

A Jurisprudential Analysis of the Role of Gender in Iranian Criminal Law with Emphasis on the Concept of Contextual Justice

1. Ahmad Reza Nakhjiri[✉]: Ph.D. Student, Department of Jurisprudence and Fundamentals of Islamic Law, NT.C., Islamic Azad University, Tehran, Iran

2. Reza Partovi Zadeh^{✉*}: Department of Theology, NT.C., Islamic Azad University, Tehran, Iran

3. Roghayeh Shahabi[✉]: Department of Theology, VaP.C., Islamic Azad University, Varamin, Iran

*Correspondence: dr.partovizade@iau.ac.ir

Abstract

The criminal law system in Imami jurisprudence is not solely based on the criminalization of conduct and the imposition of punishments; rather, it encompasses a set of limiting and protective rules aimed at preventing the unjust expansion of criminal liability and safeguarding vulnerable individuals. Principles such as “no harm” (la darar), “preservation of life” (hifz al-nafs), and “the avoidance of hudud punishments in cases of doubt” (dar’ al-hudud bi al-shubuhah) are among the most important jurisprudential foundations for restricting the scope of punishments, and they play a significant role in maintaining a balance between the enforcement of criminal justice and the protection of individual rights. Within this framework, the issue of marriage involving minors can be examined as one of the key areas of protective intervention. Although Imami jurisprudence recognizes the authority of a guardian (wali) over the marriage of a minor, the exercise of this authority is conditioned upon the observance of the ward’s best interests, and in cases where such interests are absent or harm is present, its legitimacy becomes questionable. Contemporary jurisprudence, by drawing on theories such as “governmental jurisprudence” and “interest-oriented jurisprudence,” has expanded the scope of this protective approach and has enabled legislative intervention to protect children and prevent social harm. This theoretical development is also reflected in certain contemporary legal provisions and indicates a gradual transition from a purely individual-centered approach toward a framework grounded in protective and social welfare considerations in criminal policy. The present study, using a descriptive-analytical method and drawing upon jurisprudential and legal sources, examines the role of these principles in limiting the scope of criminal liability and strengthening protective mechanisms for vulnerable groups.

Keywords: Imami jurisprudence, protective criminal policy, no-harm rule, avoidance of hudud in cases of doubt, expediency (maslahah), child marriage.

Received: 01 January 2026

Revised: 01 May 2026

Accepted: 05 May 2026

Initial Publication 14 June 2026

Final Publication 01 July 2026



Copyright: © 2026 by the authors. Published under the terms and conditions of Creative Commons Attribution-NonCommercial 4.0 International (CC BY-NC 4.0) License.

Citation: Nakhjiri, A. R., Partovi Zadeh, R., & Shahabi, R. (2026). A Jurisprudential Analysis of the Role of Gender in Iranian Criminal Law with Emphasis on the Concept of Contextual Justice. *Legal Studies in Digital Age*, 5(4), 1-9.

1. Introduction

The criminal law of any legal system, in defining criminal conduct and determining penal responses, is inevitably required to take account of the personal characteristics and attributes of the offender. These characteristics sometimes play a decisive role in determining criminal responsibility, sometimes in the conditions for the realization of the offense, and sometimes in the type and degree of punishment. Among these attributes, “gender” is one of the components that has acquired a significant position in certain areas of criminal law, especially in legal systems grounded in jurisprudence. In Imami jurisprudence, and consequently in Iranian criminal law, in some cases the fact that the offender or the victim is male or female affects the formation of the criminal designation, the conditions for its realization, and even the type of penal response. For this reason, analyzing the place of gender in the conceptual and normative structure of criminal offenses is regarded as an important issue in jurisprudential and criminal law studies (Ardebili, 2019; Mir Mohammad Sadeghi, 2020).

In contemporary criminal law literature, gender-based distinctions in certain penal rulings have sometimes been criticized as signs of discrimination or inequality. However, a careful examination of jurisprudential sources shows that in many cases gender is considered not as a criterion for assigning different value to individuals, but rather as one of the descriptive elements in defining the subject matter of the offense. In other words, just as characteristics such as age, mental capacity, or the particular status of the victim may affect the realization of certain criminal titles, in some cases being male or female is also raised as one of the constituent elements of the subject matter of the offense and therefore affects its scope and conditions of realization (Goldouzian, 2019; Habibzadeh, 2018).

