



Rereading Foundations of Muslim Retribution for the Infidel Dhimmi from the Perspective of Imami Jurisprudence

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Abstract

Qisas (retribution) is the counteraction of a deliberate crime against the physical integrity of a person. Although this type of punishment existed in various Abrahamic religions, its implementation in the criminal policy of Islam is subject to the fulfillment of conditions that make it different from other religions. One of the conditions is the equality of the criminal and the victim in religion. Although there is a different point of view among the jurists regarding this condition, the famous Imami jurists and most of the Sunni jurists believe in it. According to that, a Muslim is not retaliated for infidel Dhimmi by a crime. On the contrary, an infidel is retaliated for crime against a Muslim. This issue, which evokes a kind of religious discrimination, needs serious consideration. In the forthcoming research, the author explained and analyzed the foundations and documents of the famous view in a descriptive-analytical way and reached this conclusion. Because of the Incoming criticisms, their jurisprudential documents to prove their point of view are doubted. On the contrary, the documentation of the equality view in retribution between Muslim and infidel is predominant. The group of narrations that observes equality in retribution has priority over other categories in terms of issuing preference and implication preference, such as agreeing with the appearances of the retribution verses.

Keywords: *Crime; Retribution; Muslim; Infidel Dhimmi; Corruption in the Earth*

1. Introduction

Famous Imami Shia jurists and most Sunni jurists, except Hanafi jurists, believe that one of the conditions for the execution of retribution is equality in religion. Based on that, a Muslim will not be punished for a deliberate crime against an infidel if he is not addicted to the crime of murder, but he will be punished. But an infidel is retaliated against a Muslim for a deliberate crime. This issue, which somehow evokes religious discrimination, needs serious consideration because today, in addition to being an issue of criminal law and criminology, punishment has also become an issue of human rights. From this point of view, discrimination based on religion, sect, gender, etc. distorts fair proceedings. Although in this article the foundations of jurisprudence and the views based on it will be examined, the main focus will be on the examination of the jurisprudence foundations of the famous view. There is no doubt that

the topic of discussion in this article is infidel Dhimmi or safe -reconduct holder, not Kafir Harbi¹, because the killing of Kafir Harbi will not result in retribution due to not being "Mahqun al-Dam"².

2. Conceptology

Understanding words and terms play a major role in explaining the subject. For this reason, the concepts are presented and examined first.

2-1. Qisas (Retribution)

Qisas (retribution) in the word, means to follow the effect of something. In the dictionary of Lasan Al Arab, it is stated that "taking revenge for something means to follow its effect gradually (Ibn Manzoor, 1426 AH, Vol. 3: 3240). The author of Al-Ain book has mentioned in the meaning of retribution, "retribution: retribution for injuries and rights gradually... it was retaliated from him, which means it was taken from him." (Farahidi, 1414, vol. 3: 1484) Therefore, from the lexical point of view, Qisas refers to any kind of follow-up.

However, in the terminology of jurists, Qisas means following up the effect of crime and injury; In such a way that the retaliator inflicts exactly the same crime on the criminal. Writer of Javaher, one of the famous Imami jurisprudents, says: Retribution means following the effect of a crime; in such a way that the retaliator does the same thing as the criminal towards him" (Najafi, 1981, vol. 42:1). According to this definition, the term meaning of Qisas is more limited than the literal meaning, because in jurisprudence, only the follow-up of crime and injury has been called Qisas. However, some lexicographers have quoted the same meaning of compensation in injuries and rights. In fact, Qisas in jurisprudence means reciprocation. Therefore, retribution is fulfilled if it is equal to the crime committed by the criminal, neither more nor less. Due to the fact that this retaliation is done by judicial order, Qisas is considered a type of punishment. That is, a punishment similar to the crime committed should be imposed on the criminal.

2-2. Types of Qisas (Retribution)

In the criminal policy of Islam, Qisas is one of the types of punishment, which is adapted from the Holy Quran, verse 187 of Surah Baqarah, verses 40 and 41 of Surah Shura, and verse 126 of Surah Nahl. For this reason, the legislator is obliged to apply retribution in the same way as it is mentioned in the Qur'an and has no right to make any changes in it. According to the above verses, retribution can be implemented in two ways: soul-retribution and organ retribution; Qisas of the soul is for intentional murder, and Qisas of the body is for the intentional cause of bodily harm and amputation, which is implemented in the same way as the injury that leads to a crime.

2-3. Features of Qisas (Retribution)

Retribution as a special institution in Islamic criminal policy has characteristics that make it different from other punishments. For example: (1) the subject of the right of retribution is cruel and knowing crimes, this type of punishment can only be applied in intentional crimes, not in unintentional crimes, (2) the right of retribution has been given to the family of the victim, and without the request of the victim's family, no judicial authority can decide on the killer and execution of retribution (Helli, 2010, Vol. 4: 594), (3) execution of retribution is not mandatory and definitive, but the victim's family can forgive the killer (Helli, *ibid.*: 594). This issue can be a platform for the formation of the highest human

1 - Infidel deserving to be fought with.

