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Investigation on the mothers' retribution in her child's murder regarding islamic laws

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ABSTRACT

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The punishments of retribution are applied to murder, homicide, accidents, as well as bodily injury. They allow either actual retribution for the crime or paying blood money as a substitute penalty. On the basis of evidence from the Book and the tradition, the punishment for murder is retribution. According to Article 221 of the Penal Code, as well as defraud view, retribution order doesn't include in the death of a father who kills his son, but the mother includes in this order according to the famous Imami view and retribution for the murder of her son. The author also reviews the plan and juridical arguments from both perspectives and know the exception of the mother defensible due to arguments.

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Introduction

It would be say that the law of retribution is necessary and inescapable laws in religion and rulings that is not only is consensus, but also all jurists and the Muslims from different Islam religious are agree about it. (Fazel, Meghdad401.4; Sarakhsi,84.27). The Qur'an says that "O believers, retribution is obligatory about murder for you, free in front of the free, the slave in front of the slave, and the female in front of the female, and who gave him something from his brother that is a good task"

Retribution

This is the second type of punishment in Islamic Law. This is where the perpetrator of the crime is punished with the same injury that he caused to the victim. If the criminal killed the victim, then he is killed. If he cut off or injured a limb of the victim, then his own limb will be cut off or injured if it is possible without killing the criminal. Specialists are used to make this determination.

Retribution is not lawful except where the killing or injury was done deliberately. There is no retribution for accidentally killing or injuring someone. God says:

“O you who believe, retribution is prescribed for you in the case of murder...” (Quran 2:178)

And He says:

“...There is retribution in wounds...” (Quran 5:45)

2. In the crimes where the criminal directly transgresses against another, Islam has given the wish of the victim or his family an important role in deciding whether or not the punishment should be carried out. Islam permits the victim to pardon the perpetrator, because the punishment in these crimes is considered the right of the victim. Islam even encourages pardon, promising a reward in the hereafter for the one who does. God says:

“If anyone waives the right to retaliation out of charity, it shall be an expiation for him.” (Quran 5:45)(Al-Muala,2006)

Retribution is an Islamic term meaning "settlement of accounts".(Al-Baqarah, 178.It is a legal concept that follows the principle of *lex talionis* ("An eye for an eye") first recorded in the Code of Hammurabi. In the case of murder, it means the right of a murder victim's heirs to demand the murderer's execution.

Retribution or revenge is predestined

All criminal acts and traffic accidents that cause bodily injury or death fall under the law of retribution. As soon as blood flows deeds are punished differently from the usual criminal penalties. Here the ancient Semitic thinking breaks through, that the soul of a man is in his blood, which cries to heaven for atonement when it has been shed. The answer of the Qur'an to this is clear:

O you who believe! The law of equality is prescribed to you in cases of murder: the free for the free, the slave for the slave, the woman for the woman (Sura al-Baqara 2:178a).

A living person from the clan of the murderer, with the same social standing as the victims must be killed for every person whom he had killed. A free, healthy man for a free, healthy man, a male slave who is the property of the person who killed the slave, a free or enslaved woman for a free or enslaved woman. (The discrimination against free woman in the Qur'an becomes clear again in the fact that a free woman is mentioned together with enslaved women and only after the slave men. Muhammad summarized the importance of retribution for his religious community in the basic law:

Retribution is life for you (Sura al-Baqara 2:179)

The fear of revenge should force the clans to live together in peace. The law of retribution is one of the most important elements of peace, protection and security among the Islamic clans. Most Muslims are no solitary individuals separated from their families, rather members of a clan that has welded itself together to a "we" through the law of retribution in order to survive. Everyone has care for others, whether he wants to or not.

Kill not your own children for fear of poverty: We shall provide sustenance for them as well as for you. Truly the killing of them is a great sin (Sura al-Isra' 17:31). (See also: Sura al-An'am 6:151b).

This verse includes the abortion of unwanted children. Its unspoken goal is the growth of the world Muslim population through the surplus of births.

Retribution encompassed five crimes: murder or intentional killing, quasi-intentional killing or voluntary manslaughter (as when a person intends only to beat another but in doing so kills him), involuntary killing, intentional physical injury, and unintentional physical injury. Retribution was allowed only in instances of intentional killing and intentional physical injury; even here retribution could be

waived by the victim or his family, and monetary compensation could be exacted instead. For other retribution crimes only monetary compensation was exacted. The retribution for killing was set by most jurists at one hundred camels or one thousand gold dinars; the retribution for physical injuries varied according to the nature of the injury. The law of retribution was an exception to the principle of individual responsibility for crimes emphasized by Islamic law, because it made the perpetrator's clan ('retribution) responsible with him for payment of the retribution; correspondingly, the clan of the victim divided up the retribution payable for his death in keeping with the legal maxim that liability is proportional to the benefit. In later years when Arabs settled in military camps outside Arabia (amṣār), the 'āqilah became the military unit (dīwān) to which the killer or the victim belonged. (Ziadeh, 2014)

In another verse, God knows illogical killing a man with an aberrant kill of all humans (Maedeh, 32). Equated "Because of (prevent murder) we ordered on the Bani Israel that when somebody kills the soul without right or corruption on earth, it is like to kill all the people. »

These verses included all those who have committed murder Whether they are foreigners or the victim's relatives, however if murder is wrong and all condition of retribution of the murderer are available. Except retribution that is earthly punishment, heavenly punishment for the crime of murder exist, too.

