

Imam Al-Maqdisi's Jurisprudential Selections in the Chapter on Cutting Off Theft

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Abstract

This includes the research named (Imam al-Maqdisi's jurisprudential choices in the chapter on cutting off theft), considered one of the important researches that talked about the issues that a Muslim has always needed in knowing the rights of worship. It is not permissible to transgress them. In this study, I clarified the differences between jurists and demonstrated the opinion of Imam al-Maqdisi in the section on cutting off theft. After the introduction, the researcher gives in the first section the theft of a quorum of gold and gifts and the axioms of the jurists on this subject and discusses the proof. Moreover, in the second section, the authors presented the group's theft if they share in the quorum, the axioms of the jurists on this subject, and then the conclusion.

Keywords: Options, Jurisprudence, Section on Cutting Off, Theft.

INTRODUCTION

Praise is to God. We worship Him, seek His assistance and ask His mercy, and request refuge in God from the harms of ourselves and the bad deeds of our deeds. Whoever God directs, no one conducts him spectator, and whoever He leads spectator, there is no director for him. I accept, watcher, that there is no god but Allah and that Muhammad is His retainer and Messenger (May God support him and admit him calm) upon his good and untainted people and his most worthy friends.

As for what follows: God Almighty has blessed this nation with Islam and sent to it the last of the Prophets and Messengers, our Master Muhammad, may God sanctify him and grant him calm, and reveal to him the Great Qur'an with which he decided the divine reserves. So the message of our Prophet Muhammad (calm and approvals of God be upon him) was the most complete of messages and a mercy to the entire world and Muslims in particular. God Almighty has dedicated this to him. The nation has taught men who aided this religion well and sincerely, and among these scholars is the scholar and jurist Shams al-Din Ibn Qudamah al-Hanbali. He was among the imams of Hanbali jurisprudence, and his great book (Al-Sharh al-Kabir) is significant among knowledge students. Therefore, I selected to have the title of my thesis to obtain a master's degree: (Jurisprudential Options) by Al-Maqdisi (d. 682 AH) in Al-Sharh Al-Kabir on Matan Al-Muqni', from the punishment for theft to the end of the punishment for drunkenness, with examples of contemporary issues. My approach in this investigation was the comparative approach, as I mentioned the issues in the book without stating an introduction to his life or the definition of theft. This research contains an introduction, two sections, and sources to ensure brevity.

The first topic: stealing a quorum of gold and gifts

The public agreed to necessitate a quorum for theft. However, they varied in their amount.

Shams al-Din Ibn Qudamah (may God Almighty have compassion on him) stated: "If the stolen item is gold, then its quorum is a quarter of a dinar, and if it is silver, then its quorum is three dirhams, and if it is of something else, then if its value reaches three dirhams, then it is cut off, and if it does not reach that amount, then it is not cut off" and he said: (This is more correct) .

Sayings of jurists on this matter

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The first statement: The quorum for coins is a quarter of a dinar and three dirhams.

This is the interpretation of the Malikis and the Imamis and description on the authority of Ahmad , and it is what Shams al-Din Ibn Qudaamah chose.

The second opinion: The quorum for the cut is a quarter of a dinar in gold, whatever its value is in gold, silver, or silver, and this is the Shafi'i doctrine .

The third opinion: The quorum for the cut is ten dirhams or whatever its value is in gold or silver, and this is the Hanafi doctrine .

The fourth saying: It is restrained by little and much, which is the statement of the Dhahiriyya .

EVIDENCE AND DISCUSSION

Evidence for the First Statement

During the power of Abdullah bin Omar (may God be satisfied with him): "The Messenger of God (may God's prayers and calm be upon him) was cut into a shield whose price is three dirhams" .

During the power of Aisha (may God be satisfied with her), the Prophet (may God's prayers and calm be upon him) said: "The hand of a robber should not be cut off except for a quarter of a dinar or more" .

Reasoning point: They received the hadith of Aisha (May God be satisfied with her) regarding whether what was stolen was gold and the hadith of Ibn Umar (may God be delighted with him) concerning whether what was stolen was silver or something other than gold and silver.

Evidence for the Second Statement

During the power of Aisha (May God be satisfied with her), on the permission of the Messenger of God (may God's prayers and calm be upon him), he said: "The hand will be cut off for a quarter of a dinar" .

During the power of Aisha (May God be delighted with her), the Prophet (May God's prayers and calm be upon him) said: "The hand of a thief should not be cut off except for a quarter of a dinar or more" .

Inference

The penalty shall not be enforced on anyone who steals three dirhams or the value of three dirhams if their value is less than a quarter of a dinar out of the bulk of good dinars .

Trivial things were usually valued in dirhams, and three dirhams were value a quarter of a dinar .

Evidence for the Third Statement

During the power of Ibn Abbas (May God be pleased with her), he mentioned, The Messenger of God (may God's prayers and calm be upon him) said: "The thief should not be cut off for anything less than the price of a guard, and the price of a shield is ten dirhams" .

