



The Nature and Elements of the Crime of Hostage-Taking in Islamic Jurisprudence, International Documents, and Afghan law

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Abstract

Hostage-taking is one of the crimes against the freedom of individuals, which is carried out for political, economic, social security, retaliatory measures, etc., and the perpetrator makes the release of the hostage subject to the execution or refusal of execution by a third party, and as the case may be, with the fulfillment of other conditions is considered to be crimes against national security or even war crimes, etc.; Considering that hostage-taking is a crime that disrupts domestic and international security and causes concern to the international community and the nation and the government, and the territory of committing it is sometimes intra-border and sometimes trans-border, and in terms of time, sometimes during war and sometimes it is committed under normal circumstances, therefore it is very important and has different situations and different rulings; This act is criminalized in international documents and Afghan law. In this research, after preliminary discussions such as explaining the concepts of the problem and their differences with similar concepts, the sources of the basics and the historical background, the nature and elements of the crime of hostage-taking in Islamic jurisprudence, international documents and Afghan law have been comparatively examined in order to be a step towards realization. Justice and scientific development (God willing).

Keywords: *Hostage; Jurisprudence; International Documents; Kidnapping and Terrorism*

Introduction

The crime of hostage taking as a social phenomenon in international documents is one of the organized and unforgivable crimes and one of the examples of terrorism or war crimes and has a long history; As it has been said about the conflicts of the Jews with the Roman Empire during the 60s and 70s, new tactics were surprisingly used in these rebellions. They took prominent people, “including the son of one of the high priests, as hostages because of the exchange with the arrested people of their group” (James, M. Luther and Brendaji Luther. 1395: 51). from the point of view of jurisprudence, it is naturally punitive in nature, but depending on the case, it may cause Hadd, retribution or ransom or considered permissible act, in the past this crime was not as common as it is today; Therefore, in

jurisprudence, its rulings are not stated under the special title of today's regular hostage-taking or holding hostages. At the same time, its rulings can be different states obtained the basic principles and similar titles from jurisprudential sources.

Statement of the Problem

According to the principle of innocence and the principle of personal nature of the crime and punishment of hostage taking with the purpose of putting pressure on a third party, according to jurisprudence, international documents and Afghan law, it is a crime.

The crime of hostage taking has spread today and terrorist groups are often political in nature in the global arena. Doing it has become a threat to the national and international security and has caused the concern of the international community. "Hostage taking is done in one of two ways: 1) They kidnap a person and then make the hostage their hostage. 2) without kidnapping someone or someone as a hostage, for example, when relations between two governments are strained, one of them prevents the citizens of the other from leaving their country, so taking a hostage is a form of kidnapping" (Jafari Langroudi, 1381 v4 p3072).

According to the penal code of Afghanistan and international documents, hostage-taking is considered a terrorist crime; Also, according to Article 337 and 340 of the Penal Code, if it is considered as one of the examples of Article 8 of the Statute of the International Criminal Court, it is a recognized war crime and has its own criminal liability from the point of view of the perpetrator, the position of the perpetrator does not play a role in it; Therefore, it can be committed by ordinary people or opposing groups or state (civil) or military (military) employees, and in terms of its nature according to the jurisprudential divisions, it can be considered as a limited crime or punishable as the case may be, or it can be a cause of ransom and retribution; in terms of a third party who are pressured by the hostage takers for the release of the hostages and are forced to perform or refuse to perform an act based on paragraph (1) of article 270 of the Afghan penal code and paragraph (1) of article 1 of the international convention against hostage-taking, exclusive to it is not a natural person and a legal person, whether it is a legal person, private or public, domestic or foreign, as well is included.

In terms of time, it may be committed during wartime or in a state of peace, and it is also possible in a state of war. It is against the people who have no role in the war or who have surrendered, or against the hostile war forces. be applied, each of which has its own rules.

Based on the implementation of justice and relying on the right to life, freedom and personal security of each person and according to jurisprudence and legal sources, hostage-taking is a serious crime according to jurisprudence and the criminal laws of Afghanistan and international documents, which in addition to Governments also have responsibilities in order to secure the interests of society and individuals.

Islam's penal policy is based on cooperation on good and piety and anticipation on charity, which is necessary. The necessity of cooperation to prevent and combat hostage-taking, as well as Article 4 of the international convention against hostage-taking, member states of which Afghanistan is one of the members, are obliged to cooperate comprehensively, legislatively and judicially against the hostages; Although each country may have different solutions according to Adopt his social requirements.

