



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 terrorizing 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 *Mufā'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 Manzūr*, 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 "*Hirābah*", "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

1-Sheikh Mufīd believes; "And when the people of *Daghārah*² 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

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. (*‘Akbarī Baghdādī (Sheikh Muḥīd)*, 1413 AH, pp. 84-85)

2- *Sheikh Tūsī* 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*." (*Tūsī*, 1400 AH, p. 720)

3- *Sheikh Tūsī*, in another definition, is closer to the prevailing theory of Sunni jurists who consider *Muḥārib* as someone who cuts of 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 *Ḍimma*³ who broke the Covenant of *Ḍimma* and joined the *Dār al-Ḥarb* and fought with the Muslims. And Ibn ‘Umar said that the meaning of the verse is apostates; because the verse was revealed about ‘Arīnayn. Our reason is the Shiite consensus and their news." (*Tūsī*, 1381 AH, vol. 2, p. 477)

4- *Sheikh Tūsī*, 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 Imamiyyah 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 *Mā'idah* is bandit, as the general jurists have also said the same. (*Tūsī*, 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- *Muḥāqiq* 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. (*Muḥāqiq 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. (*Al-Mutahar al-Asadi (Allameh Ḥillī)*, nd, v. 3, p. 568)

9- *Allameh Ḥillī* in the book "*Irshād al-Adhḥān*" 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)

Shahīd 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." (*Makkī*, 2011, p. 247) and *Shahīd Thānī* added in the description of his speech: "*Muḥārib* is the unveiling of a weapon, and according to *Shahīd Thānī*, whether the *Muḥārib* is a corruptor and evil-doer or not, and whether he intends to scare people or not." (*‘Amulī*, 1432 AH, vol. 4, p. 365) *Shahīd 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, *Sharḥ Lum’ah*, 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

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." (*‘Āmulī*, 1432 AH, vol. 4, p. 365)

Ayatollah Khomeini, in his definition of *Muḥārib*, states: "Whoever takes up arms in order to frighten the people is *Muḥārib* and is exiled, and whoever takes up arms and strikes is first punished and then exiled. (Khomeini, 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 *Muḥārib*: "*Muḥārib* 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 *Muḥāribah*: 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 *Muḥārib* 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 *Muḥārib* to a large extent similar to the definition of the Shiite jurists and says: "In our country, *Muḥārib* is a person or a bandit who carries his weapon to intimidate people in a city or village (Sabuni, 1400 AH, vol. 1, p. 551) and in another definition of the Maliki religion, *Muḥārib* (bandit) is defined as follows: " *Muḥārib* 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 *Muḥārib*... and it does not matter if the *Muḥārib* 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 *Muḥārib* 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, *Muḥārib* 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 embezzler." (Shaykh al-Islam Kurdistan, 1988, p. 265)

In the Shafi'i religion, *Muḥārib* has been defined as follows: "*Muḥārib* 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 *Muḥārib*. They also believe that if the murder is done with the intention of taking property or creating fear, *Muḥārib* 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'idah 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 Shafi'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 Shafi'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." (*Raḥīṭī*, 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: "*Hirābah* is to bandit or a great robbery." ('Udah, 1989 AD, vol. 2, p. 268)

1-1-4-3- The *Hanbalī* 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. ('Udah, 1989 AD, vol. 2, p. 640)

1-1-4-4- Abū *Hanaḥīyah* 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 *Hanaḥī* 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 *Hanaḥīyah*, 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 Shafi'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. (*Mar'ashī Shūshṭarī*, 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'a and Sunnis, *Muḥārib* is someone who is wise and mature. Because these two characteristics are the condition of duty and the condition of enforcing *ḥudūd* 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) Allameh 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 Hillī*, nd, vol. 3, p. 568)

B) *Fāḍil Isbahāni* says: "Being a man is not a condition and the number is not a condition too, but the matter is the honor and awe that makes someone a *Muḥārib*. So, if a woman can do this only with her own ability, then she is a bandit." (*Isbahāni*, nd, vol. 10, p. 636) Most Sunni scholars, such as Maliki, Shafi'i, and *Hanbalī*, do not consider gender to be effective in this crime. Only among the Sunnis a Hanafi group, due to the existence of a narration of *Abū Hanīfah*, believe that gender is effective in this crime and women are not considered in this ḥadd. (*Sābiq*, 1397 AH, vol. 2, p. 467)

And among Shiite jurists, the only effect of gender in this crime has been attributed to Ibn Junaid, who said: "According to verse 33 of the *Mā'idah*, in which the word "الذين" (i.e. those) and the masculine pronoun in it has been used." And in many verses in the Holy Qur'an, the word "الذين" 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 Hillī*, 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 Hillī* 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 Hillī*, 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 'Āmulī*, 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 *Ḍarīs* from Imam *Bāqir* (AS) who said: "He who carries weapons at night is *Muḥārib*." (*Hurr 'Āmulī*, 1396 AH, Hadith 34842, vol. 18, p. 478) The narration of *Ḍarīs*, 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 disturbs 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 *Shafī'i*, 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-Qurṭubī*, 1408, vol. 16, p. 373)

Sarakhsī: "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. *Sarakhsī*, 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 *Sarakhsī*, 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 *Ḍarīs* quotes from Imam *Bāqir* (AS): "Whoever takes up arms in the evening is *Muḥārib*", but the day is obtained from the authentic narrations. (*Hurr 'Āmulī*, 1396 AH, Hadith 34842, v. 18, p. 478)

