

# **تحليل عدم جواز بتر يد السارق المبتورة بمقاربة أهداف العقوبات الحديثة**

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## **Exploring unauthorized implanting thief's amputated hand by an approach on Hadd Punishments**

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### المستخلص

نظراً للتقدم الكبير في المعرفة الطبية وإمكانية زرع يد اللص المبتورة ، ففى طرح سؤال هو : هل يجوز للجاني أن يعيد زراعة يده المبتورة بعد قضاء العقوبة ؟  
رداً على هذا السؤال ، طرح الفقهاء وعلماء القانون نظريتان عامتان هما "الشرعية" و "عدم شرعية البتر بسبب اجراء حد السرقة".  
استندت فرضية الدراسة الحالية إلى تحريم الزرع لضعف وثائق القائلين بالزرع . ولإثبات هذه الفرضية ، أثناء مناقشة الحجج القرآنية والروائية ، حظيت الأغراض الثلاثة للعقوبات تحت عناوين "التخويف" و "التصحيح" و "تعطيل الجاني" باهتمام خاص.  
وفقاً لنتائج هذه الدراسة ، بعد بتر اللص ، بالإضافة إلى التعذيب قصير المدى ومعاينة اللص ، لتحقيق أهداف العقوبة الثلاثة ، من الضروري منع إعادة ارتباطها باللس ، بالإضافة إلى تصحيحه ومنعه عن ارتكاب الجريمة مرة أخرى ، يجب عليه أيضاً ردع المجرمين المحتملين.  
**الكلمات المفتاحية :** حد السرقة ، عدم وجود سلطة الزرع ، بتر يد السارق ، تعذيب المجرم ، تدهور أوضاع المجرم والمجتمع .

### Abstract

Considering marvelous achievement in medical science and the possibility of implanting thief's amputated hand, now this question is raised that upon enduring Hadd punishment, is he/she authorized to implant his/her amputated hand ?

In answering to this question, two general theories are raised by jurists as "legitimacy" and "illegitimacy" of implanting amputated hand due to implementing theft punishment .

The hypothesis of the present study is established on the forbiddance of such implantation due to the weak evidences by implantation permit supporters. To prove this hypothesis, Holy Quran and narrative arguments as well as triple goals of punishments including "deterioration", "modification" and "criminal's debilitation" are particularly considered .

Based on research findings, upon amputating thief's hand, it is necessary to prevent re-implantation for thief's short term pain, to realize triple goals of punishment and to debilitate him/her from recommitting the crime and to deteriorate other criminals potentially .

**Key words :** theft Hadd , lack of implantation authority , thief's amputated hand , criminal's tormenting , deterioration for criminal and society.

## Introduction

A challenging issue in Islamic penal codes discussed for a long time among jurists and other Islamic penal code practitioners is the legitimacy or illegitimacy of implanting thief's amputated organ due to executing theft penalty (Hadd). It is now seen as a serious challenge in modern time due to marvelous growth in medical sciences which has made it possible to implant such organ more than ever.

Although there is no doubt and suspicious on executing the principle of amputating thief's hand in assuming fourteen conditions mentioned in article 268 of Islamic Penal Code (2013), there are disputes on the fact that whether, upon enduring theft punishment, the thief is legally and religiously authorized for re-implantation by using medical facilities or not.

The provenance of this dispute backs to the fact that is the goal of theft punishment is thief's short term torment? Or his hand re – implantation should be prevented so that in addition to his/her personal modification and debilitation, he/she is seen as an explicit symbol of learning for potential criminals and to nip the impetus of crime commission by them in the bud.

Present paper attempts to have a look at jurisprudential and legal sources and answer above question while referring to opinions and verdicts by jurists and examining their arguments.

## The opinions of jurists on implantation of amputated organ to penalized thief

Jurisprudential researches suggest that jurist's disputes on determining the scope of theft punishment and the fact that it means only to amputate hand from body or the survival of amputated hand is also considered as theft punishment has caused the emergence of two general theories or legitimacy/illegitimacy of implanting amputated organ upon executing theft punishment. Some jurists believe such implantation as legitimate while others consider it as illegitimate. Below, while both theories are clarified, their basics and arguments and then selected opinion are all mentioned.

