



## Jurisprudential and Legal Analysis of Criminal's Satisfaction in Article 384 of the Islamic Penal Code Enacted in 1392 HS

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### **Abstract**

Legislation is very serious and precise, especially where a human soul is involved. According to Article 384 of the Islamic Penal Code; if one person intentionally kills two or more people and the blood avengers of all the slain want Qiṣās, the murderer will be retaliated without paying Diya. If the blood avengers of some of the victims want Qiṣās and the blood avengers of the victim or other victims want blood money, if the murderer agrees to pay them blood money in exchange for their Qiṣās, their blood money will be paid from the murderer's property and without the murderer's consent, they do not have the right to take blood money from him or his property. The point to consider in this legal article is that the payment of Diya from the property of the criminal to the victim is bound to the consent of the criminal. The basis of this opinion of the legislator is the opinion of some jurists. The present article in a descriptive-analytical research, with a problem-oriented view, follows the legal study of criminal's satisfaction in this legal article and the analysis and critique of its jurisprudential principles. One of the most important findings of the study is that the discussion of criminal's satisfaction in Article 384 of the Islamic Penal Code needs to be reviewed and revised by the legislator because it is incompatible with the rule of justice, the rule of "The blood of Muslim is not wasted", the rule of obligation to save lives and other jurisprudential rules.

**Keywords:** *Jurisprudential Analysis; Legal Analysis; Criminal's Satisfaction; Article 384 of the Islamic Penal Code*

### **Introduction**

One of the hardest, most serious and sensitive issues is legislation. Because the legislator in every law must consider all aspects and formulate the law while preserving the material and spiritual rights of the people and observing the justice of the people addressed. In the Islamic Penal Code, the section on

Qīṣāṣ and Diya are articles of laws that do not seem to take into account the rights of the rightful parties and are sometimes incompatible with justice. One of these laws is Article 384 of the Islamic Penal Code adopted in 1392. According to this article, if one person intentionally kills two or more people and the blood avengers of all the victims want Qīṣāṣ, the murderer will be retaliated without paying Diya. If the blood avengers of some of the victims want Qīṣāṣ and the blood avengers of the victim or other victims want blood money, if the murderer agrees to pay them blood money in exchange for their Qīṣāṣ, their blood money will be paid from the murderer's property and without the murderer's consent, they do not have the right to take blood money from him or his property. According to this article, Qīṣāṣ is the right of the blood avengers, and if the blood avengers want Qīṣāṣ, the murderer will be retaliated, but if the blood avengers waive their right to retaliation and demand blood money, the blood money will be paid only if the murderer consents and without the murderer's consent, they do not have the right to receive Diya from his property. The purpose of this research is to study and analyze the jurisprudential and legal reasons for paying Diya conditional on the consent of the murderer. Why in this legal article is the payment of Diya conditional on the consent of the murderer? To answer this question, a descriptive-analytical method based on jurisprudential and legal books was used. In the two sections of jurisprudential analysis and legal analysis, the legal causes and the jurisprudential basis of the murderer's consent will be examined.

The need to clarify this issue is so great that it is related to human lives and the loss of their blood. Because if the murderer is satisfied with the blood money, he has both saved his life from retaliation and prevented the loss of the victim's blood. Although the punishment of Diya is less than Qīṣāṣ (and in fact the blood avengers have consented to less punishment), it is valuable because it saves human life and prevents the death of another human being and on the other hand prevents the loss of the victim's blood.

### ***Legal Analysis of Some Articles of the Islamic Penal Code***

By studying the Islamic Penal Code and paying special attention to the section on Qīṣāṣ and Diya, the following materials are used.

1- According to Article 16, "Qīṣāṣ is the main punishment for intentional crimes against the soul, limbs and interests" and Article 381, "The punishment for intentional murder is at the request of the blood avenger and there are other conditions stipulated in the law, Diya and Ta'zir are performed." Equal to Article 16 for the legislature in punishing premeditated murder, the principle is Qīṣāṣ. While the same legislator in Article 381 has made Qīṣāṣ conditional on the request of the blood avenger and other conditions. Therefore, the legislator has not adopted a single procedure, while the right of Qīṣāṣ is a legal right for the blood avengers.

2- In Article 296, "If a person intentionally commits a crime against an individual's limb and he dies due to the crime, if the crime is defined as intentional crimes, it is considered intentional murder, otherwise, it is a quasi-intentional murder. And the perpetrator, in addition to retaliation, will also be sentenced to pay blood money." Article 299 "If a person causes multiple crimes and murder of a person with multiple intentional blows, and the murder is included in the definition of intentional crimes, if some crimes cause murder and some do not play a role in the murder, the perpetrator shall be retaliated in addition to being sentenced to Qīṣāṣ for a limb or ransom for crimes that had no effect on the murder. But if the murder is caused by a total of crimes, if the blows are inflicted in succession, they are considered one blow. Otherwise, he will be sentenced to retaliation or blood money for a limb on whom the crime was not related to death."