2 - One whose life and safety is protected by the law.

emotions. The criminal's expression of remorse to the victim's family and their forgiveness will reduce the psychological inflammation caused by the crime. Therefore, in the Holy Qur'an, God is responsible for the reward of forgiveness; "The reward and of forgiveness and peace is with God" (Shura, 40). So whoever forgives and reconciles, his reward is with God and (4) the possibility of turning the right of retribution into blood money: although blood money does not compensate the emotional and human damages caused by the crime, it reduces the economic damages. It also facilitates the return of the criminal to the society. The family of the victim is not required to change the right of retribution, but as soon as the law has valued their feelings and will, they will be more satisfied in choosing retribution or receiving blood money. Encouraging forgiveness in the Qur'an and calling the murderer "brother" who is pardoned by the victim's family gives life back to the society; "Whoever is forgiven something (from the right of retribution) by his (religious) brother (the victim of the murder), must follow the forgiveness of the victim's supervisor in an agreeable manner and pay him (the blood price) with kindness. This is a relief and a mercy from your Lord" (Baqara, 178). According to Allameh: "If a nation reaches that level of advancement, and is educated in a way to enjoy forgiveness, Islam will never say to it, why did you forgive the murderer of your father?" because Islam also encouraged him to forgive" (Tabatabai, 1995, vol. 1, p. 664). The characteristics of retribution show that the will of the legal guardian of the victim in retaliation of less than soul has a decisive role and proceedings are conducted based on their will while in other punishments, the will of the judge is decisive during the proceedings. Anyway, in order to get familiar with the different jurisprudential views on the topic of discussion, first the opinions of Islamic jurists, both Shia and Sunni, are presented, and then we discuss the criticism of the jurisprudential documents of the famous Imami Shia jurists.

3. Views of Shia Jurists

In relation to the subject, three views can be found in the works of jurists: (1) Muslim and Dhimmi equality in retribution, (2) absolutely inequality, (3) difference according to committing murder. Famous jurists believe in the third point of view; they believe that if a Muslim intentionally commits a crime on an unbeliever and kills him, he will not be retaliated, but they have made an exception and said: the sentence for a Muslim who is addicted to killing an unbeliever is murder. However, they have different views on the criterion of addiction and the title of murder (Khoei, 1369 AH: 62-63; and Fazel Lankarani, 1407 AH: 105-105). In fact, the third view contains two consensuses. The first is the non-retaliation of a Muslim for the murder of a dhimmi infidel under normal circumstances. In this consensus, the first point of view is ignored. Second is the killing a Muslim in case of addiction to the killing of an infidel dhimmi. With this consensus, the second point of view has been ignored.

3-1. View of Muslim and Infidel Equality in Retribution

This view is related to Sheikh Sadouq. Although he commented in the book "Al-Hedaya belkhear" (Marvarid, 1410 A.H., vol.24-25:32) like the famous Imami jurists. But in the book of Muqannaa, he changed his view and says about the unbeliever of the covenants, who is the same as the dhimmi unbeliever: "If a Muslim cuts off the hand of an unbeliever of covenants, his guardians can take the blood money of his hand or cut off his hand and pay the rest of the blood money of the Muslim's hand in relation to the dhimmi and if a Muslim kills unbeliever of covenants, the same will happen" (Sadouq, 2005: 534). It is worth mentioning that his text is the same as the text of the Sahih narration of Abi Basir from Imam Sadiq (AS) (Aamoli, 1414 A.H., Vol.29:184) which is mentioned below.

3-2. View of Absolutely no Retribution

The supporters of this point of view are Ibn Idris and Mohaghegh Helli. Ibn Idris states in general that there is no retribution between a Muslim and a Dhimmi (Ibn Idris, n.d., vol.3:402). In another place, regarding murder, it is specified that "if a Muslim intentionally kills an unbeliever of covenants, a blood money is required for him and there is no retribution" (Ibn Idris, n.d., vol.3: 352). From his point of view,

even the addiction to killing an unbeliever has not retribution and he considers the incoming traditions to be rejected and contrary to the Qur'an and consensus. The late Mohaghegh Helli prefers this point of view (Helli, 2000, Vol. 4: 594).

3-3. View of Difference According to Committing Murder

From the point of view of the famous jurists, a Muslim is not retaliated against the murder of a dhimmi infidel, except in the case of addiction to killing a dhimmi, in which case he is sentenced to murder.

Sheikh Tusi writes, "A Muslim will not be killed for an infidel, whether the infidel is an unbeliever of a treaty, safe-reconduct holder or Kafir Harbi (infidel deserving to be fought with.)..." (Tusi, 1431 AH, Vol. 5: 8). Shaheed Thani writes: "The non-retaliation of a Muslim against the killing of a dhimmi is if the Muslim does not have an addiction to killing a dhimmi. But in the case of addiction and cruel murder of a dhimmi, he will be killed (Shaheed Sani, 1419 AH, Vol. 15: 143).

4) The View of Sunni Jurists

In this matter, Sunni jurists are divided into two groups.

4-1. View of Maliki, Shafi'i and Hanbali Jurists

Maliki, Shafi'i and Hanbali jurists, in accordance with the famous Shia jurists, believe that a Muslim person is not condemned to retribution for killing an infidel. From the point of view of this group, one of the conditions for execution of revenge is similarity. This group believes that there is no similarity between a Muslim killer and an infidel victim. Ibn Qudama, a Hanbali, writes, "And a Muslim is not killed for killing an infidel" (Ibn Qudama, 1421 AH: 1039). He argues that Muslims are equal in blood, even the smallest person among them is protected but a Muslim is not retaliated for killing an infidel" (Zahili, 1418 AH, Vol. 7: 5669). However, this group has different views on the application or limitation of non-retaliation. For example, Imam Shafi'i believes that a believer is not retaliated by killing a dhimmi, but he is responsible for it, it doesn't matter whether he killed a large number of people or not, whether the killing is for the purpose of defending and recovering property, or for other motives. (Shafi'i, 1420 AH, Vol. 7: 312) but Maliki's jurists believe that if the killing of an infidel is due to deception, the Muslim will be retaliated. Otherwise, only Diya (blood money) is obligatory (Andalusi, 1408, vol. 10: 221).

