,

«عَلَى الْيَدِ مَا أَخَذَتْ حَتَّى تُؤَدِّيَهُ»

and the rule of loss,

«مَنْ آتَلَفَ مَالَ الْغَيْرِ فَهُوَ ضَامِنٌ»

- Possession rule: The jurists apply in the proof of guarantee to possession rule, this rule is general and can be applied in the guarantee of the object, benefit, like or price. In the case of theft from the public treasury, in addition to the enforcement order, the thief and miscreant

is also the guarantor of the property, and according to the meaning of this rule, the property must be returned to the public treasury.

- The rule of loss: this rule was deduced from the hadiths about guarantee, and this rule does not appear in this particular form in a hadith (Bojnoordi, 1419 AH).

Shia and Sunni jurists have adhered to the rule of waste, and no opposition has been seen in this rule, and it can probably be said that it is considered one of the necessities of the parties. Therefore, according to the jurists' practice of this rule, there is no doubt in its document. And theft and embezzlement is one of the examples of wasting money; because by stealing the property, the object or interests of the property is destroyed, and illegal and unauthorized possession is created in other people's property. Therefore, according to the provisions of this rule of Muslim jurisprudence, the rejection of the property is necessary, and in case of loss of the property, the thief or miscreant is the guarantor of its value or its lost interest. Referring to the jurisprudence and legal sources of theft, it can be said that the thief is the guarantor of the stolen property and has civil responsibility and must take action to return the property.

Shahid Sani "Ra" says about the obligation of the thief to return the stolen property: It is obligatory on the thief to return it to the owner if the same property exists and it is possible to return it, and if it is lost or if it is presumed to exist, it is not excused from rejecting it. If it is similar to that, and if it is a guarantor, he should return its price to its owner, and if the same property is defective with him, he is the guarantor of paying its price to the owner (Jabai Amali, 1413 AH).

Mohaghegh Hali (1408 AH) also writes in the book *Sharia al-Islam: The responsibility of rejecting the property even with the death of the owner of the property is not removed from the thief, so the thief must hand over the property to his heirs, and if he does not have an heir, to the Imam (peace be upon him). It is obvious that the execution of the punishment against the thief does not remove his civil responsibility for returning the stolen property to the owner. Because as Shahis Sani says in *Al-Rawzah* book: "Cutting off and rejecting property are two different rulings, and one is the obligation to return someone else's property because of the aggression and injustice committed, and the other is cutting off the hand, which is due to punishment for a sin committed is fixed."* (Jabai Ameli, 1413 AH).

2-3 Types of theft in terms of punishment

Jurists have divided theft as follows:

- Definite punishment theft: theft, armed robbery and banditry, which are part of the financial crimes that require a definite punishment.
- Discretionary punishment theft: It is said to those cases that do not have the conditions of definite punishment theft, such as cheat "pick pocket" Nabbash "shroud thief". (Dehghan, 2000)

2-4 Rulings of stealing from the public treasury

- **Theft from the public treasury:** The crime of theft is one of the natural crimes, which is also considered a crime by the Holy Sharia of Islam and imposes heavy punishments for it. In the case of stealing from the public treasury, considering the opinion of the jurists that all Muslims are partners in the public treasury, it can be said that the element of belonging to another fades. For example, a person who commits this crime steals money with the intention that it is permissible for him to take it and he can take as much as his share. Here, the first and foremost thing is not to implement the cut-off punishment due to the occurrence of doubt and narrations that exist with a valid document. Of course, the narrations are often included in the topic of spoils: In the Sahih of Muhammad bin Qais, Imam Baqir (peace be upon him) says: Imam Ali (peace be upon him) said about a person who had stolen the spoils of war, I will not cut off his hand, because in what he stole, he was an accomplice. Sheikh Mofid, Salar, Fakhreddin, and Miqdad have acted according to this narration, which indicates the fall of definite punishment in the case of theft from public property, and spoils. Therefore, from the point of view of jurisprudence, even though theft of common property is not always subject to definite punishment, it can be subject to discretionary punishment. The legislator has also followed this point of view and according to Article 198 paragraphs 5, 6 and 16, this type of theft has not been considered as a definite punishment and has stated it in terms of punishments.
- **Possession in the public treasury:** one of the important issues discussed in jurisprudence about the public treasury is the rulings of possession in the public treasury; In religious sources and in the traditions and life of the Ahl al-Bayt, peace be upon them, especially from the life and sayings of Mullah Ali, peace be upon them, it is understood that it is not permissible to take possession of the public treasury outside of the Shari'a and legal scope. What is certain in this chapter is that the Imam (peace be upon him) and his deputy are the custodians of the public treasury, and they spend it for the interests of Muslims in any way they consider it appropriate. Therefore, the Muslims have this right of possession in the way of spending public treasury for the benefit of the Muslim community.

