

THE DISTINCTION BETWEEN ARMED ROBBERY AND MUHARABA

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In this article we try to reveal the distinction between armed robbery and muharabah based on Islamic Law and Islamic Penal Code (Figh). Therefore method descriptive analytical method we gathered and evaluated the discussions.

So we first presented a brief discussion of robbery and then we addressed the armed robbery and the related issues and addressed the criminal title of muharaba from the perspective of Islamic jurisprudence and analyzed its differences with armed robbery and finally the author concluded that there is a significant distinction between armed robbery and muharabah in terms of the constituent elements such as the material and immaterial elements, the type and amount of penalties, the origin of judgments and punishment overlap. Hence the judges must pay total attention to prevent criminal categories' confusion such as the fear, personality, the general environment of committing the crime and other issues.

Keywords: *armed robbery, crimes against public security (muharabah), electronic devices, corruption on the earth, attempt*

Introduction

Islam is a complete and comprehensive system which addresses all aspects of human life. With a comprehensive overview of the Islamic law, flexible rules of Islam, its comprehensiveness, and its enjoyment of detail and cases, this feature and comprehensiveness is seen clearly. While other religions and non-divine schools lack such features.

God the Almighty has brought everything in the Quran, so that he has not neglected any human needs and none of his servants can say: I wish it was mentioned in the Quran because God has already brought it in the Quran. In this regard Imam Sadeq (AS) mentions

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in an authentic hadith: “ما من شيء إلا وفيه كتاب وسنة” “Everything is brought in the Quran” (koleiny razi, 1375 AH, p 76) and accordingly the crimes against the public security can be mentioned which are more obvious in crimes such as armed robbery and muharabah. Accordingly we try to distinguish between armed robbery and muharabah and define them separately. Armed robbery according to the jurists is defined as banditry and brigandage and they have tried to consider the punish under titles such as muharabah and corruption on the earth so that it could be a deterrent element for the crime on the other hand armed robbery is considered as condemned crimes and the use of weapons was considered as a factor for more severe penalties such as Article 651 IPC that states:

“If the theft douse not include all limited terms but it is subject to all five following conditions the guilty is sentenced to five to twenty years in prison and up to 74 lashes” and among the conditions mentioned in this article is armed robbers but armed robbery according to the legislator is not limited to this type of robbery. The verse 33 of Surah Al Maedah has referred to muharabah because the viepoint of all Islamic jurists in the context of muharabah and corruption on the earth are derived from this verse, however some jurists consider the thieves as muharab (People who commit crimes against public security) referring to traditions from Imam Sadiq (AS). But unfortunately in the Penal Code we are faced with the development of this concept to the extent that even smugglers are known as muharab, now the researcher tries to distinguish the cases in which these concepts i.e. armed robbery and muharabah are merged and cause dubious penalties (Ameli , 1383 AH, p320).

According to some jurist armed robbery if committed on the main roads and streets is banditry; otherwise the armed robbery is among the terms of intensification of punishments the punishment of which is mentioned in Articles 651 and 652 and 654 of the IPC. In addition, due to the openness of Articles 185 and 653 of the IPC if banditry leads to insecurity the act is considered as muharabah and the committee is sentenced to one of the penalties set forth in Article 190 of the IPC and if the convicted has just taken another party's property and has not cause insecurity on the road, he is sentenced to the penalty stipulated in Article 653 (three to fifteen years in prison and 74 lashes) This is among the issues dealt with in few cases.

This is apart from the fact that the rules relating to the attempt have been subject to some fundamental changes with regard to Article 122 of the Penal Code and sometimes according to the content of this Article it seems that for all prescribed crimes can have an attempt and punishment. Although this opinion seems acceptable, it will be apparently incompatible with the principle of legality of penalties.

Based on the above discussions the author attempts to answer these questions:

How is it possible to distinguish between armed robbery and muharabah in IPC at the root of Islamic jurisprudence?

Why most armed robberies are evaluated as muharabah?