4-2) View of Hanafi Jurists

Hanafi jurists consider Muslims and infidels to be equal in terms of humanity, and in this sense, they believe that Muslims should be retaliated for killing dhimmi infidels. To prove their theory, Hanafi jurists argue the verses of retribution (Baqarah/178) and (Ma'idah/45) and other verses. In the mentioned verses, retribution is for murder and soul is for soul (Kasani, 1420 A.H., Vol. 8: 77). Hanafi jurists believe that Muslims and dhimmi infidels are considered to be members of Dar al-Islam. If a dhimmi's property is stolen by a Muslim, the Muslim's hand will be cut off. This hand cutting is due to the sanctity of the dhimmi's property, which is as sacred as the Muslim's property. The same branch of jurisprudence indicates that the blood of a Muslim and a dhimmi is equal because the sanctity of the property is due to the sanctity of the owner of the property (Zahili, 1418 AH, Vol. 7: 5670).

5. Documentation of the Views of Shia Jurists

The important and influential issue is the foundations and documentation of the views of the great jurists on the subject. Since the third point of view is the famous point of view of Shiite scholars, first we present, examine and criticize the documents of this point of view.

5-1. Documents of the Famous Opinion (Difference in the Murder)

According to the well-known Imami jurists, a Muslim is not sentenced to retribution for the deliberate murder of a dhimmi, unless he is addicted to killing a dhimmi, in which case he is sentenced to murder. This view is supported by several documents.

5-1-1. Consensus

Writer of Jawaher, among the reasons he has established regarding the difference between Muslims' retaliation and non- between Muslims' retaliation, is the consensus of Imamiyyah jurists. He writes: "There is no contradiction in the ruling of difference, but there is a transferable and learned consensus about it. There is a transferable consensus on the level of *istifada*³ or *mutawatar*⁴ about this ruling" (Najafi, 1367, Vol. 42: 150-151). In this case, it should be said that the consensus cannot be considered as a reason if it has an opposite. According to the late owner of the Jawaher, the late Sheikh Sadouq, one of the ancient Shiite jurists, is against this consensus in the book *Muqannaa* (Najafi, Ibid., 50). Perhaps for this reason, the late Khoi does not argue for consensus. It is possible that the consensus claimed by the late owner of Jawaher is a proof obtained from hadiths. Therefore, it is not considered an independent reason.

5-1-2. Absoluteness of the Verses of the Holy Quran

It is important to mention that in no verse of the Holy Qur'an has it been specified that a Muslim killer should not be retaliated for the killing of an infidel (whether a Dhimmi or otherwise). Nevertheless, jurists have argued on the absoluteness (universality) of some verses: including: 1st: the verse of negation of domination: "... So God will judge between you on the Day of Resurrection, and God has never made a way for the disbelievers to rule over the Muslims" (Nisa': 141). The beginning of this verse is about the opportunistic behavior of the hypocrites who always try to align themselves with the victorious side (Muslims or infidels). For the first time, the late Sheikh Tusi argued for the application of this verse. According to him, it is an absolute verse and no details are given between this world and the hereafter. What is meant by the negation of domination, is prohibition and the establishment of rulings, not news, that is "God has not dominated the unbelievers over the believers". If the meaning of negation in the verse is predicative, it is false because the infidels have dominated the Muslims in different eras. Therefore, whenever the guardians of the slain infidels are given the right to retribution, they have been given dominion over the most important thing for Muslims, which is the right to life. The absoluteness of the verse negates it (Tusi, 1416 AH, Vol. 5: 146). The result is that on the basis of this verse, it is not possible to consider the retribution of Muslim for the deliberate killing of an infidel. If the heir of the victim is a, the application of the verse does not give him the right to retribution, but if the disbeliever heir of the victim is a Muslim, it is ruled out by not promising the chapter of retribution. If the heir of the victim is a disbeliever, the absoluteness of the verse does not give him the right to retribution, but if the heir of the disbeliever victim is a Muslim, retribution is negated due to not saying to separate.

2nd: The verse of inequality: "The people of hell and heaven are never the same; the companions of heaven are saved and victorious! The disbelievers are among the companions of hell because they deny

3 - widespread narration

4 - Tradition narrated by several authorities so that it causes certainty.

the truth (Surah Hashr/20). One of the conditions of retribution is equality. The meaning of the verse is that Muslims and infidels are not equal in any way. Therefore, a Muslim should not be retaliated for killing an infidel. Also, some have argued that indefinite phrase after negation (la yastavi) indicates the publicity. The general negation includes all the details. Based on that, the infidel and the Muslim are not equal that the retribution of a Muslim for a crime against an infidel would be ordered (Helli, 2010, Vol. 4: 593).

5-1-3. Hadiths about Retribution

To prove this point of view, various narrations have been cited, which are as follows:

The first narrative: Muhammad bin Qais narrates from Imam Baqir (a.s.) that he said: "A Muslim is not punished for killing and injuring a dhimmi, but the dhimmi's blood money is taken from the Muslim as much as the crime committed by the Muslim against him, which is eight hundred dirhams" (Aamoli, 1414 AH, Vol. 29: 108) that is, if a Muslim killed him, in this case, the amount of his blood money is eight hundred dirhams, which he must pay to the Dhimmi's guardians. If there are injuries, it is measured in proportion to the same eight hundred dirhams, which is the total Dhimmi's blood money, and it is taken from the Muslim and given to his guardians. This narration removes retribution absolutely, whether the crime leads to death or leaves injuries.

The second narrative: Ismail bin Fazl says: "I asked Imam Sadiq (a.s.) about the blood of the Magi, Jews, and Christians, if there is anything on them and on the one who killed them during the time of unrest and expressing their enmity towards the Muslims? Imam (a.s.) said: No, unless he is addicted to killing them. He says, I asked him about a Muslim who kills Dhimmi infidel and people of the book, whether he will be killed? Hazrat said: No, unless he is addicted to this work, then he will be killed with humiliation (Aamoli, 1414 AH, Vol. 29: 107).

