



Payment of Diya (Blood Money) in Multiple Intentional Murders by One Murderer in the Light of the Jurisprudential Rule of Justice

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Abstract

One of the effective jurisprudential rules in the process of inferring the religious law is the rule of justice. Although this term has been used in the works of jurists of recent times, but jurists of various periods have used this rule in various issues. One of the things that needs to be covered by this rule is the issue of intentional murders, which occur multiple times and have a specific murderer. The well-known opinion of Shi'a jurists is only the Qiṣāṣ (retribution) of the murderer. While it seems that this rule is not necessary for the rule of justice. The clear question is whether the rule of justice plays a role in this case. Or that the religious rulings in this regard should be considered devotionally, and in the next stage, if justice has a place, is it necessary to retaliate, or should a blood money be paid to all the avengers of blood? The purpose of this article is the jurisprudential analysis of this issue in the light of the rule of justice. Because in the intentional murder of one person, several people of the victim's family have been harmed in two ways that the revenge of the murderer has only one aspect and the aspect of compensation is remained. Or assuming that Qiṣāṣ is fair, the compensation is for one murder and not several murders. One of the most important findings of the research is that the rule of justice can play a role as a basic and pivotal rule in relation to the religious rules and by observing the element of time and place.

Keywords: *Single Murderer; Rule of Justice; Multiple Intentional Murders; Diya*

Introduction

Justice as a jurisprudential rule can play a role in jurisprudential ijthad and inference of Shar'ī law. The rule of justice in the case of (single murderer and multiple murdered persons) means criminal justice that has the following characteristics: 1- Observance of the principle of proportionality of crime and punishment. 2- Paying attention to the interests of the parties means that we see both the perpetrator and the victim. For example, is it in the interest of the victims to retaliate against one of them who took the lead and finish the job and take the opportunity from the other, or is it their interest to define a punishment for both the perpetrator and the victim and give them an opportunity? 3- In the rule of justice,

is the compensation necessary or retribution? In this case, namely one murderer and several murdered persons, at least three people have been taken out of the economic cycle. Who is providing the economic expenses for the families of these people, including all the killed people? The legislator must see in its ruling both the perpetrator and the victim, the families and, at a higher level, the society and its interests. But what is seriously controversial is that assuming the issue of (intentional murder of several people by one person), we are faced with a consensus and a famous fatwa, and that is only the retribution of the killer. There are several points in the premise of the problem: 1- Murder is one of the greatest bodily injuries and destroys a person's existence. 2- Murder is intentional, meaning that an adult, wise and autonomous person has committed an act with criminal will and intention (with knowledge and awareness). 3- Several people have been killed and their individual rights must be upheld. The famous ruling is in conflict with the rule of justice. Can the rule of justice be held accountable in these cases? There are various debates about the murder of several people by one person. Are the avengers of blood free in the intentional murder between Diya and Qiṣāṣ, or is the principle based on Qiṣāṣ and the Diya needs a special reason? Or that the avengers of blood of all the killed, both before and after retaliation, can take blood money from the killer? If they take a Diya, is there a need for the consent of the killer? That is, if the killer is not satisfied, no ransom can be taken from his property unless there is a special reason in this regard. It should also be noted that according to the well-known opinion of jurists in the Islamic Penal Code, Article 384 approved in 1392, it is stipulated that if a person intentionally kills two or more people, the blood avengers of each of the killed people can retaliate alone and without obtaining the consent of the other blood avengers of the killed and without paying a share of the Diya to them. That is, if the blood avenger of one of the killed person retaliates against the killer, he will exercise his right of Qiṣāṣ and the right of Qiṣāṣ for the blood avengers of the other killed people is practically disappeared. The explanation and necessity of paying a Diya in multiple intentional murders by one person based on the rule of justice, in order not to violate the rights of other killed people, is the subject of this article.

Research has been conducted in this field, which mentions several cases:

- 1- In a study entitled "Unity of the killer, multiple killed persons: a jurisprudential-legal study" by Ahmad Haji Abadi; In this article, he states that according to the jurisprudential evidences, the legislator can order the possibility of taking blood money for other victims after retaliation of the murderer against one of the killed persons, while in serial crimes, in addition to specifying the right of precedence of the parents of the first victim, like the first slain, to guarantee the implementation of non-observance of this right.
- 2- In another study entitled "The originality of Diya in intentional murder" written by Seyyed Sajjad Mousavi Kermanshahi, which proves the necessity of blood money in premeditated murders by citing various arguments.
- 3- Another article entitled "Investigation of conversion of retribution into blood money with the death of the killer or lack of access to him" by Adel Sarikhani and Qasem Islaminia, in this study by examining the evidences, it is shown that in cases of death of the killer or escape or lack of access to the killer one can use Diya instead of Qiṣāṣ so that the right of the avenger or avengers of the blood are not lost.
- 4- Another article entitled "The spiritual element of intentional murder in the Islamic Penal Code adopted in 1392" by Hassan Moradi and Ali Shahbazi, in this article, the spiritual element that is in intentional murder has been mentioned. The situation of premeditated murder due to the element of general and special malice and that the adult, wise and autonomous person has done with criminal will and intention and with knowledge and awareness.
- 5- Another research entitled "Research on the rule of justice and fairness" by Ali Mazhar Gharamaleki, Ali Dadkhah, who in this research has tried to provide valid documents that include the life of the wise and authentic narrations to prove this valid rule by examining the sources of Sharia.

