Investigating the Commonalities and Differences among Shiite and Sunni in Relation to the Causes of Muḥārib

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Abstract

The word Muḥāribah is derived from the root of ḥarb i.e. war, which is the opposite of the word silm meaning peace, and in the term Muḥārib is someone who reveals his weapon to frighten people and intend to corrupt on earth. And such an act is called Muḥāribah and the person who committed it is called Muḥārib. According to verse 33 of Surah Mā‘idah, Muḥārib is one who fights God and His Messenger and corrupts the earth. Muḥāribah is used in some Islamic texts with the titles of Ḥirābah or cutting off the road or great robbery, and according to the narrations and opinions of Imamiyyah jurists: Muḥārib is a person who takes up arms with the intention of intimidating and terrifying the people. And thus commit corruption on earth. Therefore, in the term of Imamiyyah jurisprudence, Muḥāribah means taking up arms with the intention of intimidating and frightening people, and in general jurisprudence, some have dedicated Muḥāribah to robbery and making roads unsafe. And some have defined it as creating insecurity and fear and causing corruption and murder on the ground with weapons or other tools such as chemicals. The appearance of all the contents indicates that the criterion for committing the crime of Muḥāribah is the existence of violence and domination and deprivation of public security.

Keywords: Muḥārib; Bandit; Corruptor on Earth; Rebel; Security; Robbery

1- Introduction

The religion of Islam is concerned with peace and security in the international community. However, this security and comfort may deprive the security and order of the society by various things and cause fear, sorrow or worry of the people. Among these issues that should be seriously considered are the armed actions and violence of Muḥārib (i.e. the hostile person), who clearly endangers the mental and physical comfort of the people.

All religions and sects have somehow dealt with the ruling of Muḥāribah and the way of dealing with the Muḥārib, and the religion of Islam is no exception to this rule.
Considering the importance of the discussion, Islamic jurists have tried to express the conditions and causes of Muḥārib, which, of course, are not common in all cases, and there are differences in their discussions. The present article has considered "the study of commonalities and differences of the causes of Muḥārib from the point of view of Shi’a and Sunni jurisprudence."

1-1- Definition of Concepts

1-1-1- Muḥārib in Words

"Muḥārib" is an Arabic word from the root of "ḥarb" and it is the noun of the subject from Thulāthī Mazīd and from the Muṣā’ilah bāb, which many meanings for this substance and its derivatives have been mentioned in dictionaries. "Ḥarb" is the opposite of "silm" and silm means compatibility, and its opposite is Ḥarb meaning incompatibility, which sometimes appears in the form of theft of property, sometimes in the form of usurpation and sometimes in the form of war and military conflict. (Ibn Manẓūr, 1119 AH, p. 188)

According to some scholars, the word Ḥarb is used at the root of Ḥarb to mean "looting, robbing and plundering", because in the past, most of the armed conflicts and wars led to the looting of the property of the defeated party by the dominant party, and even in most cases, the purpose of war is to loot and plunder property, and in fact the connection between stripping the defeated and depriving property has been attributed to war and armed conflict. Therefore, Ḥarb has been used to mean war. (Jawharī, 1997, p. 108) So, in general, Muḥārib in the word has been defined as warrior and fighter, looting property and depriving security.

1-1-2- Muḥārib in the term

Regardless of the topics of lexicography and lexical etymology, Muḥārib and Muḥāribah have been considered as a jurisprudential and legal term among jurists and scholars of Islamic sciences and have been entered the field of studies and research of legal scholars and in different periods, wide and diverse topics have been done about it. Of course, the definitions of Muḥāribah given by the jurists are almost the same in many respects. Muḥāribah, which is sometimes referred to in Islamic texts as "Ḥirābah", "Cutting off the road" or "Great robbery" ('Udah, 1989, vol. 2, p. 268), requires other people's property; but the attribution of Muḥārib to cutting off the road and limiting Muḥāribah to robbery and theft that occurs through coercion and domination is a kind of allocation that needs a reason to be able to allocate the whole verse, which is apparently ruled out (Habibzadeh, 2000, p. 19). But in general, it is one of the crimes that deprive the public of security and comfort, and its punishment is within the limits, and its ḥadd is common to all Islamic religions1, but despite this consensus, there are different views in the details of the issue that for this reason, there is a need for discussion and study, so we will define this term in Shiite and Sunni jurisprudence.

1-1-3- Definition of Muḥārib in Imamiyyah Jurisprudence

I-Sheikh Mufīd believes; "And when the people of Daghārah2 take up arms in the land of Islam and seize the property of the people, the Imam is free to kill them with the sword, or to hang them to die, or to cut their hands and feet in the opposite direction, or banish them from the city to another place. And select someone as a lawyer not to let the looter to settle in any place, unless they are exiled from there to another place and repent, but if they draw their swords and kill someone, kill them anyway. "It is obligatory to kill them, whether by sword or by hanging, until they die and should not be left alive on the ground."