## Theory 1: permission to implant thief's amputated hand

An important insight in this regard is the permission to implant thief's amputated hand upon punishment (Hadd). The main foundation of this theory is that the necessary amount in theft punishment and other penalties which yield to amputation is only to amputate the hand and to

separate the organ from the body so that there remains no impact by implantation. Such milestone can be realized by executing the punishment and organ amputation. Thus, re-implantation of thief's amputated organ is not in contrary to punishment execution and is permissible<sup>1</sup>.

Although despite of broad contemplations in jurisprudential sources, the author could not achieve the opinions by precedent jurists in this regard, among the supporters of such insight among antecedent jurists, one can refer to Seyed Abdul-Ali Sabzaevari<sup>2</sup>, Mohammad Ali Araki<sup>3</sup>, Safi Golpayegani<sup>4</sup>, Mohammad Taghi Behjat<sup>5</sup>, Seyed Mahmood Hashemi Shahrudi<sup>6</sup>, Seyed Abdulkareem Moosavi Ardabili<sup>7</sup> and Mohammad Sadeghi Tehrani<sup>8</sup>.

### 1. Evidences for theory 1

The proponents of the first theory, have referred to below reasons to prove and foster their insights.

#### 1. Unnamed Narrative

«رَوِيَ أَنَّ أَسْوَدًا دَخَلَ عَلَى عَلِيٍّ (ع) فَقَالَ يَا أَمِيرَ الْمُؤْمِنِينَ إِنِّي سَرَقْتُ فَطَهَّرَنِي فَقَالَ لَعَلَّكَ سَرَقْتَ مِنْ غَيْرِ حَرَزٍ وَنَحَى رَأْسَهُ عَنْهُ فَقَالَ يَا أَمِيرَ الْمُؤْمِنِينَ سَرَقْتُ مِنْ حَرَزٍ فَطَهَّرَنِي فَقَالَ عَ لَعَلَّكَ سَرَقْتَ غَيْرَ نَصَابٍ وَنَحَى رَأْسَهُ عَنْهُ فَقَالَ يَا أَمِيرَ الْمُؤْمِنِينَ سَرَقْتُ نَصَابًا فَلَمَّا أَقْرَأْتُ ثَلَاثَ مَرَّاتٍ قَطَعَهُ أَمِيرُ الْمُؤْمِنِينَ عَ فَذَهَبَ وَجَعَلَ يَقُولُ فِي الطَّرِيقِ قَطَعَنِي أَمِيرُ الْمُؤْمِنِينَ وَ إِمَامُ الْمُتَّقِينَ وَ قَائِدُ الْغُرِّ الْمُحْجَلِينَ وَ يَعْسُوبُ الدِّينِ وَ سَيِّدُ الْوَصِيِّينَ وَ جَعَلَ يَمْدَحُهُ فَسَمِعَ ذَلِكَ مِنْهُ الْحَسَنُ وَ الْحُسَيْنُ عَ وَ قَدْ اسْتَقْبَلَاهُ فَدَخَلَا عَلَى أَمِيرِ الْمُؤْمِنِينَ (عَلَيْهِ السَّلَامُ) وَ قَالَا رَأَيْنَا أَسْوَدًا يَمْدَحُكَ فِي الطَّرِيقِ فَبَعَثَ أَمِيرُ الْمُؤْمِنِينَ عَ مِنْ أَعَادِهِ إِلَى عِنْدِهِ فَقَالَ عَ قَطَعْتُكَ وَ أَنْتَ تَمْدَحُنِي فَقَالَ يَا أَمِيرَ الْمُؤْمِنِينَ إِنَّكَ طَهَّرْتَنِي وَ إِنْ حَبَبَكَ قَدْ خَالَطَ لَحْمِي وَ عَظْمِي فَلَوْ قَطَعْتَنِي إِرْبًا إِرْبًا لَمَّا ذَهَبَ حَبَبُكَ مِنْ قَلْبِي فَدَعَا لَهُ أَمِيرُ الْمُؤْمِنِينَ عَ وَ وَضَعَ الْمَقْطُوعَ إِلَى مَوْضِعِهِ فَصَحَّ وَ صَلَحَ كَمَا كَانَ».

#### The quality of argument :

According to this narrative, Imam Ali (PBUH) amputated the hand of a man called Asvad due to his confess to burglary and implanted his hand again. Imam Ali's conduct is the best reason on the fact that there is no barrier to implant thief's amputated hand.