A research in studies shows that none of them have examined the issue of blood money in multiple intentional murders using the rule of justice. Rather, it is only the examination of the rule of justice or the examination of retribution or Diya in intentional murders by a person which is done serially or at intervals. The novelty of this research is that the Diya is examined in several intentional murders using the rule of justice, which is unique in its kind.

In multiple intentional murders by one person, if the avengers of blood all agree on Qiṣāṣ, the killer will be retaliated against, and if the killer consents, blood money will be taken too; but the main question is whether the killer can be sentenced to pay Diya in addition to Qiṣāṣ? That is, where the killer is not satisfied with paying Diya, can the Diya of other victims be demanded from him? Because if retribution takes place, this retribution is the punishment of one of the victims, and since he has killed more than one person, assuming retribution, one percent of the right is upheld and the right of the other victims remains and is the responsibility of the killer. In such a case, there are two possibilities:

The first possibility is that there is no Diya and the killer will only be retaliated. Jurists believe that blood money should not be paid and even the consensus has also been claimed in this regard (Āmulī, nd, v. 11: 103-104). The second possibility is that after retaliation of the killer against one of the victims, the parents of the other victims have the right to receive blood money from the property of the killer. A group of jurists believe in the existence of Diya after retribution of the murderer and Allameh Majlisī considers paying Diya more famous (Majlisī, nd: 99).

First, the first possibility and its arguments, then the second possibility and its arguments are stated, and then the arguments are criticized and evaluated with the focus on the rule of justice.

1-The First Possibility: The Impossibility of Receiving Diya (retribution only) According to some jurists, there is no blood money before or after retribution. The phrase used by these jurists: "And if the murderer kills someone intentionally, then the avengers of blood just have the right of Qiṣāṣ..." (Ḥillī, 1408, v. 4: 192; *ibid*, 1418, v. 2: 295; Ḥillī, 1421: 339; Makkī, 1410: 269). In this regard, Shahid Thānī writes in detail regarding the words of Shahid Awwal: "The appearance of the phrase is that such a right does not exist at all; because the right of the blood avengers of the victims cannot be considered just as the retribution of the murderer"¹ (Āmulī, 1410, v. 10:50). Among contemporary jurists, Ayatollah Rouhani believes in the impossibility of collecting blood money from the murderer's property and paying blood money from the treasury (Rouhani, nd, vol. 26: 134). Imam Khomeini also believes in the lack of blood money (Mousavi Khomeini, nd, vol. 2, 538).

The arguments of this group of jurists are quoted and explained and then they are criticized and studied.

1-1- Resorting to the presumption of innocence and authorization of previous state

One of the arguments of the proponents of this view is the practical presumption of innocence. According to this presumption, no one is guilty in criminal matters unless proven guilty, and no one is in debt in legal matters unless proven guilty. Accordingly, the right of the avengers of blood in intentional murder is limited to retaliation. Proponents of this view pay the Diya with special conditions and only if the killer is satisfied to pay it (Āmulī, nd, v. 11: 104; Fāḍil Isfihānī, 1416, v. 11: 49; Āmulī, 1413, v. 15: 125). This view is documented by the generalities of the Qur'an, such as "In the law of Retaliation, there is life for you"², "Life for life"³ and narrations such as the correct narration of 'Abdullah Ibn Sinan (Ḥurr Āmulī, 1416, v. 29: 53).

«و لو قتل حر حرين و لو عفا بعضهم فللباقى القصاص و هل لبعضهم المطالبة بالدية و لبعض القصاص وجهان من ظاهر الخبر و تعدد المستحق و كذا في جواز قتله بواحد أما الأول أو بالقرعة أو تخييرا و أخذ الدية من ماله للباقيين (شرح لمعه، ج2، ص248)

² Al-Baqarah: 179

³ Al-Mā'idah: 45

In this case, if the killer is not satisfied with the payment of Diya (which is mostly the case), no Diya can be taken from the killer's property. Therefore, according to this principle, the killer is free from paying blood money. Assuming doubt in the indebtedness of the killer, we issue the authorization of previous state. As a result, the killer is not responsible for anything other than retaliation (Tūsī, 1407, v. 5: 183).