In fact, Sheikh Mufīd, may God have mercy on him, believes: Whenever the corrupt people reveal their weapons in the land of the Muslims and plunder the property of the people, the Imam (AS) is free to

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1 Killing (murder), beheading (crucifixion), cutting off opposite limbs (amputation), exile
2 Daghārah means kidnapping; The people of Daghārah; the kidnappers
choose one of the four punishments. According to him, *Muḥārib* takes people's property from them by declaring weapons. (*ʿAkbarī Baghdādī (Sheikh Muṣīd),* 1413 AH, pp. 84-85)

2- Sheikh Ṭūsī has accepted the well-known definition of the Imamiyyah jurists and said: *Muḥārib* is someone who takes up arms and is from the people of suspicious in the city or outside it in the land of polytheism or in the land of Islam, whether it is night or day, so whenever he corrupts, he is called a *Muḥārib.*" (Ṭūsī, 1400 AH, p. 720)

3- Sheikh Ṭūsī, in another definition, is closer to the prevailing theory of Sunni jurists who consider *Muḥārib* as someone who cuts the road and says: "The *Muḥārib* mentioned by God in the verse of the *Muḥārib* are the same people who cut the road and take up arms, make the roads unsafe and frighten passers-by, Ibn Abbas and a group of jurists have said the same. A group has also said: The *Muḥārib* mentioned in the verse are people of *Ḍīmmah* who broke the Covenant of *Ḍīmmah* and joined the *Dār al-Ḥarb* and fought with the Muslims. And Ibn ʿUmar said that the meaning of the verse is apostates; because the verse was revealed about ʿArīnayn. Our reason is the Shiite consensus and their news." (Ṭūsī, 1381 AH, vol. 2, p. 477)

4- Sheikh Ṭūsī, may God have mercy on him, in the book "Al-Mabsūṭ Fī Fiqh al-Imamiyyah" expresses his juridical opinion in this way, first he expresses the opinion of the general jurists who consider the one who cuts the road as a *Muḥārib,* but after accepting and mentioning the famous saying of the Imamīyyah jurists, he considers a *Muḥārib* to be someone who scares people by taking up arms, whether at sea or on land, whether in the city or in the desert, and it is narrated that the thief is also a *Muḥārib.* In some of our narrations, it has been stated that the meaning of verse 33 of *Māʾidah* is bandit, as the general jurists have also said the same. (Ṭūsī, 1973, vol. 8, p. 47)

5- Ibn Barrāj, in his definition of *Muḥārib,* states: *Muḥārib* is someone who corrupts and performs evil and takes up arms, whether on land or at sea, in the city or otherwise, in the land of Islam or in the land of polytheism, night or day (Ibn Barrāj, 1406 AH, vol. 2, p. 553)

6- Rāwandī writes in the definition of *Muḥārib:* "Whoever takes up arms in the city or outside the city and while he is from evil-doers and corruptors is a *Muḥārib.*" (Rāwandī, nd, vol. 2, p. 387)

7- Muḥaqiq in the definition of *Muḥārib* says: "*Muḥārib* is someone who has taken up arms to intimidate people, on land or at sea, night or day, in the city or elsewhere. (Muḥaqiq Ḥillī, 1408 AH, vol. 4, p. 167)

8- Allameh, in his definition of *Muḥārib,* says: "*Muḥārib* is someone who takes up arms to intimidate people on land or at sea, night or day, city or otherwise, and it is not necessary for him to be a man. (Allameh al-Asadī (Allameh Ḥillī), nd, v. 3, p. 568)

9- Allameh Ḥillī in the book "Irshād al-Adhān" says: "*Muḥārib* is the one who takes up arms to frighten people, whether on land or by sea, night or day, in the city or otherwise, whether he is a man or a woman, and if he takes a property from someone by force in his city, he is *Muḥārib.*" (Allameh Ḥillī, nd, vol. 2, p. 186)

*Ṣāḥib Awwal* says: "He is the one who takes up the weapon, on land or at sea, night or day, to scare people in Egypt and elsewhere." (Makkā, 2011, p. 247) and *Ṣāḥib Thānī* added in the description of his speech: "*Muḥārib* is the unveiling of a weapon, and according to *Ṣāḥib Thānī,* whether the *Muḥārib* is a corruptor and evil-doer or not, and whether he intends to scare people or not." (ʿĀmulī, 1432 AH, vol. 4, p. 365) *Ṣāḥib Thānī* has mentioned the point of whether it is necessary that *Muḥārib* has the intention to scare people or not? He considers that having the intention to frighten people is not necessary and this is the most correct opinion. In his book, *Sharh Lumʿah,* he describes *Muḥārib* as follows: "*Muḥārib* is someone who takes up arms to intimidate people, whether in the city or not, night or day, at sea or on

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3 The people of the covenant
land, male or female, strong or weak, from the people of corruption, or not, provided that he is a criminal and even if he is suspected to be criminal." (‘Amulī, 1432 AH, vol. 4, p. 365)