In Imami jurisprudence, the regulation of many penal rulings is based on a kind of contextual view of justice, a view in which difference in rulings is not necessarily regarded as discrimination, but may instead result from differences in the nature of acts, the characteristics of the subject matter of the offense, or social and protective considerations. Within this framework, some criminal titles are defined in such a way that their realization is structurally connected to a particular gender. For example, in offenses such as *liwat* and *tafkhidh*, gender is involved in the very definition of the offense, and these titles are essentially defined within the framework of relations between males. By contrast, in some fields, especially within the domain of the family institution, gender may serve as the basis of a protective criminal policy, such that the legislator, in light of jurisprudential considerations and rules such as *la darar* and the preservation of life, provides special protective measures for certain groups, including underage girls in matters relating to marriage (Mohaqqeq Damad, 2007; Safaei & Emami, 2014).

In light of these considerations, the central issue is the level at which, and the function through which, gender affects the realization of criminal titles and the determination of criminal liability in Imami jurisprudence and Iranian criminal law. In other words, should gender-based differences in certain penal rulings be regarded as evidence of a discriminatory approach, or can these differences be explained within the logic of jurisprudential subject-identification and the substantive requirements of criminal acts? Answering this question requires an analytical examination of examples of criminal titles in which gender plays a decisive role.

Accordingly, the present study, adopting a descriptive-analytical approach and drawing on the sources of Imami jurisprudence and Iranian criminal law, examines the place of gender in the realization of certain criminal titles. The principal focus of this study is the analysis of offenses that are, in terms of their subject matter, assigned to one gender, as well as the examination of cases in which gender plays a role within the framework of protective criminal policy, especially in the sphere of the family institution. The aim is to provide, through an examination of the jurisprudential and legal foundations of these rulings, a clearer picture of the function of gender in the structure of a criminal justice system grounded in Imami jurisprudence.

2. Gender as a Descriptive Element in the Structure of the Rule

One of the fundamental foundations in the analysis of jurisprudential rulings, and consequently penal rulings, is the principle in *usul al-fiqh* that a ruling is dependent on its subject matter. According to this principle, a religious ruling always derives meaning in relation to its subject matter, and its realization or non-realization depends on the realization or non-realization of that subject matter. Legal theorists have expressed this principle through the well-known maxim that “the ruling revolves around its subject matter, existing when it exists and ceasing when it ceases.” This means that the existence of the ruling depends upon the existence of the subject matter, and its disappearance depends upon the disappearance of that subject matter

(Baqir al-Sadr, 1985; Khorasani, 1988). From this perspective, difference in rulings does not necessarily mean difference in the valuation of persons; rather, in many instances it arises from differences in the structure of subject matters and the conditions of their realization. Akhund Khorasani expressly states in *Kifayat al-Usul* that a religious ruling cannot be conceived independently of its subject matter, and that any difference in the subject matter naturally leads to a difference in the ruling (Khorasani, 1988). In the same vein, legal theorists such as al-Sadr have emphasized that the subject matter is in fact the “real qualifier of the ruling,” and that a change in it may lead to a change in the scope of the ruling (Baqir al-Sadr, 1985).

This foundation is applicable to the analysis of many jurisprudential titles, especially penal ones. In cases where the subject matter of a ruling is defined in such a way that its realization depends on specific characteristics of the actor or the object, that characteristic is regarded as part of the structure of the subject matter of the ruling. In such cases, the difference in ruling arises from a difference in the nature of the subject matter, not from a different valuation of persons. Imami jurists have defined many jurisprudential titles precisely in this manner and have specified the constituent elements of the subject matter of the ruling with great precision (Khoei, 1997; Sobhani, 2009).

In some penal titles in Imami jurisprudence, gender also plays a role in the definition of the subject matter of the act. For example, in the offense of *liwat*, jurists have defined this title as “the penetration of a male by a male.” This definition is extensively reflected in both classical and contemporary jurisprudential sources (Khoei, 1997; Khomeini, 1983; Najafi, 1988). Likewise, *tafkhidh* is defined in jurisprudential sources as a form of sexual contact between two males whose structure is, by its very nature, connected to the gender of the actors (Makarem Shirazi, 2006; Shahid Thani, 1992). In these cases, gender is not an external or accidental factor, but part of the subject-matter definition of the act itself, and without it the relevant jurisprudential title is not realized.