Literature

Various studies have been done on armed robbery and its analysis as muharabah including a thesis on crimes against national security in jurisprudence and Islamic Law performed by Tahere Aboli Gooki from Shahid Chamran University of Ahvaz in 2010, a thesis on crimes against social security (the government and public) with an approach based on the concepts of muharabah and corruption on the earth performed by Qodsieh Mousavi (2011), another work on muharabah and corruption on the earth with a focus on armed robbery and banditry performed by Mahdi Khodabakhshi and even another study titled the distinction between armed robbery and brigandage is conducted by Ali Farhadi (2012) in University of Shiraz. What has discussed above may convey that this study has nothing new to say but this is a quite superficial and fleeting perception because what is certain is that most of the studies performed in this area were before the Adoption of IPC 2013 which is the main cause of the distinction between new perspectives and other similar works while in the process of the present study some laws considered that were not considered in the previous works. The main reason to pay attention to these laws such as the crime of armed forces is to determine the perspective of the legislator on the issues such as muharabah that are spread in the legislative process in the absence of any order.

The definition of robbery on jurisprudence and subjective law

The analysis of any problem regardless of the definitions about it is useless because when there is no unity in the definition of something, how is it possible to find a unit sentence on it? This is the same problem considered in many issues such as ethics and the law, so first we analyze the definition applied in this area to apply our analyses by the definitions.

The word Serghat (robbery) in Farsi means taking something secretly and also means taken in secret. So one of its meanings is covered and hidden and the root "Saragha" means "covered". "Esteraghe Sam" (overhearing) means secretly listening. The Holy Quran says: "but any that gains a hearing by stealth, is pursued by a flaming fire, bright" (Jafar Langroodi, 2005, p356).

Ibn Manzur in the definition of the robber says: Arab people consider a robber as someone who comes to Haraz and takes a property that does not belong to him. Robbery is not defined in most writings on Islamic Law. However most jurists have defined it as: robbery is taking a property in secrete.

Feiz Kashani believes: robbery is taking a property in secrete (السرقة، اخذ مال الغير خفيه) (Kashani, 2008) There are questions about the definition and to answer them serious consideration would be required.

- 1) What are the conditions of taking someone else's property? Does it mean that taking a property must be such that no one could see him? Does it mean that it should be hidden on the part of the owner even though others have seen him when taking the property? Is there a third possibility?
- 2) Does the description of "secrecy" apply to all steps of process from the attempt to the end of action? Or simply sneaking to somewhere to steal something even though he is taken by the owner or someone else is enough to be considered as secrecy?
- 3) To realize the concept of theft is the "permanent possession" is enough or the attempt of taking something is enough, either the property is taken temporary and the burglar tends to give it back or he wants to own it permanently?

Legal writings have rarely focused to answer the above issues however in some cases it is possible to achieve some hints.

In Shiite religious writings when the circumstances of the theft penalty are considered the concept of "Sara" or "Khafia" (hidden) are discussed. Kashani has defined this as "Khafia" is the condition of taking which means that the concept of secrecy should apply to from the attempt to when he taken the property even though the burglar has not left the property.

Allama in "Tahrir-ol-Ahkam" (Helli, 1999) and "GHavaed-ol-Ahkam (Allamah Helli, 1992)" have considered Khafia as a condition for taking and said: *يشترط ان ياخذ سرا*

Before the Islamic Revolution in Iran there was no definition of robbery in the subjective law and given that Criminal Rules were derived from common law from the French Penal Code, robbery was divided into simple and severe robbery and the penalties were based on the penalties under the criminal law. In penal provisions after the Islamic Revolution under Article 212 of the law on penalties and retaliation enacted in 1982, robbery was defined as "robbery includes stealing someone else's property in secret". From what was said, we can conclude that an act in order to be considered as robbery requires to be hidden and here we review the concept and think whether it is related to armed robbery? If the answer is yes what happen to the secrecy? These are the questions that the legislator should answer to but as far as this study is concerned we consider robbery as taking another person's property while being armed with weapons.

Comparison between robbery and similar titles among the jurists

In the first part we mentioned that stealing someone else's property secretly is robbery and in case of the realization of all conditions the robber is subject to penalty. But if stealing is not performed secretly, other titles are considered among the jurists that are discussed below (author).

Ekhtilas (embezzlement), estelab (spoliation), ekhtetaf (grabbing)

In Mesbah al Monir it is written:

Ekhtetaf means stealing rapidly under the negligence of the owner and it is said that ekhtetaf is the same as estelab, however there is a significant difference between these two words. In estelab the speed in stealing and the negligence of the owner is not the case but it is realized by public stealing and the use of force.

Sahib Jawaher defines estelab as:

The purpose of estelab is to despoil the property and run off without the realization of muharabah using the weapon and so on. So estelab is ekhtetaf rather than muharabah (Najafi, 11981).