The third narrative: Ismail bin Fazl says: I asked Imam Sadiq whether a Muslim is killed for a dhimmi. Imam (a.s.) said: No, unless he is addicted to killing a dhimmi, in that case he will be killed with humiliation (Aamoli, 1414 AH, Vol. 29: 109)

As it can be seen from these narrations, the only narration related to the subject was the first narration and the other two narrations are related to the state of addiction of killing the infidel. In any case, these narrations are documentations of famous Shiite jurists. and due to the fact that the famous Shia jurists and most of the Sunni jurists believe in non-retribution, it can be said that this point of view is considered one of the essentials of Islamic criminal law.

5-1-4. Examining this Point of View

Regarding the documentation of those who hold the view in detail, especially the argument to the absoluteness of the mentioned verses and narrations, there are some things to consider.

Their first reason was consensus. The problem of this reason is that it can be argued that there is no opposition, while there is opposition among the ancients and the later ones. Therefore, it cannot be relied upon.

5-1-4-1. Concepts of the Verses

A. Negation of Dominion

Among the documents of the famous view, the appearance of the verse is the negation of dominion (Nisa', 141). According to this view, the mentioned verse governs the evidence of rulings and

negates all rulings that lead to infidels' domination (Madani Kashani, 1410: 55). According to the following points, insisting on the meaning of the verse is doubtful.

The first point: There are different views about the contents of the verses. For example, the late Tabarsi mentioned at least three points of view under the verse of negation of domination. One of them is that the verse of negation of domination refers to the negation of sovereignty and the negation of equality between Muslims and infidels in the hereafter. (Tabarsi, 1406 AH, Volume 3: 196; Fakhr Razi, 1413 AH, Vol. 11: 83). The confirmation of this possibility is the presence of the phrase "God will judge between you on the Day of Resurrection" at the beginning of the verse of negating dominance. This part of the verse cannot be separated from the previous parts, but the space of the whole verse should be taken into consideration, and considering the whole verse and the phrase: "And God never gives the unbelievers dominion over the believers" in the phrase "God will judge between you on the Day of Resurrection" has been inflected, it becomes clear that the time and place of this verse is the Day of Resurrection. The late Allameh Tabatabaei writes: The meaning of the sentence " and God never gives the unbelievers dominion over the believers " is that the judgment on the Day of Judgment is in favor of the believers and against the disbelievers, and the matter will never be reversed. He also writes: "It is possible to negate domination in both the world and the hereafter, because the believers are always victorious and dominant by God's permission as long as they adhere to the principles of their faith." (Tabatabai, 1390 AH, Volume 5:116). Therefore, from the point of view of the mentioned commentators, this verse does not refer to the proofs of the rulings, and the common understanding of the commentators does not indicate it. As Ibn Jarir quoted from Amir al-Mu'minin Ali (AS) that he said: "God has not made a way for the unbelievers over the believers" meaning in the Hereafter (Tabari, 1421 AH, Vol. 5, 406). Therefore, allocating generality of "the soul for the soul" as well as generality of "the free for free" needs a decisive reason that its appearance is stronger than the general appearance. In the case of the discussion, it is negated due to the appearance of the verse for the Hereafter (Mohaqeq Damad, 2016: 65.), 2016). : 65).

Second: Assuming that the verses are related to the status of the world, the meaning is that the believers, considering the right path and true faith they have, will have superiority over the infidels in the position of expression, argument, and argument, and will not be dominated by them (Tabarsi, 1406 AH, Vol. 3: 196).

Third: Shariah rulings are a rational matter. From the point of view of reason, there is a way and domination in the place where a person dominates another unjustly and without rights, but when a person acts according to the law to achieve his rights, it will not be domination and way (Sanei, n. d.: 35).

Fourth: This absoluteness (universality) has been violated in the cases of Hudud (fixed punishments)⁵ and Ta'zirat (discretionary punishments)⁶ because where a Muslim thief steals the property of an infidel, the right to punish the theft has been created for the infidel. Or in the place where a coercive guarantee has been imposed on a Muslim and for the benefit of an unbeliever, the way and dominion has been created for the unbeliever. Therefore, it is not possible to rely on the meaning of the verse (Rohani, 1429 AH, Vol. 39: 431).

Fifth: Assuming that the verse is related to worldly affairs, it cannot be relied upon in the discussion because the style and context of the verse is the same as the style and context of the rule of negation of harm and harm. This means that this verse negates the domination of the disbelievers over the believers due to God's decree. It means that due to divine laws and orders, disbelievers have not been given dominion over Muslims but, when a Muslim prepares the way for the domination of the infidels with his actions, the verse does not seek to negate it.

5 - punishment awarded by sharia.

6 - punishment awarded the judge.

5-1-4-2. Concept of the Verse of Inequality

The second verse that is cited by famous jurists is the verse of inequality between the companions of heaven and the companions of hell. In the verse "The Companions of Heaven and the Companions of Hell are not equal. The companions of Paradise are saved" (Surah Hashr/20), Those who forget God are considered transgressors and companions of Hell, and those who remember God and watch their behavior are considered the people of Paradise. It is natural that the examples of the companions of Jannah in this world are the Muslims and the companions of the Hellfire are the infidels, and thus the inequality between the Muslim and the infidel has been clarified, but this verse also indicates the inequality of Muslims and non-believers in the Hereafter; In fact, their performance causes them to be unequal in the afterlife and the meaning of the verse is that as long as a believer adheres to the essentials of faith, he has a superior position over the unbelievers in the hereafter (Tabarsi, 1406 AH, Vol.9 :339). Therefore, this verse will not prove the difference in retribution. Especially since the Companions of Hell is common, it also includes sinful Muslims. Allocating it to the infidels requires barrier context, while there is no such a context.