This research is based on the necessity of international cooperation and the domestic community in order to fight against the sinister phenomenon, the hostage-taking, which makes the mission of the society's informants heavier, has been carried out because of a shortcoming in this regard. It causes insecurity in societies.

Considering the scope of the topics in terms of form and substance, in this article, only the general discussion of the nature and elements of the crime. Hostage taking in Islamic jurisprudence, international documents and Afghan law have been examined and the commonalities and differences of viewpoints have been examined in order to adopt a coherent policy and provide suitable solutions and organize effective domestic and international measures to effectively and comprehensively fight the aforementioned crime and protect The ideological strongholds of Islam have been mentioned.

Main Question

What is the status of the nature and elements of the crime of hostage taking in Islamic jurisprudence, international documents and Afghan law?

Sub questions:

- 1- What are the sources and bases of the crime of hostage taking in Islamic jurisprudence, international documents and Afghan law?
- 2- What is the nature of the crime of hostage taking in Islamic jurisprudence, international documents and Afghan law?
- 3- What are the elements of the crime of hostage taking in Islamic jurisprudence, international documents and Afghan law?

Objectives of the Discussion

The goals of this research are:

- 1- Knowing the dimensions of the crime of hostage taking and distinguishing it from similar crimes.
- 2- Protecting the rights of citizens against the crime of hostage taking for the purpose of extortion, etc.
- 3- Public awareness of the nature and elements of the crime of hostage taking in order to prevent the crime.
- 4- Expanding the culture of legality in social relations at the national and international level...

The Necessity of Researching

Hostage taking is a crime that disrupts domestic and international security and causes concern in the domestic and international arena; The ever-increasing expansion of communication has caused the globalization of many crimes, including hostage-taking; War-mongering and insecurity in the region and the world, especially in Islamic countries, and the instrumental use of hostage-taking have caused the concern of the international community and the Islamic Ummah; The prevalence of the ominous phenomenon of hostage taking by criminals against the property of capitalists and famous personalities causes the flight of human and economic capital from the country; Sometimes during war, hostage taking is used as a pressure lever; All these factors make a deep investigation of the issue necessary from the point of view of Islamic jurisprudence, international documents and the law of Afghanistan, and the necessity of cooperation is necessary. International and scientific effort in this field.

The Concept of Discussion

1-Taking a hostage

In the word means "taking someone or something against one's will" (Anuri, Hassan, 1381, 6: 6154) In the terms of Article 1 of the International Convention against hostage taking, it says: "Any person who is detained or detained and threatening to kill, injure, or continue detaining another person, hereinafter referred to as a "hostage", in order to compel a third party - that is, a country, an international intergovernmental organization, a natural or legal person, or a group of persons to perform or refrain from Taking an action as an explicit or implicit condition for the release of hostages is a crime of hostage taking within the framework of the concept of this convention. International Convention against Hostage Article (1).

2- hostages

Literally, it means "an object or a person who is pledged against a loan or for reassurance" (Dehkhoda, Ali Akbar 1355, 41: 338) and in the term it means a person kidnapped in order to force a government or an international government organization or a person doing or refraining from doing the act of (Cruzon, Al. b. 1384: 283).

3 - Jurisprudence

In the word it means "understanding" Fayumi, Ahmed bin Muhammad Moqri B. Ta. 2: 479) science in "religion" (Farahidi, Khalil bin Ahmad 3, 1410: 370) and "science" by object" Nashwaan bin Saeed 1420, 8: 5235) has come. In the term "science to Shariah rulings are secondary due to detailed reasons (Hassan bin Zainuddin. 1376: 33)

4 - International documents

Documents is the plural of document, and document in the word means "something that is trusted" (Omid, Hassan 1384, 2: 1661). In the term "a document that is used to prove something, from claims and non-claims" (Jafari Langroudi previously 3: 2197), in other words, he wrote that it can be relied upon in the capacity of filing or rejecting a claim. International affairs are matters in which the presence of a foreign element It involves more than one nation or government and has a cross-border aspect; therefore, international documents are written and official documents that are formed by the will of two or more governments or by the will of one government with one or more international organizations. and it depends on the treaty, the convention, Protocol, Declaration, Statute and...