#### Answer :

This is a deficient argument for two reasons:

1. **Evidential weakness** : this narrative is weak since it is unnamed.
2. **Reasoning weakness** : this narrative is weak in terms of reasons since it seems that it is an implication of “proposition in event” and one cannot extract an overall verdict on the permission of implanting amputated hand and it cannot be extended to similar cases.

1.2. *Human's ownership to his organs*

The quality of argument :

According to such argument :

Firstly, human is the owner of his organs .

Secondly, human has the right to re-implant his amputated organ by using existing medical facilities<sup>9</sup>.

Answer :

Firstly, human's ownership toward his organs so that he/she can have a possessive ownership toward them is an unproved claim. To the same reason, some connoisseurs have used the term “entitlement relationship”<sup>10</sup> to clarify the relation between human and his/her organs; it means that organs are provided to human as divine gifts and custody so that he/she uses them rightly and rationally.

As a contemporary jurist, Ayatollah Yazdi asserts in this regard:

“We believe that human is not a de fact owner toward his organs; rather, the Divinity has provided him/her by such organs to use them in a legitimate manner. To the same reason, a healthy human has no right to donate or sell his, for instance, heart to others since it is a kind of suicide and is not certainly legitimate.”<sup>11</sup>

As another contemporary jurist, Ayatollah Javadi Amoli explicitly rejects human's possessive ownership to his organs: “Human is not his/her owner to interfere as he/she likes.”<sup>12</sup>

Secondly, if we accept ownership relationship, it should be noted that by committing a crime which deserved punishment, the thief has terminated his ownership relationship between him/her and amputated organ. Hence, upon punishment, he/she is not owner of amputated organ so that he/she can be permitted to implant it again.

Thirdly, by assuming the continuance of ownership relationship between human and amputated hand upon punishment, one should say that by committing a crime which deserved punishment, the thief has proved the lack of his/her proficiency on continuance of using this important organ and as a result, he/she has no right for re – implantation upon punishment.

*1.3. Associating aggression forbiddance toward thief before his hand amputation*

Aggression to thief's life before committing Hadd theft is forbidden. By committing Hadd theft, it is only permissible to amputate his hand while its surplus where he cannot be implanted upon enduring theft punishment, it is associated with aggression forbiddance before theft commission<sup>13</sup>.

*1.4. No special reason on the necessity of amputated organ's survival*

Extant evidences on the rate and quality of theft punishment only imply "thief's hand amputation". Additionally, however, there is no reason for amputated organ's survival. To clarify such argument and permitting thief's hand implantation, Ayatollah Araki asserts: "there is no reason for amputation more than determined amount and also no reason for amputated organ's survival."<sup>14</sup>

*1.5. Suffering, the only goal of implementing theft punishment*

One can perceive the words by some jurists that the main trait of punishment is criminal's pain suffering and rack. In some jurisprudential books, "the reason of punishment is pain suffering" refers to the same goal. On this basis, the aim of implementing punishments including theft punishment is thief's pain suffering and nothing else.

Seyed Abdul – Ali Sabzevari the author of "Mahzab Al-Ahkam" is, inter alia, a jurist who has referred to this argument :

«يجوز للسارق بعد اجراء الحد و القطع أن يعىد المقطوع و ي لصقه فى محل  
بواسطة الطب الحدى... لان المناط فى الحدود مطلقا انما هو ذوق ألم الحد لاجل  
الارتداع»

"Upon enduring the punishment and his hand's amputation, the thief can implant it by using sophisticated medical facilities; since the aim of punishment is criminal's pain suffering and rack by which he refuses re-commissioning."<sup>15</sup>

Another connoisseur expounds the reason of permitting thief's hand implantation as: "the main aim of punishment is reverberation which is realized by its implementation. Thus, upon amputating thief's hand amputation, there is no problem in its re-implantation. Besides, there is no difference in this regard between punished and unpunished people."<sup>16</sup>

All these analyses indicate that the main reason of thief's hand amputation is criminal's pain suffering and rack event though this goal

consequently realizes the secondary goal namely personal deterioration. In other words, rational analysis and practical experience of punishment and its impact on criminal and society indicate that the main goal of legislator has been criminal's pain suffering and rack so that he experiences the taste of punishment and feels its painfulness by his body and spirit. Experiencing the taste of punishment (pain) would cause that criminal and the community are deteriorated from crime commission and are less interested in re-committing the crime.

