The Scope of the Rule of Iqdam in Criminal Jurisprudence and Criminal Law with an Evidence-Based Approach

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Abstract

This article examines and explicates the "Rule of Iqdam" and the extent of its application in the field of criminal jurisprudence and criminal law. The Rule of Iqdam, recognized among Islamic jurists, states that if an individual knowingly and intentionally takes action to their own detriment, the responsibility for the resulting harm rests upon themselves, and others are exempt from liability. Although the discussions surrounding this rule have predominantly been raised in the domain of civil law and private relations between individuals, this study—with an evidence-based approach and through jurisprudential and legal discourse in a library-based method—addresses the applicability or inapplicability of the Rule of Iqdam in criminal matters. In this regard, the concept, conditions, pillars, and proofs of the Rule of Iqdam in the realm of criminal law are analyzed and evaluated, drawing upon arguments such as the identification of the Rule of Iqdam as a jurisprudential principle, juristic opinions, defense theory, the scope of consent, and relevant examples grounded in the principle of action. Moreover, its manifestation in criminal law was investigated through a close examination of particular instances. Ultimately, considering the innovative aspects, this study: first, identified the main reasons for the crystallization of the Rule of Iqdam in criminal affairs; second, with an evidence-based approach, established the principle of acceptance of the Rule of Iqdam in criminal matters; and third, by affirming this rule as a widely applicable principle in criminal contexts, highlighted the necessity of reform and transformation in certain legal provisions, particularly Clause (p) of Article 38 of the Islamic Penal Code enacted in 2013, and emphasized the need for establishing the institution of Iqdam within criminal law.

Keywords: Rule of Iqdam, criminal jurisprudence, criminal law, evidences of Iqdam, scope of Iqdam.

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1. Introduction

The Rule of Iqdam has been recognized as a well-established principle among Islamic jurists (Amid Zanjani, 2011; Mostafavi, 2000; Mousavi Bojnourdi, 1998a). This rule, as an instance of jurisprudential principles, substantively means

that if a person, with knowledge and awareness, acts to their own detriment and causes harm, they themselves bear liability, and neither the Shari'a nor the law provides them civil protection. One contemporary legal scholar, in clarifying the contents of this rule and by referring illustratively to the issue of property received under a void contract, explains: *"Whoever acts to the detriment of themselves with respect to their own property, no one else bears civil liability for their benefit. For example, in the case of property received under a void contract, when the owner has permitted the other party to take possession, if the property is destroyed by itself after receipt, or if the recipient destroys it, or transfers it to a third party, no liability arises against the owner"* (Ja'fari Langaroudi, 1993).

The rationale for the absence of liability in this case is that the owner, by transferring possession of property already belonging to themselves, has acted to their own detriment, and therefore responsibility falls entirely upon themselves and not upon others. Although the bulk of discussions concerning Iqdam have traditionally taken place in the civil sphere and private relations between individuals—and indeed, according to some jurists, the rule of Iqdam is a matter of consensus in civil law (Hosseini Maraghi, 2009)—this does not preclude the application of the rule in criminal matters. Thus, as both a theoretical and applied study, the focus here is on the scope and evidences of this rule in criminal contexts, considering the jurisprudential definition and other relevant sources.

Accordingly, this paper examines the concept and pillars of the jurisprudential rule of Iqdam, which influence its legal scope, and investigates its application in criminal jurisprudence and criminal law with an evidence-based approach. Its range is analyzed across various punishments—including *hudud*, *qisas*, *diyat*, and *ta'zirat*—with attention to the Islamic Penal Code enacted in 2013 and other statutes. From this perspective, the present study addresses an under-researched area, since most previous writings on the Rule of Iqdam have been confined to non-criminal issues.

2. Definition of Concepts

2.1. Linguistic and Technical Meaning of "Rule"

The word *qa'ida* (rule) linguistically means "established" or "fixed," and its root is the triliteral *qa-'a-da*, denoting a thing capable of being relied upon. For example, the walls of a house stand upon a definite number of foundations that are called "rules." In construction terminology, they are referred to as iron supports, and hence the meaning "stable" or "established" applies to them (Ja'fari Tabrizi, 1981).

In some usages, *qa'ida* also signifies "basis" or "foundation." As *Tahrani* writes in *Majma' al-Bahrain*: *"Al-qawa'id is the plural of al-qa'ida, and it is the foundation upon which what is above rests; raising the qawa'id refers to constructing upon them, because when built upon, they elevate"* (Tahrani, 1996).

Additionally, in military terminology, it denotes headquarters or central command of armed forces (Bostani, 1996). Beyond material meanings, the term "rule" is also used in an abstract sense, such as "scientific rules" or "moral rules." One definition describes it as fundamental principles of a discipline upon which many other issues depend, and from which they are derived (Fadel Lankrani, 2015).

Technically, a "rule" refers to a general principle applicable to all its instances (Fayoumi, 1993). In another usage, it is considered synonymous with terms such as issue, law, regulation, or purpose, and even treated as equivalent to a principle (Tahanavi, 1996). Others, however, object to such equivalence, considering it a confusion caused by superficial similarity; they emphasize that in reality, each term differs in meaning and usage, and misusing them may cause harm.

Nonetheless, consensus exists that the defining feature of a rule is its generality. This is consistent with its linguistic sense as foundation or basis. Thus, in both literal and technical terms, a rule is a general proposition serving as the foundation for subsidiary cases. Therefore, it is described as a general matter that, when identifying the rulings of particulars, applies to all its instances (Fadel Lankrani, 2015).

Since the meaning of *fiqh* is self-evident, we move directly to the meaning of *Iqdam*.