He continues with defining ekhtilas (embezzlement) as:

«و اما الختلس المفسر في محكي التهذيب و السرائر بالذي يباخذ المال ظاهرا من غير اتيهار سلاح او قهر فهو راجع الى المنتلب الذي سمعت الكلام فيه».

By defining these concepts we want to show that sometimes the same titles that are attributed to different types of robbery become clearer in form of armed robbery which is discussed below:

Armed robbery as a breach of trust

Given that public order and safeguard is on country's security and police forces, and they are trusted to protect the country according to law if under the crimes of the armed forces (providing any military facilities or territory and other examples) are considered as betraying the country which is the breach of trust but in the severe form. If the military and police officers involved in professional organizations such as the armed forces or the police, army, Islamic Revolution Iranian Revolutionary Guards and Basij attempt armed robbery by the guns given by the state to protect the homeland soil, their act is considered as armed robbery and breach of trust and in some cases it is also known as betraying the country and include rule of collective punishment even though the jurist believe that breach of trust is separate from armed robbery however there is a general principle in criminal law which states: a single action can have multiple offenses like praying in a confiscated property the principles of which are under debate and according to them a single action can have multiple titles.

Armed robbery as estelab crime (spoliation)

As discussed before jurists consider estelab as armed robbery in which the robber does not disturb social security and fled after stealing an example of which could be the following assumptions:

Suppose that a car is moving on a road and some motorcyclists move after it and they attempt armed robbery and escape in such case although the action is armed robbery, it is out of the realm of muharabah because the action has caused terror among the people in the car and the robber has ran off after the robbery but if the victims are a caravan or public transportation vehicles there is no reason for the lack of applying muharabah where it has caused terror.

The important issue to be considered in the analysis of armed robbery and muharabah is to always consider that the concept of terror is among people, which refers to two aspects: first the mentioned action must be fearful so that someone would be afraid of and second the subjects must be afraid which might be due to their own weaknesses which is very hard to prove and often esteemed judges do not consider these important issues when handling the claims.

Imagine armed robbery is done in one of the military bases in such case if the military officers say that we were afraid of the guns in the hands of the robbers and provided them with such facilities, the court should not consider this as muharabah because although their action has causes terror, it should not be fearsome for military men the fear among the military only reflect the weakness of the soldiers.

But if the armed robbery is done in a public place such as airport and the subjects claim that they were victims of terror, since this act is horrible, convicting the robbers as Muhareb is allowable (Goldouzian, 2012, p 21).

In general the criterion to convert armed robbery into muharabah is the fearsome action rather that the frightened people under that condition.

The material basis of armed robbery and banditry

Investigating any offense in terms of its constituent elements is analyzed under three concepts of material, immaterial and legal but

in this study only the cases that have distinguishing points are studied so we do not want to analyze all elements. Under such explanation it should be mentioned: Article 281 of IPC states: bandits, thieves and smugglers who take up arms and deprive public and roads safety are moharebs.

In relation to the above mentioned article the following cases must be analyzed:

- 1) The formal problems with Article 185 of IPC include: first of all the title of seventh section is muharabah and corruption on the earth and the legislator should express the form of armed robbery rather than describing the offenders; second, convicted robbers and bandit are two separate criminals and the plural form of verb must be used for them, third, depriving public security and the roads is terror.

The author believes that the insecurity of roads and terror must be distinguished the first one is when the theft is done and there is fear that such theft might occur again and terror refers to those who are victims of armed robbery and accordingly terror must be related to the armed robber and insecurity of roads must be related to the bandits and smugglers.

- 2) Criminal: in response to the question: who the criminal is, two assumptions should be separated. If the overall concept of armed robbery and the robbers is intended which is inevitably consistent with penalties, anyone including men and women, Muslims and non-Muslim, and foreigners can commit such crime.

If the special meaning of theft is considered, the armed robbery of the father from his son is not included under this type of crime because although robbery applied to this case, but the property of someone else does not apply here based on a hadith by Imam Sadiq (AS): you and your property are the belongings of your father (Sanani, 2008). In this case armed theft has happened but it is not considered as robbery and it is considered on the basis of the general rules and muharabah does not apply here because the fear of the son from his father is a personal matter and does not refer to the type of operation as mentioned in an example of stealing from a military location.