Great God says: Someone who intentionally kills a believer his punishment is hell eternally and Allah brings his wrath (of mercy) around him and makes him a great punishment. There is no doubt that this crime covers all the killers especially serious in tone even if he is from the closest relative or relatives in-laws of the victim.

So at first glance due to the retribution between absolute and public relative and even between parents and children did not differ in this respect. So at first glance due to the death between relative and absolute public and even between parents and children did not differ in this respect. Also, jurists from all religious put exception for father. Islamic Penal Code followed view of jurists and grandfather are considered exempt from execution: "Father or paternal grandfather who kill their children are not punished, and will be condemned to the payment of blood money to the heirs of the victim's murder. "(Article 220. M)

Shaykh Tusi expressed in opposite side: the father (parent) due to the death of his son's murder (murder) doesn't include in retribution in any way that murder would be take place. Other scholars also confirmed this article. Saleh Halabi know only father has been exempted from retribution.

Ardabil also does not allow the killing of father toward his son (Ardabil, 16.14, Khonsari, 302.6., Imam Khomeini, 522.2).

Sunni scholars are agree with the Imami scholars about this matter and except Malek despite the acceptance of this view who has particular description, all of them are agree on the lack of retribution of the father about killing the child (see Ahmad son of Hanbal, 22.1, son of Najim 21.9, Bahooti 622.5, Novi, Majmmoo 361.18, son of Qodameh, 360.9 and ..)

The retribution of mother due to child's murder

There is famous Fatwa from Imami scholars about The retribution of mother due to child's murder. Mofid expressed the retribution of the mother because of child's murder. (749). AbuSalah also knows exempt from retaliation just for the father and for mother know it as well as other relatives (386).

Sheikh Tusi (740) and the Ravandi (397.2) also have the same view.

Imam Khomeini (RA) has also endorsed the following statement on the view that the third condition of retribution is that the father doesn't kill because of killing his child (but) the son has been killed because of killing his father and also mother due to child deaths (retribution) (495.2) The Penal Code (Article 220), followed the famous view of Imam view and only fathers and grandfathers exception in the application of Article 219.

Sunni general view is that but the mother as well as father is not dead because of killing her child and this order isn't particular for father. (See Novi, collected, 362/18, Novi, 31/17; Sherbini, 18/4; Iebn Qdamh, 361/9, Iebn Najim, 21/9, Shafi'i, 36/6, and ...)

The Reasons the first Perspectives:

One of the famous causes of mothers' retribution in killing her child is the explanation of the verses and traditions which signify confirm that except the Father even mother is included in retribution of killing child.

Ardabil is also said that the inclusion of mother is due to the public causes of retribution.(16/14) Some Imami said only expressed the retribution of mother in killing her child and don't cited to any reasons. (see research problem, Religious laws of Islam, 998/4, Ibn Idris, Alsayr 324/3; Allameh Helli, rules, 608/3) .

There is no doubt that if does not provide a defense for exclusion of mother based on general and applied by reasons of retribution (if all of the premises of Wisdom) retribution includes the mother .

The provisions of this Article, in fact, Astshab no proof that the limit and punish it for you (the principal) has also been interpreted, and it is clear that the assumption of statistics (absolute and universal) turns to defiance and similar principles, unlikely. It may be disputed death in the verse refers to this expression as the expression of God's commandments and the detail is not retribution, but retribution is the official canonization) (Fazil Meqdad, 354/2; Tabatabai, Almizan, 659/1) if this probability is defendable , premises would not be finished for referring to holy verse . B - Another perspective is the first narrative: narratives which expressed through deception of the Prophet (PBUH).

Since the main reasons for the dismissal of father in retribution and the lack of dismissal of mother (in the Imami) are narratives (see Tusi, Alkhlaf, 152/5, etc.), it is necessary that the accounts referred to them have been proposed and are examined.

The common narratives can be divided into three categories:

Category I: traditions in which there are interpretation of parents and son.

1.Hamran narrates from one of believers (AS) who said that father doesn't kill because of murder of their children but child has been killed because of parents' murder.