2.2. Linguistic and Technical Meaning of "Iqdam"

Linguistically, *iqdam* means taking initiative, stepping forward in a matter, or undertaking an act; in other words, engaging in action or advancing in something (Amid, 2003; Mo'in, 1996).

Technically, it is a jurisprudential rule stating that whoever, aware of the possibility of harm, acts to their own detriment, no one else bears strict liability or civil responsibility for that action (Mohaghegh Damad, 1985). Others define *iqdam* as conduct by which an agent deliberately harms themselves, thereby eliminating liability from others (Ja'fari Langaroudi, 1999). Some jurists explain *iqdam* as meaning that a person takes possession of another's property or assumes liability for it upon receipt, regardless of whether their action causes its destruction (Mousavi Bojnourdi, 1998b).

Thus, *iqdam* refers to behavior by which a person knowingly exposes themselves to harm or loss, creating the condition for others to inflict damage upon them. In this sense, the individual's conscious action leading to self-harm is described as *iqdam* (Makarim Shirazi, 2006).

3. Conditions of the Rule of Iqdam

Several conditions are necessary for the realization of *iqdam*. If any are absent, recourse to this rule is precluded.

First, harm must exist in some form—whether material or moral.

Second, the material or moral harm must be caused by a third party.

Third, the conduct of the individual (whether by action or omission) must constitute the precondition enabling others to cause harm to them. In other words, the person must be the intermediary facilitating the harm, not its ultimate perpetrator.

Finally, as the fourth condition, the presence of legal capacity (intellect, maturity, and sound judgment), intention, consent, and knowledge in relation to self-harm or what constitutes liability is necessary (Mohammadi, 1995; Naderi Owj Baghzi et al., 2022).

Accordingly, if an owner willingly entrusts their property to a minor, an insane person, or a prodigal, and it is destroyed while in their possession, no liability falls upon them (Mohaqqeq Hilli, 1987). Similarly, situations arising from negligence or recklessness fall outside the scope of this rule, since in negligence there is no intent or consent to accept harm.

It thus appears that with the fulfillment of these conditions, a person may invoke the Rule of Iqdam as a defensive principle.

4. Evidentiary Reasons for the Intervention of *Iqdam* in Criminal Jurisprudence and Criminal Law

Considering what has been discussed in the introduction and the explanation of the terms *rule*, *jurisprudence*, and *iqdam*, it may be inferred that *iqdam* is not limited to the legal (civil) domain alone, but its application can also be extended to the realm of criminal law. On this basis, the evidentiary reasons for the intervention of *iqdam* in jurisprudence and criminal law are analyzed.

4.1. Considering the Rule of Iqdam as a Jurisprudential Rule

Interpreting *iqdam* as a jurisprudential rule, as has been expressed by many scholars, plays a crucial role in clarifying the scope of this rule in criminal jurisprudence and criminal law. However, the issue has not yet been approached from this angle. One of the conceivable reasons for the intervention of *iqdam* in criminal matters is, therefore, its consideration as a jurisprudential rule. By examining the concept of a jurisprudential rule, along with the definitions and pillars related to it, this conception moves closer to acceptance.

Jurisprudential rules are general principles whose function is to express a universal judgment or an all-encompassing standard regarding certain rulings. By "ruling," what is meant is those judgments that relate to specific religious matters. In other words, a jurisprudential rule is one that can be applied to numerous particulars and examples. For instance, when the rule *la darar wa la dirar fi al-Islam* ("there is no harm and no reciprocation of harm in Islam") is mentioned, this expression conveys a universal and all-encompassing principle. Precisely because of this generality, it can be examined as a jurisprudential rule.

Some jurists have argued that for a matter to be considered a jurisprudential rule, two conditions are required: generality and conformity with Shari'a (Haji Deh Abadi, 2008). Based on this definition and the conditions proposed, it appears that three requirements must exist for a matter to qualify as a jurisprudential rule: first, generality; second, Shari'a conformity; and third, applicability to particular cases. If any of these are absent, the matter falls outside the scope of jurisprudential rules.

4.1.1. Generality

A jurisprudential rule must always be general and comprehensive, meaning it encompasses all of its instances without exception. For example, the rule *la darar wa la dirar fi al-Islam* includes numerous instances, and wherever the concept of harm is discussed, this rule may be invoked. Harm may be addressed in many areas of jurisprudence, and therefore the rule applies broadly. It cannot be said that the rule *la darar* is restricted to a specific branch of jurisprudence. Hence, as some legal scholars have argued, there is a significant difference between the general principle of *la darar* and the particular issue of, for example, a well in one's house causing harm to another, where the owner must compensate the injured party (Mohaghegh Damad, 2005).

Applying this condition to *iqdam* is also justified by the way in which its principles appear across different branches of jurisprudence. In other words, the Rule of *Iqdam* is not confined to a single branch but can be applied in various fields such as the sale of defective goods, sales involving fraud, renunciation of property, partnership contracts (*mudarabah*), and so forth (Makarim Shirazi, 2006). From this perspective, the Rule of *Iqdam* is a jurisprudential rule characterized by generality, and accepting this condition supports its application in criminal matters.