This analysis has also been emphasized in contemporary jurisprudential writings. For example, Ayatollah Khoei, in his discussions of penal jurisprudence, states that the realization of some *hudud* titles depends on the exact realization of their subject-matter elements, and that the absence of any one of these elements excludes the conduct from the scope of the criminal title (Khoei, 1997). Similarly, some contemporary jurists, in analyzing the structure of *hudud* offenses, have stressed that many of these crimes have specific subject matters defined by particular attributes, and that these attributes are in fact constituent parts of the subject matter of the ruling (Makarem Shirazi, 2006; Sobhani, 2009).

On this basis, gender in this category of offenses may be regarded as a “descriptive element of the subject matter of the offense.” In jurisprudence, descriptive elements are features upon which the realization of the subject matter of the ruling depends. Characteristics such as maturity, mental capacity, free will, or the existence of particular conditions in the actor or object are among the attributes that play a role in determining the subject matter of the ruling in many jurisprudential rulings (Momen Qomi, 2013; Sobhani, 2009). Just as lack of maturity or lack of mental capacity may prevent the realization of criminal responsibility, so too, in some offenses, the absence of specific subject-matter characteristics, including a particular gender, removes the conduct from the scope of the criminal title.

This analysis is also observable in Iranian criminal law. In many legal systems, the elements of an offense include attributes relating to the characteristics of the offender, the victim, or the conditions of the commission of the offense. In Iranian criminal law as well, some offenses are defined on the basis of specific characteristics of the offender or the victim. Iranian legal scholars have analyzed these characteristics within the framework of the “material and descriptive elements of the offense” (Ardebili, 2020; Goldouzian, 2019; Mir Mohammad Sadeghi, 2021). For example, in some offenses, the age of the victim, a kinship relationship, or the gender of the persons involved plays a role in the definition of the crime, and without the realization of these characteristics, the criminal title does not arise.

From a theoretical perspective, this issue is also comparable with discussions in contemporary legal philosophy and criminal law. In legal theory, some elements of an offense are recognized as “descriptive elements,” meaning elements that refer to objective and identifiable characteristics of the subject matter of the offense or its actor and form part of the legal definition of the offense. Within this framework, characteristics such as age, physical condition, or gender may play a role in defining an offense without necessarily indicating a different valuation of persons (Hart, 2012; Robinson, 1997).

Accordingly, differences in some penal rulings in Imami jurisprudence may be analyzed in light of differences in the “subject-matter structure of the offense.” In such cases, gender operates as one of the constituent elements of the subject matter

of the offense, and its role in defining the offense arises from the specific nature of that subject matter. Therefore, the difference in ruling in such cases is the result of a difference in the nature of the act and the conditions of its realization, not the result of an evaluative preference for one gender over another. Such an analysis may contribute to a more precise distinction between subject-matter differences and normative discrimination, and may provide the basis for a deeper understanding of the jurisprudential foundations of criminal law.

3. Contextual Justice and Differentiation

One of the important theoretical foundations for analyzing differences in jurisprudential and legal rulings is the concept of “contextual justice.” Under this approach, justice is not understood merely as formal equality or the uniform application of rulings under all conditions, but rather as the observance of proportionality between the ruling and its subject matter. In other words, whenever subject matters differ in terms of their nature, effects, or conditions of realization, justice requires that rulings also be regulated in proportion to those differences. In the jurisprudential tradition and in the philosophy of Islamic law, this type of justice is based on the principle of “putting something in its proper place,” according to which justice is defined as placing each ruling in a position appropriate and proportionate to its subject matter (Javadi Amoli, 2009; Mesbah Yazdi, 2012).

In the analysis of Islamic thought on justice, many thinkers have emphasized precisely this approach. Ayatollah Javadi Amoli, in his discussions of the philosophy of Islamic law, regards justice as a concept that derives meaning from “the proportionality between the ruling and the objective realities of the subject matter”; therefore, imposing identical rulings on different subject matters is not only unjust, but may itself lead to injustice (Javadi Amoli, 2009). Likewise, Ayatollah Mesbah Yazdi, in his analysis of the foundations of justice in Islamic law, states that justice does not necessarily mean complete sameness of rulings, but rather means observing the proportionality of rights and duties with the actual conditions of persons and subject matters (Mesbah Yazdi, 2012).