The document of famous jurists in reaffirming the sufficiency of retribution, without committing to Diya, is based on the principle; in other words, after performing Qiṣāṣ, there is a doubt whether by performing Qiṣāṣ, all the duties and responsibilities that have been for the killer have been performed or, in addition to Qiṣāṣ, the Diya is also on him, which should be given to other blood avengers? The principle is his non-obligation to pay Diya (Tabataba'i, 1420, vol. 14, p. 145; Sheikh Tūsī, 1429, vol. 5, p. 176; Fāḍil Hindī, 1416, vol. 11, p. 161; Sabzevārī, 1417, vol. 28, p. 298). Relying on this principle is useful where the subject does not have religious documents, but with the existence of religious texts from the Qur'an and Sunnah in confirmation of blood money in addition to retribution, and the existence of religious rules cited by the Imams (AS) in this regard, as will be continued, the issue of the principle and innocence of his obligation has been removed from the financial obligations, there is no place left for it. In the critique of the citation of the principle to both narrations, it can be said: First, the proponents of the Diya have cited arguments that if it is over, there is no place for the practical principle of innocence and authorization of previous state; because the practical principle has been forged in the place of doubt, and despite the reason for the Diya, it is no longer the turn of the practical principle. If the principle refers to the ijthādi evidences of the life for life, etc., then it must be seen that in opposition of these evidences with the evidences of the existence of blood money as a rule of "Muslim blood is not wasted"⁴, which one is preferable? If both evidences are complete, it is not unlikely to say that the strength of the evidences of the existence of blood money, especially the above mentioned rule, removes the principle of the monopoly of the right of the blood avengers to retribution. According to this rule, Muslim blood is not wasted. First, the tone of the rule indicates that this rule is inalienable (Khansari, 1405, v. 7: 51) and it cannot be said that Muslim blood has been wasted in some cases, including the murder of several people by one person, and secondly this rule is no longer the same as other rules because it has been documented in different sentences⁵. Thirdly, it can be said that the right of the avenger of blood is limited to retaliation based on arguments such as "life for life" where the killer has killed one person, but where one person has killed several people, "life for life" and the like give up these cases; because even if it includes this case, the result is that "the life for lives" and this is against the rule of justice. In this case, the situation of intentional murder of several people is worse than the unintentional murder of several people; because in the second, Diya is required for the number of killed people, but in the first, there is no Qiṣāṣ and Diya other than one Qiṣāṣ. (Madani Kashani, 1410: 46). One person against several persons, while the murder has been committed intentionally and knowingly, leaving several families bereaved and homeless. This punishment is not commensurate with the specific crime and is against the rule of justice.

1-2- Narrations

Two groups of narrations have been cited in this regard. One is the narrations of (the murderer is not punished more than his life⁶) and the narrations of Ibn Muskān.

According to the narrations and (the above rule), the murderer is not punished more than his life; that is, the murderer cannot be sentenced to both Qiṣāṣ and blood money. The principle of this rule is about a woman who has intentionally killed a man. Since if a man kills a woman, the woman's blood avengers can retaliate the man if they pay him half of the blood money, but if the situation is reversed and

⁴ قاعده لا يبطل دم امرء مسلم

⁵ Like the legitimacy of Qasāmah (Ḥurr Āmulī, 1416, v. 29: 153), the acceptance of women's testimony in the murder (Ḥurr Āmulī, 1416, v. 29: 138), and a well - documented rule of Arash (Najafī, 1404, v. 43: 168)

⁶ لا يجنى الجاني

a woman kills a man, can she pay the half of the Diya and also be retaliated? In the narrations, a negative answer has been given and the above rule has been stated⁷. (Ḥurr Āmulī, 1416, v. 29: 83). This rule has been cited for the absence of blood money in the issue (for example, Āmulī, nd, v. 11: 104; Āmulī, 1410, v. 10: 125; Khansari, 1405, v. 7: 223).

In criticizing the documentation to this rule, it can be said: 1- This rule has nothing to do with the discussion, while it is controversial and only related to a specific case of the narration and should not be used elsewhere. 2- This rule is in the case where the killer has committed one crime and not where the person has committed various crimes (Ṭabrīzī, 1426: 115-116). This rule applies to a woman who has killed a man (one crime) and according to this rule she cannot be sentenced to both retaliation and half a Diya; but where a criminal has committed several crimes, there is no prohibition on retaliation and other punishments. 3- According to the rule of justice, the criminal should be punished according to the number of crimes committed. It is as if the murderer has hit several times a person and only some of them have caused his death. In addition to retaliation, there is retaliation or blood money for the organ. The person who kills several people has committed numerous crimes and the above rule does not apply to this case.

But Ibn Muskān's narration has been narrated by both Kulaynī and Sheikh Tūsī, but with a slight change in the document. The narration of Kulaynī is as follows: "Ali ibn Ibrahim from Muhammad ibn from Yūnus from Ibn Muskān from someone who has narrated from Abi 'Abd Allah (AS) and said: If a murderer has killed a man or several men, he should be retaliated. (Kulaynī, 1407, vol. 7: 286) Sheikh Tūsī has also narrated in this way, just the phrase "from someone who has narrated from" does not exist in his narration. (Tūsī, 1365, vol. 10: 221). In other words, this narration is Mursal according to the narration of Kulaynī and it is Musnad according to the narration of Sheikh Tūsī. According to this narration, Imam Ṣādiq (AS) said about a man who kills two or more men that the killer should be retaliated. Imam (AS) in addition to Qiṣāṣ, did not mention the existence of blood money. As a result, the narration requires us to say that there is no blood money, otherwise the Imam (AS) would have stated it (Madanī Kāshānī, 1410: 46).