#### 1.6. Principle of permission

The issue of thief's hand amputation is an issue to which no main reason is mentioned for its forbiddance. Hence, in accordance to this verse

(هُوَ الَّذِي خَلَقَ لَكُمْ مَا فِي الْأَرْضِ جَمِيعًا) <sup>١٧</sup> «كُلُّ شَيْءٍ هُوَ لَكَ حَلَالٌ حَتَّى تَعْلَمَ أَنَّهُ حَرَامٌ بِعَيْنِهِ»

it is subjected to principle of permission.<sup>18</sup>

In other words, divine words are realized by thief's hand amputation; after punishment, however, there is no theological reason for proving or disproving thief's hand implantation. By lack of theological reasons, it turns to jurisprudential reasons such as principle of permission. Thus, referring to this practical principle, it is permissible to implant thief's hand to himself.

## 2. Criticisms by permission proponents

In responding to reasons 3, 4, 4 and 6, one can say that theft punishment does not pursue a single and expanded goal to achieve thief's rack; rather, this kind of punishment has carious longitudinal goals. Its initial goal is thief's painfulness and rack which can be realized by his hand amputation. The secondary goal, however, is special and general deterioration and it is realized when the thief has no right to re-implant his amputated hand.

Additionally, the main reason by implantation permission proponents was that the main reason of theft punishment is thief's pain and rack. To the same reason, upon suffering the pain, there is no reason to forbid amputated organ implantation. In refusing such argument, implantation forbiddance proponents say:

First, the main goal by lawmaker on posing theft punishment, is warning for others not thief's painfulness. To the same reason, some

jurists have considered using anesthetic drugs to reduce pains from amputation as permissible<sup>19</sup>.

Second: assuming the necessity of experiencing the bitter taste of punishment by theft, its realization is not just depended on posing pain on his body; rather, it can be done by rack and torture on his spirit. On this basis, by assuming the necessity of posing pain of thief's body, one can refer to "principle of inexistence", one can abnegate physical pain. Likewise, by limiting to spiritual pain of thief, one can use anesthetic drugs to mitigate pains from amputation<sup>20</sup>.

Since the arguments by the proponents of thief's amputated hand re-implantation are inadequate, many jurists have accepted the theory on lack of permission as discussed below.

### **The second theory : lack of permission on thief's amputated hand re-implantation**

The second well – known theory in this regard, is thief's amputated hand re-implantation illegitimacy. On this basis, the necessary amount in theft punishment is not just to amputate organ; rather, its impact should be remained on criminal's body to be a lesson for others in addition to disable punished person.

Explorations in jurisprudential resources suggest that prior jurists have not stated in this regard but since many Imamieh jurists have supported the lack of permission for implantation concerning the issue of retaliation due to dead body and of amputated organ, one can infer that thief's amputated organ supports lack of permission<sup>21</sup>.

Among contemporary jurists, Ayatollah Fazel Lankarani<sup>22</sup>, Montazeri<sup>23</sup>, Makarem Shirazi<sup>24</sup>, Seyed Mohammad Sadegh Ruhani<sup>25</sup>, Sanei<sup>26</sup>, Seyed Yusuf Tabrizi<sup>27</sup> and Abdullah Khanghi<sup>28</sup> supported lack of implantation permission.

### **Evidences for the second theory**

The proponents of the second theory have provided some reasons to prove their attitude as below:

#### **1. Extending the verdict on lack of permission for amputated organ via retaliation to amputated organ by punishment implementation**

Concerning retaliation, if the criminal implants amputated ear, the victim can demand for its amputation<sup>29</sup>. The basis of this fatwa is below narrative:



«أَنَّ رَجُلًا قَطَعَ مِنْ بَعْضِ أُذُنِ رَجُلٍ شَيْئًا فَرَفَعَ ذَلِكَ إِلَى عَلِيٍّ (عليه السلام) فَأَقَادَهُ فَأَخَذَ الْآخَرَ مَا قَطَعَ مِنْ أُذُنِهِ فَرَدَّهُ عَلَى أُذُنِهِ بِدَمِهِ فَالْتَحَمَتْ وَبَرَأَتْ فَعَادَ الْآخَرُ إِلَى عَلِيٍّ (عليه السلام) فَاسْتَقَادَهُ - فَأَمَرَ بِهَا فَقُطِعَتْ ثَانِيَةً وَ أَمَرَ بِهَا فَدُفِنَتْ وَ قَالَ (عليه السلام) إِنَّمَا يَكُونُ الْقِصَاصُ مِنْ أَجْلِ الشَّيْنِ.»<sup>30</sup>