According to these two articles of the Islamic Penal Code, each crime has a separate punishment, and if the perpetrator commits several crimes, he must be punished for each crime separately. If Criminal has committed a crime against both the soul and the limb, he should be punished separately. Accordingly,

if someone intentionally kills several people, there should be one punishment for each murder, and not to put them all together and say that criminal has no more than one life. Why doesn't the legislator say this about the crime against the limb, even the limbs that are one in the body and in the absence of an organ, determine Diya for it?

3- According to Article 348, "the right of Qiṣāṣ is inherited as described in this law". And in Article 350, "In case of multiple blood avengers, the right of Qiṣāṣ is fixed for each of them separately."

These two articles show that the right to retaliation belongs to each of the blood avengers and this right is fixed for them to a certain extent that it is even inherited. Therefore, no one has the right to take possession of the right of retaliation of the blood avengers, and no one but the blood avengers can increase or decrease this right.

4- In Article 422, "In any right of Qiṣāṣ, each of its owners has the right of retaliation independently, but none of them in the position of resignation should destroy the rights of others, and if he waive the right of retaliation without the permission and consent of other people seeking retaliation, he should guarantee the share of the blood money of others."

Each of the blood avengers has the right to independent Qiṣāṣ, but care must be taken not to lose any right in exercising the right to Qiṣāṣ.

5- According to Article 419, "Execution of Qiṣāṣ and stewardship in it is the right of the blood avenger and the victim, in case of their death, this right is transferred to their heirs and must be done through the relevant penal execution unit after being authorized by the Supreme Leader.» And Article 421 "No one has the right to retaliate against the perpetrator except the victim or his blood avenger, and if someone retaliates against him without their permission, he is entitled to retaliation."

Execution of retaliation is the special right of the blood avengers, and if someone retaliates without the permission of the blood avengers, he deserves to be killed and retaliated.

6- In Article 389, "If due to one or more blows, several crimes occur in one or more limbs, the right of Qiṣāṣ for each crime is fixed separately and the victim can reconcile with the perpetrator about some of them, forgive others and retaliate some other." In multiple intentional crimes, retaliation or compromise can be decided separately for each crime. The legislature has issued this sentence for a crime against a limb, but has remained silent about the crime against several individuals. While the crime against multiple souls is much more damaging than the crime against multiple limbs in one person or persons.

7- In Article 391, "Whenever a person commits an intentional crime against several limbs of one person and it is not possible to retaliate all of them, such as if both hands of one person are amputated and he does not have more than one hand, the criminal will be retaliated for other crimes, and he will be sentenced to pay Diya and Ta'zir prescribed in the fifth book of "Ta'zīrat". Article 392: "Whenever a person commits an intentional crime against the limbs of several persons, if Qiṣāṣ is possible for all of them, Qiṣāṣ shall be imposed, and if Qiṣāṣ for all crimes is not possible, the criminal shall be retaliated for the first victim. Then, the perpetrator will be sentenced to pay the Diya and Ta'zir prescribed in the fifth book of "Ta'zīrat" for crimes for which there is no place for retaliation. If the occurrence of two crimes is at the same time, each of the two victims can ask for retaliation, and after retaliation, for other crimes for which retaliation is not possible, the perpetrator is sentenced to pay Diya and Ta'zir prescribed in the fifth book of "Ta'zīrat". If after the first Qiṣāṣ, the second Qiṣāṣ can be done, but it is less than the limb of the crime, he can retaliate for the amount and pay the difference. For example, if the perpetrator has first cut off the finger of someone's right hand and then the right hand of another person, in which case, the first victim has the first right for the execution of Qiṣāṣ, and by performing his Qiṣāṣ, the second victim can retaliate against the perpetrator's right hand and take the blood money of his finger from him."

In many crimes against limbs for which it is not possible to retaliate for all crimes, the payment of Diya is fixed. The legislature has stated this (every crime has a punishment) for a crime against the limbs, while in a crime against several people, it has made the blood money conditional on the consent of the criminal. And this shows that the legislator has not gone through a single procedure. In many crimes, the Diya is fixed on the limbs, while in many crimes, the Diya is not fixed on the souls and is conditional on the consent of the criminal.