In criticizing the citation of this narration, first there is a problem in document. This narration is not mentioned in many jurisprudential texts, only mentioned in a few writings of contemporaries, because it is Mursal and weak (Shūshtarī, 1406, v. 11: 257; also Madanī Kāshānī, 1410: 46). It is also not possible to mention a documental problem and say that the Prophet (PBUH) meant by saying: "If the murderer killed a man or several men, he should be retaliated", the principle is the possibility of retribution, because the principle of the possibility of retribution is not an unknown issue and exists in all intentional murders eligible for retribution and as a result, that some have written: Maybe the Imam is in the position of expressing retribution and that not mentioning the blood money does not indicate its fall, is not acceptable. (Madanī Kāshānī, 1410: 46).

1-3- Consensus

Sheikh Tūsī has cited consensus in his book "al-Mabsūṭ"⁸ (Tūsī, 1387, vol. 7: 61) and the book "al-Khilāf"⁹ (Tūsī, 1407, vol. 6: 183) and many proponents of non-blood money have quoted it after him (Fāḍil Isfihānī¹⁰, 1416, v. 11:50). In criticism of citing to consensus, it should be said: First, despite the opposition of many jurists who believe in blood money, this consensus is doubtful (Madanī Kāshānī, 1410: 46) and it is likely that Sheikh Tūsī's intention in al-Mabsūṭ and al-Khilāf that has claimed

⁷ Ibid.

⁸ Sheikh Tūsī explained the issue more in his book "al-Mabsūṭ":

"كأنه قتل في التقدير عشرة واحدا بعد واحد، وجب لولي كل قتل عليه القود، لا يتعلّق حقه بحق غيره فإن قتل بالأول سقط حق الباقيين إلى بدل النفس"

⁹ Sheikh Tūsī, in the book "al-Khilāf", writes about the person who has killed ten persons:

"ثبت لكل واحد من أولياء المقتولين القود عليه لا يتعلّق حقه بحق غيره. فإن قتل بالأول سقط حق الباقيين، وإن بادر أحدهم فقتله سقط حق كل واحد من الباقيين"

¹⁰ عن رجل قتل رجلين عمداً و لهما أولياء فعفا أولياء أحدهما و أبي الآخرون، فقال عليه السلام: يقتل الذي لم يعف و إن أحيوا أن يأخذوا الدية أخذوا فإن اجتمعوا على المطالبة فقتلوه استوفوا حقوقهم و ليس لهم عليه غير نفسه، فإنه لا يجني الجاني أكثر من نفسه خلافاً لعثمان البتي «2» فإنه قال: إذا قتلوه سقط من الديات واحدة، و كان لهم في تركة الباقي من الديات بالحصص.

consensus is consensus based on the basis of principle and rule, not on the consensus of all jurists, because a significant number of jurists have opposed it. Figures such as Fāḍil Miqdād and Fakhr al-Muḥaqqīn (Īdāḥ al-Fawā'id, 1389, vol. 4, p. 573, Fāḍil Miqdād, 1404, vol. 4, p. 421) have also supported the theory of the necessity of paying Diya in addition to Qiṣāṣ. Second, this consensus is an evidence or probably an evidence and it is invalid. Thirdly, this consensus is nothing more than a quoted consensus, and a quoted consensus has no independent function in jurisprudence.

Assuming the confirmation of this consensus, since there are many narrations and texts on this subject that may have been documented by the creators of this consensus, then this consensus cannot be considered as an independent reason, and it cannot be expected to be devotional. Hence, this consensus must inevitably be abandoned. Assuming the confirmation of this consensus, it conflicts with other arguments such as the rule of justice, the rule of invalidity, and so on.

2- The Second Possibility: The Possibility of Receiving Blood Money After Retribution

In contrast to the previous group, a number of jurists believe in receiving Diya after Qiṣāṣ for the blood avengers of other victims. The arguments of this group include verses, narrations, the rule of invalidity, the rule of justice and the principle of precaution, which are examined below. Apparently, the first jurist to believe in this matter is Ibn Junaid, who, according to Allameh in Mukhtalif al-Shi'a, believes in it, and Allameh himself also accepts it (Ḥillī, 1415, v. 9: 443). Allameh Ḥillī also believes this in al-Taḥrīr (Ḥillī, 1420, vol. 5: 448) and al-Qawā'id (Ḥillī, 1413, vol. 3: 595). Some of the later and contemporaries also believe in it (Fakhr al-Muḥaqqīn, 1387, vol. 4: 573; Suyūrī, 1404, vol. 4: 421; Āmulī, 1422: 207; Ibid, 1413, v. 15: 125-126; Khoei, 1422, v. 42:66; Ṭabrīzī, 1426: 115; Madanī Kāshānī¹¹ 1; 1410, v. 4:47). Allameh Majlisī considers the proof of blood money more famous (Majlisī, nd: 99).