This narrative suggests a penal case by which Imam Ali (PBUH) convicted someone to retaliation who had cut a part of someone's ear. Immediately, the criminal implanted the amputated organ. This time, the victim went to Imam Ali and complained and asked for re – retaliation. Imam amputated it for the second time and said that retaliation aims at deficiency realization.

It is interpreted in jurisprudential resources in two manners:

Interpretation 1: it is likely that the term “فَأَخَذَ الْآخَرَ” means victim and “فَعَادَ الْآخَرَ” means criminal. On this basis, victim has implanted the part of his ear and criminal who has lost his ear by retaliation has asked for victim's retaliation. Such possibility is too far since it is only practical to implant an amputated organ which is bleeding and in a very short time after amputation. So it is too improbable that upon criminal's retaliation, victim can be in a position to implant the part of his amputated ear.

Interpretation 2: the second interpretation which seems stronger since it is compatible with narrative and lacks the problems in interpretation 1 is that upon retaliation, victim has implanted his own amputated organ rapidly and victim has asked for the second retaliation and Imam Ali retaliated him for the second time<sup>31</sup>.

#### The quality of argument :

First, re-retaliation of implanted organ suggests that the aim of retaliation is continuance of impact and the criminal has no right to eliminate such impact through re – implantation.

Second: although this narrative is on retaliation, one can extend it to punishment by annulment of characteristic. As a result, the goal of theft punishment is continuance of impact and upon amputation, thief has no right for re – implantation.

#### Argument critique :

Two critiques are mentioned on this narrative:

##### 1. Evidential deficit

Some believe that the evidences for this narrative are too weak<sup>32</sup>. It seems that the reason is the attendance of “Ghyas Ibn Klub” in evidences

since by Sheikh Toosi's claim. His narratives are referred by Imamieh jurists if they face with no opponent<sup>33</sup>.

**Answer :** it seems that mentioned deficit is not seen as a serious barrier on referring to this narrative since its implication is executed rightly and its evidential weaknesses are compensated<sup>34</sup>.

Perhaps, it is for the same reason that some jurists have interpreted it as "valid<sup>35</sup>" and other as "well". Some authors have considered as contention and plea<sup>36</sup>.

## 2. Argument deficit

The narrative is on retaliation. Characteristic annulment and extending the verdict from retaliation to punishment is difficult.<sup>37</sup>

It seems that this problem is remained and cannot be justified. On this basis, this narrative is not adequate to prove lack of permission for implantation and one should refer to other evidences for its improvement.

### 2.1. Dead body and uncleanness of amputated organ

#### The quality of argument :

Since thief's hand is deemed as dead body and unclean upon implementing thief punishment and being separated from his body, some jurists believe that it not permitted to implant it and in their analyses, they have told that such implantation would yield to carry unclean organ. Carrying unclean organ would revoke those religious acts conditioned to clean body such as praying. As a result, such implantation is not permissible in terms of assignment<sup>38</sup>. In the case of implantation, the thief should amputate such organ since his body is now unclean and if not obeyed, some jurists believe that this is a task by religious ruler<sup>39</sup>.

#### Answer :

The abovementioned reason can be a document on forbidding the implantation of amputated hand by which the soul cannot be returned to amputated hand. If we assume that the soul is revived, amputated organ is getting out of a dead body and is considered as a part of a live organ and there is no barrier for its implantation.

### 3.1. Considering triple goals of punishments especially Hadd to prove lack of permission for thief's hand implantation

The most important reason for lack of permission for thief's hand implantation upon theft punishment is to consider triple goals in punishments especially Hadd ones. For explanation. One can say:

By studying jurists' words on the goals of punishments, it becomes clear that Hadd punishments pursue various goals. Jurists have interpreted such goals by different phrases.