8- In Article 360, "In cases where the execution of Qiṣāṣ requires the payment of a Diya to the person being retaliated (the criminal), the person entitled to retaliation right has the choice between rejecting the Diya and accepting the Diya prescribed by law, even without the consent of the perpetrator." "Otherwise, compromise requires the consent of the criminal." Article 359 "In cases of proving the right of retaliation, if retaliation is not conditional on the rejection of the difference as Diya, the victim or the blood avenger can only retaliate or forgive, and if he wants Diya, he needs to reconcile with the perpetrator and needs his consent." However, in Article 347, "the holder of the right to retaliation may pardon the right or property, free of charge or by compromise, at any stage of the prosecution, trial or execution of the sentence." According to these three articles, if the execution of Qiṣāṣ requires the paying the difference as a Diya to the victim, the consent of the criminal is not a condition, but in Article 384, the legislator has made the payment of Diya to the blood avenger conditional on the consent of the criminal. And if the holder of right asks Qiṣāṣ, it is subject to the consent of the murderer. It seems that the legislator has taken the side of criminal in the mentioned articles.

9- In Article 363, "forgiveness or reconciliation, before or after the issuance of the sentence, causes the right of Qiṣāṣ to fall." According to this article, the right of Qiṣāṣ is revoked by amnesty or compromise.

In my opinion, it is better for the legislator not to use the word fall, because the right of Qiṣāṣ is an inalienable right and can be forgiven or converted into blood money if the blood avenger agrees.

10- In Article 424, in any retaliatory right, if some of its owners are absent and their absence period is short, the issuance of the sentence will be postponed until the presence of the absentee, and if the absence is long or there is no hope for their return, the Supreme Leader will decide on their behalf, and if the time of return is not known, the Supreme Leader decides for them after a short time and before the time of absence is extended. If those present forgive or reconcile with him, the right of Qiṣāṣ is reserved for the absentees, and if they want Qiṣāṣ after appearing, they must first pay the share of the blood money of those who have forgiven or compromised with the perpetrator, and then retaliate." If the holder of the right of Qiṣāṣ is absent, his right of Qiṣāṣ will not be lost and his right is reserved.

11- In Article 383, "If a person kills two or more people intentionally, the blood avengers of each of the victims can retaliate alone and without obtaining the consent of the blood avengers of the other victims and without paying a share of the blood money to them."

In case of multiple blood avengers, the right of Qiṣāṣ is fixed for each of them. So in multiple premeditated murders, one retaliation cannot be done instead of several murders and it cannot be said that criminal has no more than one life.

12. In Article 435, "If in the case of an intentional crime, due to death or escape, access to the perpetrator is not possible, at the request of the holder of right, Diya shall be paid from the property of the perpetrator. And if he has no property, the victim can take the Diya from the wise relative, and in the absence of the wise or the lack of access to them or their inability, the Diya will be paid from the treasury, and in cases other than murder, the Diya will be on the treasury. If, after receiving Diya, the access to the perpetrator of a crime, both murder and non-murder, is possible, if the receipt of Diya is not for the purpose of forgiving Qiṣāṣ, the right of Qiṣāṣ is reserved for the blood avenger or the victim, but the received Diya must be given back before Qiṣāṣ."

In the absence or lack of access to the perpetrator, the rights of the blood avengers are not lost.

Comparing the articles of the Islamic Penal Code, it is clear that the legislator has not followed a single procedure, for example, in Article 384, he believes in retaliation, but in Article 392, he believes in the possibility of receiving blood money. It is not clear to me why the legislature has distinguished between murder and non-murder. Of course, apparently the only reason is that he has followed the jurisprudential texts in the field of multiple murders, which have said that if the blood avengers of all the victims agree on Qīṣāṣ, the murderer can only be retaliated, and he cannot pay Diya in addition to retaliation. (Āmulī, 1413, vol. 15; 125). The point is that the legislature has not followed a single procedure

What is clear is that the basis of Article 383 is to follow the well-known saying of the jurists. But it is incorrect to invoke the rule "Converting Qīṣāṣ to Diya if the criminal is content", because this rule refers to the case where a woman kills a man intentionally. In this case, the man's blood avengers cannot demand half of the man's ransom from her in addition to the woman's Qīṣāṣ. In order to solve this problem, it is suggested that the Islamic Penal Code be amended in such a way that (such as crimes for wounds) those blood avengers who are unable to assert their right to retaliation for any reason and at the same time want ransom, can deduct Diya from the property of the murderer and if they do not have access to it, they should use the treasury, because the blood of the Muslims should not be wasted. In addition, criminal is the guarantor of the number of victims and acquittal is not achieved except by paying Diya. Obviously, this ruling does not contradict the rights of the heir of (murderer). Because the heirs have right if their heir has no debt to others, and what debt is higher and more important than the Muslim blood that has been established on his obligation. It should be noted that if the blood avengers of all the victims want Qīṣāṣ for the murderer or if Diya is demanded, the murderer does not agree to pay it, because according to the rule, criminal doesn't owe more than himself, then the blood avengers cannot force criminal to pay Diya, and on the other hand, they cannot retaliate against the murderer more than once. Therefore, in the multiplicity of crimes against the soul, whether it occurs with one act or with multiple acts, the right of Qīṣāṣ is created for the number of victims and the blood avengers of each of the victims have the right of Qīṣāṣ and regardless of the decision of the other blood avengers they make their own decisions and others do not have the right to interfere in them.