This foundation is also clearly visible in Imami jurisprudence in the manner in which the subject matters of rulings are analyzed. When deriving rulings, jurists pay attention to the characteristics of the subject matter and the effects that follow from it, and consequently, where the structure of the subject matters differs, the ruling also differs. Within this framework, many differences found in jurisprudential rulings should be regarded as the result of differences in subject matters, not as the result of evaluative preference among persons. Some contemporary jurists, in analyzing the foundations of legal derivation, have likewise emphasized that a precise understanding of subject matters is one of the principal pillars of *ijtihad*, and that a change in the understanding of the subject matter may lead to a change in the scope of the ruling (Momen Qomi, 2013; Shabzندهdar, 2015).

This approach is also observable in the field of jurisprudential criminal law. In analyzing offenses, jurists consider not only the nature of the act but also its social effects and the characteristics of the offender or the victim. Consequently, where the structure of the act or its social consequences differs for different groups, the ruling is formulated in proportion to that difference. For example, in some offenses relating to sexual relations, the structure of the act is defined in such a way that gender plays a role in defining the subject matter of the offense, and this leads to a distinction in the criminal title and in the type of penal response (Fazel Lankarani, 2004; Tabrizi, 2005). In such cases, the difference in ruling arises in reality from a difference in the subject-matter structure of the offense and not from an evaluative preference for one gender over another.

The reflection of this foundation can also be observed in Iranian criminal law. In contemporary criminal law, the criminalization of conduct is often carried out on the basis of specific subject-matter characteristics, and the legislator, in defining some offenses, takes into account special conditions relating to the offender or the victim. Iranian legal scholars have pointed out in their analysis of the structure of crime that the constituent elements of an offense may include particular characteristics of persons or of the circumstances of the act, and that these characteristics form part of the legal definition of the offense (Habibzadeh, 2018; Sadeghi, 2019). In such cases, the difference in the scope of the offense arises from a difference in its subject-matter structure.

On the other hand, contextual justice in some cases also appears in the form of protective criminal policy. Under this approach, the legislator, taking into account the greater vulnerability of certain groups or with the aim of protecting social

institutions, provides special protective regulations. Such a policy is also observable in many contemporary legal systems. For example, in criminal laws relating to the protection of children or the response to domestic violence, special regulations are provided for the protection of vulnerable groups, based on protective and social considerations (Ardebili, 2019; Mir Mohammad Sadeghi, 2020).

Examples of this approach can also be seen in Iranian law. In some areas, the legislator, with the aim of protecting vulnerable individuals or preserving social order, has provided specific sanctions. This approach shows that criminal policy is in many cases shaped by protective considerations and social necessities, and that differences in some penal rules may arise from precisely such considerations.

Comparative legal studies likewise confirm the reality that many contemporary legal systems, in regulating certain offenses, especially in the field of sexual crimes and the protection of children, employ a similar approach. In those systems as well, characteristics such as age, physical condition, or gender may play a role in defining the offense or in determining legal protections. These characteristics are regarded as part of the subject-matter structure of the offense, and their purpose is to ensure effective protection of vulnerable groups and the preservation of social order (Hart, 2012; Robinson, 1997).

Accordingly, the concept of contextual justice in Imami jurisprudence and Iranian criminal law provides a theoretical framework within which differences in some penal rulings may be explained not as discrimination, but as the result of differences in the nature of subject matters and the necessity of proportionality between the ruling and the subject matter. Within such a framework, differences in some criminal titles or in certain forms of penal protection should be analyzed in light of the subject-matter structure of the offense and protective considerations. This approach enables a more precise understanding of the jurisprudential and legal foundations of existing differences in the criminal justice system and shows that, in many cases, gender is considered not as a criterion of value judgment, but as one of the factors affecting the definition of the subject matter of the offense or the design of protective policies.