By " المقصود من الحد الزجر " , some jurists believe that the goal of Hadd punishments is only pain (rack).<sup>40</sup> Another group have interpreted by " المقصود من الحد الردع " and believe that its goals is deterioration<sup>41</sup>. Other has interpreted by " القصد من الجلد الزجر و الردع " <sup>42</sup>or similar ones<sup>43</sup> and believe that the goal is pain and rack.

In conclusion, one can say that although inner component and trait of punishment including Hadd is pain, embarrassment and rack, in Islamic penal law, imposing punishment including Hadd is not only a tool to rack the criminal and experiencing bitter taste of punishment but also in a deeper glance, it purview three goals including deterioration of criminal and community, modifying the criminal and community and criminal's disability. These three goals are cross sectional namely all of them are the cause of criminal's rack. Racking the criminal would cause the he/she experience bitter taste of punishment and his/her deterioration so that the bitter memory of punishment would be always remembered by him.

Criminal rack would modify him since upon punishment, he would find the ugly aspect of his committed crime and his punished spirit would feel hate. Such feeling would modify him mentally and spiritually. Rack would also yield to his inability.

The goal of criminal inability is a complementary to criminal's modification and deterioration goals and is seen under circumstances where the goal of criminal's modification and deterioration is not adequate and, as a result, law is forced to pose punishments to protect the society against recommitting the crimes and abdicating permanent or temporary ability of crime commission<sup>44</sup>. Thus the triangle of deterioration, modification and inability of criminal are the causes of criminal rack and the reason of his deterioration. Criminal deterioration which is the cause of criminal rack and experiencing bitter taste of punishment creates a relatively sustainable mode in criminal's mind which prevents his crime recommission. His modification which is also a cause of rack, would create a feeling of hate in criminal which prevents his crime recommission. His inability which is also a cause of rack, would abdicate him of strong or weak criminality which prevents his crime recommission.

On this basis, thief's hand amputation would cause his short term rack while for achieving three goals of punishment by such rack, it is necessary to prevent re – implantation of thief's hand to make him modified and unable and other can get lessons by observing his catastrophic conditions.

**Evidences for the third argument :**

There is also a third reason for not permitting thief's hand implantation which enjoys a Holy Quran and narrative supports and evidences as below:

**1. Holy Quran**

«وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا نَكَالًا مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ»

This verse<sup>45</sup> states that one of the purposes of the theft Hadd is naqal, that is, to create repulsion and deterrence. This goal is achieved if the thief's hand is left amputated and not implanted.

In addition, although at a superficial point of view, the authority in this verse is the amputation of the thief's hand, but the customary understanding, considering the appropriateness of the verdict and the subject, indicates that the authority in this verse consists of two parts:

- a. Thief's hand amputation
- b. Survival and continuance of punishment impact through thief's losing hand so that upon punishment, he is not permitted to re – implant<sup>46</sup>.

On this basis, the aim of implementing theft punishment is not only amputating his hand immediately, but also the continuance of punishment impact by lawmaker which can be only realized by lack of permission on re – implantation of amputated organ.

**2. Narrative evidences**

Various and valid news and narratives are perceived that the goal of Hadd implementation is to make criminal remain unhandled and impossibility of enjoying it in future as below:

*2.1. Narrative I*

To clarify the reason and philosophy of thief's hand amputation, Imam Reza (PBUH) asserts:

«وَعَلَّةٌ قَطَعَ الْيَمِينَ مِنَ السَّارِقِ لَأَنَّهُ يَبَاشِرُ الْأَشْيَاءَ بِيَمِينِهِ وَهِيَ أَفْضَلُ أَعْضَائِهِ وَ أَنْفَعُهَا لَهُ فَجَعَلَ قَطْعَهَا نَكَالًا وَعِبْرَةً لِلْخَلْقِ لئَلَّا يَتَغَوَّاهُ أَخْذَ الْأَمْوَالِ مِنْ غَيْرِ حِلِّهَا وَلِأَنَّهُ أَكْثَرُ مَا يَبَاشِرُ السَّرْقَةَ بِيَمِينِهِ»

The reason for cutting the thief's right hand is that he (usually) does things with his right hand, which is the most useful organ in the body. Hence (theft punishment) the amputation of the right hand is placed so that it is both a lesson for others and (the thief himself in the future) does not recommit theft again<sup>47</sup>.