During the power of Ibn Abbas (May God be delighted with them both): "The Messenger of God, May God support him and permit him clam, cut off the hand of a man in a guard, the value of which is a dinar, or ten dirhams" .

Reasoning point: The two hadiths explicitly mentioned that there is no cutoff for anything less than ten dirhams, thus indicating that this amount is the quorum.

Evidence for the Fourth Statement

The Dhahirites cited as evidence what was described on the power of Abu Hurairah, on the permission of the Prophet (May God's prayers and calm be upon him), who said: "May God curse the thief who steals the egg and has his hand cut off, and thieves the string and pleased has his hand cut off." This was also a strong and clear text that there is no limit on what must be cut off in theft unless a text comes. Another clear statement:

The Messenger of God (May God bless him and admit him peace) contained all theft and did not specify the number of theft .

Discussing the Evidence

Discussing the evidence for the first and second statements

The hadith was described by Aisha (may God be satisfied with her), and hadith scholars were disordered about it. Most of them agreed that it was not traceable to the Messenger of God (May God bless him and grant him peace), so much so that Al-Qasim bin Abd al-Rahman if he heard someone narrating this hadith as traceable to the Prophet, he would throw stones at him.

The hadith of Ibn Omar (may God be satisfied with him): Taking the most is more deceptive to ward off punishment because doubts avert punishments, and taking the most, i.e. ten dirhams, is better .

It is better to take the most precautionary degree to ward off punishment, and this is because at least suspicion is not a crime, and it wards off punishment. Ibn Abbas (may God be satisfied with them both) says: “The Messenger of God (may God’s prayers and calm be upon him) cut off the hand of a man with a sword, the worth of which is a dinar, or ten” dirhams.

Discussing the Evidence for the Third Declaration

The narration of cutting a gold coin worth ten dirhams must be stronger. It cannot be acted upon if isolated, so how come it disproves the clear and authentic hadiths regarding estimating a quarter of a gold dinar ?

There was disagreement about the value of the shield, and the accurate narration regarding that is the narration of Abdullah bin Omar (may God be satisfied with them both): “The Messenger of God (May God bless him and grant him peace) cut a shield whose price was three dirhams” .

Ibn Abd al-Barr said: (This is the most authentic hadith narrated on the power of the Prophet (May God support him and admit him peace) in this regard) .

Discussing the evidence for the fourth declaration

The Zahiri evidence argues that the verse is absolute concerning the type and quantity of what was stolen, and the hadith explains it. As for the hadith of the egg and the rope, what is meant by that is a clarification of the absurdity and weakness of the thief’s mind, his vileness, and his baseness. He exposes having his hand cut off for vile, trivial things, as this expression is a type of rhetoric which contains repulsion and vulgarity and portrays the act of sin in a hateful and reprehensible way .

Preference: What seems more likely is the second judgement, which says: The quorum is a quarter of a gold dinar, or whatever its value is in gold, silver, or silver. God knows.

The second topic is stealing from the group if they participate in a quorum

The jurists decided that if a crowd of contributors in a robbery and each one obtains a quorum, they must cut it off.

However, they affected about whether they participated in a theft scam. Would they steal it?

Shams al-Din Ibn Qudamah (may God Almighty have compassion on him) said: “If a group participates in stealing a quorum, they shall be cut off, whether or not some of them were able to eliminate it without cooperation between them, and whether they removed it as a whole or each one of them removed it in part, and he said: (It is better) .

Sayings of jurists on this matter

The first declaration: They are cut off altogether

It is the view of Abu Thawr, Ahmad, and the Imami Shiites, and it is a narration on the authority of Malik and was chosen by some of his companions , and it is what Shams al-Din Ibn Qudamah chose.

The second statement: They will not be cut off unless the portion of each of them reaches a quorum, whether all of them are responsible for receiving and carrying or only some of them are responsible for that, and the output is added to each other to complete the quorum. This is the view of Abu Hanifa and his two companions Abu Yusuf and Muhammad .

The third opinion: They are cut off altogether if it is unfeasible to remove it except with their cooperation, and if possible, only the pregnant woman. This is the opinion of Malik and most of his companions , and it is the selection of Ibn al-Murtada from the Zaidiyya.

The fourth declaring is that they shall only be cut off if they carry together goods whose share equals a quorum for each of them, or each one is alone in bringing out a quorum. Whoever produces out a quorum will be cut off from it, and whoever does not bring out a quorum will not be cut off .

This is the interpretation of Al-Shafi'i and his friends, and an excerpt from the Hanafi school of thought .

Evidence and its Discussions

Evidence for the First Statement

The Book: The Almighty's declaring: (And the male and female thief, cut off their hands) .