4. Limiting Principles: La Darar, Preservation of Life, and the Avoidance of Hudud

In Imami jurisprudence, although in some criminal titles characteristics such as gender, age, or physical condition play a descriptive role in determining the subject matter of the offense or the conditions of its realization, this jurisprudential system at the same time provides a set of limiting principles and rules whose purpose is to prevent expansive interpretation, harsh enforcement, or the unjustified extension of the scope of punishments. These principles, rooted in the major jurisprudential foundations and the purposes of the Sharia, become especially important in the sphere of hudud offenses and in cases where the rights of vulnerable individuals are at risk. Among the most important of these rules are the principle of la darar, the principle of preservation of life, and the rule of avoiding hudud punishments in cases of doubt, each of which plays a role in limiting the scope of penal rulings and preventing harmful consequences.

One of the most important jurisprudential rules in this regard is the principle of “la darar wa la dirar fi al-Islam,” based on the well-known Prophetic report transmitted in authoritative hadith sources (Hurr Amili, 1988; Momen Qomi, 2013). In Imami jurisprudence, this rule is recognized as one of the foundational legal maxims, and many jurists have regarded it as a governing rule across different chapters of jurisprudence. According to this principle, the enactment or enforcement of a ruling that entails significant harm to those subject to it is incompatible with the spirit of the Sharia. For this reason, Imami jurists, in cases where the enforcement of a ruling causes substantial harm, have either considered the ruling itself inapplicable or limited the scope of its enforcement. Shaykh Ansari, in his analysis of this rule, states that its content is the negation of harmful rulings in the Sharia, and therefore, whenever the enforcement of a ruling causes significant harm, that ruling is restricted at the stage of enforcement (Ansari, 1995). Likewise, some later jurists have emphasized the governmental and social dimension of this rule and have considered it one of the most important tools for preventing the imposition of unjustified harm on individuals (Khomeini, 1989).

The application of this rule can be observed in various jurisprudential fields. For example, in the discussion of the authority of the father or paternal grandfather over the marriage of an underage girl, many jurists have expressly stated that this authority is not absolute and is conditional upon the observance of the ward’s best interests. If the marriage entails harm or lacks benefit, such authority loses its legitimacy. Mohaqeq Damad, in examining this issue, emphasizes that guardianship in the marriage of

a minor is a fiduciary form of authority and is valid only within the framework of the girl's genuine welfare (Mohaqeq Damad, 1995). In the same vein, some contemporary legal scholars, relying on these jurisprudential foundations, have stressed that if marriage at a young age causes physical or psychological harm to the child, it may be considered an instance of harm, thereby rendering the legitimacy of such an act open to doubt (Safaei & Emami, 2014).

Alongside the principle of *la darar*, the principle of "preservation of life" is also one of the most fundamental principles in the Islamic legal system. This principle is recognized, within the framework of the theory of the purposes of the Sharia, as one of the basic objectives of legal rulings. Al-Shatibi explains that Islamic law seeks to preserve five essential interests—religion, life, intellect, lineage, and property—and that the preservation of human life occupies a central place among these interests (Shatibi, 1997). On this basis, many jurisprudential rulings are interpreted in a manner that serves this objective. In Imami jurisprudence as well, jurists have in many contexts emphasized the priority of preserving human life and health. For example, Khoei states in his jurisprudential discussions that whenever the enforcement of a ruling creates a serious danger to human life, its enforcement must be avoided, because the preservation of life is among the most important purposes of the Sharia (Khoei, 1989).

This approach is likewise evident in discussions relating to the rights of children and vulnerable individuals. Some jurists, in discussing the marriage of minors, have expressly stated that observance of the child's welfare is a fundamental condition for the validity of such a marriage, and that where there is a possibility of physical or psychological harm, the guardian's action may be legally questionable. Such an analysis has also found reflection in contemporary law and has appeared in the form of protective policies for children and adolescents, such that many legal systems have attempted, by setting minimum ages for marriage or creating supervisory mechanisms, to prevent possible harm.

Another important rule in the field of Islamic criminal law is the principle of "avoiding hudud punishments in cases of doubt," which is recognized as one of the most important precautionary principles in the enforcement of hudud penalties. The basis of this rule lies in numerous traditions according to which, whenever any doubt exists regarding the realization of the conditions of a hudud offense, the hudud penalty must not be enforced (Hurr Amili, 1988). Imami jurists have regarded this principle as a foundation for narrow interpretation in hudud offenses. The author of *Jawahir al-Kalam* expressly states that whenever there is doubt regarding the realization of the subject matter of the offense or the conditions for proving it, the enforcement of the hadd is impermissible and recourse must be made to the rule of avoidance (Najafi, 1988). The same approach has been emphasized in the works of many later jurists as well.