### ***Jurisprudential Basis for Criminal's Satisfaction or Dissatisfaction***

Regarding the jurisprudential basis of the necessity of criminal's satisfaction, jurists are divided into two groups. The famous Imāmīyyah jurists have considered the principle on the necessity of criminal's satisfaction with the payment of blood money and believe that according to the verses and stories about the determinate punishments in retaliating crimes, the victim or his blood avengers only have the right to retaliate against the murderer. According to this group of jurists, if the holder of the right to retaliation demands Diya from the offender, he has the choice between agreeing and disagreeing to pay this amount (Tūsī; pp. 176-178; Tūsī, p. 734). On the other hand, another group, citing some narrations and the rule of "Not wasted", has ruled at the discretion of the holder of the right of Qīṣāṣ to choose "Qīṣāṣ or blood money" or "taking blood money from the criminal even without his consent."

In the Islamic Penal Code, the Iranian legislator has accepted the well-known opinion of the jurists in various crimes against souls and considers the blood money to be subject to the consent of the criminal. But in the case of multiple crimes against limbs, in the absence of a limb, he considers the blood money to be fixed.

## ***Jurisprudential Analysis for the Necessity of Criminal's Satisfaction***

Well-known Imāmīyyah jurists are of the opinion that in those punishments whose execution requires paying the difference as Diya by the owner of the right of Qiṣāṣ, the only right that exists for the victim or his blood avengers is that after paying the difference of Diya to the criminal, he should be punished with Qiṣāṣ. According to this group of jurists, if the owner of the right to retaliation demands Diya from the criminal, he is free between "paying Diya and saving his life from Qiṣāṣ" and "not paying Diya". Because the main punishment in intentional crimes is only Qiṣāṣ, and therefore the offender cannot be punished by a means other than his action (ibid.). Therefore, paying Diya by criminal to the rightful owner of retaliation requires the conclusion of a peace contract, and in concluding such a contract, the consent of both parties is a condition. In order to prove this, many proofs are presented by the famous Imamiyyah jurists which by investigating these reasons it will be clear that the evidence presented falls into two categories of verses and narrations.

### **1- Verses**

Among the verses that indicate the principle of Qiṣāṣ in intentional crimes, the following can be mentioned:

- The first verse: "O ye who believe! The law of equality is prescribed to you in cases of murder: the free for the free, the slave for the slave, the woman for the woman. But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude, this is a concession and a Mercy from your Lord. After this whoever exceeds the limits shall be in grave chastisement." (Baqarah/178)

Explaining the meaning of this verse to "the principle of Qiṣāṣ for intentional crimes" it should be said that although in some parts of the verse it seems that criminal's amnesty and payment of blood money has been the focus of God, but by examining the commentary books, one can realize that the Qiṣāṣ is the only main punishment for intentional crimes and the instructions given to the servants in this verse are more moral (Al-Mīzān, vol. 1, p. 656).

In criticizing this view, it should be said that if Qiṣāṣ was the only punishment for an intentional crime, God would not have mentioned amnesty, forgiveness and blood money. For what reason do you consider the beginning of verse to be a jurisprudential ruling and the continuation of the verse to be moral? Given the circumstances of the revelation of the verse in the early days of Islam, when a tribe was sometimes attacked for the sake of one's blood, it is necessary for God to limit this aggression of the Arabs to a retaliation against a murder and refer to it at the beginning of the verse. But we have no reason for the morality of the continuation of the verse. According to divine wisdom, in this verse, alternative punishments of Qiṣāṣ are specified.

- Second verse, "The prohibited month for the prohibited month, and so for all things prohibited, there is the law of equality. If then any one transgresses the prohibition against you, transgress ye likewise against him. But fear Allah, and know that Allah is with those who restrain themselves." (Baqarah/194)

In this verse, the necessity of matching crime and punishment is explicitly mentioned, but there is no proof of the originality of Qiṣāṣ or the necessity of consent.

- The third verse: " We ordained therein for them:" Life for life, eye for eye, nose or nose, ear for ear, tooth for tooth, and wounds equal for equal." But if any one remits the retaliation by way of charity, it is an act of atonement for himself. And if any fail to judge by (the light of) what Allah hath revealed, they are wrong-doers. (Mā'idah/45)

In explaining how to cite this verse, it should be said that as it is clear from the logic of the verse, God Almighty in this verse, intends to introduce the types of punishments provided for intentional crimes and has announced that in case of committing intentional crimes by the criminal, the victim or his blood avengers can only inflict the same damage on criminal that he has inflicted on the victim. Therefore, in several murders by criminal, he must be retaliated against the number of people he killed, and since the murderer does not have more than one soul, he must pay Diya for wasting the other souls.