Reasoning point: It seems that elimination is only obligatory for specific theft, and every one of the groups deserves this name, so he must be entitled to amputation .

Analogy: The analogy applies to the group's participation in the murdering of an individual. Just as an assembly kills by one individual to preserve bloodshed, it requires that they be cut off if they steal a single quorum from the Score to preserve wealth .

Reasonable

They participated in demolishing the stone and removing the quorum, so they had to cut it off as if it was heavy, so they carried it.

The goal of the punishments is to prevent, without requiring resemblance, and the need to discourage taking money .

The punishment is related to the amount of stolen money, which is the quorum, which requires cutting off, and it exists to maintain people's money and close the door to crime .

Evidence for the Second Statement

Approval: The analogy in theft is that it should only be disturbed by someone who takes a quorum and removes it directly from his guard, but here, it is interrupted out of approval to close the door to pretext and corruption.

Our proof: Whoever does not take out the money is not a thief, so he does not have to cut it off, just as if he did not enter.

What is reasonable: that the theft was obligated by each one of them because taking was created by all of them with the meaning of assistance, as in the case of grand theft, because it is customary among them for some to carry the goods and include the rest to pay, so if cutting is abstained it would lead to closing the door to punishment, but if the share each one of them is less than the quorum. They did not cut because cutting was mandatory for each of them due to his crime, so the quorum was considered complete in his right .

Evidence for the Third Statement

Those who said this have inferred that these people have become like those who carried him on an animal and assisted to lift him onto it. They are participating in the theft since if the one transporting him had been alone; he would not have been able to carry and steal him .

Evidence for the fourth statement

The Sunnah: During the power of Aisha (may God be satisfied with her), the Prophet (May God's prayers and calm be upon him) said ("The hand shall be amputated for a quarter of a dinar or more") and in a narration by Muslim: ("The hand of a thief shall not be amputated excluding for a quarter of a dinar or more").

Reasoning point: The meaning of the hadith is clear: There is no cutting unless there is a absolute quorum, and each person does not steal a quorum, so he should not be cut .

Reasonable

The elimination is obligatory for each one of them due to his crime, so its completion is considered his right. None of them stole what was worth the quorum of the elimination, so the theft was not completed according to its conditions. The amputation was only limited to the quorum, and not to something less than it due to the sanctity of the hand, so many hands should not be cut off in cases where the law requires the amputation of one hand .

Whoever does not take out the money is not a complete thief, so he is not obligated to cut it off as if he had not recorded .

The reason for the theft is two things: a fine and a piece, and it has been confirmed that the fine of each of them is taken into account, so it must be a piece taken into account .

Preference: After we present the axioms of the jurists and their evidence, I will explain as follows:

The second and fourth schools of contemplation (Hanafi and Shafi'i) agree that if a group participates in stealing a quorum or more and the share of each one of them is not a quorum, none of them will cut it, whether some of them can carry it or not. This is what is most likely on this purpose. When he passed. God knows.

Ibn Qudamah, may God have compassion on him, says: ((And this saying is more beloved to me because there is no stipulation here that is definitive, nor is it within the meaning of what is stipulated and unanimously agreed upon, so it is not obligatory, and caution in omitting it is better than caution in affirming it because it is one of those that ward off doubts)) .

The two schools of thought varied as to whether the share of each was a quorum, but not every thief was assigned a quorum, or did they carry the stolen property in its entirety? Rather, some took it, and others did not. So should what was taken be increased in part to another to complete the quorum of the partners in the theft, or not:

The Shafi'i doctrine is that it is not combined or cut off except by those who have taken a quorum, and the Hanafi doctrine is that all participants are joined and cut off, and this is what I tend to, and in addition to what has been inferred the following:

Because it is intermediate between the other two principles.

The statement of non-interruption unlocks the door to pretext, corruption, and the security of criminals, and the commander must legally close it.

Then what is the difference between those occupied in the crime, between those who bear many shares and those who carry.

Less than a fraudster, or someone who protects them and carries and takes the stolen item, because it is the habit of those involved in the crime to distribute roles to facilitate the successful implementation of the operation. God knows.

CONCLUSION

After finalizing this research, I concluded it with a conclusion of the maximum significant consequences that I extended, which are:

Imam al-Maqdisi is from the Al Qudama family of Jerusalem, famous for knowledge, jihad for the sake of God Almighty, and affiliation to the policy of Imam Ahmad ibn Hanbal.

Al-Maqdisi is interested in revealing the disagreement and narrations inside and outside the school of thought, so he mentions scholars' disagreement regarding this, then chooses one of the sayings of Imam Ahmad.

Evidence for jurisprudential matters is depending on the situation, sometimes by the Qur'an, Sunnah, consensus, or analogy.

He can use the hadiths conveyed from the Companions and Followers as evidence if he finds nothing attributed to the Prophet.

He did not follow a fixed technique of weighting and selection, so the first narration is not the most likely.

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