Imamiyyah jurists, citing the generality and application of verses and narrations of the chapter on *Muḥārib*, believe that there is no difference between night and day in the realization of the act of *Muḥārib*. And they have said: "At any time, anyone who takes up arms to intimidate people, whether at night or during the day, is *Muḥārib*." (Mousavi Khomeini, nd, p. 889) Among Sunni jurists, people like *Ibn Ḥazm* and *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 Abi Yusuf, say that the condition for the realization of *Muḥārib* is that he use the weapon at night. (*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 *Muḥārib*. And the reason (no difference between land and sea for being a *Muḥārib*) is the existence of helpers and friends in the city, which often destroys the power and honor of *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, *Muḥārib* is valid; (*Al-Nawawī*, vol. 20, nd, p. 108)

Abū Ḥanīfah said that the condition for the *ḥadd* to be imposed on *Muḥārib* should be its occurrence in the land of Islam and Muslims. And if he is in the land of disbelief, no *ḥadd* will be imposed on him because the custodian of the *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, *Hanbali*, and *Zāhirī* consider the obligation to impose the *ḥadd* in the land of Muslim and infidels and call the perpetrator *Muḥārib*. (*Al-Jazīrī*, 1392 AH, vol. 5, p. 411)

Bahouti writes: "*Muḥārib* is the same bandit and may be a Muslim or a *Dhimmī*-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 *Muḥārib*, and these *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 *Muḥārib*." (Al-Bahouti, nd, vol. 1, p. 677) Malik equates the inside and outside the city. (Sabuni, 1400 AH, vol. 1, p. 551) *Abū Ḥanīfah* says: "*Muḥārib* is not inside the city." (Sarakhsi, 1406 AH, vol. 9, p. 195)

3- The Differences About *Muḥārib* from the Perspective of Shi'a and Sunni

3-1- Location

Some Sunni jurists (*Abū Ḥanīfah*, *Thūrī*, *Ishāq*, and *Kharaqī*, some of *Hanbalī* scholars) consider the realization of *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: Sarakhsi, 1406 AH, vol. 9, p. 195) As *Abū Ḥanīfah* says: "*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: *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: *Ibn Ḥabīb al-Baṣrī*, 1419 AH, vol. 13, p. 352, and also *al-Nawawī*, nd, vol. 20, p. 104)

Shiite jurists, just as they do not consider time as a condition for the realization of *Muḥārib*; being inside and outside the city or being at the sea and at the desert are not considered effective in the realization of *Muḥārib*. (Hashemi Shahroudi, nd, p. 159) *Muḥāqiq Ḥillī* says: "*Muḥārib* is anyone who uses his weapon to frighten people, whether he is on land or at sea, day or night, or otherwise." (*Muḥāqiq*

Hillī, 1408 AH, vol. 4, Pp. 958-959) Imam Khomeini has also emphasized the same idea with phrases⁴ similar to the words of the *Muḥāriq*.

3-2- Inside or Outside the City

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 *Wajīz*⁵. 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'i*, *Layth*, *Mālikīyah* and *Zāhirīyah*. (*Sābiq*, 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 Imamiyyah jurists, there is no difference between being inside and outside the city. (*Ibn Barrāj*, 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 *Zāhirīyah* 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. (*Sābiq*, 1397 AH, vol. 2, p. 467)

3-3- People of *Rībah*

Rībah literally means "doubt and slander." And the people of *Rībah* 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 *Rībah*. Hence, those who commit crime in society are called people of *Rībah*; 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

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 *Rībah*. (Al-Mousavi al-Golpayegani, nd, vol. 1, p. 216)

One of the third differences between Imamiyyah and Sunni jurists is that *Muḥārib* is "*Ahl al-Rībah*". In this case, Sunni jurists believe in power and honor and do not accept the people of *Rībah* (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 *Muḥārib* as "*Ahl al-Rībah*" (1- *Shaykh al-Tūsī* in (*al-Nahāyah*) and 2- *Qāḍī Ibn Barrāj* in (*Al-Muḥadhdhab*) 3- *Ibn al-Hassan al-Rāwandī* in (*Fiqh al-Qur'an*) 4- Al-Shahid al-Awwal in (*Durūs*).

And some believe that it is not a condition for the *Muḥārib* to be *Ahl al-Rībah*. (1- *Al-Muḥaqqiq* in (*Sharāyī' al-Islam*) 2- Al-Allameh in (*Qawā'id al-Aḥkām*) 3 *Fāḍil al-Isbahāni* fi (*Kashf al-Latham*) 4- *Al-Muḥaqqiq Sheikh Muhammad Hassan al-Najafī* in (*Al-Jawāhir*)

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

Shaykh al-Tūsī says about being a *Muḥārib* as *Ahl al-Rībah*: "*Muḥārib* 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 *Muḥārib* 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 *Muḥārib* 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 *Muḥārib*, 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 *Muḥārib*

Most jurists believe that being from *Rībah* people is not a cause of being *Muḥārib*. *Muḥaqqiq Hillī* says: "Is it a condition for *Muḥārib* 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 *Rībah*." (*Muḥaqqiq Hillī*, 1408 AH, vol. 4, p. 167) Allameh says in "*Qawā'id al-Aḥkām*": "There is no stipulation that *Muḥārib* 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 *Muḥārib* or not? It is more true to say that this is not a condition." (*Hillī*, [Allameh Hillī], 1413 AH, p. 553)

Fāḍil Isbahāni, in the field of considering the valid condition of being from the people of evil and corrupt for *Muḥārib*, says: "Being a person of corruption and evil is not a condition." (*Isbahāni*, nd, vol. 10, p. 636) "*Ṣāhib Jawāhir*" says: "Is it a condition for *Muḥārib* 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, *Muḥārib* 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 *Muḥārib* 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 *Muḥārib*, taking the property of others is not a condition. And *Muḥārib* 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 use 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", "*Hirābah*"; 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 *Hanaḥīyah* 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 *Hanbali* 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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