5- Captive and its relationship with hostage taking

In the word it means: Straught, Capped and Jailed. (Wasti... 6:23). Is the name of someone whose freedom has been taken away (Sadri Afshar, Gholamahosseini Hakkami, Nasrin Hakkami Nastern. 1: 172) in the term means "arrested", Bandi (Jafari Langroudi, previous 1: 387), taking a prisoner means taking a human being together with the imprisonment of (Mianji, Ali Ahmadi, 1411: 57)

A captive is a hostage; In a way that every hostage is a captive, but many captives are not considered hostages; Because all those who are taken captive by a third party other than for blackmail are considered captives, but they are not considered hostages; Also, those who are under arrest and detention or legal imprisonment are also referred to as captives, but hostages are not referred to, and in military terminology, only those captured in order to exert pressure on the enemy and release their captives, or in order to obtain ransom. They become hostages of reality in other cases, only captive is referred.

6- Kidnapping and its relationship with hostage taking

Kidnapping in the word means: quickly catch. (Qurishi. Seyyed Ali Akbar. 2: 263). Abduction with speed (Isfahani, Hossein bin Muhammad Raghil, 1412: 286) Taking control of something and stealing it with speed. (Jazri Ibn Athir Mubarak bin Muhammad Beita 2: 49). And in legal terms, "kidnapping is the snatch of a person using threats or Using force or other types of intimidation or using trickery or deception, or using physical or mental disability, or changing a baby with another baby, or taking a baby away from his parents or legal guardian, or leaving a baby in a non-residential place. regardless of whether such actions are aimed at exploitation or causing harm". (Afghanistan Penal Code Article: 590). In jurisprudence is interpreted as using people's negligence and taking it in order to achieve their goals, it has been. (Isfahani, Majlisi Dowim. 99: 175).

Kidnapping and hostage-taking have one point in common and two points of difference, because firstly, in kidnapping, kidnapping is a condition, which is not a condition in hostage-taking; On the other hand, hostage-taking is necessarily done in order to force a third party to perform or refuse to perform an act; While there is no such requirement in kidnapping; Therefore, where a human being is kidnapped for the purpose of exploitation and forcing a third party to perform or refuse to perform an act, both kidnapping and hostage taking apply; But if the abduction is done in order to cause physical or moral harm to the victim, only abduction is valid. Also, if hostage taking is accompanied by kidnapping, kidnapping is also considered, but if it is done without kidnapping, kidnapping is not considered

7- Terrorism and its relationship with hostage taking

In the word terror. (Hashemi, Seyyed Hossein. 1390: 33). terror dictionary, the methods of those who consider killing and threatening people and creating fear and terror in any way necessary and permissible to achieve their political goals, such as changing the government or taking control of affairs. (Omid, Hassan. 2: 569). In the term "terrorism is a systematic threat and methodical and organized use of terror or unpredictable violence against the government of society and individuals to achieve a political goal" (Shams Natri, Mohammad Ibrahim. 1398: 79). Assembly in its 1984 resolution, Interpol, the international criminal police organization, defined terrorism as "violent criminal activities carried out by organized groups to create terror in order to achieve. I make it possible for political goals" (Bosar Andro, translated by Rakhshani. 1375: 20).

The crime of hostage taking has one point in common with terrorism and two points of difference because being organized and having a political goal is necessary for terrorist crimes, while hostage taking is often associated with organization. It is found and sometimes it is done with a political purpose, but it does not apply to them because in some cases it is done by people who are not organized and without a political purpose. They also have a clear difference in terms of belonging, because hostage-taking is a type of crime against freedom individuals, while terrorism includes a wide range of crimes against national and international security; Therefore. This is if the crime of hostage-taking is done with political organization and purpose and by creating public terror 7 take Terrorism is also true if it takes place without a political goal and without creating public terror, only hostage taking applies; Also, if terrorist acts are carried out without hostages, then hostages are true does not

8- Illegal detention and its relationship with hostage-taking

Means depriving or restricting a person's freedom illegally, as Article 585 of the Afghan Penal Code says: "A person who captures another or deprives or restricts his freedom illegally or continues to deny or limit another's freedom after the legal term has expired, the perpetrator of the crime of arrest, seizure or limitation of freedom shall be punished according to the provisions of this chapter" (Afghanistan Penal Code Article 585). Illegal detention includes hostage taking; That is, hostage taking is one of the examples of illegal arrest because hostage taking is used with illegal detention; Wherever there is a hostage situation, it is also an illegal seizure, but every illegal seizure is not a hostage situation because there is no condition in the illegal seizure that it is intended to extort money from third party.