4.1.2. Shari'a Conformity

When one speaks of a jurisprudential rule, it refers to a general principle that must also have Shari'a legitimacy. In other words, it must be endorsed by the Divine Lawgiver. Consequently, anything not rooted in Shari'a cannot be considered a jurisprudential rule. In this respect, the Shari'a-based evidences for *iqdam*, which can be described as specialized proofs, include the Qur'an and traditions, as well as reason and consensus.

a. Qur'anic Verses

Among the Qur'anic verses relevant to the Rule of *Iqdam* are:

- Surah al-Baqarah (2:195): *"And spend in the way of Allah and do not throw yourselves with your own hands into destruction; and do good, indeed Allah loves the doers of good."*
- Surah al-Shura (42:30): *"And whatever affliction befalls you, it is because of what your hands have earned; and He pardons much."*

These verses indicate that individuals may play a role in bringing harm upon themselves. Thus, they cannot be considered entirely blameless, and responsibility may be shifted away from others.

b. Traditions

From the perspective of hadith, the narration *"La yahillu mal imri' Muslim illa bi-tib nafsihi"* ("The property of a Muslim is not permissible [to another] except with their willing consent") supports the notion of *iqdam*. The wealth of a Muslim is inviolable, but if the owner willingly negates their claim, liability is removed (Hosseini Maraghi, 1996).

In addition, several hadiths emphasize individual accountability for one's own actions—both speech and conduct—and reject transferring blame to others. For instance:

- *"Every person is held accountable for the crime of their tongue and hand"* (Tamimi Amidi, 1989).
- *"Whoever commits evil, commits it against themselves"* (Tamimi Amidi, 1989).
- *"Serving the body is to gratify it with pleasures and desires, and therein lies the destruction of the soul. Serving the soul is to protect it from lusts and base cravings."* (Nouri, 1987).

These traditions, either explicitly or implicitly, point to the notion of *iqdam*.

c. Reason and Consensus

In addition to scriptural sources, the maxim *"Whatever is judged by reason is also judged by Shari'a"* further legitimizes the Rule of *Iqdam*. If a person knowingly causes harm to themselves, rational minds do not impose liability upon others for such an act. Just as reason absolves others of responsibility, so too does Shari'a (Mostafavi, 2000; Velaei, 2008).

Accordingly, the Rule of *Iqdam*, grounded in the consensus of rational practice (*bina-ye 'uqala*) and supported by Qur'anic verses and Prophetic traditions, is recognized as one of the jurisprudential rules with certain Shari'a legitimacy. It is worth noting that while consensus has also been invoked as a proof of the rule's validity, some scholars consider such consensus to be "evidentiary" and therefore unreliable. They argue that the rational basis of the rule renders reliance on consensus or purely devotional justification unnecessary (Khoei, 1989).

4.1.3. Applicability to Particular Matters (Case-by-Case Adaptation)

In addition to the two aforementioned conditions, some scholars have introduced another requirement: the applicability of a jurisprudential rule to particulars or to all the issues under its subject (Haji Deh Abadi, 2008). The explanation is that every jurisprudential rule has its own specific subject matter. For example, when the rule of *daf' al-afsad bi-l-fasid* (averting the greater evil by committing the lesser evil) is invoked, it is tied to its unique subject. Wherever such a subject arises, the conditions for applying the rule are present. The same applies to the rule of *la darar*. Whenever harm and injury are at stake—such as harm resulting from fasting during Ramadan or the destruction of another's property that leads to loss—the issue of *la darar* arises.

Such rules are numerous, each encompassing a distinct subject that permits their application within their respective contexts. Building upon this point, for a matter to qualify as a jurisprudential rule, one must consider where its subject appears across the branches of jurisprudence. This kind of inquiry clarifies the scope and field of operation of jurisprudential rules.

For instance, in research on the rule of *daf' al-afsad bi-l-fasid*, its placement and application in the context of conflicting prohibitive rulings (*tazahum bayn al-haramayn*) suggest that its scope extends across numerous branches of jurisprudence. The breadth of its application is so wide that it is not limited to a single area of fiqh. Reason dictates that situations involving competing benefits or harms may arise in various areas of jurisprudence. Consequently, the rule is not confined to one chapter alone. Unlike the rule of *la tu'ad*, which is limited to the chapter on prayer, the rule of *daf' al-afsad* resembles the rule of *hujjiyat al-bayyina* (the probative force of evidence) in its generality and comprehensiveness. The rule of *bayyina* states that the testimony of two just men establishes proof in all matters except where specific exceptions exist. This rule has applications in different branches of fiqh, such as purification, testimony, adjudication, and others. Such rules are referred to as comprehensive and wide-ranging jurisprudential rules (Haji Deh Abadi, 2008).

A similar perspective applies when evaluating the Rule of *Iqdam* in the context of criminal jurisprudence and criminal law. Since the inquiry concerns whether *iqdam* can be expanded to criminal matters, the question arises: is its scope confined to one specific branch of jurisprudence, or, like the rules of *daf' al-afsad* or *hujjiyat al-bayyina*, does it apply across all—or at least most—branches of jurisprudence? While, at first glance, the Rule of *Iqdam* has been primarily evaluated in relation to civil matters, upon closer consideration it appears that the rule, by virtue of its subject, can also be applied to various criminal issues. Therefore, it cannot be restricted to a single branch.

This view is also supported by Islamic jurists. For example, one authoritative text on jurisprudential rules states that *iqdam* is a rule under which, if someone acts in relation to their own property in a way that harms them, or if in criminal matters a person commits an act that results in their death or bodily injury, no one else bears responsibility for that action, and no liability arises. The law, moreover, does not provide protection for such a person (Mousavi Bojnourdi, 1998a). From this, it follows that the Rule of *Iqdam* is among the comprehensive rules applicable across different branches of fiqh. Given its essential focus on "action" (*iqdam*), wherever an individual's self-detrimental conduct is at issue, the rule may be invoked.