As a result, according to the well-known opinion of Imāmīyyah jurists, the above verses indicate that the punishment of Qiṣāṣ in intentional crimes, and the claim of the existence of a right against the right of Qiṣāṣ (such as blood money) by the holder of the right of Qiṣāṣ is contrary to the appearance of the verses. While this is not understood from the appearance of the verses.

## 2- Narrations

Well-known Imāmīyyah jurists have also cited two narrations to prove that the only main punishment for intentional crimes is Qiṣāṣ.

-The first true narration is from Abdullah Ibn Sinan: I heard from Imam Ṣādiq (AS): Whoever kills a believer intentionally, he will be retaliated unless the blood avengers of the victim agree to receive blood money instead of retaliation. So, if the blood avengers of the victim are satisfied with receiving Diya and the murderer is willing to do so, Diya will be paid to the blood avengers of the victim." This narration is one of the well-known arguments and explicitly introduces Qiṣāṣ as the main punishment in intentional crimes and considers the payment of blood money to the blood avengers of the victim conditional on the consent of both parties (Hillī, vol. 9, p. 395).

- Another reason for this group of jurists is the narrations that indicate the receipt of blood money by the blood avenger without the consent of the perpetrator. Among these narrations are the true narration of Abdullah ibn Maskān and the Abdullah ibn Sinān. Ibn Maskān narrates from Imam Ṣādiq (AS): "Whenever a man kills a woman, if the blood avengers of the woman want Qiṣāṣ, they pay the man's Diya and retaliate him, and if they do not pay the Diya, they receive the full Diya of the woman and the woman's Diya is half of the man's Diya." (Tūsī, 1909, vol. 1: 231; Ḥurr Āmulī, 1190, v. 20: 21)

Abdullah Ibn Sinān says: I heard from Imam Ṣādiq (AS) while talking about a man who killed his wife deliberately: "If the blood avengers of a woman want Qiṣāṣ, they will retaliate against the murderer and pay half of the blood money, and if the blood avengers want Diya, they can receive half a Diya in the amount of five thousand dirhams." (Tūsī, 1909 AH, vol. 1: 231; Ḥurr Āmulī, 1190 AH, vol. 20: 29).

The jurists, while considering these narrations to be correct, have issued fatwas and argued based on them in various issues (Mohaḥiq Ardabili, 1199 AH, vol. 11: 111-112; Khansari, 1191 AH, vol. 1: 100-102; Mohaḥiq Khoei, 1122 AH, 90-91; Madani Kashani, 1119 AH, 90-91; Sabziwārī, 1119 AH, v: 20; Rouhani, 1112 AH, v. 23: 101.)

These useful narrations have two important consequences. Qiṣāṣ can be done if the difference of blood money is paid before the retaliation. On the other hand, receiving Diya from the perpetrator is only subject to the wish of the blood avengers of the woman, and there is no word of the perpetrator's consent in this regard. According to the recent conclusion, it is observed that there is a difference between these narrations and the narrations of the famous view. There is a conflict between these narrations; because in some narrations documented by the recent opinion, the belonging of Diya is absolutely stated and there is no condition of criminal's satisfaction in them. But in other narrations, the condition of criminal's satisfaction is specified. To combine these two categories of narrations, we can also use the approach of Mohaḥiq Khoei and say that the narrations of the second category are based on not compromising with the perpetrator and his consent to receive Diya, and the narrations of the first category are dedicated to the cases of rejecting the difference of Diya based on the compromise with the perpetrator. And the narrations

of the first category, based on compromising with the perpetrator, does not require payment of the difference of Diya (Mohaqq Khoei, 1122 AH, vol. 12, pp. 111).

Thinking on Articles 910 and 939 of the Islamic Penal Code adopted in 1902 indicates that this approach has been adopted by the legislature. In Article 910, the legislator stated the condition of "reconciliation with the perpetrator and his consent" in cases where "Qisās is not conditional on the rejecting the difference of Diya and the victim or the blood avenger wants the Diya" and immediately assigned Article 939 to cases where "Retaliation requires the payment of the difference of Diya to the retaliated person", and it stipulates that "the person entitled to retaliation may receive the Diya prescribed by law without the consent of the perpetrator."

It is assumed that the conflict between them was resolved by combining these two categories of narrations, but it is still not clear why this compromise sometimes requires the consent of the perpetrator and sometimes does not require the consent of the perpetrator.

-Another narration is from Jamil Ibn Darāj: Defining premeditated murder, one of infallible Imams has said: "Premeditated murder is a murder in which if the beating is intentional, the punishment is Qisās." (Ḥillī, vol. 29, p. 37) This narration briefly identifies the main punishment for retaliation in intentional crimes (Ḥillī, vol. 9, p. 395).

My opinion in criticizing the arguments of this group is that this narration has problems in terms of Sanad and other narrations cannot compensate for its weakness.