Ayatollah Khoei, in his definition of Muḥārīb, states: "Whoever takes up arms in order to frighten the people is Muḥārīb and is exiled, and whoever takes up arms and strikes is first punished and then exiled. (Khoei, 1396 AH, vol. 1, p. 318) Ayatollah Bojnourdi also says: "Almost all narrations mean that mere taking out the weapons is not enough to achieve the title, but in addition to that, there must be the creation of fear and panic" (Mousavi Bojnourdi, nd, First volume, p. 30)

Imam Khomeini (RA) writes in the definition of Muḥārīb: "Muḥārīb is someone who takes out his weapon to intimidate people or equips himself with it and intends to corrupt the land, whether on land or in the water, in the city or not, whether it is at night or during the day, and in fulfilling what has been mentioned, it is not a condition that the perpetrator be from the people of corruptors and evil-doers and also that the man and woman are the same (Mousavi Khomeini, 2005, p. 889) In the definition of Imam Khomeini (RA) three pillars have been mentioned for the realization of Muḥārībah: first: a weapon that someone has taken or prepared, second: intimidating and frightening, third: intent to create corruption.

As a result, research and examination of the opinions of Imamiyyah jurists show that the vast majority of them considered Muḥārīb to be "Someone who prepares or takes out weapons with the intention of intimidating the people."

1-1-4-1- The religion of Maliki expresses the definition of Muḥārīb to a large extent similar to the definition of the Shiite jurists and says: "In our country, Muḥārīb is a person or a bandit who carries his weapon to intimidate people in a city or village (Sābuni, 1400 AH, vol. 1, p. 551) and in another definition of the Maliki religion, Muḥārīb (bandit) is defined as follows: " Muḥārīb in our country is a person or a bandit who carries his weapon to intimidate people in the city or village (Al-Jazīrī, 1392 AH, vol. 5, p. 411) and also in their opinion if inside or outside the city a woman or a man from people of Dhimmī or Muslims use weapons or other harmful means such as poison or debilitating substances, cause public fear and cause corruption or murder on earth, are considered Muḥārīb... and it does not matter if the Muḥārīb is a nuisance to Muslims or for the people of Dhimmī. (Ibn Rushd, 1408 AH, vol. 16, p. 373; also Ibn Abd al-Barr, 1400 AH, vol. 2, p. 1087) Of course, some, such as Khaṭṭāb in "Mawāhib al-Jalīl" and Desuqi in "Hashiyah", consider Muḥārīb to be someone who, by showing power or fighting or destroying the minds of individuals, has caused insecurity and commits robbery in order to seize people's property in such a way that It is difficult for the people to deal with their threats. (Khaṭṭāb, 1412 AH, vol. 6, p. 314, also Desuqi, nd, vol. 4, p. 348)

1-1-4-2- In the guidebook of Shafi'i religion, Muḥārīb has been defined as follows: "A bandit is a person who intends to attack the property or life, or the honor of the people by trusting in personal force and power and by pretending that the law enforcement forces do not help the people, so the bandit block the way for passers-by. If a person or group could defend themselves against a bandit or a group of bandits but they surrendered themselves, it is called robbery and looting, and if the aggressors and protesters do not trust the power of their forces and want to seize the opportunity and steal something but do not want to run away, they are called embezzlers." (Shaykh al-Islam Kurdistan, 1988, p. 265)

In the Shafi'i religion, Muḥārīb has been defined as follows: "Muḥārīb is someone who seize the property or commit murder or create intense fear, so that by relying on his power and glory, he deprives another of the possibility of asking for help."(Al-Jazīrī, 1392 AH, vol. 5, p. 411). Some Shafi'i jurists believe that anyone who openly attacks a girl (less than 9 years old) is considered Muḥārīb. They also believe that if the murder is done with the intention of taking property or creating fear, Muḥārīb will be realized. (‘Udah, 1989 AD, vol. 2, p. 640)

Shafi'i also did not differentiate between houses, roads, deserts and villages, and considered the ruling to be the same for all of them. Imam al-Shafi'i quotes Ibn Abbas: that verse 33 of surah Mā`īdah is related to someone who cuts the road for the Muslims (bandit). He then quotes the opinion of several
scholars in interpreting the meaning of Muḥāribah with God and the Prophet: "The first quote is the opinion of Juybar who considers Muḥāribah with God and the Prophet in the verse as enmity with them. The second statement is that the verse means to oppose God and the Prophet; the third statement is that the verse means fighting and harassing the ‘Awliyā’ of God." Then Shafī’i says: "It means enmity with the ‘Awliyā’ of God, and trying to corrupt means exclusively robbery and making the roads insecure. He considers a bandit to be someone who has endangered the security of the people in the city or desert, and usurps their property openly. In fact, he considers the attack on the security of public places in the city as Muḥāribah and introduces the perpetrator as a Muḥārib; because first of all, security inside the city is wider than in the desert; therefore, it needs more legal protection; second, the city is more under government control than the desert; thirdly, the city is the place where people live and settle their property. "Therefore, its security is more important." (Māwardī, 1419 AH, vol. 13, p. 352)