2-1- Qur'anic verses

To prove this theory, two verses of the Qur'an can be used: "Whoso is killed unjustly We Have appointed to his next of kin [his Heir] authority and right of retaliation, but His heir also should not exceed The Limit¹²." The domination that is legislated in this verse for the avenger of the blood is retribution and blood money; because limiting it to Qiṣāṣ and removing Diya from the realm of the verse will limit the avenger of blood and reduce his rights, which is in contradiction with the generality of the verse (Ardabili, 1412, p. 846; Ṭabrasī, 1415, vol. 6, p. 248; Sheikh Tūsī, nd, vol. 6, p. 457; Rāwandī, 1410, vol. 24, p. 220). This general view to "monarchy" can also be confirmed and accepted from the point of view of jurists (Fāḍil Miqdād, 1404, vol. 4, p. 443; Allameh Ḥillī, 1418, vol. 9, p. 287; Shahid Thānī, 1413, vol. 15, p. 261; Ibn Fahd Ḥillī, 1412, P. 225). Although the jurists have argued this verse in the case of the death of the killer and proved the existence of blood money in addition to retribution, but it is clear that in the case of multiple murders in which the killer has been killed by one of the blood avengers, can be argued.

Another cited verse is in verse 194 of Surah al-Baqarah: "Whoever commits aggression against you, react you likewise against him [Retaliate in the same manner]"; so whoever raped you, rape him like him. This verse is one of the clear examples of justice in the verses of the Qur'an and also expresses the similarity in dealing with the criminal, and the confirmation of his punishment as a crime. It is obvious that if we consider just Qiṣāṣ for a person who has committed multiple murders, without any reference to

إذا قتل الرجل الرجلين أو أكثر من ذلك قتل بهم «1» مع ان الدية للثاني ان كانت واجبة¹¹
لبينه الامام عليه السلام لأنه في مقام البيان و لم يكتف بالقصاص فقط. (كتاب القصاص للفقهاء و الخواص، ص: 46)

¹² Isrā': 33

his other murders, equality and justice in the punishment to which this verse refers, has not been done and the proportionality between crime and punishment has not been observed; because how can the retribution of a criminal who is one person be considered equal to his multiple murders? Accordingly, according to Seyyed Morteza, whenever a person kills a group, the blood of one person will never be equal to the blood of the congregation, in which case the rule requires that he be killed in front of one of them and a Diya be paid for the others; if a group also kills one person, although all of them can be killed in retaliation for one person, but Diya should be considered for others¹³ (Seyyed Morteza, 1415, p. 538) and this is according to the same law of Qiṣāṣ in punishments that is received from the mentioned verse. As a result, according to this verse, in addition to retaliation, the blood money should be considered for the victims, and in this case, justice will be established.

2-2- The rule of "the blood of Muslim is not wasted" is taken from the narrations

Some jurists have referred to Ṣahīh Abi Baṣīr which is about the escape of the murderer in intentional murder and lack of access to him and contains this rule (Khoei, 1422, v. 42: 66; Ṭabrīzī, 1426: 115; Madanī Kāshānī, 1410: 47). Abi Baṣīr says: "I asked Imam Ṣādiq (AS) about the sentence of a man who intentionally killed a man and then fled and there is no access to him. He said: If he has property, blood money will be taken from his property, otherwise it will be taken from his relatives in the form of the nearest relatives. If he does not have a relative, the Imam will pay his blood money, because the blood of a Muslim will not be wasted." (Ḥurr Āmulī, 1414, v. 29: 395)

In this narration, in spite of the fact that the blood money is on compromise in intentional murder; however, due to the impossibility of the Qiṣāṣ due to the escape of the killer, the Holy Prophet (PBUH) ordered them to take blood money from the killer's property, without any compromise. That is, if retribution is not possible, they replaced the blood money.

The citation of these narrations is the rule of (the blood of Muslim is not wasted) known as (not wasted). This rule is one of the most important rules of Diya and it has been mentioned in several narrations and some jurists have mentioned this rule absolutely in the place of discussion.

The ruling in this narration is not specific to the narration (escape of the murderer), but first, the interpretation included in this narration can be used that what is important is the general interpretation on the basis of which Muslim blood is not wasted and where retribution is possible, the matter will be transferred to Diya. It does not matter whether the lack of power is due to escape or death or retribution or any other matter (Khoei, 1422, v. 42: 66). In other words, the narration has a partial ruling (the need to pay a ransom from the property of the fugitive intentional murderer), but a reason is mentioned for it (because the blood of Muslim is not wasted) and since it is a public cause, the ruling is not specific to escape and in other cases it also comes.