Public property in all eras, especially in the present era with all its extent, belongs to all members of the society and is not the private property of anyone. Therefore, to use the public property in line with the public interest and correctly, principles and criteria have been determined and defined for the public treasury so that all people are obliged to comply with those principles to prevent wrongful seizure. One of those principles regarding public treasury is trustworthiness, and all people, both responsible and non-responsible, should be diligent in observing this principle. The second principle is the generality of public treasury, which does not need to be explained. Another principle is justice-centered, because misappropriation of public property is in conflict with justice, and public property should be distributed based on justice in order to

prevent class divisions. And the last principle is accuracy and caution, it is necessary for everyone, especially brokers, to observe accuracy and caution in relation to public property.

2-5 Ways to prove theft from the public treasury

- **Testimony:** In all jurisprudence books such as Sharia' al-Islam, (Hali, no date), Takmelah al-Manhaj, (Khoei, 1410 AH), Al-Rawzah al-Bahiyya, (Aameli "Shahid Sani", 1403 AH) and... it is stated that one of the ways of proving theft is the testimony of two righteous men.
- **Confession:** Another proof of theft mentioned by jurists is confession; Fazel Hendi says in this regard: "Ennama Sabt Belgharar Martin" theft is proved by confessing twice. Other jurists such as Mohaghegh Hali (Hali, Bitā), Shahid Aval (Aameli "Shahid Aval", 1413 AH) and others have also included two confessions among the conditions for proving theft. It is well-known among jurists that the definite punishment of theft is established by two confessions, but there is also the opinion of Shazi who believes that the definite punishment of theft is also established by one confession, such as Sheikh Sadouq, Khoi and Shahid Thani (Hali, 1418 AH).
- **The knowledge of the judge:** The sheikh has stated in various places that "the ruler can act according to his knowledge in all rulings, whether it is about property, limits, retribution, etc., and it does not make any difference whether it is from the rights of God or the rights of people, and also it doesn't matter whether his knowledge of the matter was acquired before he took charge of the matter of justice or after it. (Hali, 1418 A.H.) And Abul Salah Halabi also said: "Leh An yakoma Beelma" (ibid.). Ibn Hamze says:
«بَجُورٌ لِلْحَاكِمِ الْمَأْمُونِ الْحُكْمُ بِعِلْمِهِ فِي حَقِّ النَّاسِ وَالسَّلَامُ فِي جَمِيعِ الْحَقُوقِ» (Alam al-Hadi, 1415 AH).

2-6 Sayings of jurists about theft from the public treasury

In general, there are three sayings among jurists regarding theft of public property and public treasury:

2-6-1 absolutely not cutting hands

- Sheikh Mofid "Ra" accepted this saying and said: If a Muslim steals from the booty, his hand will not be cut off because the Muslim has a share in the booty, but if an infidel steals from it, his hand will be cut off. Salar Dilmi also followed Shaykh "Rah" in this saying in his book Al-Alawiyya Ceremonies and Al-Ahkam Al-Nabuyyah p. 258, and made this statement absolutely.
- Allama Heli "Ra" (1413 lunar year) mentions two sayings in this debate. He considers public treasury to be everyone's right, and considers everyone to be a partner in it, and in the end, he gives fatwa to not cut hand and says: If the financial booty is stolen; two promises means cutting off the hand if one steals his share. And there is no hand cut otherwise. As well as

discussing public treasure, Zakat, Khums, etc., which a strong promise is not to cut off hands..."