9- Corruption in the world and its relationship with hostage taking

In the realization of corruption in the world, it is a condition that the commission of crimes and crimes against public security is widespread; "If it has been said that anyone who commits crimes against the physical integrity of people, crimes against the internal or external security of the country, or causes the spread of corruption or prostitution on a large scale, he will be considered corrupt on earth and sentenced to death" (Criminal Law of the Islamic Republic of Iran 1392, Article: 286). Therefore, hostage-taking is considered one of the most corrupt examples in the world only if it is carried out in a widespread and widespread manner and leads to the deprivation of public security; otherwise, it will only be hostage-taking; Also, the crime of corruption in the world has many examples, such as terrorist crimes of spreading toxic, microbial and dangerous substances, or opening centers of corruption and prostitution, etc., of which hostage taking under special conditions is only one of its examples.

10- Mohareb and its relationship with hostage-taking

According to respected Hanafi jurists, Mohareb is the same as highway robbery or grand theft. According to Shia jurists, anyone who kills or carries a weapon to frighten people is a Muhareb. (Ravandi, Qutbuddin, Saeed bin Abdullah, 1405, 1: 365). hostage-taking is considered as an example of muharibeh only if it is armed and accompanied by creating fear and panic among the people; If it is a hostage taking without drawing a gun, or if it is a war without taking a hostage, either They will have a separate territory.

Basics of the Crime of Hostage Taking

The basics of the crime of hostage taking in terms of Islamic jurisprudence, international documents and Afghan law, the same reasons for establishing laws. The regulations surrounding the crime of hostage-taking and the reasons for making them binding are from the community board; Establishing justice, maintaining social order, ensuring internal and international security, legitimate defense of nations and the world community are among the common foundations of the issue in Islamic jurisprudence, international documents and Afghan law, and the right to be known and the prohibition of the wrong are the basis.

Its Specificity Is According to Islamic Jurisprudence

Sources of the crime of hostage taking: Sources "In the term of contemporary legal science, there are sources that are the origin of rights and duties" (Shirazi, Nasser Makarem, 1427: 634) The sources of the crime of hostage taking in Islamic jurisprudence are divided into two parts: the case of coincidence and the case of dispute; The relevant sources are the Holy Qur'an, the Prophetic tradition and Ijma, but the intellect, Qiyas Isthisan and the material of the message are among the sources of jurisprudence disputed by the jurists of different Islamic schools.

Sources of the crime of hostage taking in international documents include international treaties, the Universal Declaration of Human Rights, international conventions, international custom, general principles, legal doctrine, and judicial procedure.

Historical and Legislative Background of the Crime of Hostage Taking

The phenomenon of hostage taking, as one of the examples of terrorism, has a long historical background, as it has been said: "Terrorism was not a common phenomenon in the ancient world, but examples of this phenomenon can be seen in the early periods of history" (James Luther, Previous. 1395: 47). In the same first century AD, it is emphasized about the conflicts of the Jews with the Roman Empire during the years 60-70 AD that also in these revolts: "new tricks were surprisingly used in the battle. They killed prominent people, including the son of one of the high priests. They used to take hostages because of the exchange with the captured people of their own group" (James M. Luther. 47) Earlier,

taking hostages in war conditions was allowed as a practice, as it is narrated that some traditions indicate that the Prophet “The Prophet (PBUH) took some of the infidels as hostages because they had taken some of the Muslims as hostages” (Tabasi, Najmuddin – translator: Hosseini, Seyyed Mohammad Reza and Shafiaai, Mustafa. 1427: 80-81). There are also hadiths that allow the killing of hostages. He did not know that it indicates the presence of hostage-taking at the beginning of Islam (Hamiri, Abdullah bin Jafar. 1413, 1: 62). In the legal aspect of the international arena, it has been said that “hostage-taking in non-international armed conflicts is also Common Article 3 of the Four Geneva Conventions of 1949 and Article 3, Clause 2, Article 4 of the Second Additional Protocol is recognized as a crime” (Agha Janat Makan, Hossein. 1393: 248) but the most important international document is the International Convention Against Hostage Adopted on December 17th, 1979 equal to 26th of Azar 1358 AH of the United Nations General Assembly and the Statute of the International Criminal Court approved on July 17, 1998 in Rome.

The Nature of the Crime of Hostage Taking

From the point of view of Layer and jurists, crimes have different divisions in terms of their nature, the explanation of which is as follows:

First - the nature of the crime of hostage taking from the point of view of Islamic jurisprudence

The crime of hostage taking has different situations and it is not possible to determine a single and specific nature for it, but it differs according to the case, which is explained below.