Muḥārib is someone who threatens the road of Muslims and attacks and frightens people in cities or villages, closes the way for them, attacks their property and honor. (Novi, nd, v. 20, p 113). Of course, in the Shafī’i religion, the important condition for a Muḥārib person is to be a Muslim and to have power and victory over the perpetrators. In a way that is dangerous for the people and the government and dealing with their threats and aggression is difficult and dangerous. (Novi, 1412 AH, vol. 10, p. 154.) Al-Ghazālī explicitly states: "It is a condition to have honor and victory, but it is not necessary to be a man, to have weapons and to have many people." (Rafi’ī, 1417 AH, vol. 11, p. 248)

The definition of Muḥārib is one cutting off the road, which requires the robbery of people's property on hills and roads outside the city and villages, so the definition of Muḥārib is closer to the thief and is rare in the words of Imamiyyah jurists and is more documented in the opinion of Sunnis who have said: "Ḥirābah is to bandit or a great robbery." (ʽUdah, 1989 AD, vol. 2, p. 268)

1-1-4.3- The Ḥanbalī have said in the definition of Muḥārib: "Robbery with taking property or murder or intimidation if it is by resorting to force and violence and crying out for help to someone who has not been charged with a crime." (Al-Zarkashī, 1413 AH, vol. 6, p. 364) They also believe that in order to enforce the ḥadd of Muḥārib, the property seized by the Muḥārib must be equal to the quorum of the theft limit, which is one dinar or ten dirhams or their price. (ʽUdah, 1989 AD, vol. 2, p. 640)

1-1-4.4- Abū Hanafiyah believes that Muḥāribah can only occur outside the city and village and only on the way, so taking property inside cities and villages is considered embezzlement and it is not considered Muḥāribah. While confirming the opinion of their leader, some Hanafi jurists say that the name of this crime is banditry, therefore, considering the name of the crime and its occurrence, it is not possible except on public roads outside the city or village. According to Hanafiyah, in order to achieve Muḥāribah, it is a condition that the Muḥārib use a weapon or something that is a weapon, such as a cane and a stone, while according to Shafī’i, it is not a condition for the Muḥārib to use a weapon and it is enough for him to use his honor and power for the realization of the enmity. (Ibn Qudāmah, 1404 AH, vol. 10, p. 304) Examining the opinion of the Sunni religions, it is known that all the Imams of the Sunni religions agree that Muḥāribah is when someone takes up arms on a public road outside the city and frighten passers-by. And stealing people's property in the hills and roads outside the city and villages brings Muḥāribah closer to theft and is rare in the sayings of Imamiyyah jurists and it is mostly documented according to the Sunnis. (Ibn Qudāmah, 1404 AH, vol. 10, p. 305)

2- The commonalities of Muḥārib from the Point of View of Shiite and Sunni

2-1- Wisdom and Puberty

The vast majority of jurists and lawyers agree that the two elements of wisdom and puberty are the conditions of criminal responsibility, because the perpetrator can be punished only when he can be found guilty and responsible for his criminal behavior. If he doesn’t have the ability to understand his criminal behavior and its social ugliness, he cannot be punished.
Therefore, the child and insane people do not have the necessary rational conditions to bear the punishment of their criminal act, so punishing them is neither rationally nor morally desirable. (Marʿashī Shīṣhtārī, 1995, p. 15) Sunni jurists believe that taking out weapons and intimidating people by a child or insane person, who commits Muḥāribah and kills someone, the ḥadd of Muḥārib cannot be imposed on him and he cannot be called Muḥārib. (Sabziwārī, nd, v. 10, p 305)

Therefore, by examining the conditions of wisdom and puberty in the jurisprudence of Shi’as and Sunnis, Muḥārib is someone who is wise and mature. Because these two characteristics are the condition of duty and the condition of enforcing hudūd about the offender. Therefore, an immature and crazy child, no matter how much he participates in acts of Muḥāribah, is not considered a Muḥārib. Because he is not legally obligated. And the jurists have no conflict on this. (Najafī, 1981, vol. 41, p. 570; Sabziwārī, nd, vol. 28, p. 121)

Gender

The issue of gender is considered as the second common aspect of Shi’a and Sunni.

A) Alīmah says about the condition of Muḥārib being a woman or a man: "Being a man or so many people is not a condition, but honor and power is meant that being a Muḥārib is realized. So if a woman can only do this on her own ability, she is a bandit." (Allameh Hīljī, nd, vol. 3, p. 568)

B) Fādil Isbahānī says: "Being a man is not a condition and the number is not a condition too, but the matter is the honor and aye that makes someone a Muḥārib. So, if a woman can do this only with her own ability, then she is a bandit." (Isbahānī, nd, vol. 10, p. 636) Most Sunni scholars, such as Malikī, Shafi’ī, and Ḥanbalī, do not consider gender to be effective in this crime. Only among the Sunnis a Ḥanafi group, due to the existence of a narration of ʿAbū Ḥanīfah, believe that gender is effective in this crime and women are not considered in this hudād. (Ṣābiq, 1397 AH, vol. 2, p. 467)