5-1-4-3. Narrative Documentation

The main reason in this point of view is the narrations that the deceased writer of Javaher claims to be Mustafiz⁷ news or Motavater⁸ news about this matter (Najafi, 1988, Vol. 42: 150). In this chapter, it should be said that there are traditions that were narrated through Khaseh, and the late author of the Book of wasayil Al- Shia in this chapter narrates up to 7 narrations. These hadiths can be classified into three categories. One hadith refers to the non-retaliation of a Muslim due to the killing of a dhimmi, which is the Sahih of Muhammad Bin Qays from Imam Sadiq (AS). Three narrations have prescribed retribution in case of addiction to killing ifedile, and the other three narrations indicate retribution absolutely, on the condition that the guardians pay the rest of the Muslim blood money. Therefore, out of all the narrations of the chapter, only one narration refers to the topic, which was mentioned before. However, the authentic narration of Muhammad bin Qays, which is related to the subject, conflicts with other authentic and trustworthy narrations. The Hadiths that ordered retribution on the condition of paying the rest of blood money, such as:

- 1- Sahiha⁹ of Ibn Maskan from Imam Sadiq (a.s.): Ibn Maskan narrates from Imam Sadiq (a.s.) that he said: If a Muslim kills a Jew, a Christian, or a Magi, and their guardians demand retribution, they must pay the difference of the Muslim's blood money and then retaliate (Horr Aamoli, 1412 AH, Vol. 29: 107).
- 2- Sahiha Abi Basir from Imam Sadiq (a.s.): Aba Basir narrates from Imam Sadiq (a.s.) that he said: If a Muslim kills a Christian and the guardians of the Christian seek retribution, he can retaliate the Muslim after paying the difference of the blood money (Ibid: 108).
- 3- Muthaqah¹⁰ Samaah from Imam Sadiq (a.s.):

Al-Sama'a narrates from Imam Sadiq (a.s.) that the Imam said about a Muslim man who killed a Dhimma man: retaliating Muslim for killing a Dhimmi is a difficult matter that people cannot bear. However, the dhimmi pays the difference of the Muslim's blood money and then retaliates the Muslim (Ibid., vol. 29: 108).

7 - Mustafiz news is said to be a narration that has many narrators but does not reach the level of Motavater narrators.

8 - Khabar Motavater is a narrative whose narrators are numerous in all classes, and collusion in lying is usually impossible.

9 - Sahiha hadith is a tradition whose chain of transmission reaches the infallible person (s.a.) through Imami and reliable narrators.

10 - Muvassaqa news is the news whose narrators are truthful, even if some of the narrators are not Imami.

These hadiths are complete both in terms of the document and in terms of indicating the subject. If it is taken as it seems, these three narrations are in conflict with the Sahiha of Muhammad Bin Qais. Since the narrations indicating retribution are in harmony with the appearances of the verses, it has precedence over the narration of Muhammad bin Qais. The agreement of the book is also a preference that precedes all preferences regarding conflict. Now the question is, despite such narrations, why did famous Imamiyyah jurists object to them and only adhere to the narration of Muhammad bin Qais regarding non-retribution? At least three aspects can be seen from the examination of the famous view.

First: interpretation based on the state of habit: in fact, the jurists have collected between the hadiths with this method. The third category is taken as the witness between the first and second categories and the hadiths that believe in retribution have carried a situation where a Muslim person has a habit of killing infidels, and in this case, retribution is made, but under normal circumstances, retaliation is not given (Najafi, 1404 AH, Vol. 42: 152). Where there is a collection of hadiths, from the point of view of meaning, there is no need for another justification, such as carrying on taqiyyah. (Fazel Lankarani, 1427 AH: 131).

This method collection can be violated in several ways: (1) According to the narrations that indicate retribution, it is a normal state, not an addiction, so carrying them on an abnormal state requires a barrier context. (2) The realization of murder in the form of addiction is a rare and exceptional thing. Hadiths that indicate retribution are absolute. Therefore, it is not correct to carry absolute traditions to rare cases because the absolute expressions are the law and the law should prevail over the cases that deviate from it. (3) In none of the narrations proving retribution in the case of the addiction of a Muslim killer, there is no mention of paying the remaining blood money. The late owner of Wasayel al-Shia's book has narrated at least three narrations in this regard, and all of them are empty of the payment of the difference of the blood money, unlike the narrations related to the proving of retribution, which stipulates the payment of the remaining of blood money. Therefore, it seems that these two categories of narrations are different in terms of subject. To say that the traditions regarding the killing of a Muslim in the form of a habit is due to the Hadd and corruption in the world, especially since most of the Imami jurists have commented on this issue (Helli, 1413 AH, Vol. 2: 290; Ardabili, 1403, Vol. 14: 3.). The narrations regarding the proof of retribution are related to retribution. The characteristics of retribution show that these two issues have important differences, including the implementation of Hudud is one of the duties of the Islamic ruler. While retribution is conditional on the demand by owner of blood, but Hadi murder, the difference in payment cannot be paid, so these two narrations have differences in the subject and cannot be compared.