1- The crime of hostage taking is punishable

The crime of taking a hostage, regardless of whether it is accompanied by any other crime, (such as murder, bodily injury, sexual assault, pulling a gun, etc) is an example of a punishable crime in jurisprudence, because for the punishment of any crime that falls under the title of hadd, retribution or if there is no money, ta'zeer applies and is subject to “the rule that every forbidden act can be tazeer” (Haji Dehabadi, Ahmad.1387: 290). and it has been said that “ta'zeer is haram for any behavior, whether it is an action or an omission” (Ardabili, Seyyed Abdul Karim Mousavi. 1: 1427 .34). which includes the crime of hostage taking can also?

2- Limitation of the crime of hostage taking:

If the hostage-taking operation is accompanied by the drawing of guns and creating fear and panic among the people, it is called Muharebeh and if it is committed to a large extent or is combined with repetition and habit and its bad effects spread in the society, it is called corrupt. It is true for him in the world and causes the implementation of the limit;

As it has been said, "the corrupter of the earth is the one whose harm is widespread and the fear of harm to the Ummah and society is in him" (Abd al-Karim bin Abdullah bin Abd al-Rahman bin Hamad al-Khudeer. 1376: 2: 29).

3- The nature of retribution or ransom for the crime of hostage taking:

If the hostage takers deliberately kill their hostages due to not reaching their goal or for any other reason; It causes retribution; In cases where the killing of hostages by the hostage takers is not intentional, and the hostage taking is not repeated and habitual, or its ill effects have not spread in the society, such as if it is the first time that the hostage taking crime is committed, and the killing of hostages lacks criteria, elements, and reasons for killing. be intentional; He is condemned to pay diah in terms of the right of the servant and ta'zir in terms of the divine and governmental rights.

The First Rule of Islamic Law on Hostage Taking from The Point of View of Jurisprudence

From the point of view of jurisprudence, the first rule of hostage taking is sanctity because it is one of the examples of harming and depriving people of their freedom. It is forbidden in any way. (Shirazi, Seyyed Mohammad Hosseini: 390). Also, killing hostages and ambassadors and representatives of foreign countries is absolutely forbidden and is not allowed in any way. (Aamili, Har, Muhammad bin Hassan. 15: 117) and it was said: "Enemy people who are held as hostages by the Islamic Army have the immunity of their lives and no one has the right to attack their lives" (A group of researchers 2: 214).

Objections to the First Rule of Hostage Taking in Jurisprudence

From the point of view of jurisprudence, contrary to the relevant laws, there are exceptional cases that take hostages in special circumstances. It is allowed and its permissible items are:

A- In the war situation in order to free captives, as mentioned, "Allameh Halli says: Just rulers can take hostages from the infidels and rebels who are available to them to free their captives. Ibn Qudama, one of the Sunni scholars, also has the same opinion, and others have also mentioned it" (Tabasi, Najmuddin – previous. 1427:81).

B- Ordinary people, for the sake of retribution, this case is in conflict with the principle of personality, the crime is a point of dispute in jurisprudence, but in some cases, its permissibility has been considered permissible due to reciprocity. (Shirazi, Nasser Makarem. 1424:72)

Second - The nature of the crime of hostage taking from the perspective of international documents:

According to international documents, especially the preamble of the International Convention against Hostage Taking, which says: "The member states of this convention, taking into account the goals and principles of the United Nations Charter regarding the maintenance of international peace and security. Especially by recognizing that every person has the right to life, liberty and personal security, which is included in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Considering that hostage-taking is a crime that causes deep concern of the international community and that according to the provisions of this convention, any A person who commits a hostage act should either be prosecuted or extradited, believing that the development of international cooperation between countries in designing and adopting effective measures to prevent the prosecution and punishment of all acts of hostage taking that manifests in international terrorism is an urgent necessity. They reached an agreement in the following cases..." (the law of the accession of the government of the Islamic Republic of Iran to the international convention against hostage-taking, introduction). The nature of the crime. The hostage taking is as follows:

1- Taking hostages is against human rights

According to Article 3 of the Universal Declaration of Human Rights: "Everyone has the right to life, liberty and personal security" (Universal Declaration of Human Rights, 1948 Article 3). Taking hostages is a clear violation of the right to freedom and personal security of people; therefore, taking hostages is against human rights. And all the members of the international community are obliged and committed to prevent it. In this sense: "it is emphasized that taking hostages in any form and for any purpose is prohibited" (Islamic Human Rights 1990 Article 21).

2- The terrorist nature of the crime of hostage taking

According to the most important international documents in the field of combating terrorism, it is found that hostage-taking is of a terrorist nature, as it has been said, "The crimes included in the following conventions are also considered terrorist crimes...C- The International Convention against Hostage-Taking" (the Law of Accession of the Government of the Republic Islamic Iran to the Convention of the

Organization of the Islamic Conference to Combat International Terrorism 1387, Article 1 D). For this reason, the Afghan Penal Code, in accordance with international documents, included the crime of hostage-taking as a sub-set of terrorist crimes and discussed the issue of hostage-taking in The chapter on terrorism is included. (Afghanistan Penal Code 2015 Article 270).