- Sheikh Tusi in al-Mabsut, before expressing his opinion, attributes a ruling to the jurists and says: "If someone steals from the treasury or the booty, the jurists have ruled not to cut off their hands" (Tusi, 2008), but Sheikh Tusi in this issue explained in detail.
- Ibn Idris also says: The requirement of the principles of religion is that it is not definitive against the thief of booty when he claims to be wrong, because without any dispute, there is doubt in such a case, and because the principle is that there should be no cut, so the claimant of cut has claimed a Shari'a ruling that requires a Shari'a proof to prove it, while there is no proof and no consensus.

Those who believe in non-cut have argued several narrations, we mention two cases (Kelini, 1407 AH):

- ❖ **The first narration:** Imam Baqir said: Imam Ali said about a man who took an egg from the spoils and people said that he had stolen, cut off his hand. Imam said, I will not cut off anyone who is a partner in it."
- ❖ **The second narrative:** Imam Sadiq said: A man was brought to Imam Ali who had stolen something from the treasury, and he said that "his hand" will not be cut off, because he had a share in the public treasury.

2-6-2 The second promise

The description between the case where the stolen object is superfluous to its share and that surplus reaches the quorum that causes the hand to be cut off. And if it doesn't reach this limit, it won't be cut off in this case. This saying has many supporters, among the early ones, Sheikh Tusi in his two books "Al-Nahiya fi Majrad al-fiqh and al-Fatawi, p. 715 and al-Mabssut, vol. 8, p. 44-45" and Mohaghegh Heli in "Shari'e al-Islam fi Masael al-Halal and al-Haram", vol. 4, p. 160 And other elders, a group like Shahid Thani in al-Rowaza and Al-Masalek, Faiz Kashani, the late Najafi and the late Khoi and others believe in this statement. For example, Sheikh Tusi (2008) says: If there is a theft from the booty or from the treasury, the thief's hand will not be cut off, but if the theft is more than the amount that he is entitled to from the treasury, the thief's hand will be cut off..." and in the book "Khalaf", like theft of booty, he accepts the promise of detail and states the existence of consensus as the reason for his ruling (Tusi, 1407 AH). This promise has been argued in two ways:

- **Argument based on narration:** Sheikh Tusi (1407 and 1390) has narrated in a narration: Abdullah bin Sinan says: I asked Imam Sadiq (peace be upon him), what is the ruling on a man who has stolen from booty? Will his hand be cut off? Hazrat said that it should see how much he took, if what he took is less than his share, he will be punished and his full share will be given to him, and if what he took is equal to his share, nothing will be given to him, but if it is equal to the price of a shield, that is, if he takes a quarter of a dinar more than his

share, his hand will be cut off. The meaning of this narration is clear in detail and there is no doubt.

- **Consensus:** if it is manifested from the sayings; jurists have accepted this promise and issued fatwas according to it. Sheikh Tusi claimed consensus on this statement. Tusi (1407 AH) and Shahid Thani (1413 AH) attributed this promise to the majority and said that the practice of this promise is in order to agree with the rules of the first Shari'ah.

2-6-3 The third promise

There is a pause in the issue, some elders have not commented on this issue and have satisfied themselves to mentioning the first two words and have not preferred any of them over the other. For example, Allameh Hali in *Mokhtalef al-Shia* and Shahid Aval in *Lam'a Damasqiyah* consider this promise. Imam Khomeini "Ra" (1426 AH) also says in *Tahrir al-Wasila*: There are two narrations about stealing from Mughnem, in one of them, it is said that it is not cut off, and in the other, it is said that if what he stole is more than his share equal to the quorum, it is cut off.

Finally, by examining the evidence regarding the theft from the public treasury, the promise seems to be correct in detail, because the traditions argued to prove the first promise absolutely say that the thief's hand will be cut off. And the hadiths of the second promise give details and say that because the thief takes the amount of his share from the treasury, his hand will not be cut off. Therefore, the *Sahih* of Muhammad bin Qays, because it is absolute, is bound by the *Sahih* Yunus bin Abd al-Rahman. As a result, it can be deduced from these two types of narrations that if the thief has stolen as much as his share, the definite punishment will not be implemented. Because he took from the property in which he has a share. But if he has stolen more than his share, which is much more than the limit of theft, then the punishment will apply to him. According to the above, the promise is correct in detail.