4.1.4. Data Analysis and Conclusion of the First Argument

The three conditions required for identifying a jurisprudential rule—namely, generality, Shari'a conformity, and applicability to particulars—clearly confirm that the Rule of *Iqdam* meets all of these criteria. On the one hand, it possesses a comprehensive scope, similar to other key jurisprudential rules such as *la darar*, making it applicable in multiple situations

with diverse examples. On the other hand, its strong foundation in primary Shari'a sources, including Qur'anic verses and reliable traditions, together with rational endorsement (based on the maxim "whatever is judged by reason is judged by Shari'a"), establishes both its legitimacy and validity (Mostafavi, 2000; Velaei, 2008).

Finally, the ability of this rule to adapt to practical and particular cases provides full justification for recognizing *iqdam* as a jurisprudential rule. Consequently, envisioning *iqdam* as such paves the way for its application in diverse criminal issues. As will be further shown in the subsequent jurisprudential discussion, this comprehensiveness becomes even more evident.

4.2. Iqdam and the Discourse of Jurists

In some sources, *iqdam* has been cited as one of the evidentiary bases of jurisprudence with regard to the rule of liability for property received under a void contract (Najafi, 1983). Certain jurists, relying on the maxim *"whatever is judged by reason is judged by Shari'a"*, have considered this rule to be a rational judgment and, by the rule of correlation (*qa'idat al-mulazama*), concluded that Shari'a likewise recognizes no right for such a person (Mousavi Bojnourdi, 1980). Based on this reasoning, which reveals the rational foundation of *iqdam*, it is possible to recognize the rule's application across all branches of jurisprudence. From this perspective, the rule is not limited to legal or contractual matters. Indeed, some scholars, in explaining the rule, have rejected its exclusivity to transactions and have acknowledged its application in other areas, such as bodily crimes.

In elaborating the jurists' views on the scope of *iqdam*, it has been argued that: *"Some jurists, when dealing with harm resulting from accidents, reason that if a worker is injured or dies during work—for example, if a carpenter, mason, or engineer falls from scaffolding—the harm results from their own conduct, since each knowingly undertook the risk of harm. Had they not been working on the scaffold, they would not have faced the accident. Thus, they directly contributed to their own injury, and by the principle of iqdam, liability cannot be imposed on others."* However, this reasoning is ultimately rejected on the grounds that the Rule of *Iqdam* applies only to cases where a rational and cautious person would avoid the risk—such as someone throwing themselves from a height in an act of suicide or undertaking a manifestly reckless act. Hence, when a worker is injured on the job, the situation cannot be considered as *iqdam* against oneself. In such a case, the employer or the beneficiary of the work remains liable under the rule of causation (*tasbib*) (Mousavi Bojnourdi, 1998a).

Although this critique challenges the reasoning of some scholars, it nevertheless acknowledges the involvement of *iqdam* in branches of jurisprudence beyond transactions. Similarly, Allama Muhammad Baqir al-Sadr, in presenting applications of *iqdam*, points to the case of a person who knows that using water will harm them but nonetheless uses it in a manner that renders them in a state of major ritual impurity (*janaba*). This example further supports the recognition of *iqdam* in jurisprudential contexts outside transactions (Sadr, 1996).

Imam Khomeini, though not explicitly using the term *iqdam*, indirectly refers to its implications in his discussion of retaliation (*qisas*) for bodily injury. He writes: *"The avenger is not liable for the unintended consequences of retaliation except where he transgresses in carrying it out. If he deliberately exceeds what is required, he is liable for compensation or retribution. But if he claims the excess was caused by the agitation of the offender, the statement of the avenger is accepted with an oath. Similarly, if the offender alleges error but the avenger denies it, the avenger's oath is accepted…"* (Imam Khomeini). In other words, if the offender, during the execution of *qisas*, becomes agitated and as a result suffers injury beyond what was inflicted upon the victim, the victim (carrying out *qisas*) bears no liability. Conversely, if the additional injury results solely from the deliberate action of the avenger, liability attaches.

The issue of throwing a person into fire is also a well-known jurisprudential example. If a person throws another into a fire and the victim is unable to escape, resulting in death, the perpetrator is liable for *qisas* or *diyah*. However, if the victim could escape but deliberately refrains from doing so in order to implicate the perpetrator, the prevailing juristic view is that the victim's blood is wasted, and the perpetrator bears no liability for death. Nonetheless, this does not absolve the perpetrator entirely; they remain liable for the harm directly resulting from their initial act (Shahid Thani, 1992; Tabrizi, 2005).

Based on this reasoning, the victim's death is attributed to their own conduct through the Rule of *Iqdam*. Thus, the absence of liability can extend to other cases of *qisas* analogous to being thrown into fire, such as when a person cuts their own vein and fails to bind it, or when they are cast into water but do not attempt to save themselves. Although juristic opinions differ on

these cases (Zehni Tehrani, 1987), proponents of this theory argue that the true cause of death is the victim's own failure to act, and therefore, under the Rule of *Iqdam*, liability rests with the victim (Fadel Lankrani, 2015).

This approach aligns with common understanding: if a victim is capable of saving their life by a simple act but refrains, despite being aware of the consequences, they are deemed responsible for their own death. This is the general principle underlying cases such as refusal to leave a fire, failure to bind a bleeding vein, or neglecting treatment. The broader principle in the field of *qisas* or *diyat* may thus be articulated as follows: if a person, with full awareness and intent, commits an act leading to self-harm, liability is lifted from others. Similarly, if a victim could easily preserve their life but refuses, responsibility lies with them. One contemporary jurist, in response to a question analogous to the case of throwing into fire—concerning injury to a worker in a workshop—confirmed this principle, supporting the broader applicability of *iqdam* (Makarim Shirazi, 2006).