The application of this rule in jurisprudential discussions shows that there is an important distinction between the "preliminary acts of prohibited conduct" and the "full realization of a hudud offense." For example, some jurisprudential sources state that if two men lie under a single covering without a barrier between them, such conduct by itself does not amount to the hudud offense of *liwat* and may only be punishable by *ta'zir*. Allamah Hilli, in his jurisprudential works, makes the imposition of the hadd dependent upon the precise proof of the specific act and does not regard mere circumstantial evidence or preliminary conduct as sufficient for the realization of the hudud offense (Hilli, 1987). Shahid Thani, in his commentary on *Shara'i al-Islam*, likewise emphasizes that in hudud offenses the material elements and the conditions for proof of the offense must be established with precision, and that in the presence of any doubt the hudud penalty is precluded (Shahid Thani, 1992).

In sum, an examination of rules such as *la darar*, preservation of life, and the avoidance of hudud shows that the criminal system grounded in Imami jurisprudence is not based solely on the definition of criminal titles, but simultaneously contains a body of limiting and precautionary principles. These principles play an important role in preventing inflexible or overly expansive enforcement of penal rulings and, in practice, contribute to creating a balance between the necessity of preserving social order and the protection of individual rights and interests. Especially where the rights of vulnerable persons are at stake, these rules may provide the basis for a restrictive interpretation of penal rulings and for the adoption of protective approaches in the contemporary legal system.

5. Gender and Protective Criminal Policy

In some areas of criminal law, the role of gender appears not in the direction of creating different forms of criminal liability, but rather in strengthening protective mechanisms. One of the most important examples of this approach can be observed in

discussions relating to the marriage of minors. In Imami jurisprudence, although the principle of the father's or paternal grandfather's guardianship over the marriage of an underage girl is recognized, this authority is not regarded as absolute and is restricted by the essential condition of "welfare." According to the view of many jurists, the exercise of this guardianship is valid only where the marriage contains a genuine and demonstrable benefit for the girl; otherwise, such an act lacks legal legitimacy (Khoei, 1989; Najafi, 1988).

This condition shows that even within the framework of traditional jurisprudence, protection of the interests of the minor is regarded as an important criterion for the validity of decisions made by legal guardians. In contemporary jurisprudence, this approach has acquired a broader scope through reliance on some modern jurisprudential theories, especially the theory of "governmental jurisprudence" and "interest-oriented jurisprudence." The theory of governmental jurisprudence, developed systematically in the thought of Imam Khomeini, is based on the premise that the Islamic government, within the framework of the public welfare of society, may enact binding regulations in order to regulate social relations and prevent social harms (Khomeini, 1989). According to this view, where public welfare or social necessity so requires, the legislator may use legal and even penal instruments to protect vulnerable groups.

Within this same framework, some contemporary jurists, emphasizing the role of "collective welfare" in the regulation of social rulings, have stressed the possibility of legislative intervention in areas related to the rights and health of minors. In this approach, sometimes referred to as "interest-oriented jurisprudence," welfare is considered not merely at the individual level but at the social and protective level, and may serve as the basis for the enactment of protective regulations (Sistani, 2010). Such an analysis provides the necessary theoretical basis for the adoption of rules whose purpose is to prevent the possible harms arising from certain decisions within the family sphere.

The reflection of this theoretical development can also be seen in some contemporary legal regulations. For example, in the Iranian legal system, the legislator, while preserving the framework of traditional jurisprudence, has in certain cases provided specific penal guarantees with the aim of protecting minors and preventing social harms. Such measures show that, in this field, gender is taken into account not as a basis for intensifying criminal liability, but as a factor in strengthening the protection of vulnerable individuals.

Some scholars regard this transformation as evidence of a shift from an "individual-centered welfare approach" to a kind of "protective-social welfare approach," an approach in which the legislator considers not only individual welfare but also the social and protective consequences of decisions. This change in outlook has played an important role in the development of protective policies in the field of the rights of women and children, and has led to the use of criminal law instruments in the service of protecting these vulnerable groups (Daneshmand Kermani, 2020; Sadeghi, 2018).