Secondly, at the beginning of the narration, the phrase "if he has no power on it" appears in the subject of the ruling that there is no power for retribution (Khoei, *ibid*: 155). Now, this powerlessness is due to the death of the murderer, or his suicide or being killed by someone other than the blood avenger or anything else, and the ruling of narration includes it. In the discussion, with the murderer's Qiṣāṣ for one of the victims, there is no possibility of retaliation for the others, and therefore, according to this rule, the Diya is proved in the murderer's property.

و مما يقوي المذهب الذي اخصصنا به أنه لا خلاف في أن الواحد إذا قتل جماعة لم يكافي دمه دماءهم حتى يكتفي بقتله عن جماعتهم، بل يقتل¹³ بواحد منهم و تجب الدية للباقيين، فيجب في الجماعة إذا قتلت واحدا مثل هذا الاعتبار، حتى يكونوا متى قتلوا به عاد على أولياء الباقيين

2-3- Rule of Maysūr

The rule of Maysūr is considered a principle by most Usūlīs. This rule is one of the jurisprudential rules and its content is that whenever it becomes difficult or impossible to perform a task completely with all its components and conditions or all its examples, the obligee should perform a part of it that is possible for him. (Bojnourdi, 1419 AH: 127) that is, when the holy legislator ordered something that is composed of components and conditions and it was obligatory to perform some of its components and conditions or it was not possible to leave some of its obstacles, the rest of the components and conditions must be performed. (Akhund Khorasani, v. 2, 235)

This rule is taken from a famous hadith of Imam Ali (AS) with the title: "something that is easy and possible to do part of it, does not fall down due to the difficulty of the whole¹⁴) (Ibn Abi Jumhūr, 1403, vol. 4, p. 58) which can confirm the "theory of blood money in addition to retribution"; because its content, in terms of its application and scope, shows that in a compound with components and conditions, or in general, benefiting from countless or few people, if a person becomes incapable of performing some individuals or components, it does not cause the doable part to be overthrown (Makarem, 1387, vol. 1, p. 484). The result is that if retaliation is not possible for some blood owners due to its performance by others, it does not mean that they will be deprived of Diya like Qiṣāṣ and all their rights will be lost, but the Diya that is allowed and it can be done, should be given to them, and due to the difficulty of retaliation, it is not possible to avoid the blood money.

2-4- Principle of precaution

This is a practical principle and it is the act of doing something in the light of which the obligated person is relieved of his duty (Meshkini, v. 1:42). According to the principle of precaution, the employment of a certain obligation requires the release of a certain obligation, and precaution is desirable in any case (Akhund Khorasani, 1409, p. 349). In the case of a murderer who has committed several murders intentionally, there is employment of a certain obligation, and given that Qiṣāṣ and Diya are the right of the people, in such cases the release of the release of a certain obligation requires that in addition to Qiṣāṣ, Diya for other victims should be taken from the killer. It is only in the case of determining the blood money for other victims that it can be claimed with certainty that the obligation of the killer has been removed from all the victims. Therefore, it is up to the killer to pay a Diya for the number of victims.

2-5- The rule of justice

One of the rules that is valid in all jurisprudential chapters is the rule of justice (Bojnourdi, v. 4: 127). This rule has been interpreted with other titles such as the rule of denial of oppression or the rule of justice, expediency, fairness, taste of Sharia, or the spirit of law. The method of the jurists, intellect, verses, narration and tradition of the infallibles all confirm justice as a superior "rule" in such a way that they have called it "the mother of rules"¹⁵ (Asghari, 1388)

According to this rule:

- 1- If there is no blood money, it is necessary that intentional murder is in a worse condition than unintentional murder; because if one person kills several people in the form of quasi-intentionality or error, a Diya is required for all, but if he intentionally kills, it is only retribution and nothing else, and such a result is not binding and is unjust (Madanī Kāshānī, 1410: 48).