And among Shi’ite jurists, the only effect of gender in this crime has been attributed to Ibn Junaid, who said: "According to verse 33 of the Māʾiḍah, in which the word "الذین" (i.e. those) and the masculine pronoun in it has been used." And in many verses in the Holy Qurʾān, the word "الذین" for men and women is common; also, the criteria of the ruling, which is to create fear and panic in society, exist equally in men and women. (Allameh Hīljī, 1413 AH, vol. 9, p. 259)

2-2- Being Public

Among Sunni jurists, publicity is often one of the conditions for being Muḥārib. Ibn Qudāmah has said about the condition of the realization of Muḥārib: "Muḥārib is the one who enters by force and conquers and takes property. Therefore, if it is secret, it is considered theft."(Ibn Qudāmah, 1388 AH, vol. 9, p. 145) And among the Imamiyyah jurists, Allameh Hīljī has written in the definition of Muḥārib: "Muḥārib is someone who forcibly and openly takes another's property from him. In this case Muḥārib is realized." (Allameh Hīljī, 1443 AH, vol. 3, p. 568)

2-3- Using Weapons with the Intention of Scaring People

One of the main conditions for the realization of a Muḥārib person is the intention to create terror in the society, which most jurists have explicitly mentioned in their definitions. Using weapons to intimidate people and the will to corrupt society is something that the news and narrations have pointed out, some of which imply a corresponding meaning and some imply an obligatory meaning.

A-Imam Ṣādiq (AS) says: "If they only made the roads unsafe and did not kill anyone and did not loot anyone's property, they will be sent to prison, and this means deportation from the land for making the roads unsafe. And if they make the roads unsafe and take the property, it will be ordered to cut off its arms and legs in the opposite way (right leg with left hand and vice versa) or to hang them." (Hurr Ṭāmilī, 1396 AH, Hadith 34835, vol. 28, p. 310) This narration refers to the corresponding implication
that if someone makes roads unsafe with the intention of intimidating people and using weapons, he will be Muḥārib and the punishment for Muḥāribah will be on him.

B- Some narrations have an obligatory meaning and are clear and obvious, such as the authentic narration of Darīs from Imam Bāqir (AS) who said: "He who carries weapons at night is Muḥārib." (Ḥurr ʿĀmulī, 1396 AH, Hadith 34842, vol. 18, p. 478) The narration of Darīs, which indicates that a person who carries a weapon at night and is a person of evil and corruption, is Muḥārib, and this means that he is an inseparable part of intimidation.

The narrations of the thief as well as the verse indicate that if a person commits Muḥāribah but does not kill anyone and does not rob property, and so on..., this is accompanied by intimidation, because if he does not intimidate someone, he is not Muḥārib. Like someone who use a gun and disturb or kills dogs and wild animals. Abū Ḥanīfah and Ahmad ibn Ḥanbal made it a condition that Muḥārib should have a weapon or anything that had the status of a weapon, such as a stick, a stone or a wand. But Malik and Shafīʿi, the Zāhirī and the Zaydi Shiites do not consider being armed as a condition of Muḥārib, and they believe that trust in the power and ability of Muḥārib is sufficient. As Malik considers the trick of Muḥārib without using any power at times or using hands and feet such as punching with the hand. (Al-Qurtubī, 1408, vol. 16, p. 373)

Sarakhsi: "An evil and frightening person will be imprisoned for the rest of his life. (Terrorist) is the one who frightens people and takes property from them, and in fact he is a bandit. God has said: "Indeed, the punishment of those who fight against the friends of God and His Prophet" (See. Sarakhsi, 1414 AH, vol. 20, p. 91)

When a group of Muslims or Dhimmī rob another ethnic group of Muslims or other Dhimmī people and commit murder in this Muḥāribah and seize their property; the view is that the Imam should cut off their hands and feet in the opposite way or hang them. But the condition of the bandit according to Sarakhsi, the first condition: there must be a group and ethnicity that engages in Muḥāribah and mentions some attributes for this Muḥārib, including that the Muḥārib according to the text of the Qur'an is someone to whom this profession has been accustomed. Secondly: their robbery and making the roads unsafe and frightening the people is due to the baseless greatness and honor that they have created for themselves in front of each other, and with these titles, they loot and rob.

Ibn Qudāmah: "The Muḥārib are those who attack a group using weapons and loot their property by force in the desert. (Ibn Qudāmah, 1388 AH, vol. 9, p. 144) According to Ibn Qudāmah, Muḥārib must have a weapon with himself, if he does not have a weapon, he is not considered a Muḥārib; so if he attack an ethnic group with a cane or a stone or a glass, such people are considered Muḥārib. And Abū Ḥanīfah also thinks that the condition for being Muḥārib is that he must use a weapon or something that is a weapon, such as stone, wood, or a cane. (Al-Jazīrī, 1392 AH, vol. 5, p. 41; and also Ibn Qudāmah, 1388 AH, vol. 10, p. 304)

If we put the sum of the contents together, what can be clearly seen in all of them is that the intention to create terror in society is the common aspect of all these cases. And if Muḥārib disrupts the security of the society by intimidating a person, that is, the security of a person is threatened in a way that leads to the deprivation of the security of the society, this is also Muḥārib.