2.Allama narratives from Imam Sadeq (as):Father doesn't kill because of killing a child but child has been killed because of killing his father and if a man commit the crime, does not inherit from the victim although murder is wrong.

3.Ishaq the son of Ammar narrated from Imam Sadiq :(Ibid., 58) if the father kills his child, he is not dead by murdering but child who kills his/her father ,he/she will be killed.

4.The narrator of Amr the son of Muhammad from his father, Imam Sadiq (AS) is that(Hrr Ameli).

Category II:

1.The narratives in which the narrator asked Imam (AS) about the death of a father who killed his son and his answer was negative:

2.Hammad narrate from Imam Sadiq .Also,the narrator of Hammad from Imam Sadeq: The theme of both verses is similar that Imam replied: the man who killed his son, he has been killed (retribution)? He Said : No.

3 - Jabir the son of Ja'far said that A man who kills his own son , is he kill ,too (death)? He said: he doesn't kill but he is severely beaten, or be exiled from his homeland.

CategoryIII: The narrates that expressed without question.

Approximate reasoning

The approximation of these traditions is clear that in all these narratives ,there is discussion about the murder of a child by a parent. In some narratives, the parent word has been come that follows the expression (toward child) and it means the father . In some traditions the term statesman came and in others the term "b" that no doubt means father.(See the second Masalk Alafham; Ardabil, 16/14).

The third reason of the lack of retribution is that the father's respect is necessary. Sani said that because father is the cause of creating the child , therefore the child does not cause to destroy him. This matter is incompatible with the dignity of fatherhood. (Masalek Alafham, 156/15). This is because the documentation by Sunni scholars.

The fourth reason that was invoked in this case is that there is a doubt about the father. Egyptian the son of Najim said: Father doesn't killed because of the murder of his son . This is often due to a parent's love and compassion to his children and that this led to doubts that brought down the

retribution "(21/9) see also, Qdamh 360/9) The rules are very important that has been approved and emphasis in Islamic criminal jurisprudence popular rule .

The verses that has been accepted by scholars and practice and with consideration of the terms approximation also includes retribution due to the lack of religious fact and scholars invoked to this rule for removing the retribution penalty in cases such as issue that is debated by us (for clarifications refer to Mohaghegh, 41; research groups, University of Islamic Sciences, 47).

Consensus: Consensus is one of the reasons that fans of no retribution of the father for the murder of the child and the mother's death has been cited.

The Reasons the second perspectives:

A. Including parent word to the mother:

Allama said that: "The son of Junaid (for his vision so) has argued that the parent mention to mother ,too because the mother is one of parent" (9/422)

Nuvi and Kashani noted that father does not punish for murder of his son and by proofing of this statement about the father, it will be approved about the mother because the mother is same as the father in the birth of child (has role in the birth of the child) (Novi, 361/18; Kashani, 235/7)

Doubt

The doubt that causes refusing retribution for the father causes refusing the mother from retribution, to. Egyptian Najim said: mother is like father because the child is a part of her .So, doubt includes all the cases . "(21/9)

- The need to respect mother perfectly

As previously mentioned ,one of the reasons for the collapse of the father's retribution is the need to respect father . Some Sunni scholars have stated that this reason is more true for the mother.

The correct approach is the of lack mother in the killing of her child because of the prophetic verses and also for the mother is one of the two parents and she has the priority than father in making good behavior. So, she is more deserve than father in refusing retribution. (if the problem is how to overturn the death of the mother, while the mother against the father doesn't have responsibility on her child the answer is that in the fall of retribution responsibility isn't bet.

Therefore in some cases that father doesn't have any responsibility toward his child ,he is still void of retribution . Similarly, the grandfather is not included in retribution while he doesn't have any responsibility on his grandchild as well as the retribution is not included to father with a child who of a father is the opposite of faith .

Conclusion

Retribution is life for you (Sura al-Baqara 2:179)

The fear of revenge should force the clans to live together in peace. The law of retribution is one of the most important elements of peace, protection and security among the Islamic clans. Most Muslims are no solitary individuals separated from their families, rather members of a clan that has welded itself together to a "we" through the law of retribution in order to survive. Everyone has care for others, whether he wants to or not.

By investigating the narratives: In none of these narratives is clear that the mother is included in retribution for the murder of her child or not. The first category: the narrative interpretation of "parent" and "son" has been discussed. If the parent and the parent's interpretation used together, undoubtedly used to mean the father.

But when used individually or without context, it may be mean gender.

Of course, it can be say that the meaning of parent is someone who came child to this world. Kashani Hanafi said about it: The main reason for excluding parents and grandparents and grandmothers of Retribution is , Prophet narratives.(235/7).

At the end of this study, regarding all above discussion father isn't included retribution but as the researcher believe mother should be included in this rule because she has more priority than father in growing child although she doesn't have responsibility toward her child.

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