### ***Jurisprudential Analysis for the Unnecessity of Criminal's Satisfaction***

Some other jurists believe that in the punishments that the blood avengers ask for Diya, the victim or the blood avengers can choose between "paying the Diya or Qisās the criminal" and if they selected "receiving the Diya from the criminal", there is no need for his consent and he is obliged to pay the Diya to the owner or owners of the right of Qisās (Ibn Fahad Ḥillī, vol. 5, p. 249).

This group of jurists have also relied on the various evidence and documents to prove their opinion. One of the most important arguments that have been put forward by those who believe in this theory are the verses and hadiths that indicate there is no need for criminal's consent to receive blood money from him.

#### **1- Verses**

- The Almighty God says in the Holy Qur'an:

And if anyone is slain wrongfully, we have given his heir authority (to demand Qisās or to forgive). (Isrā'/33)

This authority is the same right of Qisās that belongs to the blood avengers. According to the verse, God has legislated Qisās for every premeditated murder, the right of Qisās and the power to take the right of the blood avengers. It is obvious that the domination that is legislated in this verse for the blood avengers is both Qisās and Diya. Because limiting it to retaliation and removing the category of blood money from the realm of the verse has limited the blood avenger, will reduce the scope of his powers and rights, and this perception is in contradiction with the generality of the authority and its scope (Ardabili, 1412 AH, p. 846, Ṭabratī, 1415 AH, vol. 6, p. 248, Tūsī, nd, vol. 6, p. 457, Rāvandī, 1410 AH, vol. 24, p. 220).



This general view on "Authority" is also acceptable from the point of view of jurists (Fāḍil Miqdād, 1404 AH, vol. 4, p. 443, Ḥillī, 1418 AH, vol. 9, p. 287, Shahid Thānī, 1413 AH, vol. 15, p. 261, Ibn Fahad Ḥillī, 1412 AH, p. 225).

-Also, verse 178 of surah Baqarah, which at the beginning of the verse refers to the punishment of Qiṣāṣ and in the continuation of the same verse refers to amnesty and blood money as an alternative punishment to Qiṣāṣ.

- Verse 194 of Baqarah and 45 of Mā'idah express the similarity in dealing with the offender and confirms his punishment in the same size of the crime.

## 2- Narrations

One of the most important arguments by those who believe in this view is narrations. The most important of these narrations are:

- A narration from Abdullah ibn Sinān that says:

«قال سمعت ابا عبد الله (ع) يقول في رجل قتل امراته متعمدا فقال ان شاء أهلها أن يقتلوه يُؤدوا إلى أهله نصف الدية و إن شاءوا أخذوا نصف الدية خمسة آلاف درهم»

According to this group of Imāmīyyah jurists, in the mentioned narration, the payment of blood money to the blood avengers is not subject to the consent of the murderer.

- The second narration is from Abi Maryam (Āmulī, 1416 AH, vol. 29, p. 82). Abi Ja'far (AS) said: A man was brought to the Messenger of God (PBUH) who hit a pregnant woman on the head with a pillar of a tent and killed her. The Prophet (PBUH) gave the right to the blood avengers of the woman to choose one of the following ways: They can receive five thousand dirhams and the murderer should also free a slave or maid for the baby on the woman's womb. Or the blood avengers give five thousand dirhams to the blood avengers of the murderer, and retaliate him.

According to this narration, if the murderer's retaliation against the victim requires the payment of the difference of Diya by the blood avengers of the victim to the blood avengers of the murderer, the person entitled to retaliation can choose between "Qiṣāṣ of the murderer and payment of Diya" and "Receiving the blood money of the victim from the murderer" (Khoei, vol. 2, p. 28).

However, some believe that in order to gather this narration with the news that indicate the necessity of paying the difference of Diya to the blood avengers of the murderer and his Qiṣāṣ, this narration can be interpreted in such a way that in this hadith, the satisfaction of the murderer to pay Diya has been considered as a presumption. (Majlisī, vol. 24; p. 62).

- The third narration is from Abu Abbas (Ḥurr Āmulī, vol. 29, p. 83). "Imam Ṣādiq (AS) said: "If a man kills a woman, the blood avengers of the woman are free to retaliate against the man and pay half of the full blood money to the murderer's heir, or to take half of the full blood money from the murderer."

In quoting this narration, as in the first narration, it is claimed that the lack of expressing the necessity of the murderer's consent in the words of Imam (AS) indicates the non-necessity of the murderer's consent. It goes without saying that there are other narrations that indicate the same concept, among these narrations we can mention the Ṣaḥīḥ of Muhammad ibn Qays (Ibid., Vol. 29, p. 84).

Regarding the meaning of this narration, the late Tabrizi believes that the narration indicates that in case of mutual consent, the murderer can save his life from retaliation by paying Diya. It continues that the above mentioned narrative does not mean that the authorities will be able to compel the criminal to pay the Diya or the murderer can oblige the blood avengers to forgive him and receive Diya for the victim (Tabrizi, nd, p. 80).