Although in most cases the application of *iqdam* in the discourse of jurists appears situational and issue-specific—primarily within *qisas* and *diyat*—some jurists have moved beyond such limited contexts. They emphasize the generality of the Rule of *Iqdam* and regard it as a principle leading to the abrogation of respect (*isqat al-ihtiram*). In other words, they interpret *iqdam* under the maxim *"al-taslit wa al-iqdam yasqut al-ihtiram"* ("consent and action nullify protection"), thereby treating it as grounds for negating liability (Najafi Kashif al-Ghita, 1980). This interpretation closely aligns with the concept of a jurisprudential rule, as discussed earlier, and resonates strongly with rational principles as well.

4.3. Iqdam and the Theory of Defense

Among the multitude of early and later jurists, Maragha'i, paying attention to the element of aggression and the attacker's own *iqdam*, writes in a striking formulation: *"There is no liability … for every rebel, aggressor, thief, usurper, and the like, with respect to what ensues from their acts by way of indemnities and destructions of lives and limbs; all of this is due to their undertaking such vile deeds by their own iqdam. Otherwise, the life, property, labor, and honor of a Muslim are inviolable so long as their inviolability has not been forfeited."* Accordingly, there is no liability for the losses and destructions of life or limbs that befall the aggressor himself, for these harms occur by virtue of his *iqdam* upon reprehensible acts; otherwise, the blood, property, labor, and honor of a Muslim remain respected unless that respect is forfeited (Hosseini Maraghi, 1996).

The innovative point in this statement can be examined from two angles:

First, the injuries and damages that befall the aggressor himself without direct human intervention—for example, when a thief, upon entering another's house to steal, falls into a well. In such a case, based on *iqdam*, owing to the initial aggression, the non-excess of the owner's conduct, and the absence of any invitation extended to the thief, liability rests on the attacker—even if the homeowner dug the well anticipating the thief's fall (Tarhini Amili, 2006; Zehni Tehrani, 1987). Second, when the harm results from human intervention—such as the homeowner grappling with the thief and thereby causing injury—then, again based on *iqdam*, the homeowner bears no liability, and treating the attacker as a "victim" would be merely formal and unrealistic. This outlook presupposes defensive conditions for the defender: the confrontation forces a choice between two competing rights, and ultimately one is sacrificed for the other. Thus, the person who transgresses another's rights sees the value of his own rights diminished or extinguished, while the rights of the person under attack must be maintained (Ardebili, 2021).

With this explanation, one may say that the Rule of *Iqdam* can potentially be invoked within the theory of defense. The attacker's *iqdam* in committing the aggressive act suffices to bear its ensuing consequences; there is no need to establish the attacker's consent. The mere occurrence of aggression gives rise to a right of defense for the victim (Shams Nateri & Abdollah Yar, 2010). The reason for this possibility lies in the definition and conditions of the Rule of *Iqdam*: it applies where a person, knowingly and deliberately, undertakes action against themselves (Mohaghegh Damad, 1985; Tahrani, 1996). Consequently, accepting *iqdam* as a complete theoretical foundation for legitimate defense cannot be absolute, because there are instances—such as aggression by the insane or intoxicated—where presuming knowledge and awareness is meaningless, yet legitimate defense remains available (Zehni Tehrani, 1987). The legislator's approach in Article 156 of the Islamic Penal Code (2013), especially Note 3, is based on this very premise. Thus, treating *iqdam* as the basis for legitimate defense must be

confined to attackers who are aware; otherwise, recourse to *iqdam* would be unfounded. If *iqdam* were accepted as the complete foundation, legitimate defense would be permitted only when an attacker acts knowingly, and, conversely, where the aggressor lacks reason, the defense would not be recognized. From this angle, *iqdam* alone cannot justify legitimate defense (Shams Nateri & Abdollah Yar, 2010). Therefore, by distinguishing deliberate from non-deliberate attacks (hinging on the presence or absence of intent), one can accept an *iqdam*-based foundation for those forms of legitimate defense that involve aggression undertaken with knowledge and intent—subject to the additional requirement that, under the chapeau of Article 156 of the Islamic Penal Code (2013) and Note 2 of Article 302, the defender observe the stages or degrees of defense (Gha'edi, 2024). In contrast, the Rule of *Iqdam* contains no such condition.

It should be noted that the lack of some conditions does not undermine the basic recognition of *iqdam* as a foundation within the theory of defense, because scholars have not reached consensus on a single foundation for legitimate defense; different foundations have been articulated. Thus, legitimate defense does not rest upon a single basis; rather, a combination of grounds and theories can undergird this institution (Shams Nateri & Zare, 2017).

4.4. The Rule of Iqdam and the Scope of Consent (Idhn)

Liability analyzed through the lens of consent and its relationship to *iqdam* can also be examined as a reason for *iqdam*'s intervention in criminal matters. The issue may be discussed in two parts.

4.4.1. The Owner's Consent to Another's Entry onto the Premises and the Effect of the Rule of Iqdam

This part concerns cases where a person enters another's property and suffers certain injuries or losses. The prime jurisprudential instances involve digging a well in a public place or on private property, with further examples including leaving a knife, placing a slippery object, positioning a stone, or driving a nail. By eliminating the specificity of these examples, one may infer that digging a well is not unique; generally, any condition that causes an accident can be analogized. The juristic discussions proceed in two branches:

a. Absence of the Owner's Consent and the Occurrence of Injury or Loss

Many juristic writings support the view that if the owner, on his own property, undertakes acts such as placing a stone or knife—or, generally, anything that could cause an accident—and another person enters without permission and is killed or injured, the owner bears no liability. Al-Tusi writes in *al-Mabsut*: "If he digs it in his own property, then there is no liability upon him, for he may do in his property as he wishes …" (Tousi, 1987). A contemporary jurist likewise states: "If he placed a stone on his property, he is not liable for the compensation of one who stumbles upon it, by consensus" (Khoei, 1989). The basis of this ruling, echoed by many other jurists (Mohaqqeq Ardabili, 1983; Mohaqqeq Hilli, 1987), is the narration of Zurara from Imam al-Sadiq (peace be upon him): "If a man dug a well in his own house, and then a man entered and fell into it, there would be nothing upon him—no obligation and no liability—but he should cover it" (Kulayni, 1984).