**The quality of argument :**

In this narrative, two reasons are providing on thief's hand amputation:

- a. Functionality of right hand in doing daily jobs'; This part clearly expresses that the aim of thief's hand amputation is to deprive him from his most useful organ. Hence, if re-implant is permitted, it would actually negate the goal.

- b. Converting amputated hand to a symbol lessons by potential criminals  
The second reason and philosophy of thief's hand amputation is to consider it as a lesson. Since the phrase "فجعل قطعها نكالا و عبره للخلق" is absolute and its deterrence is not limited to a certain time or group of people. It is perceived that by imposing thief's hand amputation punishment, holy legislator intends to be instructive for people. This is achieved when the effect of the Hadd remains and the thief is not allowed to reconnect with himself after serving the sentence. Because if the bond is permitted, its deterrence and instructiveness will only apply to those who have closely observed the scene of the execution of the Hadd; but it will not be instructive for other people in the community who were not present at the scene or were unaware of the incident. Therefore, the fact that the execution of the theft limit is a lesson requires that the thief be permanently deprived of any benefit from the amputated hand by performing the theft limit, which can only be achieved by not allowing hand impact.

Some jurists have confirmed this perception<sup>48</sup> and believe clearly that re-implant of the thief's amputated hand is in contrary to Hadd which negates Holy Lawmaker's intent<sup>49</sup> since holy lawmaker's intent is not just thief's pain realized by amputating his hand; rather, it demands for remaining its mar (amputated hand)<sup>50</sup>. On the one hand, by depriving the thief of using his most important organ, the possibility of theft re-commission is minimized and on the other hand, thief can be an objective lesson for potential criminals who can observe his situation.

2.2. *Narrative 2 :*

عَنْ أَبِي جَعْفَرٍ (عليه السلام) قَالَ: «كَانَ عَلِيٌّ (عليه السلام) لَا يَزِيدُ عَلَى قَطْعِ الْيَدِ وَالرَّجْلِ وَيَقُولُ إِنِّي لَأَسْتَحْيِي مِنْ رَبِّي أَنْ أَدْعَهُ لَيْسَ لَهُ مَا يَسْتَجِي بِهِ أَوْ يَطْهَرُ بِهِ».

Imam Sadeh asserts that the method of Imam Ali in penalizing the thief was that he did not amputate more than one hand or one leg and sad I feel ashamed of the Divinity that I make his creature in a manner that he cannot clean himself<sup>51</sup>.

### The quality of argument

The phrase

" إِنِّي لَأَسْتَحْيِي مِنْ رَبِّي أَنْ أَدْعَهُ لَيْسَ لَهُ مَا يَسْتَجِي بِهِ أَوْ يَطْهَرُ بِهِ "

indicates clearly that by enduring theft punishment, thief's hand is not amputated suddenly; rather, he is permanently deprived of his hand. Such interpretation is only compatible with the lack of permission for re – implanting the amputated hand.

It is noteworthy that some connoisseurs believe that this narrative on the lack of permission on thief's hand implant is unfinished due to lack of implantation in that time<sup>52</sup>. Answer: it is likely too fat especially by the phrase that

" إِنِّي لَأَسْتَحْيِي مِنْ رَبِّي أَنْ أَدْعَهُ لَيْسَ لَهُ مَا يَسْتَجِي بِهِ أَوْ يَطْهَرُ بِهِ "

it implies more a new form occurred by theft punishment in thief's body which is thief's permanent deprivation of his hand than the impossibility of implantation in that time. Particularly, being a lesson as mentioned in the first narrative in detail needs that the thief is deprived of his hand permanently by enduring theft Hadd.

### Jurists' opinions on the thief's amputated hand implantation

Studying the thief's amputated hand implantation among jurists indicates different verdicts and seeking their opinions indicate that there are three attitudes in this regard.

#### 1. Permission of the thief's amputated hand implantation

As mentioned before, some jurists support the thief's amputated hand implantation. Their most important reason is that reasons on quantity and quality of theft Hadd only implies the thief's amputated hand. Additionally, there is no reason that the thief remains amputated<sup>53</sup>. Some contemporary jurists have referred to it and have accepted the theory on thief's amputated hand implantation permission<sup>54</sup>.