2.4- No Difference between Night and Day

The application of the fatwas of the jurists and the hadiths indicates that there is no difference between night and day in that a person is Muḥārib. In addition, in some narrations, "night" has been mentioned. As Darīs quotes from Imam Bāqir (AS): "Whoever takes up arms in the evening is Muḥārib", but the day is obtained from the authentic narrations. (Ḥurr ʿĀmulī, 1396 AH, Hadith 34842, v. 18, p. 478)
Imamiyyah jurists, citing the generality and application of verses and narrations of the chapter on \textit{Muḥārib}, believe that there is no difference between night and day in the realization of the act of \textit{Muḥārib}. And they have said: "At any time, anyone who takes up arms to intimidate people, whether at night or during the day, is \textit{Muḥārib}." (Mousavi Khomeini, nd, p. 889) Among Sunni jurists, people like \textit{Ibn Ḥazm} and \textit{Abū Ḥanīfah}, like Shiite jurists, do not differentiate between night and day, and believe that time has no effect on the commission of this crime. But some of them, such as Shafi'i, Abu Sulaymān, and Abī Yusuf, say that the condition for the realization of \textit{Muḥārib} is that he use the weapon at night. (\textit{Ibn Ḥazm al-Andalusī}, nd, vol. 11, p. 303)

2-5- No Difference Between Land and Sea

From the general news and narrations and their applications, even in the clarification of some hadiths and the words of the jurists, it is understood that there is no difference between land and sea in the practice of \textit{Muḥārib}. And the reason (no difference between land and sea for being a \textit{Muḥārib}) is the existence of helpers and friends in the city, which often destroys the power and honor of \textit{Muḥārib}. Among the Sunni jurists, Maliki and Shafi'i do not differentiate between the desert and the city, and if it takes place in the city or outside the city, \textit{Muḥārib} is valid; (\textit{Al-Nawawī}, vol. 20, nd, p. 108)

\textit{Abū Ḥanīfah} said that the condition for the \textit{ḥadd} to be imposed on \textit{Muḥārib} should be its occurrence in the land of Islam and Muslims. And if he is in the land of disbelief, no \textit{ḥadd} will be imposed on him because the custodian of the \textit{ḥadd} is the infallible Imam who has no guardianship over the land of disbelief and polytheism, even though the place of the fine is the land of disbelief. However, Maliki, Shafi'i, Ḥanbalī, and Žāhirī consider the obligation to impose the \textit{ḥadd} in the land of Muslim and infidels and call the perpetrator \textit{Muḥārib}. (\textit{Al-Jaṣīrī}, 1392 AH, vol. 5, p. 411)

Bahouti writes: "\textit{Muḥārib} is the same bandit and may be a Muslim or a \textit{Dhimmi}-woman or Man, this group forcibly attack an ethnic group to seize their property, and this attack may be with weapons or stones or wood or the like, but if they do not have a weapon, they are not \textit{Muḥārib}, and these \textit{Muḥārib} may be in the desert or in the middle of people's houses, either on land or at sea, and the reason for that is the generality of the verse of \textit{Muḥārib}." (Al-Bahouti, nd, vol. 1, p. 677) Malik equates the inside and outside the city. (Sabuni, 1400 AH, vol. 1, p. 551) \textit{Abū Ḥanīfah} says: "\textit{Muḥārib} is not inside the city." (Sabarkhsi, 1406 AH, vol. 9, p. 195)

3- The Differences About \textit{Muḥārib} from the Perspective of Shi'a and Sunni

3-1- Location

Some Sunni jurists (\textit{Abū Ḥanīfah}, Thūrī, Ishāq, and Kharaqī, some of Ḥanbalī scholars) consider the realization of \textit{Muḥārib} to be based on its occurrence in a place where it is not possible for a person (i.e. the one who has been intimidated) to seek help. (See: Sabarkhsi, 1406 AH, vol. 9, p. 195) As \textit{Abū Ḥanīfah} says: "\textit{Muḥārib} who is subjected to the rules of bandit is one who carries weapons in the desert, but if he does so in the city, he is not bandit; because the victim can ask for help. (See: \textit{Ibn Qudāmah}, 1388 AH, vol. 9, pp. 144-145)

But many, including Shafi'i, say: "It is possible in the city as well, and houses and roads are also dangerous for people to their property and lives than cutting off roads in the desert." (See: \textit{Ibn Ḥabīb al-Baṣrī}, 1419 AH, vol. 13, p. 352, and also \textit{al-Nawawī}, nd, vol. 20, p. 104)