b. Presence of the Owner's Consent and the Occurrence of Injury or Loss

Ṣāḥib al-Riyāḍ writes: "If the person who entered with [the owner's] permission is blind, or the well is covered or the place is dark and the like, the owner is liable" (Tabataba'i, 1997). This, however, is conditioned upon the owner's failure to inform the licensee; if the owner informs the licensee of the danger, he is not liable (Fadel Isfahani, 1995).

c. Analyzing the Rule of *Iqdam* within the Owner's Scope of Consent

It is evident that the Rule of *Iqdam*, particularly in the first branch (entry without permission), operates fully to negate the owner's liability. In the second branch (entry with permission), *iqdam* applies only if the owner has warned the licensee of the existing dangers; otherwise, the owner's failure to warn creates liability and prevents the full operation of *iqdam*. Article 508 of the Islamic Penal Code (2013) has been enacted on precisely this jurisprudential foundation (Hojjati, 2015; Validy, 2013).

4.4.2. Voluntary Active Euthanasia and the Effect of the Rule of Iqdam

Euthanasia refers to conduct whereby a person, without malice and criminal intent, performs an act that ultimately deprives a human being of life. The victim's consent and the modality of the life-ending act give rise to different types of euthanasia

(Nabi, 2020). Voluntary active euthanasia is one type in which the patient's death is intentionally caused and is grounded in the patient's consent, which entails a form of waiver. In Islamic criminal jurisprudence, two principal views exist—both focusing mainly on the victim's consent and its conditions: the more prevalent opinion holds that *qisas* does not apply to the killer, while the other view imposes *qisas* (Khodayar, 2010).

Adopting the prevalent basis, and noting that current statutes do not expressly confer the right of *qisas* upon the heirs in this situation—and that Article 365 of the Islamic Penal Code (2013) addresses forgiveness after the commission of the crime but before death—it follows (given that euthanasia is not encompassed by that provision or other articles) that, invoking the purport of the Rule of *Iqdam* and the exercise of individual choice, in the case of active euthanasia the patient's *iqdam*—requesting the physician to end their life—produces a fall of liability. Affecting the case's legal status, even though the physician's act is intentional killing, *qisas* is extinguished; thus, the physician is not subjected to *qisas*. However, compromise over *diyah* between the physician and the heirs, together with *ta'zir* punishment and the act's eschatological consequences for the perpetrator, remain in view (Ghani et al., 2016; Khosravi et al., 2018; Ramshi et al., 2017).

5. *Iqdam* and Criminal Statutes

Pursuant to Article 14 of the Islamic Penal Code (2013), punishments are divided into four categories: *hudud*, *qisas*, *diyat*, and *ta'zirat*. The Iranian legislator, either generally or within each of these categories, has in several instances taken account of the Rule of *Iqdam* and legislated on its basis.

5.1. Iqdam and Hudud (Fixed Shari'a Penalties)

Article 268 of the Islamic Penal Code, in stating one of the conditions for *haddi* theft, refers to the violation of the secure enclosure (*hattk al-hirz*) by the thief. The legislator's reference indicates that if someone other than the thief violates the enclosure, the *hadd* punishment for theft—such as amputation—will not be established. Now, suppose the complainant (victim) himself, for any reason, breaks the enclosure; in that case, his conduct prevents the realization of *haddi* theft, and—based on the Rule of *Iqdam*—bringing a *haddi* theft complaint or requesting amputation or execution would be unfounded. Likewise, in the offense of *qadhf* (criminal slander), if a person slanders another and, as a result, the other reciprocally slanders him, then by reason of *taqadhuf* (mutual *qadhf*), the *hadd* of *qadhf* is not applied. Article 261 provides that among the cases causing the fall of the *hadd* of *qadhf* at the stages of prosecution, adjudication, and execution is: "Whenever two persons slander each other, whether their slander is identical or different," and, finally, for *taqadhuf* imposes 31–74 lashes as a sixth-degree *ta'zir* sentence. In both examples, there is no explicit mention of the Rule of *Iqdam*, yet the complainant's conduct—an embodiment of *iqdam*—affects the defendant's liability.

5.2. Iqdam and Diyat–Qisas

The Note to Article 473 of the Islamic Penal Code provides: "Whenever a person, knowingly exposing himself to danger or by fault, enters a prohibited military zone or any other place where entry is forbidden, and is targeted according to regulations, liability is not established; and if he was unaware of the prohibition, *diyah* is paid from the public treasury." It is evident that being in such a place increases the probability of harm from bullets or shots; therefore, an informed victim must take note and avoid the harm; otherwise, he has acted against himself. Under this provision, the legislator implicitly grounds the absence of the offender's liability in the Rule of *Iqdam*. Although the rule is not explicitly named, this instance—which can also be viewed as part of warning and hazard-notice doctrines—has been explicitly discussed and affirmed by many jurists as a paradigm of *iqdam* (Hosseini Maraghi, 1996; Mousavi Bojnourdi, 1998a).