2-7 conditions of implementing the definite punishment theft

2-7-1 Thief conditions: There is no difference between men and women in realizing the nature of the crime of theft, and the verdict of a Muslim and an unbeliever is the same; if a Muslim steals from a Zammi or vice versa and meets other conditions, the Shari'a limit applies. In a number of jurisprudence books, conditions for the thief are stated, which are examined:

- **Maturity:** According to jurisprudence standards, maturity is one of the general conditions of duty, and according to the rules governing general criminal law, it is one of the conditions for realizing criminal responsibility; This issue has been agreed upon by jurists in Islamic law. In the relevant laws of the Islamic Republic of Iran, according to the amendment of Note 1 of Article 1210 B.C, the age of puberty is 15 full lunar years for men and 9 full lunar years for women. Therefore, in the implementation of definite punishment, it is also necessary that the thief has reached the legal maturity, and otherwise, the definite punishment will not apply to him. (Habibzadeh, 2010). It means that the thief must be an adult and the first

condition is to be an adult, so if a child steals, he will be punished (Yazdi, 2010). Shahid Aval says in this regard: The ruling of cutting the hand is implemented in the case of adult theft of the amulet where there is no quasi-property involved and a quarter of a dinar or its value is secretly stolen and the child is not stolen from the father and food is not stolen in a year of famine (Shahid Sani, 1410 AH).

- **Intellect:** Another condition for the definite punishment of theft is intellectual; So, the crazy hand is not cut off, but if it is repeated, he will be punished. This is the famous opinion of the jurists, who have given three reasons for it: 1. The principle is that there is no definite punishment except where it is proven by a Shariah reason. 2. The hadith of Rafe, "Rafe Al-Ghulam An Al-Majnun Hata Yafigh" also indicates the condition of reason. 3. The consensus that Saheb Jawaher says: We did not find any conflicting opinion regarding the requirement of reason to enforce the definite punishment of theft. Ayatollah Khomeini says: If a madman steals, his hand will not be cut off. In spite of the fact that the definite punishment is not applied to a madman person, if he is a person of distinction, in the opinion of some jurists, he is punished in such a way that the discipline and ta'zir are effective in tormenting him and preventing him from committing a criminal act. The author of Sharia says: The hand of a madman is not cut off, but he is disciplined, even if he repeats the theft. (Heli, 1408 AH)
- **Authority:** it means that the thief steals at his own will. Therefore, if someone forces him to steal by compulsion or reluctance, he is not considered a thief or a thief, because reluctance and coercion take away his authority, and taking away authority causes the obligation to fall, so such a person is not obligated. This condition is agreed upon by Imamiyyah and Shia jurists. Therefore, the hand of someone who is malicious will not be cut off. Shahid Thani (may Allah be pleased with him) writes in this context: Another limitation for cutting off the thief's hand is discretion, and with this limitation, we seek to avoid cases where a person has been forced to steal (Shahid Thani, 1410 AH).
- **Absence of urgency:** Some jurists have stipulated the urgency of the thief and they believe that if it is not an emergency, his hand will be cut off because starvation alone and without considering the urgency and if the thief is independent does not have a role to be involved in changing the verdict (Imam Khomeini, no date).
- **Suspicion level:** Among the other conditions for the implementation of the definite punishment of theft between Shia and Sunni jurists is the lack of suspicion of ownership. Because the illusion of ownership causes suspicion and according to the principle of "Al-Hodud Todara Bal-Shobahat"; definite punishment are rejected because of suspicions, and cutting off a hand is one of the examples of definite punishments, so if someone thinks that he is the owner of the property and takes it, then it turns out that he is not the owner, then the definite punishment does not apply. (Shahid Thani, 1413 AH). Imam Khomeini (may Allah be pleased with him) says: This is one of the examples of ignorance and subjective doubt, and as a result, its ruling is the same as the ruling of objective doubt. In the case of subjective doubts, the ruling is usually to remove the responsibility (Imam Khomeini "Ra").