Shiite jurists, just as they do not consider time as a condition for the realization of \textit{Muḥārib}; being inside and outside the city or being at the sea and at the desert are not considered effective in the realization of \textit{Muḥārib}. (Hashemi Shahroudi, nd, p. 159) \textit{Muхаqiq Ḥillī} says: "\textit{Muḥārib} is anyone who uses his weapon to frighten people, whether he is on land or at sea, day or night, or otherwise." (\textit{Muхаqiq
Some Sunni jurists (Abū Ḥanīfah) have stipulated that acts of Muḥārib must be carried out in the desert so that the perpetrators can be identified as Muḥārib. If they do it inside the city or village, they are not Muḥārib. Because what is obligatory is the definitive ḥadd of the bandit, and the cutting of the road and robbery is in the desert, and help is possible in the city; and the aggressors do not have glory and power, so they are not Muḥārib; rather, they do theft and embezzlement; and there is no limit to embezzlement. This is the religion of Abū Ḥanīfah, Thūrī, Ishāq, and most of the Shiites, and Kharaqī one of the Ḥanbali scholars has also said it in Wajīz5. And Shaykh al-Islam Ibn Taymiyyah says: "If the Muḥārib take up arms in the city and villages and seize people’s property by force, they are the thief not Muḥārib. Because they can ask for help. Another group of Sunni jurists believe that the rule of city, village, and desert are the same. Because the meaning of the verse is general and includes any Muḥārib. In addition, the losses of the Muḥārib in the city are greater, so in the first way, this punishment includes the Muḥārib in the city. Because in prosperous areas, all people’s property is at risk, but travelers in the desert usually do not have all their belongings with themselves). Therefore, all the criminal gangs of robbery, deprivation and murder are Muḥārib. And this is the religion of Imam Shafi’i, Ḥanbalī, Abū Thūrī, Uza‘ī, Layth, Mālikīyah and Ẓāhirīyah. (Ṣābiq, 1397 AH, vol. 2, p. 468)

It seems that this difference is due to the differences between provinces and cities. Someone who has considered the desert as a condition has considered the prevailing situation in his region and locality, or this Muḥāribah has not occurred in the cities during their time. On the contrary, those who do not know the desert as a condition, they have faced such situation in the cities as well. Therefore, Imam Shafi’i says: "When the ruling force is weak, these situations of insecurity are also considered as conditions of Muḥārib, and if the ruling force is not weak, it is not Muḥārib but it is an embezzler.” (See: Shaykh al-Islam of Kurdistan, 1988, vol. 2, p. 265)

According to Imamīyyah jurists, there is no difference between being inside and outside the city. (Ibn Barrā‘ī, 1406 AH, vol. 2, p. 553) Shafi’i has considered the validity of the act of Muḥārib for not helping the person as a condition. Lack of helper is sometimes due to the distance from the place or the presence of the Sultan or the inability of those present at the scene or the proximity of the scene or the weakness and inability of the Sultan or the inability of those who are satisfied to seek help. (See: Shaykh al-Islam of Kurdistan, 1988, vol. 2, p. 265)

The Shafi’i religion is similar to that of the Maliki and the Zaydi Shiites; in the fact that the act of Muḥārib is considered valid outside the city, although some of them have considered it valid in the city, but the religion of Ẓāhirīyah has a broader view than the other religions and they consider the act of Muḥārib in the city and the plateau. Whether it happens at night or during the day, armed or unarmed, in a small village or in a large city, helpers are available or not available. (Ṣābiq, 1397 AH, vol. 2, p. 467)

3-3- People of Ṣābiq

Ṣābiq literally means "doubt and slander." And the people of Ṣābiq is someone who deserves suspicion, and in our custom, the term "evil and criminal" is used about them. In general, a person whose appearance or his bad history makes people suspect him, is a people of Ṣābiq. Hence, those who commit crime in society are called people of Ṣābiq; because their bad behavior in society causes others to lose confidence in them; and puts them in a position of doubt and accusation in their actions. Therefore, evil

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4 A - A weapon that someone has prepared.  
B - Intimidation and frightening  
C - Intention to cause corruption  
5 Name of a book
and corrupt people in the community are called the people of Ṣibah. (Al-Mousavi al-Golpayegani, nd, vol. 1, p. 216)

One of the third differences between Imamiyyah and Sunni jurists is that Muhārib is "Ahl al-Ṣibah". In this case, Sunni jurists believe in power and honor and do not accept the people of Ṣibah (Al-Jazīrī, 1392 AH, vol. 5, p. 411) But Imamiyyah jurists also have a difference of opinion on this issue and some jurists have a view on the condition of being a Muhārib as "Ahl al-Ṣibah" (1-Shaykh al-Tūsī in (al-Nahāyah) and 2- Qāḍī Ibn Barrāj in (Al-Muhadhdhab) 3- Ibn al-Hassan al-Rāwandī in (Fiqh al-Qur’ān) 4- Al-Shahid al-Awwal in (Durūs).

