



## **Explaining the Limits and Criteria for the Murder of Mahdur Al-Dam in the Iranian Legal System**

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### **Abstract**

In Islamic jurisprudence and Iranian criminal law, a “bloodsucker” is a person whose blood is permissible and whose killing does not result in retribution or blood money. This concept, which originates from authentic Islamic texts, has gained special importance due to its direct connection with human life and the scope of its legal protection. In special cases, when individuals commit hadd crimes such as apostasy, insulting the Prophet, war, and rebellion, or pose a serious threat to the security and order of society, the title of “bloodsucker” is applied to them. These individuals are deprived of full religious and legal protection, but determining the instances and conditions of being a bloodsucker requires precision and reliance on valid religious evidence. The Supreme Leader, Ayatollah Khamenei, emphasizes the need for caution in the blood of individuals who are introduced as bloodsuckers and has announced that the execution of relevant rulings must be carried out solely by competent judicial authorities and based on religious proof, and any arbitrary action is rejected. They do not consider Mahdur al-Dam to be an absolute term and believe that this title is more relative and takes into account the jurisdiction of the Sharia ruler and the Supreme Leader. The Islamic Penal Code, in Article 302, recognizes groups such as the apostate by nature, the slanderer of the Prophet, the warlike infidel, and the adulterer who is a Muhsin as Mahdur al-Dam and does not consider their killing to be subject to retribution or blood money. However, a note to the law considers any action without the permission of the court to be a crime and subject to ta’zir punishment. The existence of legal principles such as the principle of innocence, the principle of precaution in blood, and the monopoly of the execution of punishment by the Sharia ruler are important frameworks for observing human rights and judicial justice in this regard. The issue of killing Mahdur al-Dam should be examined and implemented in a way that, while maintaining the security and social order of society, prevents the abuse and violation of individual rights.

**Keywords:** Fatwa, Supreme Leader, Murder of Mahdour al-Dam, Limits, Regulations, Iranian Legal System.

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## Introduction

In the scope of Islamic jurisprudence and criminal law, the issue of “murder of innocent people” and, consequently, the issue of murder of innocent people is one of the topics that has always been the subject of serious debate and challenges among jurists, lawyers, and intellectuals. This concept, which has its roots in authentic Islamic texts, has found a special place in the legal and judicial systems of Islamic countries, especially the Islamic Republic of Iran, due to its direct connection with human life and the limits of legal protection for individuals. In Islamic society, the principle is the sanctity and protection of human life, and the Holy Lawgiver considers the shedding of innocent blood to be one of the greatest sins. However, in exceptional cases, some individuals are excluded from the full protection of Sharia and law due to the commission of specific crimes and a serious threat to the security, order, and fundamental values of society, and the title “murder of innocent people” is applied to them. A careful examination of these exceptions, determining the instances and conditions for their realization, always requires precision, deep thinking, and attention to the jurisprudential, legal, and human dimensions of the issue.

One of the fundamental points in analyzing this issue is to pay attention to the views and opinions of the Supreme Leader, His Highness Ayatollah Khamenei, as the supreme jurisprudential authority and Supreme Leader of the Islamic Republic of Iran. Emphasizing the need for caution in bloodshed, he always emphasizes that any action against individuals who are guilty of murder must be taken solely based on religious proof and through competent judicial authorities, and that determining the case and executing the verdict is not within the competence of ordinary people in society. The Supreme Leader clarifies in this regard: “The meaning of bloodshed is not that anyone can kill the person who committed the crime by recognizing the case. Rather, it must be proven through religious means, and its surest value is the proof of the ruling of the Islamic law”.

He also criticizes the incorrect understandings of the concept of Mahdur al-Dam, stating: “Mahdur al-Dam is the rightful owner of all other persons except the Imam. When we say Mahdur al-Dam, we mean Mahdur al-Dam in relation to the Imam, not in relation to other persons... We only have one category of Mahdur al-Dam, and that is relative Mahdur al-Dam... We do not have the principle of absolute Mahdur al-Dam in this sense”.

This approach, while emphasizing the observance of the principle of precaution in bloodshed and the necessity of Sharia proof, emphasizes the role of the rule of law and judicial authority in the implementation of limits and criminal rulings, and strictly avoids any arbitrary and illegal action in this regard. Such a view, in fact, guarantees the fundamental rights of individuals, even in exceptional cases, and prevents the occurrence of excesses and excesses in the implementation of criminal rulings. In this article, based on jurisprudential and legal principles and with special attention to the views of the Supreme Leader, various aspects of the murder of Mahdour al-Dam, its circumstances and instances, and the legal and judicial challenges

related to this issue are examined. It is hoped that this research, while explaining the relevant concepts and rulings in more detail, will pave the way for a deeper understanding of this sensitive and important issue in accordance with Islamic and legal standards, and provide a suitable platform for further discussion and reflection in this area.