6. Conclusion

An examination of the place of gender in Iranian criminal law and Imami jurisprudence shows that analyzing this issue is impossible without considering the subject-oriented foundations of jurisprudence and the logic underlying the formation of penal rulings. Many discussions in contemporary legal literature, especially in the field of human rights critiques, quickly interpret existing differences in certain penal rulings as "gender discrimination." However, jurisprudential analysis shows that a significant portion of these differences stems from the subject-matter structure of rulings and the particular characteristics of legal subject matters, rather than from a different valuation of women and men as legal persons.

In the foundations of *usul al-fiqh*, one of the fundamental principles is that "the ruling revolves around its subject matter, existing when it exists and ceasing when it ceases." According to this principle, every religious ruling depends on the characteristics of its subject matter, and a change in the attributes of the subject matter may lead to a change in the ruling. Within this framework, certain human characteristics such as age, physical condition, family relationships, and also gender, may play a role in defining the subject matter of the ruling. From this perspective, in some criminal titles gender appears not as a basis for different valuation, but as one of the descriptive attributes of the subject matter of the offense, an attribute that, alongside other elements, forms the legal structure of the crime.

The analysis undertaken in this study showed that, in many cases, the role of gender in penal jurisprudence is intelligible within the framework of the "descriptive element of the subject matter of the offense." Just as in modern criminal law descriptive and normative elements are distinguished in the definition of crime, in jurisprudence too some characteristics are

taken into consideration solely for the purpose of precisely determining the subject matter of the ruling. Within this framework, gender may in some cases function as one of the identifying elements of the subject matter of the offense, without implying a different valuation of the legal personality of individuals.

On the other hand, the concept of contextual justice plays an important role in jurisprudential thought in explaining differences in rulings. According to this view, justice does not necessarily mean complete uniformity of rulings in all cases, but rather proportionality between the ruling and the circumstances of the subject matter. On this basis, differences in some rulings may be the result of differences in the actual conditions of subject matters. In such a framework, differences among some rulings relating to women and men may be analyzed in light of differences in social roles, biological conditions, or protective considerations.

The examination of limiting jurisprudential rules in the sphere of enforcement of penal rulings also showed that Imami jurisprudence has not confined itself merely to defining criminal titles, but has at the same time provided mechanisms for preventing harsh or unjust enforcement of punishments. Rules such as the principle of *la darar*, the principle of preservation of life, and the rule of avoiding hudud punishments in cases of doubt are examples of these moderating mechanisms. The existence of such rules shows that, alongside defining crime and punishment, the jurisprudential system has also paid attention to preserving human dignity and preventing unnecessary harm.

In addition, analysis of criminal policy in some gender-related fields shows that, in certain cases, legal differences have been formed with the aim of protecting vulnerable groups. In many legal systems, legislators also enact different regulations in order to protect persons in particular situations. In Iranian jurisprudence and law as well, some regulations may be analyzed within the framework of a “protective criminal policy,” a policy whose goal is to reduce the vulnerability of certain groups and preserve both individual and social welfare.

Ultimately, the results of this study show that, in order to analyze gender-based differences in criminal law with precision, a distinction must be drawn between two levels of analysis: first, the level of the subject-matter structure of rulings, in which characteristics such as gender may play a role in defining the subject matter of the offense; and second, the level of normative valuation, which relates to the legal equality or inequality of persons. Failure to distinguish between these two levels may lead to incorrect understandings of the structure of some penal rulings.

For this reason, the study of the place of gender in Iranian criminal law requires an interdisciplinary approach that takes into account both the foundations of *usul al-fiqh* and the theoretical developments of contemporary criminal law. Such an approach can provide the basis for a more precise understanding of the structure of criminal law and for scholarly dialogue among different viewpoints in this field.

Ethical Considerations

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

Acknowledgments

Authors thank all who helped us through this study.

Conflict of Interest

The authors report no conflict of interest.

Funding/Financial Support

According to the authors, this article has no financial support.