Motivation in armed robbery

Usually in an armed robbery a lot of motivations are involved. Although motivation plays no significant role in determining the material element of the crime, it can be considered as another form the most important of which is the motivation for financial profit, revenge and retaliation or even honorable incentives such as helping the poor. So in classifying criminal motivations in armed robbery it should be noticed that motivation against someone can be very different and despite the fact that motivation is an internal element, under some circumstances motivation can be simply discovered and this is important because it can have an effective role in exacerbating or commutation of the penalty (Habibzadeh, 1994, p32). It is crucial because in case of the proof of incentive to public terror it is possible to increase the punishment of the offender under armed robbery to muharabah (Sanei, 1393, p 312) but before taking incentive involved in the legal element of the crime it is necessary to know the proper way of achieving the motivation of the offender.

Ways to achieve the motivation of the robbers: First the life history of the person should be considered and examine his behavior and in this case the criminal and non- criminal records of the person are important.

Then terms and conditions of the robbery must be considered if someone has attempted armed robbery because of his child even if he causes terror the author strongly emphasizes that he must not be convicted of muharabah because saving a life is a necessity and here there is little difference between jihad or the war which is under command-sufficiency according to the leader because the reason is the same and the people who are forced to commit such crime should not be those who commit such crimes allegedly.

The next step is according to the confessions of the criminal during the theft and also in the court unfortunately often only the confessions of the criminal in the court are regarded and what he has said in the crime scene does not matter while they can have a significant effect on the punishment. Imagine if someone during a robbery clearly mentions that this theft is to damage a certain person and we have nothing to do with anyone else under such condition

even if someone causes terror, the court should not declare it as muharabah even if this person confesses in the court that he has committed the crime to cause terror because based on the rule of Dar (Haji Deh Abadi, 2008) the issue of punishment can be defended.

In the next step it is necessary to consider the crime scene conditions (Kalantari, 2007) and the type of weapon of choice by the robbers because it can greatly determine the motivation because for example if someone uses a piece of iron or wood on the side of the street to commit robbery would not be a muhareb certainly even if he causes terror because most people can defend against primitive weapons such as wood especially if they are a population they can defend against such a robber and under such cases the incentive to commit the crime is simple and we should not relate incentives such as standing up to the system unless the person has already declared it.

Another way to identify the motivation of the robber is to analyze his behavior with the person who has got robbed if a person has just robbed his property and has not injured him he does not deserve to be deemed as muhareb but there are cases that the robber amputates a woman's arm to rob her jewelry. Such cases can be considered as muharabah even though it is against one person because what's important is fear of the people and they will be afraid to have the same fate and they do not need to see it, even hearing such incidents can be effective.

One of the most important ways to identify the motivation of the person convicted of armed robbery is that whether the person who is robbed had financial or family issues with robber, if the robber has committed the crime for revenge, the case is out of the examples of muharabah unless the contrary is proven.

Identifying the concept of muharabah in Islamic jurisprudence and law

It is possible to understand the concept of muharabah by referring to the dictionaries and the Quran. "Mohareb" is derived by the root "Harab" and it is the antonym for "Salama" and peace. Thus, the

word is taken from a (moghtelah) fight where force and power tools are applied. According to this definition we need to distinguish between moghtelah and monazeah (conflict) which means hostility and hatred.

Zabid in Taj-ol-Aroos (Zobeidi, 2003) says:

Harab is against Salama and these two words are opposites. Thus, Qital (fight) is called Harab and according to Soheili "Harab" means bilateral shooting with arrow, throwing harpoons against each other, march with swords and wrestling...

According to the definitions it is clear that using power tools to express hostility even though it is not used in some cases such as wrestling no weapon is used.

This concept is used in several verses in the Holy Quran regardless of verse 33 Sura Maida which is the base of muharabah punishment the concept is used in verse 64 Sura Maida, 57 of Surah Anfal and 4 of Surah Mohammad (PBUH). However for a better understanding of them it is necessary to consider the context of revelation of the verses to consider the best understanding in case of muharabah commentators (Poorbaferani, 2011, Pp49-78) believe that the Verse (muharabah verse) there are some differences among the commentators about the context of revelation and mentioned three probabilities:

The first group thinks that the verse is revealed on those who believed in holy books who broke their pact and began to corruption. Ibn Jarir al-Tabari (in The Great Commentary) has mentioned Ibn Abbas. Ibn Tabari has also mentioned Zuhak in some texts that they committed robbery and banditry.

The probability is Abu Davoud and Nasaei from Ibn Abbas dynasty and they have quoted Basri and Akrame: this verse was revealed about the general infidels and did not include Muslims.