3- International crime of hostage taking:

In a division of international crimes, it is divided into two parts (international crimes) and international crimes, and "according to Pierre-Marie de Puy, international crimes compared to international crimes are like ordinary offenses that have inherent characteristics. They are the only ones. They are evaluated in the relationship between the perpetrator and the victim and are resolved using the compensation regime, while international crimes violate an objective obligation to the international community and all governments" (Momani, Mehdi. 2016: 100) and each has different effects. are; According to the international convention against hostage taking approved by the United Nations General Assembly on December 17, 1979 and the Organization of the Islamic Conference convention to combat international terrorism, the crime of hostage taking is considered an international crime and is subject to special laws and regulations regarding international crimes.

4- Hostage being a war crime:

According to Article 5 of the Statute of the International Criminal Court, taking hostages in wartime under special conditions is considered one of "the most important crimes that is a cause of concern for the international community" (Shari'at Bagheri, Mohammad Javad. 2017: 5) and based on Paragraphs 1 and 2 of Article 8 of the said Statute, if during the war, hostage-taking is carried out in "the form of a plan or a policy or is part of a chain of similar crimes" (Shariat Bagheri, previous. 10, 11). is considered a war crime that the International Criminal Court has jurisdiction over.

5- The normality of the crime of hostage taking

Ordinary crime: "Any crime that does not have the title of political crime" (Jafari, Langroudi. Previousi,192). is known as ordinary crime, and on the other hand it is a political crime. It is said that "the act or omission of a criminal act is done with a benevolent motive and without taking into account personal benefit and without violence and conflict against the established (legitimate) political system and the government's sovereignty and the supreme management of the country and the interests of the Islamic Republic system or the rights and If the political and legal freedoms of the citizens are committed, it is called a political crime" (Paivandy, Alireza. 1388: 88) Noting that the political criminal is subject to legal protections in the proceedings and the issuing of judgments, which the ordinary criminal is deprived of, it can be said that the crime of hostage-taking is of a normal nature, if It is emphasized that: "stewardship Deputy's participation and initiation of the following crimes is not considered a political crime: A- Crimes subject to limits, retribution and diat. B - Assassination of domestic and foreign officials C - Kidnapping and hostage taking..." (Political crime law Islamic Republic of Iran 2015 Article 3).

The reason for this is that political and ordinary crimes are different in terms of the three elements of crime, in this sense, some jurists have discussed political crime under the psychological element and said: "According to the psychological element, crimes are divided into two categories: public and political. are divided ..." (Paivandy, Previous. 77 and 78). Assuming that we can imagine a common territory for political and ordinary crime and consider the so-called compound crime, which "refers to those crimes whose subject is ordinary but it is done with political motivation" (72 Shushtri, Seyyed Mohammad Hasan Marashi. 1427 AH. 1.74). Again, in suspicious cases, it is considered a normal crime. If it has been said that "in crimes composed of a political crime and a normal crime, the sentence of a normal crime is implemented and the punishment is considered based on the normal crime... It is not necessary to try him with the presence of a jury. take it" (Shushtri. Previous. 741) This point is due to two reasons, one is that the ordinary crime is the main one and the political crime is the subsidiary one, and the departure from the main one must be clear, otherwise it will be subject to the main ruling, the

second is because the interests of the society take precedence over the individual, which in the compound case Being a political crime with a serious crime such as murder, muharibeh and hostage taking And ... according to jurisprudential and legal standards, the perpetrator is sentenced to the punishment of a serious crime. According to international documents, hostage-taking is considered a crime against national and international security, and in some cases, a terrorist crime or a war crime. Therefore, it cannot be considered a political crime, as it has been said, "Crimes that cause public danger or a state of fear and panic are not considered political crimes" (Shushtri, Previous. 1: 105).