Likewise, the Note to Article 523 treats the perpetrator's informed *iqdam* as a case of falling liability: "In cases where the injury is attributable to the injured party himself—for example, where the entrant knows the animal is dangerous while the permitter is unaware of the danger or unable to avert it—liability is negated." In addition, Note 1 to Article 658 references the element of consent in illicit intercourse and treats the party's consent—stemming from his or her informed *iqdam*—as a ground for the fall of liability of the fornicating party. Under this provision, "Whenever defloration results from intercourse with

consent, nothing is established." The non-entitlement to *arsh al-bakarah* (compensation for virginity) where intercourse occurs with consent has also been affirmed by many jurists; thus the consenting woman is entitled to nothing (Rouhani, 2003).

Granting a grace period for payment of *diyah* and disregarding the statutory deadline by the liable party—and consequently bearing additional cost—is another instance falling under this rule. Under Article 488, the liable party has a specified time to pay *diyah*. If he fails to pay by the due date, he must pay the amount in accordance with the monetary value of *diyah* on the day of payment. Although, after the due date, rights such as applying for enforcement, seeking asset identification, and invoking Article 3 of the Law on the Enforcement of Financial Convictions (2013) arise for the beneficiary, if the beneficiary, despite maturity of the debt, does not request enforcement, this does not alter the liable party's duty to pay *diyah* at the day's value. Based on the Rule of *Iqdam*, the debtor must in any case pay according to the value on the day of payment; in other words, the loss caused by the increase in *diyah* value is attributable to the debtor, and it cannot be said the beneficiary "abused" his right, since the Rule of *Iqdam* governs the matter.

More broadly, in the *diyat* chapter, numerous provisions—such as Articles 504, 507, 508, 511, and 512—implicitly incorporate the content of the Rule of *Iqdam*. In this vein, and as a general principle, Article 537 states: "In all cases mentioned in this chapter, whenever the injury is exclusively attributable to the victim's deliberate act or fault, liability is not established." By virtue of this text—and its reference to "this chapter"—one may state that the legislator has accepted the Rule of *Iqdam* in the field of *diyat*, in a manner that removes criminal responsibility and negates the obligation of the offender to pay *diyah*. Finally, with emphasis on what was stated in the juristic survey regarding *qisas* by transitive aggravation, we merely note Article 422 of the Islamic Penal Code (2013): "If the offender, by moving or otherwise, causes the retaliation to exceed the injury, the avenger of blood is not liable; and if the avenger or another person causes the excess, then, as the case may be, he is punished by *qisas* or *diyah*." Thus, in executing *qisas* for a limb, if the offender's movement causes the retaliation to exceed the original injury, the avenger bears no liability (Validy, 2013). Here, the offender's own *iqdam* causes the enlargement of the *qisas*, and the executor is not liable.

5.3. Iqdam and Ta'zirat

Given the foundational difference between *ta'zir* crimes and non-*ta'zir* crimes, the scope of *iqdam* is assessed differently. *Ta'zir* is that chastisement or punishment for which a fixed measure is generally not prescribed by the Lawgiver and is left to the judge's discretion; as Shahid al-Thani states in *Masalik*, the default in *ta'zirat* is the absence of a fixed, known measure, and in most cases no specific amount is set for persons or instances (Zojaji & Malmir, 2019). With this principle in mind, we examine the scope of *iqdam* in *ta'zir* crimes.

Most *ta'zir* crimes in the Islamic Penal Code (2013) derive from the *Ta'zirat* section enacted by the Islamic Consultative Assembly in 1996. The prevailing view among many criminal-law scholars is that self-*iqdam* by victims does not affect the essence of criminal responsibility for such offenses; they assign no percentage effect to *iqdam* in these crimes. For example, the offense of insult—among crimes against the moral dignity and reputation of persons—is criminalized in several provisions. Article 608 provides: "Insulting individuals, including using abusive language and coarse words, where it does not constitute the *hadd* of *qadhf*, is punishable by a sixth-degree monetary penalty." Explaining this and addressing spontaneous abusive speech, a commentator writes: "The insult must be spontaneous and initial—that is, not merely a response to the addressee's insult. Therefore, if the victim immediately repeats the insult back and begins responding, one cannot treat his act as falling under this article; the rationale is the state of provocation and agitation that arises upon hearing an insult, causing the listener, without prior reflection, to respond and utter abuse. This is obviously confined to oral exchanges; if someone, after time for reflection, sends a letter containing insults, the act cannot be considered non-criminal" (Hojjati, 2015). The text's breadth aligns with this current of thought; nevertheless, another view exists.

In a juristic Q&A concerning spontaneous insult, a contemporary *marja'* was asked: "Is spontaneity and initiatory status a condition in insult or not? If two people insult each other, is the first person who initiates guilty and subject to *ta'zir*, and what about the second person who responds in kind?" The answer: the first insulter is guilty by the Qur'anic text, reason, and traditions and is subject to *ta'zir*; the second, if he insults only to the extent of the first, is not guilty by the verse of retaliation; if he exceeds, he is guilty to the extent of the excess and subject to *ta'zir* (Rouhani, 2004).