On the other hand, if the killing of an addict is not from Hadd, in the assumption that the victim's guardian is a non-believer and demands retribution, the domination of the non-believer over the Muslim has been smoothed while famous scholars have considered the "verse of negation of domination" as non-assignable and have rejected domination. However, some jurists believe that even though retribution is limited to the demand by owner of blood, but since its implementation is in the hands of the ruler, it is not considered the rule of the infidel (Fazel Lankarani, 1421 AH: 234). The ambiguity of this justification is whether the ruler can ignore the demand of the guardians of the victim? It seems that the application of the verses and traditions negates it. In that case, the rule of the infidel over the Muslim is still established. Also, if the killing of an addicted Muslim is by retribution, it faces at least three ambiguities

In the case of a Muslim murder, do all the guardians of the victims have to pay the difference or only the guardian of the last victim has such an obligation? (2) Is the killing of an addicted Muslim dependent on the demand of all the guardians of the infidels, or is the demand of the recent victim sufficient? (3) Assuming that retribution is subject to everyone's demand, if some of the guardians pardon the murderer, will the retribution be nullified, that is, is it nullified as whole by nullification of the part or not? Perhaps because nothing has been stated in the narrations to disambiguate, the late martyr believed that it was stopped (Shaheed Thani, 1419 AH, Vol. 15: 144).

Second: interpretation based on taqiyya (dissimulation): One of the aspects that the late author of the book *Jawaher* has emphasized upon it is the transmission of traditions that prove retribution absolutely based on taqiyyah. They believe since these hadiths are in agreement with the public (sunnis), they were issued for the sake of taqiyyah from them including Abu Yusuf from the Hanafi jurists (Najafi, 1404 AH, Vol. 42:150) and therefore the jurists have abandoned it. Since the news indicating retribution are against the book, news, consensus and validity, the late Aamoli in *Miftah al-Karamah* puts them on taqiyyah (Aamoli, n. d., vol. 11, p. 18). Perhaps his intention from the validity is the social mentality of Muslims that Muslims are superior to infidels and are not equal.

It seems that the interpretation of the hadiths based on taqiyyah is without reason because: (1) Among the Sunnis, only the Hanafi jurists believe in Muslim retribution for the killing of a dhimmi infidel. Other religions believe in non-retribution, especially during the lifetime of Imam Sadiq (a.s.) in Medina, the Maliki religion was official. Shafi'i and Ahmad Hanbal were born after the death of the Imam (148 AH). Shafi'i (in 150 AH) and Ahmad Hanbal (in 164 AH) were born, but Malik was born (in 95 AH) who, like Abu Hanifa, lived during the time of the Imam (Madani Kashani, 1410 AH: 55). Maliki believes that retribution is not proven. It is against the official religion to carry narrations that prove retribution on taqiyyah and if Abu Hanifah's religion was considered, it is far from the mind because: **Firstly:** He was in the fields of Iraq and far from Medina. This poem (You jurists and poets who live in Baghdad and its surroundings, weep for your religiosity), which was written in condemnation of Abu Yusuf's opinion (who believed in the equality of Muslims and infidels in retribution), is the witness of this claim that the Hanafi religion did not have significant followers in Medina during the time of Imam Sadiq (a.s.) (Najafi, *ibid.*: 150). **Secondly:** His opinion was against the famous Sunnis, which was also rejected by them. The possibility that the imam ignored the view of the ruling religion and adopted a religion that was far from the center of the Islamic country is an unlikely possibility.

The mention of the phrase "This hadith is so strong as to be impossible for people" in the imam's narration, which was evidence of proof of retribution, confirms the fact that the ruling on proof of retribution is not acceptable to them because it is against the opinion of the government of that era. It is as if the Imam (a.s.) wants to say: I want to say the real verdict, but the people do not accept it, and the real verdict is the possibility of retaliating Muslim for killing a dhimmi. This possibility is strengthened by the fact that most sunnis believe in non-retribution. Therefore, it is logical that, on the contrary, the narrations indicating the lack of proof of retaliating Muslim for the murder of a dhimmi infidel should be considered taqiyyah.

If the hadiths were issued due to taqiyyah, they must be exactly according to the opinion of the Hanafi school of thought. The Hanafi jurists believed in retribution absolutely while he established the traditions of retribution by paying the excess of Muslim's blood money to Dhimmi infidel.

Third: Weakness of narrations by avoidance of the Companions: Some jurists believe that it is possible to consider the avoidance of the Companions from acting based on the second group as the cause of their weakness and not act on it (Madani Kashani, 1410 AH: 55). As a result, although the second category of narrations are numerous and have valid documents, they cannot be cited due to the avoidance of the companions. The only person who acted on these narrations is the late Sadouq in the book of *Muqnaa*.

In this case, it should be said that the narrations indicating revenge are not completely abandoned because the jurists have acted on a part of it. Famous jurists have said that in case of addiction and murder of a Muslim, the difference of the blood money should be paid. This is despite the fact that in the narrations of the third group, which falsified the verdict of murder for the sake of addiction, there is no mention of paying the difference of blood money. Since in the narrations of the second group, there is talk of paying the difference of the dowry, and these narrations are also carried on the assumption of addiction. So the famous jurists have taken paying the excess of blood money in the murder of addiction

from the second category. Therefore, the second category of narrations is not completely abandoned from the point of view of famous people. Among the jurists, this issue is known as cutting, which is used as a part of the narration (Khansari, 1364, vol.7:230).

5-2. Documents of the Point of View of Absolutely no Retribution

The supporters of this point of view are Ibn Idris and Mohaghegh Hali. Ibn Idris generally states that there is no retribution between a Muslim and a Dhimmi (Ibn Idris, n. d., Vol. 3: 402). He considers the second and third categories of narrations to be rejected and against the Qur'an and consensus. The late Mohaghegh Helli prefers this point of view. Since Ibn Idris made a general claim and did not refer to a specific verse, the late Mohagheq Hali argued with the appearances of the verse of negation of dominion (Nisaa/141) and the verse of inequality between the people of Hell and the people of Paradise (Surah Hashr/20) (Helli, 1379, vol.4 :594) that previously, the principle of argument was raised. Therefore, the documentation of this point of view consists of the appearances of the Qur'anic verses and the narrated consensus.