-Another narration is Ṣahīh Abi Baṣīr (Ḥurr Āmulī, vol. 29, p. 395). Abu Baṣīr narrated that I asked Imam Ṣādiq (AS) about the verdict of a person who killed another person intentionally and then fled and it is not possible to take him. Imam (AS) replied: "If the murderer has money, the blood money will be taken from his property, otherwise, it is taken from his blood avengers, and otherwise it will be taken from the closest relatives to the farthest relatives, respectively. And if he does not have anyone, the Imam will pay the blood money, because "Muslim blood is not wasted." According to those who claim that criminal's satisfaction is not necessary in paying Diya, taking Diya from the property of the murderer without his permission shows that, firstly, in paying Diya to the rightful owner, "The criminal's satisfaction" is not a condition and secondly, if the Diya is requested, it is the murderer's debt and if he could not pay it, his blood avengers must pay it, and if that was not possible, the Imam should pay.

- Another authentic narration is from Abu Al-Abbas " (Āmulī, 1416 AH) Imam Ṣādiq (AS) says: If a man kills a woman, the blood avengers of the woman are free to retaliate the murderer. If they want to retaliate him, they should pay the half of the full blood money to the heir of the murderer, or they can take half of the full Diya from the murderer. This narration indicates the choice of the blood avengers between Qiṣāṣ and blood money and the consent of the murderer or the perpetrator is not mentioned.

- Another authentic narration is from Muhammad ibn Qays: (Āmulī, 1416 AH: vol. 29, p. 84). Ibn Sinān says: I heard Imam Ṣādiq (AS) said about a man who killed his wife intentionally: "If the blood avengers of the woman want to retaliate against the murderer, they will kill him and pay half of the blood money to his family, and if they want, they can take half the blood money, which is five thousand dirhams (from the murderer). In this narration, the payment of blood money to the blood avengers is not subject to the consent of the murderer.

There are other narrations in this regard that we will suffice with the same number. Now, if the blood avengers asked for Diya, and the murderer would not consent to pay it, he should be retaliated, or the blood avengers forgive him so that the victim's blood is wasted. In this case, we have given all the authority to the murderer, while the blood avengers have the right. So there may be a problem with the payment of ransom. Because compromise requires mutual consent.

### ***Reasons for not Paying Diya to the Blood Avengers of the Victim***

According to what has been said, the legislator considers the payment of blood money by the murderer as a kind of compromise that requires the consent of the parties, i.e. the murderer and the blood avengers of the victim. If it can be proved that the payment of ransom to the blood avengers of the victim is not a compromise, the condition of the murderer's consent will be removed. So, this is not a compromise and the reasons are given below.

#### **1- The Authority of the Blood Avengers in Retaliation or Blood Money**

Is the blood avengers' right only retaliation and they cannot take blood money from the murderer, unless the murderer is satisfied with giving blood money? Or he can waive the retaliation, and take the blood money. And the blood avengers can choose between Qiṣāṣ and Diya. In the latter case, in other words, this is the blood avengers right and can directly renounce retaliation and force the murderer to pay blood money to the blood avengers. Most Shiite jurists have accepted the first view (Tūsī, 1417 AH: pp. 176-178; Ibid., nd: p. 734; Ibn Zohra, 1417 AH: p. 405; Ibn Idris, 1411 AH: vol. 3, p. 326; Shahid Thānī, 1413 AH: vol. 15, p. 224) and some have accepted the second opinion (Ibn Fahad Ḥillī, 1413 AH: vol. 5, pp. 249-251, also Ibn Junaid and Scaffi).

The theory of choosing between Qiṣāṣ and Diya is more logical and more compatible with justice and jurisprudential rules. According to the jurisprudential and legal analysis expressed in this matter, there is no doubt that retaliation and its implementation is the private right of the blood avengers, and

even in the absence of the blood avengers, this right is not lost and this right is inherited with the death of the blood avengers. And if the crime was committed against several people, the right of retaliation is fixed for each and every blood avenger. How is it that this right, which does not disappear even with death, becomes a right of the parties with the forgiveness of the blood avengers of the victim and the request for blood money, so that if the murderer is not satisfied with the payment, the right of the blood avengers is violated? This is not compatible with the custom of the wise and justice and other jurisprudential rules that we make the right of the righteous subject to the consent of the person who has violated the right of that person and has deprived the human soul of existence. While the same legislator considers the blood money to be fixed in quasi-premeditated murder.