Accordingly, in light of the legislator's positions in various provisions—for example, the offense of slander (*iftira'*) and the necessity that the attributed crime not be proven against the complainant (Article 697 of the 1996 *Ta'zirat*), or in special criminal statutes, or Paragraph (p) of Article 38 of the Islamic Penal Code (2013)—it is somewhat difficult to conclude that the Rule of *Iqdam* is entirely rejected in *ta'zir* crimes. To elaborate: in *iftira'*, attributing a crime is a legal right of the victim; if the attribution leads to the other party's conviction, there is no ground for an *iftira'* complaint against the complainant. The rationale is that the convicted party's act—proved by the complainant—reflects the convict's *iqdam* against himself through committing the crime complained of (Aghaei Nia, 2020). From the negative implication of "fails to prove its truth" in Article 697, it may be inferred that the legislator contemplated *iqdam*. Similarly, the non-hearing of the criminal complaint for *tark-e anfaq* (failure to pay spousal maintenance) under Article 53 of the Family Protection Act (2013), where the wife's *nushuz* (recalcitrance) is proven, means that a recalcitrant wife's criminal complaint due to noncompliance is inadmissible; conversely, if compelled *nushuz* and leaving the home due to the husband's abuse is proven, the Rule of *Iqdam* operates against the man and the duty to pay maintenance remains (Golpayegani). In this light, the provision in Paragraph (p) of Article 38 of the Islamic Penal Code (2013), which allows mitigation and thus reduces criminal responsibility, may be viewed as consonant with acknowledging *iqdam*—though if *iqdam* were to be fully embedded across criminal matters, this provision would warrant revision and reform (Validy, 2013).

6. Discussion and Conclusion

The Rule of *Iqdam* is not confined to a particular branch of jurisprudence. Based on its definition—as, in general terms, "acting against oneself"—it can be invoked across all areas of jurisprudence, from devotional matters to transactions and especially criminal law. The idea that *iqdam* can be applied in criminal matters is supported by its evidentiary foundations. Conceiving of *iqdam* as a jurisprudential rule is one such basis, since each jurisprudential rule is characterized by generality, legality, and applicability to particulars; and any subject containing these features can easily be applied in diverse matters. Juristic opinions, the theory of defense, and the scope of authorization are further supports for the foundations of this rule. Nevertheless, all these reasons must be interpreted alongside the crucial condition of *iqdam*, namely, the actor's knowledge and awareness.

Although juristic discussions of *iqdam* in criminal matters are often confined to specific issues—such as the transmission of injury in *qisas*—some jurists, moving beyond particular and case-specific formulations, emphasize the generality of the Rule of *Iqdam*. Without reference to a specific branch of jurisprudence, they regard *iqdam* as grounds for the forfeiture of respect (*isqat al-ihtiram*), and in other words, they define the Rule of *Iqdam* as a basis for the negation of liability under the maxim *"al-taslit wa al-iqdam yasqut al-ihtiram"*. This understanding of the rule aligns closely with its characterization as a jurisprudential rule and harmonizes with rational approaches. However, even though the definition of a jurisprudential rule and the classification of *iqdam* as a subset of it—as well as certain juristic statements—affirm its generality across all fields, its application in *hudud* seems to invite greater doubt. Because of its strictly legal nature, it should remain confined to expressly stipulated cases, such as *taqadhuf* or *haddi* theft and its reclassification as a *ta'ziri* offense. In other words, from the tenor of statutory provisions in the field of *hudud*, it can be inferred that the Rule of *Iqdam* has been accepted by the legislator with minimal effect, with the ultimate outcome being mitigation of punishment rather than a complete removal of criminal liability.

In contrast, in other branches of criminal law—*qisas*, *diyat*, and especially *ta'zirat*—given the principle *al-ta'zir bima yarah al-hakim*, there is no limitation on applying the Rule of *Iqdam*. With respect to diverse examples and foundations—such as transmission in injury, the theory of defense, the scope of authorization with its twofold cases, several provisions of the Islamic Penal Code (2013) and the *Ta'zirat* Law (1996), and the many juristic and legal views in the field of *diyat*—one can, by establishing a new doctrine in criminal law (similar to what occurred regarding the Rule of *Dar'* in criminal legislation) (Safari & Zehravi, 2009), formally recognize the Rule of *Iqdam* in criminal law through the enactment of a specific article or articles. Naturally, institutionalizing such a rule would necessitate reform or repeal of certain provisions, including Paragraph (p) of Article 38 of the Islamic Penal Code (2013). On this basis, and with consideration of *iqdam*, provocative conduct or speech by the victim may, in certain circumstances, negate the offender's criminal liability. It is recommended that the final part of Paragraph (p) of Article 38—namely, the phrase "provocative conduct or speech by the victim"—be deleted and, instead, inserted as a new note to Article 38, as follows:

"In cases where the commission of a crime arises from the complainant's or victim's provocative conduct or speech, and where it does not fall under legitimate defense, *dar'*, or other justifying rules of crime, the offender shall, under the Rule of *Iqdam*, be exempted or benefit from mitigation if the following conditions are met:

1. The complainant or victim had knowledge and awareness of the likelihood of harm;
2. The complainant's or victim's act was unlawful or unconventional;
3. The harm or injury to the complainant or victim resulted from that very act."

Finally, at the end of the chapter on defenses to criminal liability in the Islamic Penal Code (2013), a new independent article should be enacted as Article 159 *bis*, with a note, in the following form:

"Whoever knowingly and deliberately, being aware of the probability of material or moral harm or bodily injury to himself, unlawfully or unconventionally engages in conduct that in fact results in harm or injury to him by another, the person causing the harm or injury shall not bear criminal liability, and the act shall be deemed lawful. Note: In *haddi* crimes, the application of the Rule of *Iqdam* is permissible only where the legal and jurisprudential conditions are definitively established; in cases of doubt, the presumption is that it does not apply."

It is evident that enacting such a provision may lead to the inclusion of some criminal-law concepts within the scope of the Rule of *Iqdam* or its analogues. Yet this legislative technique has already been used in prior contexts, such as Paragraphs (a) and (b) of Article 158 of the Islamic Penal Code (2013). Therefore, the objection that the creation of a new legal institution based on the Rule of *Iqdam* is problematic holds no merit.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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