In Article 120 of the Islamic Penal Code, the rule of *Daraa* is stated: whenever the occurrence of a crime or some of its conditions or any of the conditions of criminal responsibility is suspected or doubted and no evidence is found to negate it, it is not proven according to the crime or the said conditions that a general rule applies to all definite punishment.

- **The thief is not a father or grandfather:** the stolen property does not belong to the thief's son. Therefore, if a father steals the property of his child or a master steals the property of his servant, even if he is student, his hand should not be cut off, but on the contrary, if the child steals the property of his father or mother, the definite punishment will be valid, and if the servant steals the property of his master, there is a difference in the implementation of the punishment (Dasgheib, no date).

2-7-2 Terms of stolen property

- **Reffraction:** reffraction is a place where property is kept for the purpose of keeping it, and thief raptures an amulet means: he raptures the place of keeping the property alone or in partnership with another, so if the other person destroys it and he then steals the property, the hand is not cut. In Article 268 of the Islamic Penal Code, the Islamic legislator has accepted amulets and rapture as conditions of limited theft, and in Article 269, he defines amulets as follows: An amulet is a suitable place where property is traditionally protected from theft. The place of amulet is different according to different properties and the amulet of anything depends on the customs and habits of people, sometimes something is a amulet at one time and not at another time. It can be seen that the Prophet, peace and blessings of God be upon him, forbade the punishment of cutting off for someone who steals a sheep from the pasture, but if he steals it from the pen, which is an amulet, his punishment is cut off. So the amulet and its rapture are valid and the Prophet did not accept the shepherd's gaze as an amulet, perhaps because if the gaze is an amulet, it is not a secret theft, and if the gaze is not, it is not an amulet. And in paragraph 3 of Article 268, the secrecy of theft and reffraction is stated in such a way that: reffraction and theft is secret.
- **Ownership of the stolen thing:** Another condition for the definite punishment of theft is that he owns what he stole. The meaning of property being own is that the thing has value for people and they try to maintain it. Therefore, if someone steals wine, pork, impure nobles, and the skin of a dead animal, his hand will not be cut off, because these have no value among Muslims.
- **Reaching the quorum:** Another condition is that the stolen property reaches the quorum prescribed by Shari'ah, and if the stolen property is less than a quarter of a pure gold dinar in the common coin that is traded with, in this assumption, hand is not cut. According to the stronger word, it doesn't matter if the stolen property is the quarter dinar or its price. (Shahid Sani, 1413 AH).
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2-8 Falling of the definite punishment of theft in jurisprudence:

The definite punishment of theft in jurisprudence and law is waived according to conditions, but the thief must deny the stolen property, because the stolen property is the right of the people and it is not waived unless the owner of the property waives his right. The definite punishment of theft is reduced due to the thief's repentance before it is proven before the ruler of Sharia who has been appealed to; And if he repents after the rebellion, it will not be fell. And if he repents after confessing to the ruler twice, then there is disagreement between the decision of the Imam to perform the punishment and pardoning, and the protection for other than the original Imam is to abandon the performing of the punishment, due to the doubt arising from the tradition that a congregation have acted on it. (Bahjat, 2005) So the thief who, after being oppressed, regretted the ugly deed he had done and repented and returned to God and reformed himself and made himself worthy, "he repented with purity of intention and purity of heart and returned the property he stole bring him back" God will accept his repentance and forgive him, his hand will not be cut off and he will not be tormented in the hereafter if his repentance was before he was caught, and if he repents after they caught him, his hand will be cut off and in the hereafter he will not be punished because God is forgiving and merciful to sinners. This verse was revealed about Tomah bin Habira when he stole a piece of armor, **فَمَنْ تَابَ مِنْ بَعْدِ ظُلْمِهِ وَأَصْلَحَ**

Abdullah bin Umar says that a woman had committed theft and cut her right hand during the time of the Messenger of God, peace be upon him, then this woman came to the Prophet and said, O Messenger of God, is there any repentance for me? Then this verse was revealed. Repentance is not accepted after it is proven by the judge because of the sin and the definite punishment is applied. However, if the repentance is due to confession after the theft is proven, there is a difference in whether the benevolent ruler is between pardon and enforcement of the definite punishment or the enforcement of the definite punishment is determined. (Golpayegani, 1412 AD)