And some believe that it is not a condition for the Muhārib to be Ahl al-Ṣibah. (1- Al-Muḥaqiq in (Sharāyi’ al-Islam) 2- Al-Allameh in (Qawā’id al-Ahkām) 3 Fāḍil al-Iṣbahānī fi (Kashf al-Latham) 4- Al-Muḥaqiq Sheikh Muhammad Hassan al-Najafī in (Al-Jawāhir)

3-3-1 The opinion of some jurists is that Muhārib is the people of corruption and evil (Ahl al-Ṣibah):

Shaykh al-Tūsī says about being a Muhārib as Ahl al-Ṣibah: "Muhārib is one who declares his weapon and is one of the people of corruption and evil." (Shaykh al-Tūsī, 1400 AH, p. 720) Qāḍī Ibn Barrāj says in this regard: "Everyone who is the people of corrupt and exposes his weapon in the city and elsewhere, and who is corrupt, he is a Muhārib in all cases." (Ibn Barrāj, 1406 AH, vol. 2, p. 553) Ibn al-Hassan Rāwandī says: "Whoever reveals his weapon in the city and elsewhere and is a corrupt person, he is a Muhārib in any case." (Rāwandī, nd, vol. 2, p. 387) The first martyr says: "Whoever declares his weapon in the city and elsewhere to intimidate people, be it night or day, even if he is a woman, he is considered Muhārib, provided that he is a man of corruption and evil, even if we are not sure about this." (‘Āmulī, 2011, vol. 2, p. 247)

3-4 Invalidity of the people of corruption and the evilness of Muhārib

Most jurists believe that being from Ṣibah people is not a cause of being Muhārib. Muḥaqiq Ḥillī says: "Is it a condition for Muhārib to be corrupt and evil? We doubt it. It is more correct to say that where there is an intention to intimidate, it is not a condition to be a people of Ṣibah." (Muḥaqiq Ḥillī, 1408 AH, vol. 4, p. 167) Allameh says in "Qawā’id al-Ahkām": "There is no stipulation that Muhārib should be one of the people of corruption and evil. And will it be realized once the way is closed to someone who does not have a weapon, along with his inability to frighten the Muhārib or not? It is more true to say that this is not a condition." (Ḥillī, [Allameh Ḥillī], 1413 AH, p. 553)

Fāḍil Iṣbahānī, in the field of considering the valid condition of being from the people of evil and corrupt for Muhārib, says: "Being a person of corruption and evil is not a condition." (Iṣbahānī, nd, vol. 10, p. 636) "Ṣāḥib Jawāhir" says: "Is it a condition for Muhārib to be corrupt and evil?" Sayings are different. It is even the opposite, but it is more correct that it is not a condition; where it accompanies science with the intention of intimidating." (See: Najafī, 1981, vol. 41, pp. 595 and 596)

3-5 Intention to Robbery

Contrary to the opinion of Sunni scholars, Muhārib does not have to steal the personal property with the intention of stealing it, but by carrying or using a weapon in order to intimidate with any purpose, the crime of Muhārib will be achieved. In the meantime, sometimes a person uses weapons and intimidates in order to seize property from another person with more confidence. This act is called "armed robbery", which Sunni scholars interpret as "great theft". (Al-Zuhaylī, vol. 7, p. 5462)

In other words: according to the well-known opinion of Imamiyyah jurists in the realization of Muhārib, taking the property of others is not a condition. And Muhārib can be realized without taking the
property of others. But according to Sunni jurists, the intention to take property is a condition for banditry. (Al-Zuhaylī, vol. 7, p. 5464)

**Conclusion**

What we achieved in this article is that: From the issues that have been raised about the issue of Muḥārib and banditry and the commonalities and differences between the two, it has been mentioned that: banditry is a clear example of Muḥārib in terms of jurisprudential standards. Of course, it should be noted that there is a difference of opinion between Sunni jurists and Imamiyyah jurists in the definition of banditry and Muḥārib. In short, according to the well-known opinion of Imamiyyah and Sunni jurists, Muḥārib is someone who uses his weapon with the intention of intimidating the people.

Muḥārib is realized by encroaching on the privacy of society and depriving the public of security. However, there is a slight difference between Imamiyyah and Sunni jurists in recognizing the example of Muḥārib. According to Imamiyyah jurists, Muḥārib is defined as someone who takes up arms in order to intimidate people.

And the Sunni jurists who consider Muḥārib with the titles of "banditry", "great robbery", "Ḥirābah"; each has defined it in a way. According to Maliki jurists, Muḥārib is someone who uses his weapon inside or outside the city to intimidate the public and cause corruption or murder on the ground. According to Imam Shafi’i, if a group of Muslims who have power and dominance in a way that is difficult and dangerous for the people and the government to deal with their threats and aggression, and they attack people’s security in the city or desert and publicly usurps their property, they are Muḥārib.

According to Ḥanafiyah jurists, if a group of Muslims or Dhimmī people who have power and glory block the way for another Muslim or Dhimmī and commit acts such as killing and seizing property, they are Muḥārib. In Ḥanbali jurisprudence, Muḥārib is someone who openly and armed attacks on people in order to seize their property.

Therefore, with different definitions by religions, it can be concluded that: The criterion for the realization of Muḥārib is to create public fear and insecurity in society, which is done by attacking others in any way (whether firearm or white arm, whether at sea or on land, whether in the city or not, whether at night or during the day, whether male or female) and the only difference inside the city is an intention of Muḥārib to steal, which distinguishes the definition of Imamiyyah jurists from Sunnis.

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