¹⁴ الميسور لا يسقط بالمعسور

¹⁵ ام القواعد

- 2- Undoubtedly, one of the effective goals in the legislation of punishments is their deterrent role in committing a crime and the proportionality of the crime and punishment. Obviously, if a particular punishment does not have this effect, or even encourages the offender to commit a crime, the difficulty of the punishment should be questioned and the positive reasons should be reconsidered. Accordingly, in the case of multiple murders and suffice to retaliation, if the killer knows that the second and third murders will not increase his punishment, and the financial problem will not occur for himself or his relatives, he may kill others and be more rude in attacking them, and this is contrary to the philosophy of Islamic punishments. On the other hand, the principle is on the proportionality of crime and punishment; however, when retaliation is taken against one murder and retaliation is sufficient for several murders, there is no correlation between crime and punishment, and in order to correct this problem, a distinction must be made between the two issues and the multiplicity of murders leads to Qiṣāṣ and Diya.
- 3- There is no doubt that there is a clear difference between intentional and unintentional crime; because intentional crime is much heavier in terms of criminal motives and malicious intent than the unintentional crime, which has no malice and does not have many features and consequences of the intentional crime. Thus, intentional and deliberate crimes, as much as their deviation and slippage are deeper and wider in practice, demand heavier punishments to prevent the recurrence of the crime, and to be a lesson to others. Accordingly, in the case under discussion, if only retaliation for one of the victims is sufficient and no Diya is taken for the other avengers of the blood, then the punishment for intentional murder should be much lighter than the unintentional murder; because in the unintentional murder, the rights of all the victims and the killed have been observed and an independent ransom has been considered for each of them to protect their blood; whereas in the intentional murder, except for one of the blood avengers who has committed retaliation, no rights, whether retaliation or blood money, has not been considered for others, and this cannot be compatible with Islamic justice and deterrence of punishment (Allameh Ḥillī, 1415, vol. 9, p. 287; Shirazi, 1409, vol. 89, p. 141).
- 4- Another argument based on the rule of justice is that the murderer has taken a complete life from each of his victims, so that the life of each of them was independent and had no other connection with other lives. In this case, it is natural that the murderer has created the right of retribution for each of the blood owners independently and has allowed them to retaliate alone and exercise their right without attracting the attention of others. On the other hand, since the murderer owns one life, he can only be accountable to one of them and expose his life to the retaliation of that one and not the others; the result is that the murderer, by numerous murders, has violated the rights of the blood avengers (except for one of them, and knowing that he has nothing to retaliate against all the killed people) has taken the opportunity of retaliation from them and destroyed their rights. It is obvious that in this case, he will have to make up for all their lost rights, which, in addition to retaliation, can be provided with blood money, in other words, since the murderer has killed many people for whom he has to pay his own soul, and since he does not own more than one soul that he can place in front of only one of those persons, it is natural that compared to the other lost persons he cannot give his soul, therefore, according to the tradition of wastage, in case of a pardon, he must pay the ransom, which is the blood money (Allameh Ḥillī, 1418, vol. 9, pp. 287-288; Ibn Fahd Ḥillī, 1412, vol. 5, p. 226 Najafī, 1981, vol. 42, p. 317) Some jurists have said: Although the murderer has killed several persons, but according to the rule of "لايجنى الجاني اكثر من نفسه", the holy legislator has demanded only one life from him in the face of all his murders and nothing else. And hence, the Diya is not fixed (Ibid). This statement is also not acceptable; because the mentioned rule has a special place as it has been mentioned and it faces many challenges that it cannot deny the blood money, and deprive the blood owners of their natural rights.

- 5- Another argument based on the rule of justice is that if in the case of multiple murders by a single criminal, he accepted retribution without blood money, then only one of the avengers of blood who retaliated the murderer has achieved his right, but other blood avengers are deprived of all their rights, whether retribution or blood money, but if blood money is considered for those who have survived retribution, the result is that all blood owners have achieved their rights to some extent. Because some of them have used *Qiṣās*, and some of them have benefited from *Diya* instead of *Qiṣās*; in this case, the sum of the rights has been realized. Obviously, in the conflict between these two views, the priority is with the option that can implement the combination of rights that is more compatible with Islamic justice and in harmony with the spirit and temperament of *Sharia*, and that is the theory of the need to pay *Diya* in addition to retribution (Fayḍ, 1401, vol. 2, p. 138; Shahid Thānī, 1413, vol. 15, p. 126; Najafī, 1981, vol. 42, p. 120). It is worth mentioning that jurists have issued fatwas in many cases based on the sum of the rights; this is seen in retaliation, whenever a person intentionally commits multiple crimes on the limbs of one or more people but he himself does not have a similar limb, for example, he cuts off someone's right hand, but himself (the hitter) does not have a right hand. To compensate, the left hand is retaliated against the right hand, and also he is sentenced to pay *Diya*. (Ibid., P. 325: Allameh Hillī, 1413, vol. 3, p. 626, Sabzevārī, 1417, vol. 28, p. 302) or in the issue of excuse, they have offered to pay the price (Ansari, 1428, vol. P. 226).
- 6- Another argument is that although retribution is legislated in the first stage of intentional murder and not *Diya*, and also where retribution is possible, one should inevitably take advantage of the option of retribution, but the question raised in this chapter is that if retribution became impossible for any reason and the situation developed in such a way that the avengers of blood could not use this religious right, then all their rights would be lost, in which case the ruling would be unjust. Therefore, *Diya* can be substituted for *Qiṣās* because it is possible, and the avengers of blood can benefit from *Diya*. This view is in accordance with justice and is documented in the following narrations.

The first authentic narration of *Abi Baṣīr* is from Imam Ṣādiq (AS) who says: "I asked Imam about a man who intentionally killed another, then he ran away and was out of reach, Imam said: If he has money, the *Diya* is taken from his property, otherwise, the *Diya* is taken from his relatives. If he has no relatives, the Imam pays for it; because Muslim blood is not wasted. (Ḥurr Āmulī, nd, vol. 19, p. 303; Sheikh Tūsī, 1390, vol. 10, p. 170; Kulaynī, 1401, vol. 7, p. 365). The second authentic narration has been quoted by Ibn Abi Nasr from Imam Jawād (AS) that he said to a man who killed another intentionally and died after fleeing: "If he has money, the *Diya* is taken from his money, otherwise the *Diya* is taken from his relatives." (ibid.). In these two narrations, the payment of *Diya* from the property of the killer is explicitly emphasized and ordered.