## 2- The Jurisprudential Rule of "the Muslim Blood Is Not Wasted":

Some jurists, citing the rule "The Muslim blood is not wasted", believe that the blood avengers are free between retribution and blood money, because it is assumed that the killer is not willing to compromise with the blood avengers. In this case, if the blood avengers cannot take the blood money from the murderer, because the blood money should be compromised in the premeditated murder, the victim's blood was wasted and he was killed innocently, and his killer was not retaliated, and no ransom was paid to the victim.

Citing this principle is seen in the words of some jurists, such as Allameh Ḥillī and Ayatollah Khoei. (Ḥillī, 1413 AH: v. 3, p. 594; Khoei, 1396 AH: v. 2, p. 28).

## 3- The Rule of "the Value of Human Blood"

One of the important rules in the Islamic criminal law system is the rule of the value of blood or the obligation to save lives. If the blood avengers forgive the murderer by receiving blood money, we shouldn't subject the payment of ransom to them conditional on the consent of the murderer because if the murderer is not satisfied, which is often the case, the blood of the victim is wasted. In the narration of Fuḍayl from Imam Ṣādiq (AS), he said: there is Qiṣāṣ in premeditated murder, unless the blood avengers of the victim are satisfied. Therefore, since the right of Qiṣāṣ is reserved for the blood avengers, the Diya must also be with the consent of the blood avengers. (Shahid Thānī, vol. 8, pp. 106-108).

In this regard, Shahid Thānī has stated: "Paying Diya is obligatory on a criminal at the request of the blood avenger, according to a saying (Ibn Junaid), because it is obligatory on everyone, including a criminal, to save his life, and the protection of life depends on payment of blood money to the victim's blood avengers. Therefore, in case of power and ability to pay Diya, the murderer is obliged to pay it (Ibid).

## 4- The Rule of Justice

One of the rules that is valid in all jurisprudential chapters is the rule of justice (Bojnourdi, v. 4: 127). In the chapters of jurisprudence, we face cases where the great jurists have left out one or more narrations because they are not compatible with justice, even though those narrations are also authentic in terms of document.

The document of the rule of justice is many verses in the Qur'an that indicate the observance of justice and numerous narrations that have reached us from the Infallible Imams. 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 "Umm al-Qawā'id" (Asghari, 1388, p. 53).

According to this rule, if there is no Diya, it is necessary that premeditated murder be in a worse condition than non-premeditated murder. Because if one person kills several people in a quasi-intentional way or by mistake, Diya is required for all, but if he kills several people intentionally, it is only Qiṣāṣ and nothing else, and such a result is not obligatory and is unjust (Madani Kashani, 1410 AH, P. 48).

In other words, a criminal is someone who has committed a crime against a human soul, such a person wants to work for his own benefit, so his consent to carry out the sentence of blood money is not fair.

### **Conclusion**

From the jurisprudential and legal analysis, it is clear that according to the arguments mentioned in the verses and hadiths and the analysis of the right of Qiṣāṣ and jurisprudential rules such as the rule of “justice” and the rule of “The blood of Muslim is not wasted” and the rule of “preserving the value of human blood” and other rules that cannot be discussed here, the payment of Diya by the murderer in multiple premeditated murders does not require the consent of the murderer, and the murderer must pay the perfect Diya of a human being for each soul he has killed.

But the reason why the legislator insists on the satisfaction of criminal is for the following reasons:

The legislator has followed the well-known opinion of the jurists and has based the principle on Qiṣāṣ.

Because the legislator’s opinion is based on the originality of Qiṣāṣ, therefore, if the victim has a request other than Qiṣāṣ (i.e. blood money), it has no originality. According to the legislator's basis (originality of Qiṣāṣ), the payment of Diya by the criminal to the blood avengers requires a peace contract, and in such a contract, the consent of the parties is required.

According to the legislator's basis (originality of Qiṣāṣ), by converting Qiṣāṣ into Diya, the right of Qiṣāṣ for the blood avengers, which was allocated to them, becomes a common right and mutual consent (compromise) in the Diya. With this description, in most cases, neither the blood avengers waive their right to retaliation nor is the killer often satisfied with the payment of blood money, so this law closes other ways and leaves only the way of Qiṣāṣ open and encourages retaliation. In criticizing the legislator's words, it should be said that the legislator should correct the basis of his words and that he believes that only retribution and nothing else is wrong. The falsity of this promise is clear from the verses and hadiths that have been narrated. At the same time, it is clear from the care in the basis and the consequences of it that the promise is incorrect. Because the basis is incorrect, its consequence is also incorrect. This person is criminal so his satisfaction is nonsense.

### **Suggestions**

- It is suggested that the legislator amend Article 384 of the Islamic Penal Code and compile it in such a way that it is in accordance with the justice of the rightful parties and the rights of the blood avengers of the victim are not lost.
- It is suggested that the legislator follow a single procedure in drafting the laws of retribution and blood money so that the laws do not conflict with each other.
- It is suggested that investigations like this be conducted by researchers and submitted to the judiciary to identify and review legal deficiencies.

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