Elements of the Crime of Hostage Taking in Jurisprudence and International Documents

The general and specific elements of the crime of hostage taking in Islamic jurisprudence and international criminal documents are as follows:

First, the elements of the crime of hostage taking in Islamic jurisprudence

The general and specific elements of the crime of hostage taking in Islamic jurisprudence are as follows:

A - The legal element of the crime of hostage taking in Islamic jurisprudence

According to the Qur'anic generalities which say that God does not oblige any person before the pronouncement of the ruling (Surah Talaq, verse 7; Surah Isra', verse 15). and narrative references such as the hadith of the Prophet of Rifa, which says that the obligation has been removed from those for whom the ruling has not been pronounced (Subhani Tabrizi, Jaafar.1424;3:475). In addition, the rule of reason and consensus of the lawmaker is a condition for criminalization, including hostage taking, regardless of whether it is accompanied by Every crime, from the point of view of jurisprudence, is one of the examples of taziri crime, so the jurisprudential document and legal element of it is the rule of tazir and the generality of the said rule, and in cases where hostage-taking is one of the examples of abduction, war, corruption on earth, murder, physical injuries, sexual assault, etc. It is decided that their special verses and traditions are also considered as its legal element, and considering that many Islamic countries such as Afghanistan, etc., as a member of the United Nations, ratify and sign the international convention against hostage-taking, the general verse of Mubarakah 34 From Surah Isra' that it is obligatory to keep the promise has also been considered a legal element of the crime of hostage taking from the point of view of jurisprudence.

B - The material element of the crime of hostage-taking in Islamic

jurisprudence is not considered a crime until it reaches the stage of actualization and commission; And it is only a sign of inner malice and bad behavior, and finally, it is a sign of exploitation, which according to the opinion of famous jurists is not forbidden in itself. (Shirazi, Seyyed Sadegh Hosseini, 1425. 1: 548). Therefore, the material element of the crime and its external realization in all crimes, including hostage-taking, is a condition for the emergence of criminal responsibility from the point of view of jurisprudence, and the public document of the material element of the crime in Islamic jurisprudence is one of the many verses in the Holy Qur'an that show that a person is held hostage by his actions It means that until the criminal act and behavior of the material element of the crime has not been committed, it will not be punished. (Holy Quran, Surah Zamz verse 70 and Surah Towbah verse 111).

The components of the material element of the crime of hostage-taking are the perpetrator of the criminal behavior, the result, the criminal, the causal relationship between the criminal act and the result, and the circumstances, such as the organization of the crime, or the circumstances and circumstances of the perpetrator or victim, or the use of a weapon, or the occurrence at a specific time or place, and which may be effective in aggravating or mitigating the punishment and start to crime According to the classification of the crime based on the material element, the crime of hostage taking is a continuous compound and absolute crime.

C - The spiritual element of the crime of hostage taking in Islamic jurisprudence

“In a criminal offense, there is always the presence of malicious intent or criminal intent or criminal guilt on the part of the perpetrator of the crime to prove. Criminal liability is mandatory in all crimes”. (Shambiati, Houshang. 1384: 228). Documentary on the psychological element of crime Any crime, including hostage-taking, in Islamic jurisprudence, in addition to the honorable verse that says: God, the person who can If he does not have the obligation, he does not obligate the (Holy Quran, Surah Baqarah, verse 233). in the same sense, the insane and the child of another Due to the lack of spiritual element, because they do not have the capacity and ability to do the task, they are not criminally responsible; the most obvious The jurisprudential document of the validity of the psychological element in the crime is the famous Hadith Rifa, which the Holy Prophet of Islam (PBUH) said is responsible A penalty was taken from my nation due to the lack of mental element in the state of error, forgetfulness, reluctance to lose, knowledge of compulsion, etc. has been (Hali Allameh Hasan bin Yusuf bin Motahar Asadi. 1404: 243). and the spiritual element of the crime of hostage taking It consists of knowing that the act of taking a hostage is a crime with criminal intent and knowing the result of the crime and the motive Based on the division of the crime according to the spiritual element of the crime of hostage-taking, of intentional crimes and with prior decision and insistence and with a certain intention.

Second - Elements of the crime of hostage taking in international documents

The elements of the crime of hostage taking in international documents are as follows:

A- The legal element of the crime of hostage taking in international documents

The legal element of the crime of hostage taking in international documents is:

1 - The International Convention against Hostage Adopted on December 17, 1979 by the United Nations General Assembly Thamidh, which has 20 articles and is dedicated to the crime of hostage taking.