In answering this argument, it is said: although theft Hadd asserts that thief's hand should be amputated, the ultimate goal is the continuance of

amputation and showing contempt of organ amputation to others as lesson for potential criminals. Considering common commensurate between verdict and subject also confirms lack of thief's amputated hand implantation permission. For instance, if someone orders his maid to prevent dog entrance into home and if the animal enter the home by maid's negligence, such claim is never accepted by conventional since the assignment has been preventing dog entrance into home so maid has no assignment to get out the animal from home. Rather, common perception is that the order to prevent animal entrance into home is in fact an introduction to achieve this goal by which the animal should not be at home. Thus, if animal enters the home in anyway, the maid is takes to get it out from home by any tool<sup>55</sup>.

## 2. The theory on lack of Permission of the thief's amputated hand implantation

Other jurists believe in lack implantation permission. To prove their theory, they have referred to below reasons:

- 2.1. A wisdom on Hadd implementation is to deter this criminal and other potential ones from crime commission. Realizing such goal is achieved by continuance of Hadd impact and lack of implantation.
- 2.2. Concerning the right of human ownership on his body, most authors believe that there is a bilateral right here which means that ownership is for the Divinity and human has only the right of benefit but id an organ is amputated by theft punishment, it is only the of the Divinity which requires lack of Permission of the thief's amputated hand implantation<sup>56</sup>.
- 2.3. In addition to above reasons, implanting amputated organ is a kind of waiver of divine verdicts and this also emphasizes on lack of implantation permission<sup>57</sup>.

## 3. Detailed theory

Some jurists, by distinguishing between the right of Divinity and the right of the people, have elaborated on the legitimacy of thief's hand implant. They consider the implantation of the amputated hand permissible for the people, such as the retaliation of an organ, provided that the victim is satisfied. But they do not consider it permissible to link it to the right of Divinity (such as amputating the hand due to the execution of hadd).



The most important reason mentioned by the proponents of this theory is to consider ultimate goal of punishments in Hodud and the principle of non – negligence in the right of Divinity.

It is explained in this manner:

First, among different goals of punishments, the most important punishment is to realize public security.

Second, discipline for offender and creating public security is the common goal of all crimes except than creating public security in Hodud is seen as the main and ultimate purpose. To the same reason, the principle on non – negligence and punishment waiving is seen in Hodud while this principle is not only true in retaliation but also lawmaker, in some cases, has recommended to respect negligence and to be lenient in disciplinary treatment with criminal. Based on this analysis, in crimes which yielded to retaliation, by assuming that criminal has obtained victim's consent, he can implant his amputated organ. Concerning Hadd crimes, since the most goal is to protect public security on the one hand and this right belongs to society and not just a person or special people on the other hand, thus previewing public interest requires that upon enduring theft Hadd, the thief should not be permitted to implant his amputated organ<sup>58</sup>.

### Conclusion

Considering marvelous achievement in medical science and the possibility of implanting thief's amputated hand, now this question is raised that upon enduring Hadd punishment, is he/she authorized to implant his/her amputated hand?

In answering to this question, two general theories are raised:

Theory 1: "legitimacy" implanting amputated hand;

The followers of this attitude have referred to below reasons to prove their theory:

1. Human owns his organs
2. permission to implant thief's amputated hand
3. The lack of a special reason to continue amputation impact
4. Painfulness as the unique aim to implement theft Hadd
5. Principle of permission

Theory 2: "illegitimacy" of implanting amputated hand:

Proponents of this theory have criticized the reasons for implantation permission theory and to prove implantation illegitimacy, have argued as below:



1. Extending the verdict of lack of permission on amputated organ implantation due to retaliation to amputated organ due to Hadd;
2. Dead body and uncleanness of amputated organ
3. Considering three goals of punishments

It seems that the most important backup for illegitimacy of implanting amputated hand is to consider the goals of punishment. It means that although inner component and trait of punishment including Hadd is pain, embarrassment and rack, in Islamic penal law, imposing punishment including Hadd is not only a tool to rack the criminal and experiencing bitter taste of punishment but also it purview three goals including deterioration of criminal and community, modifying the criminal and community and criminal's disability. Thus the triangle of deterioration, modification and inability of criminal are the causes of criminal rack. To realize triple goals of punishments by rack, it is necessary to prevent thief's hand amputation to modify and disable him and to make him as a lesson for potential criminals. Considering above arguments, it seems that the second theory, that is, lack of permission on thief's amputated hand re – implant is righter and closer to pious act.

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