References

- Ansari, M. (1995). *Al-Makasib*. Muassasat al-Nashr al-Islami.
- Ardebili, M. A. (2019). *General Criminal Law, Volume 1*. Mizan.
- Ardebili, M. A. (2020). *General Criminal Law*. Mizan.
- Baqir al-Sadr, M. (1985). *Durus fi Ilm al-Usul*. Dar al-Taaruf.

- Daneshmand Kermani, M. R. (2020). Social Interest and Its Role in Jurisprudential Developments of Family Law. *Journal of Fiqh and Foundations of Islamic Law*.
- Fazel Lankarani, M. (2004). *Tafsil al-Shariah fi Sharh Tahrir al-Wasilah, Book of Hudud*. Markaz Fiqhi Aemme Athar.
- Goldouzian, I. (2019). *Essentials of General Criminal Law*. Mizan.
- Habibzadeh, M. J. (2018). *Foundations of Criminal Law*. SAMT.
- Hart, H. L. A. (2012). *The Concept of Law*. Oxford University Press.
- Hilli, H. i. Y. (1987). *Qawaid al-Ahkam fi Marifat al-Halal wa al-Haram*. Muassasat al-Nashr al-Islami.
- Hurr Amili, M. i. H. (1988). *Wasa'il al-Shia*. Muassasat Al al-Bayt.
- Javadi Amoli, A. (2009). *Philosophy of Human Rights*. Esra.
- Khoei, S. A. (1989). *Misbah al-Fiqahah*. Institute for Revival of the Works of Imam al-Khoei.
- Khoei, S. A. (1997). *Mabani Takmilat al-Minhaj*. Institute for Revival of the Works of Imam al-Khoei.
- Khomeini, R. (1983). *Tahrir al-Wasilah*. Institute for Compilation and Publication of Imam Khomeini's Works.
- Khomeini, R. (1989). *Sahifeh-ye Imam*. Institute for Compilation and Publication of Imam Khomeini's Works.
- Khorasani, M. K. (1988). *Kifayat al-Usul*. Muassasat Al al-Bayt.
- Makarem Shirazi, N. (2006). *Anwar al-Fiqahah, Book of Hudud*. Imam Ali ibn Abi Talib School.
- Mesbah Yazdi, M. T. (2012). *Islamic Legal Theory*. Imam Khomeini Educational and Research Institute.
- Mir Mohammad Sadeghi, H. (2020). *Crimes Against Persons*. Mizan.
- Mir Mohammad Sadeghi, H. (2021). *General Criminal Law*. Mizan.
- Mohaqeq Damad, S. M. (1995). *Jurisprudential Rules, Civil Section*. Markaz Nashr-e Olum-e Eslami.
- Mohaqeq Damad, S. M. (2007). *Jurisprudential Rules, Civil Section*. Markaz Nashr-e Olum-e Eslami.
- Momen Qomi, M. (2013). *Jurisprudential Foundations of the Islamic Legal System*. Bustan-e Ketab.
- Najafi, M. H. (1988). *Jawahir al-Kalam fi Sharh Shara'i al-Islam*. Dar al-Kutub al-Islamiyyah.
- Robinson, P. H. (1997). *Structure and Function in Criminal Law*. Oxford University Press.
- Sadeghi, H. (2018). Protective Criminal Policy Toward Children in Iranian Law. *Legal Research Quarterly*.
- Sadeghi, H. (2019). *Analysis of the Elements of Crime in Iranian Criminal Law*. Mizan.
- Safaei, S. H., & Emami, A. (2014). *Family Law*. Mizan.
- Shabzendehtdar, M. M. (2015). *Foundations of Ijtihad and Legal Inference*. Markaz Fiqhi Aemme Athar.
- Shahid Thani, Z. a.-D. A. (1992). *Masalik al-Afham ila Tanqih Shara'i al-Islam*. Muassasat al-Maarif al-Islamiyyah.
- Shatibi, A. I. (1997). *Al-Muwafaqat fi Usul al-Shariah*. Dar al-Marifah.
- Sistani, A. (2010). *Al-Fiqh lil-Mughtaribin*. Office of Ayatollah Sistani.
- Sobhani, J. (2009). *Mawsuat al-Fiqh al-Islami al-Muqaran*. Muassasat Imam Sadiq.
- Tabrizi, J. (2005). *Irshad al-Talib ila al-Taliq ala al-Makasib*. Dar al-Fiqahah.