2- Article 21 of the Declaration of Islamic Human Rights briefly states that taking hostages in any form and for any purpose is prohibited (Declaration of Islamic Human Rights, Article 21), these two sources are the most important pillars Legally, hostage-taking is considered a crime in international documents;

3- Paragraph (4) of Article 1 of the Convention of the Organization of the Islamic Conference to Combat International Terrorism, which was approved by the meeting of foreign ministers of the Organization of the Islamic Conference in July 2018 in Burkina Faso. which in paragraph (3) of the international convention against hostage-taking has been stated as a terrorist crime. The Law of Accession of the Government of the Islamic Republic of Iran to the Convention of the Organization of the Islamic Conference, in order to fight against International Terrorism Article (1)

4 - Article 8 of the Statute of the International Criminal Court approved on July 17, 1998 in Rome, which includes the crime of hostage taking has introduced a war. (Shariat, Bagheri. 1397: 11 and 14). It is obvious that these last two cases are secondary sources for the legal element of the crime of hostage taking; Because their subject is the crime of hostage taking in specific circumstances, not in absolute terms.

B - The material element of the crime of hostage taking in international documents

According to paragraph 1 of article 1 of the international convention against hostage-taking, it can be concluded that the material element of the crime of hostage-taking is the positive action, the external existence of the perpetrator, the mental existence, the criminal result of the relationship. The causality between the criminal act and the result of that side of the perpetrator and the means does not play a role in the principle of its realization.

C. The spiritual element of the crime of hostage taking in international documents

According to the definition in paragraph 1 of article 1 of the international convention against hostage-taking, the spiritual element of the crime of hostage-taking is the knowledge of the criminality of the act, the intent of the criminal act, and the intent of the criminal result, but The occurrence of the result is not outside the condition, so it is considered as an absolute crime.

Specific Elements of the Crime of Hostage Taking in Jurisprudence and International Documents

Every crime, in addition to the general elements governing all crimes, also has specific elements or elements that distinguish it from others It distinguishes crimes and it is considered as its main chapter; The specific elements of the crime of hostage taking are:

- 1- The human nature of the subject means that what is pledged is a human being, not property.
- 2- Hostage operation, which is a special operation and kidnapping is not a condition for carrying it out, therefore crimes like kidnapping and it excludes the theft of children in which kidnapping is a condition.
- 3- Forcing a third party, because in hostage taking, the freedom of the hostage is conditional upon the fulfillment of the hostage's wishes Gun Giran is not released by a third party and usually without realizing it.

Discussion Results

- 1- The crime of hostage taking in Afghan law and international documents is specifically criminalized in Islamic Jurisprudence It is not specifically criminalized, but its rulings can be determined from the generalities and applications of Sharia evidence and from the criminal titles Similar to captive, kidnapping, illegal detention, moharebeh and obtained.
- 2- Justice, maintaining social order, providing internal and international security, legitimate defense of nations and the world community The common bases of the crime of hostage taking in Islamic jurisprudence are international documents and Afghan law; Obligation is well-known. And the prohibition of evil is its exclusive basis according to Islamic jurisprudence.
- 3 - International treaties and covenants are common sources of the crime of hostage taking in Islamic jurisprudence, international documents and It is the law of Afghanistan; The subject laws of international custom, legal principles and jurisprudence are one of its exclusive sources in international documents and Afghan law; The Holy Qur'an is the prophetic tradition, consensus, reason, analogy, approval and merit Mursal is one of its exclusive jurisprudential sources.
- 4- The crime of hostage-taking has a long historical and prehistoric history from a legal point of view, and also in the beginning of Islam has been affected.
5. The crime of hostage taking in international documents and Afghan law has a criminal and anti-human nature and is of the type Crimes are ordinary, not political, and sometimes they are considered war crimes, and according to Islamic jurisprudence, they originally have the nature of It is punishment, but depending on the case, it may also have the nature of retribution and diya.
- 6- The legal element of the crime of hostage-taking is certain legal articles in Afghan law and international documents; in jurisprudence Islamic is generalities and applications that can be adapted to interpretation and analysis.

7- The material element of the crime of hostage-taking in Islamic jurisprudence, international documents and Afghan law is: foreign positive action, external existence of the perpetrator, mental existence of the criminal result, the causal relationship between the criminal act and its result.

The position of the perpetrator and the means do not play a role in the principle of its realization

C- The spiritual element of the crime of hostage-taking in Islamic jurisprudence, international documents and Afghan law is the knowledge of the criminality of the act, the intention of the criminal act and the intention of the criminal result; But the occurrence of the result is not outside the condition, so it is of the type

Absolute Crimes Are Considered.

The specific element of hostage-taking is the humanity of the subject, so it does not include the property of the hostage; and Forcing a third party to release hostages offer It is suggested that the eminent jurists discuss the partial rulings of the various forms of the crime of hostage-taking in an argumentative manner by referring to jurisprudential sources in order to be a positive step in enriching and dynamic Islamic jurisprudence and responding to current issues of the day.

Resources

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