### **Term in terms of vocabulary and meaning**

A person whose blood is not wasted or valuable, and no retaliatory killing is carried out against his killing, and no blood money is paid. (Ibn Manzur, 1414 AH: 11/405) In contrast, he is a person who is protected from killing. (Ibn Manzur, 1414 AH: 13/126)

And Khoei considers a person whose blood Islam has deemed permissible to shed. (Khoei, 1410 AH: 2/83)

Some crimes and sins cause the shedding of blood and property; such as disbelief - in non-Dhimmi - and apostasy and insulting the Prophet (PBUH) and the Infallibles (PBUH). The perpetrator of these crimes is called a person who is protected from killing, or a person who is protected from killing, or a person who is protected from killing. Sometimes the title of Mubah al-Dam or Mahdur al-Dam is applied to anyone who is sentenced to death as a hadd punishment. (Qusalnameh Fiqh Ahl, 1384: 41/248)

In the Basani of the Completeness of the Method of Execution, under the discussion of Qisas, it is stated: In a legitimate murder, there is no Qisas; because the blood of the victim in these cases is wasted and is not a reason for Qisas or blood money. Of course, sometimes the blood of the victim is wasted in relation to any person; such as the murder of a natural apostate and cases of Qisas, warring, and attacking life, honor, and property. (Khoi, 1410 AH: 2/83)

Individuals who, by committing a crime, are excluded from the protection of the law and Sharia; They can be divided into two general groups:

Absolute bloodguilt: A group that is considered bloodguilt against all Muslims.

Relative bloodguilt: A group that is bloodguilt against a specific person or persons.

There are differences in the words of the jurists regarding the permissibility of killing and the persons who are bloodguilt and whether it is absolute or relative. According to the consensus of the Shiite jurists, a person who curses the Prophet (PBUH) and the pure Imams (AS) is an absolute bloodguilt. While there is a difference in the interpretations of the jurists regarding the permissibility of killing a person who is a cause of death for the Prophet and the obligation of killing him, there is a consensus that the person who is a cause of death for the Prophet is a cause of death for anyone who hears him. In the case of the attacker and the man who sees his wife committing adultery with a stranger (relative bloodguilt), there is a consensus that killing is permissible only for the defender and the husband. (Qussalname Fiqh Ahl, 1379: 22/139)

The Supreme Leader, in defining the Mahdur al-Dam, says: “The blood of the Mahdur al-Dam and the unjust means someone who is sentenced to death without proof of personal right over him; such as: a well-behaved apostate and adulterer; but he immediately says: Of course, it should be noted that the meaning of the Hadar blood is not that anyone can kill the Mahdur al-

Dam by recognizing the matter. Rather, it must be proven through religious means, and its sure value is the proof of the ruler of the religion.”

### **Views of jurists on types of Mahdur al-Dum**

Jurists disagree about the various instances of Mahdur al-Dum. Some believe that killing these individuals requires the permission of an Imam or ruler, while others believe that killing Mahdur al-Dum is absolutely not subject to retribution or blood money.

#### **A) The adulterer and the adulteress are in bed together.**

From the perspective of Imam Khomeini (RA), if a man sees his wife committing adultery with a stranger, there are two possible scenarios. In the first scenario, if the husband does not know that his wife has voluntarily consented to the stranger's request, he can act to repel her based on Islamic jurisprudence. Imam Khomeini (RA) clarifies in Tahrir al-Wasilah that if the husband sees his wife committing adultery, he has the right to repel her, and even if this action leads to murder, it is considered a waste. In the second scenario, if the husband knows that his wife has voluntarily consented to the stranger's request, it is permissible to kill both of them, and this act is not sinful from a religious perspective and no retribution is considered for him. (Imam Khomeini, 2010: 1/521)

#### **Conditions and rulings for killing an adulterer and an adulteress**

They also state that there are specific conditions for the permissibility of killing in these cases. One of these conditions is the husband's knowledge of his wife's committing adultery. If the husband can prove the act of adultery, he can be exempted from punishment. However, if his claim is without witnesses, the judge will order his retribution according to the criteria of judgment. Thus, murder in bed is permissible only under specific conditions, and the lack of sufficient evidence can lead to the punishment of the murderer. (Ibid(.

#### **b) Mohareb**

Article (279) of the Islamic Penal Code defines Mohareb as drawing a weapon with the aim of threatening the life, property or honor of people or creating fear in them; in such a way that this act leads to insecurity in society. This article stipulates that if a person draws a weapon towards one or more specific people with personal motives and his action is not public, or if someone draws a weapon towards people; but due to incapacity cannot deprive them of security; That person is not considered a war criminal.