Although these two narrations are about the death of the murderer and his escape, but it is clear that these two titles will not have any role in the sentence, i.e. the obligation of blood money, but the main issue should be sought in not reaching the murderer and inability to retaliate him; because the common sentence that is the main basis of the ruling in both hadiths and the questioning question is taken from it, is the phrase: "but there is no way for *Qiṣās*" which expresses the excuse of retribution and its impossibility; and the death of the killer and his escape mentioned at the beginning of the hadith, both have been used to show this concept and to reflect it. Accordingly, in explaining the content and concept of the hadith, it should be said: in these two hadiths, instead of retribution, they relied on blood money, from the point of view that the avengers of blood had no way to reach the killer and retribution was impossible for them; the result is that wherever retribution becomes impossible, the *Diya* naturally replaces it, whether in the event of the escape or death of the killer, or in any other case that makes retribution impossible. Accordingly, in religious sources, where they have seen retribution unattainable, they have shown *Diya* instead; for example, where a group help the killer escapes. (Ḥurr Āmulī, nd, vol. 19, p. 34), or a stranger kills the killer by mistake (Fāḍil Hindī, 1416, vol. 11, p. 162), or someone who

does not have the same limb, similar limb is cut off (Najafī, 1981, vol. 42, pp. 396 and 121; Allameh Hillī, 1413, vol. 3, p. 595; Ḥurr Āmulī, nd, vol. 19, p. 131).

In addition, wherever retribution is impossible, in order for the ruling to be just, a substitute must be appointed and subject to the evidence of Diya; therefore, according to these arguments, blood money can be proved and the necessity of its existence can be stated (Khoei, 1428, vol. 2, p. 212). The objection of a document regarding these two hadiths is also unacceptable; because these two hadiths have been accepted by the jurists and they have issued fatwas equal to its content, and even consensus has been formed in support of that (Ibid., P. 154; Tabataba'i, 1420, vol. 14, p. 142; Khansari, 1405, vol. 7, p. 266; Rāvandī, 1410, vol. 24, p. 245; Fāḍil Lankarānī, 1427, p. 350).

Conclusion

In the case of the murder of several people by one person, serially or at intervals, various debates can be raised, including whether the avengers of the blood are free in the intentional murder between retribution and blood money, or the principle is based on retribution, and the blood money needs a special reason. Or that the blood avengers of all the victims, both before and after retaliation, can take Diya from the killer. According to the famous opinion of Shi'a jurists, only retaliation is prescribed and taking Diya requires the consent of the killer, and if the killer is not satisfied, it is not possible to take Diya from his property unless there is a specific reason in this regard. The arguments of this group of jurists include: the verses of the Qur'an "and there is life for you in Qiṣāṣ¹⁶" and "a life for a life¹⁷" and narrations based on the rule of "the murderer is not punished more than his life¹⁸" and the consensus of jurists and resorting to the presumption of innocence and authorization of previous state, each of which was reviewed in detail.

On the other hand, a number of jurists believe that blood money is given to other victims of multiple intentional murders. The arguments of this group include: the verses of the Qur'an: the verse "Whoso is killed unjustly We Have appointed to his next of kin [his Heir] authority and right of retaliation." and the verse "Whoever commits aggression against you, react you likewise against him [Retaliate in the same manner]" and the narrations based on the rule "the Muslim blood is not wasted" and the rule of Justice and the rule of Maysūr and the principle of Precaution¹⁹. According to this group, if the blood avenger of one of the victims retaliates against the killer, he has exercised his right, but the right of the other victims is the obligation of the killer. It seems that the Qiṣāṣ of only one person for several intentional murders is unfair. In such a case, the popular opinion should be corrected in such a way that those avengers of blood who are unable to assert their right to retaliation for any reason and at the same time want the ransom, can deduct the ransom from the murderer's property and if they do not have access to it, they must receive it from the Bayt al-mal²⁰ because Muslim blood should not be wasted.

In addition, the murderer is a guarantor of the number of victims and will not be acquitted except by paying a ransom. Obviously, this ruling does not contradict the rights of the murderer's heirs, because the heirs become the owner of the estate if their deviser is not responsible for others. Which debt is higher and more important than the Muslim blood that has been established on him? Therefore, looking at the arguments of both groups and with the criterion of reason and the degree of justice, it is possible to rule on the necessity of Diya (blood money) in addition to Qiṣāṣ (retribution) in several intentional murders.

¹⁶ ولكم في القصاص حياه

¹⁷ النفس بالنفس

¹⁸ قاعده «لا يجنى الجاني»

¹⁹ Principle of Ishtighal

²⁰ House of money

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