2-9 Ta'ziri thefts and its punishment in Islamic jurisprudence

- **Embezzlement:** There are different opinions on the concept of embezzlement. Some jurists, including Shhid Thani (God bless him and grant him peace), considered embezzlement on its literal meaning and say: Stealing another's property secretly and without reffractin is embezzlement, but if it is combined with reffractin, it is called theft. Embezzlement in jurisprudence is stealing money from a place other than amulets secretly (Abazeri Fumshi, 2013).
- **Estelab:** Estlab comes from the root of ``salb'' which means to gouge, to take property by force and openly, to loot, grab and run away. Shahid Thani (1403 AH) says: The one, who steals property openly and runs away, while he is not a combatant, is a thief. Sahib Jawahar says in the definition of Estelab: Stealing property and running away, without a weapon. (Najafi, 1981).
- **Kidnapping:** It comes from the root of khataf, which means sudden abduction with force and looting of property. Kidnapping actually means snatching, in which the perpetrator is

quick in his action and takes advantage of the negligence of the lost property and takes his property (Habibzadeh, 2010).

- **Nahab:** It means looting property by force. Its difference from theft is that it is public and force and domination are necessary for its realization, but in theft, concealment and absence of force and domination are a condition. In any case, the punishment of Nahab is discretionary punishment.
- **Fraud:** Another financial crime for which punishment is prescribed in jurisprudence is fraud. Sheikh Tusi says that anyone who encroaches on people's property by resorting to trickery, deception, false books, testimonials, false writings, etc., must be disciplined and punished, and all the property taken must be returned and it is appropriate for the sultan to make him known to the people with punishment so that others do not commit such an act. (Tusi, 1974).
- **Munabbij:** In the word Banj or Bang is a plant that destroys the senses and reason and is a sleep-inducing agent, and Muraqid means a sleeping medicine. Shid Thani says in Lamea: If an anesthetic or sleeping medicine is given to someone and the person who eats it is harmed, he is a surety and will be punished.
- **Tarrari:** Tarrar is a person who steals money from someone's pocket and clothes with impunity, and due to the existence of circumstances, the sentence of theft does not apply in this case. There are some hadiths in the Vasaal Al-Shia that indicate that the hand of a tarrar is not cut off, but it is the opinion of Imam is discretionary punishment, peace be upon him, and the document of this ruling is the following narration: On the one's hand who removes the dirhams from clothes should be cut off. (Namaki, 2013).
- **Betrayal of trust:** in words, betrayal of trust means: use of the entrusted property by the trustee in a way that is not intended by the owner of the property. (Jaafari Langroudi, 1995) But in the term, it is: committing an intentional criminal behavior contrary to trustworthiness on the part of the trustee towards the property, objects and documents that were entrusted to him for one of the legal reasons or were ordered to be entrusted, and it was supposed to be returned, but the trustee has appropriated, used, destroyed or lost it to the detriment of its owner or occupier. (Walidi, 2002)

3. Discussion and conclusion

According to Arbaa's evidences, the obligatory sentence of theft is sanctity, and its conditional sentence is the rejection of property and compensation for social effects. From the point of view of jurists, theft is divided into two categories: definite punishment and discretionary punishment. According to the verses and traditions, the sentence of definite punishment is, in the first case, amputating four toes of the right hand, in the second case, cutting off four toes of the left foot, in the third case, life imprisonment, and in the fourth case, execution, even if he has stolen in prison. The punishment of the thief in discretionary punishment thefts is according to the judge's judgment and opinion, according to the type of theft. And in the laws, different rulings

are mentioned for different types of discretionary punishment thefts. There are three opinions among the jurists regarding theft from public treasury: (1) absolutely not cutting off the hand (2) the detail between the stolen object being more than the thief's share and the excess amount being equal to the amount of cutting off the hand, in this case the hand is cut off and between the excess not reaching the quorum limit, which is not cut off in this case (3) Some scholars have stopped on the issue and have not commented.

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