The third possibility according to most commentators, this verse was revealed when new Muslims attacked the camels carrying collected zakat, killed the riders and robbed zakat. Jurists have also accepted this quote. (Ansari, 2011, p 221).

Muharabah in the Islamic Penal Code and other laws

Muharabah penalty is not directly mentioned in Iranian law but it is mentioned in the definition of muhareb and his characteristics:

Article 183 of Islamic Penal Code in defining muhareb stipulates: "anyone who uses weapon to create fear and deprivation of liberty and security of the people is muhareb and corruptor on the earth.

Note 1 - Who uses weapon against people but does not cause fear among people is not muhareb.

Note 2 - If someone uses weapon against people under personal motivations and his act is not public is not muhareb.

Note 3 - There is no difference between the cold and firearms.

In Article 179 IPC 2013 the legislator has emphasized his former views. According to the principles of criminal law any crime needs to achieve both material and immaterial elements to be realized. In simple terms, legally, a crime occurs when an act is committed in violation of law and secondly the committer pursues a motivation following criminal acts. For the crime of muharabah the material element is to use both warm and cold weapons and the immaterial element is causing terror among the people. This is clearly seen in Article 183... (Mir Mohammad Sadeghi , 2013).

Causing psychological terror is muharabah. It means that the criminal act must be intended to frighten people and create fear. Otherwise using a weapon without an intention to frighten people is not muharabah. In fact this is true in private disputes and the act of people in private disputes even with the use of hot or cold weapons although it is a crime, it is not muharabah. The legislator states on this issue: "if someone uses his weapon with personal motivation against one or more persons and his act is not public, his is not muhareb.

The importance of the immaterial element of muharabah is that the legislator stipulates that "if someone holds a weapon against people but he fails to cause terror due to his weakness, he is not a muhareb(Ibid).

About major examples included in the scope of the whole issue referred to by jurisprudence some Articles such as 675 of IPC, Article 183 (on setting fire on building, ship and...) clause 1 of Article 678

(sabotage of installations), Article 722 of Armed Forces Offences Act, Article 9 of the ibid law (failure to comply with orders to stop the war operations), Article 17 of Armed Forces Offences Act (making surrender contract), Article 9 of fight against drugs Act (production, distribution, Export of narcotics ...) and... can be mentioned. Obviously the revelation of the verse did not intend to broaden the scope of muharabah to this extent so the question is that where does such an expansion originate from?

Differences of armed robbery and muharabah

According to the previous discussion there are some differences between these categories of crime some of which are discussed below.

The difference in terms of material basis***Material element of the crime***

In the armed robbery: First: The act of the criminal is to rob someone else's property and remove the property from his possession. Second: The subject of crime is stealing property and materiality is important especially in penal robberies. Third: the realization of the crime in the outside world. It means that the material element of the crime which us to rob someone else's property and remove the property from his possession should be realized in the outside world. For example taking someone else's property is the criminal act of theft. Fourth: using the weapon at the time of stealing.

However, according to the definition contained in the Penal Code, the elements required for the realization of muharabah and corruption on the earth include:

A - Crime commitment

Legislator in the IPC has used the term "anyone". So, the person or groups known as muharab and corruptors on the earth have criminal liability. Then:

First- The rule of muharab and corruptors on the earth does not apply to the "watchman" (Tabatabai , 1986, p354). Second- The rule of muharab and corruptors on the earth is not fixed for "the

participant” while the rule of armed robbers is fixed for the assistants and it just less severe (Feiz, 1989).

Third- according to the rule “of writing “(Rafol Ghalam) muharabah and corruption on the earth does not apply to minors and insane while it applies in armed robbery but it differs in terms of the quality of its implementation and the amount.

Fourth- This rule is not fixed against someone who takes his weapon or fills it to frighten muharab and corruptor on the earth or defend himself against someone with malicious intent because here the purpose is to remove corruption rather than causing corruption. However such case does not exist in armed robbery (al-Tusi,, 1972, p 47).

B – Publicity

The definition of muharab and corruptor on the earth suggests that the threat of muharab and corruptor on the earth must have a public aspect. That is because the terms “people” mentioned in the Article and “corruption on the earth” communicate the publicity of the crime. If the threat is against one or some persons muharabah and corruption on the earth will not be realized (Ameli , 1383 AH, p98). But in the case of armed robbery the criterion is not the nature of attempt to commit robbery so if the theft is committed even at night and in the person’s home it is subject to armed robbery while this is not true in case of muharabah (Shahid Sani, 1995, p384) .