According to the famous Imami jurists, this view has been criticized and rejected:

5-2-1. Criticism of the First Reason

From the perspective of the first martyr, the argument of the verse of negating domination (Nisaa/141) is distorted in several ways. First, argument is against consensus; The Imami jurists agree on killing a Muslim who is addicted to killing a dhimmi infidel. Second, the indication of the verse is an apparent indication, but the indication of the hadiths is definite, and the definite indication precedes the apparent indication (Shaheed I, 1421 AH: 348). Therefore, despite the narrations indicating murder, it is not possible to stick to the appearance of the verse that negates domination.

5-2-2. Criticism of the Second Reason

Regarding his claim of consensus, the late Shaheed 2 writes that his claim of consensus is not acceptable because before him, the consensus on the killing of a Muslim addicted to the killing of a dhimmi infidel was reported. As an example, the late Seyyed Morteza narrates consensus (Alam al-Hada, 1415 AH: 543) and if the opposition of Ibn Idris is taken into account, a transferable consensus will never be formed (Shaheed Thani, 1421 AH: 348).

5-3. Documentation of the Equality View between Muslim and Infidel Dhimmi in Retribution

It has already been said that this view is related to the late Sadouq. He states that if a Muslim amputates the hand of a promised unbeliever, his guardians can take blood money of his hand or amputate Muslim's hand and pay the difference of Muslim's blood money to him. If a Muslim kills promised unbeliever, this will also be done (Sadouq, 2005: 534). His wording is the text of Abu Basir's sahih narration of Imam Sadiq (a.s.) with slight changes. The text of the narration is as follows: "Abu Basir says: I asked the Imam (a.s.), what is the ruling on a disbeliever cutting off a Muslim's hand? He said: If the Muslim's guardians want, they will cut off the dhimmi's hand and take the difference blood money between the Muslim's and the dhimmi's hands and if a Muslim cut off a promised infidel's hand, his guardians take the blood money if they want, and if they want, they will cut off the Muslim's hand, but the difference of blood money between a Muslim and an infidel should be paid to a Muslim, and if a Muslim kills a dhimmi, this is done" (Aamoli, 1414 AH, vol. 29: 184-183).

Although the late Sadouq only argued for this narration, but as we have seen, the second category of narrations that were mentioned earlier, are all documents of this point of view. This category of narrations is preferable to the other category because on the one hand, they are preferred in terms of

implication and on the other hand, they are preferred in terms of issuance. In addition to that, the third group of narrations are out of the question because from the perspective of the majority of Shia jurists, murder in the case of addiction is for corruption in the world and not for revenge (Hashmi Shahroudi, 1423 AH, Vol.: 1, 414).

5-3-1. Preference in Terms of Meaning

The narrations of the second group, which show the equality of Muslims and infidels in retribution, agree with the appearances of the Quranic verses. Verses like: "And for you in retribution is life, O possessors of wisdom! Perhaps you will be righteous" (Al-Baqarah/179), "O people who have believed! The decree of retribution for the slain has been written upon you: free for free, slave for slave, and woman for woman" (Al-Baqarah, 178) and (Ma'ida: 45) "And We decreed for them [the Children of Israel] in that [Torah] that life is for life, and eye for eye, and nose for nose, and ear for ear, and tooth for tooth and every wound has a retribution" (Ma'idah/45). The meaning of these verses that legislates the rules of retribution is absolute. Although the third verse describes the conditions of retribution, Islam and the disbelief of the murderer and the victim are not considered as conditions or obstacles to retribution, but retribution is legislated in case of a crime committed through cruelty and aggression or intentional injury. Basically, the "life" expressed in verse (179) of Surah Al-Baqarah is realized when there is uniformity among the people of the society and everyone is considered the same. Despite having discrimination, the life caused by retribution will not be realized, but the traditions of the first and third groups, which indicate the difference in retribution, are against the appearances of the above verses.

5-3-2. Issuance Preference

Narrations that indicate Muslim revenge for killing infidels are also preferred in terms of issuance because in the authentic hadith of the Sama'ah, it was said that Imam Sadiq (a.s.) said before stating the sentence of retribution: "This hadith expresses a harsh sentence that people do not accept it". It means that the retribution of a Muslim for killing an infidel is a harsh ruling that people do not accept it. This means that those narrations which, accordance with the majority of Sunnis, indicating none retribution, were not real rulings and have been issued by taqiyyah. Perhaps the meaning of "this hadith is heavy that the people cannot bear it" is that people consider the status of a Muslim person to be higher than an infidel in terms of mental concentration. For this reason, it is not acceptable for them that a Muslim is retaliated for a dhimmi who has a lower status, as this issue caused the humiliating Abu Yusuf, one of the Hanafi jurisprudents. For this reason, the Imam has said: a Muslim will be retaliated against a dhimmi, but with the paying blood money by the dhimmi to reduce this exclusion of people. While Muslims no longer pay blood money for murdering each other, except with the consent of the guardians. According to what has been said, the meaning of the second category of narrations on Muslim revenge for killing a Dhimmi infidel is complete; as based on those narrations, it is possible to abandon the appearance of the verses of retribution during execution. This means that the narrations of the second category are compatible with the absoluteness of the verses in the retribution legislation, but in the fulfillment of retribution, they bind the absoluteness to the paying the difference of the blood money.

Conclusion

According to what has been discussed so far, we conclude that the condition of equality in religion and non-retaliation of a Muslim for killing a dhimmi infidel, which has become famous among Islamic jurists, is questionable due to the criticisms of their documents. The most important document among them is the hadiths about retribution, which contradict each other. In this conflict, the narrations indicating Muslim retaliation for killing the dhimmi infidel, have priority over the narrations, indicating non-retribution, in two ways: (1) these narrations coordinate with the absolute ness of retribution verses because in the Qur'an, the condition of equality in religion has not been stated and (2) Preference in terms of issuance: There are contexts in hadiths that show the correct ruling is none- condition of equality in

religion. Based on that, we can refer to the absoluteness of the verses of retribution and the traditions compatible with the verses of retribution and conclude the equality of retribution between Muslims and unbelievers.

References

Holy Quran

Aamoli, Muhammad bin Makki, Shahid thani, (1421 AH), Ghayat al-Murad fi Sharh Nokat al-Irshad, Qom, Islamic Propaganda Office Publishing Center, 1st. ed.

Aamoli, Shahid Thani, Zain al-Din, (1419 AH) Masalek al-Ifham Ila-Tankih Shar'e al-Islam, vol. 15, Qom, Institute of Islamic Studies, 1st. ed.

Al-Aamoli, Muhammad Javad, (n. d.), Miftah al-Karamah fi Sharh Qava'ed al-Allamah, Beirut, Dar Ihya al-Trath al-Arabi.

Allameh Helli, Hassan, (1413 A.H.) Qavaed al-Ahkam, Vol. 2, Qom, Islamic Publication Institute, 1st. ed.

Al-Shafa'i, Muhammad bin Idris, (1420 AH) Kitab al-Aom, vol. 7, Beirut, Dar Ihya al-Tarath al-Arabi, 1st. ed.

Andalusi, Ibn Hazm, (1408 A.H.) al-Mohalla be al-Aathar, vol. 10, Beirut, Dar al-Kotob al-Elmiya.

Ardabili, Muqaddas, (2024), Majmaa al-Faideh and Burhan, vol. 14, Qom, Al-Nashar al-Islami Institute, 2nd. ed.

Fakhr al-Razi, (n. d.), Tafsir al-Kabir, vol. 11, Beirut, Dar al-Trath al-Arabi, 3rd. ed.

Fazel Lankarani, (1427 AH), Tafsil Al- Shari'ah, Kitab al-Qisas, Qom, 3rd.ed.

Hashemi Shahroudi, Mahmoud. (1423 A.H.), contemporary jurisprudential readings, vol.1, Qom - Iran, Encyclopaedia of Islamic jurisprudence Institute.

Helli, Fakhr al-Muhaqqeen, (2010), Idah al-Fawadee, vol. 4, Qom, Ismailian Institute, 1st. ed.

Helli, Muhammad bin Idris, (n. d.) Vol. 3, Qom, Al-Nashar al-Islami Institute.

Hor Aamoli, Muhammad bin Hasan, (1412 AH) al-Wasyel al-Shia, vol. 29, Qom, Aal-ALbeit Institute, peace be upon him.

Ibn Qudama, Muwafq al-Din (n. d.) al-Mughni and Sharh al-Kabir, vol. 9, Beirut, Dar al-Kotob al-Arabi.

Ibn Qudama, Muwafq al-Din, (1421 AH) al-Maqannaa, vol. 2, published in the Al-Masader al-Fiqhiyyah series, Ali Asghar Marwarid, Beirut, Dar al-Tarath, Kitab al-Qisas and al-Diyat.

Khansari, Seyyed Ahmad, (1985) Jame al-Madarek fi Sharh Mokhtasar al-Nafi, vol. 7, Qom, Ismailian, 1st. ed.

Madani Kashani, Reza. , (1410 A.H.), Kitab Al-Qisas for Foqhaha and Al-Khawas, Qom - Jameat al-Madrasin fi Al-Hawza Al-Alamiya, Al-Nashar Islamic Publishing House, 1st. ed.

- Mohagheq Damad, Seyyed Mostafa, (2016) *Argumentative Jurisprudence of Comparative Punishment*, Tehran, Islamic Sciences Publishing Center.
- Mousavi Khansari, Ahmad, (1976), *Jame al-Madarak fi Sharh al-Mukhtasar al-Nafi*, Vol. 7, Tehran-Iran, Mataba Al-Sadooq.
- Rouhani, Seyyed Mohammad Sadiq, (1429 AH) *Fiqh al-Sadiq*, vol. 39, Qom, Mansurat al-Ijtihad, 4th. ed.
- Sadooq, Abu Jaafar Muhammad bin Babouyeih, (1410 AH) *Al-Hudaiyeh Belkhair*, printed in the series of *al-Inabae al-Fiqhiyya*, Ali Asghar Marwarid, *al-qiasas wa al-Diyat*, vol. 24-25.
- Sadooq, Abu Jaafar Muhammad bin Babouyeih, (2005) *Al-Muqnaq*, Qom, Imam Al-Hadi Institute, 2nd. ed.
- Sanei, Youssef, (n. d.), *Fiqh al-Saqlain*, Qom, Institute for editing and publishing the works of Imam Khomeini (RA).
- Tabari, Ibn Jarir, (1421 A.H.) *Jami al-Bayan on interpretation of the Quranic verse*, vol. 5, Beirut, Dar al-Fikr.
- Tabarsi, Fazl bin Hasan, (1406 AH) *Majmaal Bayan*, vol. 3, Beirut, Dar al-Marafa, 1st. ed.
- Tabatabaei, Mohammad Hossein, (1390 AH) *Al-Mizan fi Tafsir al-Qur'an*, vol.5, n. p., 2nd. ed.
- Tusi, Abi Jaafar Muhammad, (1416 AH) *Kitab al-Khilaf*, vol. 5, Qom, Al-Nashar al-Islami Institute, 1st. ed.
- Tusi, Abi Jaafar Muhammad, (1431 AH) *Al-Mabsout*, Vol. 5, Qom, Al-Nashar al-Islami Institute, 2nd. ed.
- Zaheili, Wahba, (1418 AH), *Al- Fiqh va adellatoho*, vol. 7, Damascus, Dar al-Fikr, 1st. ed.

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