C- Taking weapon

For the realization of muharabah and corruption on the earth not only the person should use words to threat people but also he should take a weapon (Razini , 1991,p 16) . However in the case of armed robbery taking weapons is not a criterion determining criminal title but possession of weapons by one or more members of a group that attempted to steal is enough for inclusion as armed robbery.

D- Crime scene

More Sunni scholars disagree on the material element of muharabah and corruption on the earth in the urban and rural areas and Malik

in defining the crime as muharabah and corruption on the earth believes that since the oppressed has a chance to cry in the urban area so the oppressor is not a muharab and corruptor on the earth (Mohammad Hasan, 1991, p 152). In addition some great jurists consider the execution of the sentence subject to the commitment of the crime in Darol Islam and argued that if the the oppressor frightens the Muslims he is punishable under the sentence of muharab and corruptor on the earth. However it can be concluded from the reasons that there is no difference between Darol Islam and Darol Harab and the purpose is frightening anyone scaring of whom is haram and there is no difference between Darol Islam and Darol Harab (Feiz, 1989, p 99).

While in the armed robbery the criterion is to commit robbery so the opposite rule has not been issued yet, however, generally, if the armed robbery happens on the roads and streets, it is a clear example of muharabah by armed robbery which is subject to both punishments and if one of them cannot be applied the other penalty is applied (Ibid).

E- Depriving the security and safety of people

In the realization of muharabah and corruption on the earth it enough that someone takes the gun to cause terror, insecurity and lack of freedom among people. However in armed robbery depriving the security is not the criterion and the realization of theft is enough to satisfy the material element (Aljby al-Ameli, 1403AH, p 386).

The difference in terms of general basis

Legal element: The legal element of armed robbery is a single article entitled legislation to toughen penalties adopted on armed robbery enacted in December 26th , 1959 and also the penalties provided in Chapter XXI of the Penal Code in 20013 while the legal element of muharabah is Article 282 IPC.

Determination of the amount and type of penalty

The penalty in armed robbery is a maximum of 20 years in prison but the minimum penalty is 2 years in prison but in muharabah it

should be mentioned that it is fixed and there is no minimum for it including: execution, rupture, deprivation or exile and it is in contrast with armed robbery because on the one had the nature of the issue indicates that prescribed punishment is heavier than discretionary punishment and on the other hand 15 years in prison is subject to debate when compared with 1 year in exile.

In terms of the type of penalties it should be said that armed robbery has discretionary punishment while the penalties for muharabah are prescribed punishments and this breakdown is very effective in the application of rules, punishment and appeal.

Factors of abolition of the punishment

In muharabah if the muharab repents his actions before being arrested by government forces, he will be subject to abolition of the punishment while in armed robbery repentance can lead to commutation of the sentence and does not cause abolition of the punishment. However the abolition of the punishment can be realized by working with government to deal with crime but since they are too close to each other they are not discussed here.

Scope of criminal cases

The truth is that when we review the penal code we find that the scope of armed robbery is much broader than armed robbery and these concepts have more limited aspects among the old and contemporary jurists but the fact that there is difference between these two concepts....

It should be noted that unfortunately the legislator has failed to include this distinction in the text of law for the reasons he is more aware of and this has caused the confusion between criminal titles and in many cases people are sentenced to punishments they do not deserve. This issue becomes more evident in addressing the discretionary crimes such as corruption on the earth. So we should not consider various cases of this type to have jurisdiction roots but they are among emerging issues that were assigned according to the discretion of the legislator in law and has no legal precedence.

Punishment overlap

This means that some areas of armed robbery can be considered as muharabah under certain conditions in which case they say muharabah has occurred under armed robbery but the opposite is not true (Aljby al-Ameli, 1403AH, p 384).

Conclusion

Armed robbery as a crime against public safety is among the cases that have been subject to criminalization even before the development of Islam and Islam has approved it, however in Islamic period when the crime is mixed with fear and terror is identified as muharabah and corruption on the earth. The fact that where such a wrong process started is rooted in different understandings of the jurists from tradition and Hadith and this has caused us to be faced with a limitless scope of criminal categories in the Penal Code in 2013. So first we have to offer a clear definition of muharabah and then define our principles and criteria then the criminal examples are manifested and the reckless development of criminal examples without religious support is prevented and we hope that honorable judges try to distinguish some indicators that are mentioned here and prevent the confusion of rules and inappropriate sentences.

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