It is stated in Islamic law: “A war criminal is someone who takes up a weapon to frighten people on land or at sea, whether it is night or day, in Egypt and elsewhere. Is it a condition that he be a person of interest? In this case, the more correct view is that there is no condition, provided that he intends to frighten. In this ruling, men and women are equal if it happens, and in proving this ruling for someone who only holds a weapon; despite his weakness in frightening, there is doubt that it is similar to proof and is sufficient with his intention. This ruling is not proven for the leader or the supporter.” (Muhaqq al-Hilli, 1408 AH: 4/167(

In the crime of war criminality, the result of the crime is to create fear and terror and deprive people of their freedom and security. The way some jurists express it indicates that the crime of war criminality is absolute. Muhaqq al-Hilli believes; in proving the ruling of war criminality

for someone who takes up a weapon but is weak in causing fear; It is doubtful. But it is like proving the ruling of moharebeh. According to this group of jurists, simply drawing a weapon is sufficient to commit a crime and there is no need to create fear and intimidation among the people. Others have expressed their inference from the narrations that almost all narrations mean that simply drawing a weapon is not enough to fulfill the title; rather, in addition, it must also create fear and terror. (Mousavi Bojnourdi, 2005: 152)

Article (281) of the Islamic Penal Code defines mohareb and specifies that bandits, thieves, and smugglers who use weapons to create insecurity for people and roads are known as mohareb. This article emphasizes that the actions of these individuals not only threaten the security of society; but also cause fear and terror among the people, and thus, the law will deal with such behaviors with firmness.

Article (282) of the Islamic Penal Code divides the punishments for Moharebeh into four categories: execution, crucifixion, amputation of the right hand and left foot, and denial of citizenship. These punishments clearly demonstrate the severity and decisiveness of the law intended to combat Moharebeh and security threats. The choice of each of these punishments is left to the discretion of the judge, which allows the judge to make a decision based on the specific circumstances of each case and the degree of dangerousness of the perpetrator's act. This approach creates the necessary flexibility in the judicial process and allows the judge to impose a punishment commensurate with the crime.

### **c) Rebellion**

It is stated in Al-Nahiya: "Anyone who rebels against a just Imam, breaks his oath of allegiance, and opposes his rulings is a rebel, and the Imam is permitted to fight and strive with him, and it is obligatory on the one whom the Imam calls to fight with them to rise up with him." (Sheikh Tusi, 1400 AH: 1/296) Jihad against a rebel is obligatory if called by the infallible Imam (AS) or appointed by him, and disobeying it is a major sin; the second point is that it is obligatory on the members of the Islamic community to refrain from any arbitrary action against the rebels and not to engage in military combat with them without the invitation and call of the ruler. Sheikh Tusi writes: "No one is permitted to fight the rebels except by the command of the Imam, and whoever fights them should not distance himself from them unless he is victorious or they return to the truth." (Ibid., 1/297)

Rebellion is defined in the Islamic Penal Code as an armed uprising against the system of the Islamic Republic of Iran. According to Article (287) of this law, individuals who take armed and organized action against the foundation of the system are considered "rebels" and their punishment is death. This crime is known as a security and political crime and includes any armed action that threatens public security.

### **D) Apostate**

A natural apostate is someone whose father or mother or both are Muslims and who has left Islam after reaching puberty. In contrast to a natural apostate, a national apostate is someone whose neither of his parents was Muslim at the time of conception and who has become Muslim after reaching puberty and then becomes an infidel. (Najafi, 1404 AH: 41/603)

One of the contemporary apostates is Salman Rushdie, who was sentenced to death by a fatwa issued by Imam Khomeini (RA) in October 1988 for writing the book "The Satanic Verses". The reason for this ruling has been attributed to Salman Rushdie's apostasy.

### **Punishment for an apostate**

The punishment for a male national apostate, if he does not repent, and for a male natural apostate, is death. (Muhaqq al-Hilli, 1408 AH: 4/950)

However, a female apostate is imprisoned until he repents or dies. (Najafi, 1404: 41/611) Of course, a female natural apostate and a national apostate, whether male or female, if they repent, their repentance is accepted. (Ibid., 612-613)

In today's Iranian legal system, the issue of apostasy is not officially defined as a crime in Islamic penal laws. However, in some laws, such as the Press Law and the Law on the Organization of Islamic Councils, the term apostasy is mentioned and punishments have been determined for those who insult Islamic sanctities. According to Article (26) of the Press Law, anyone who insults the religion of Islam and its sanctities, if this action leads to apostasy, will be sentenced to apostasy. Also, according to Article (167) of the Constitution, the judge is obliged to cite reliable Islamic sources in the event of silence of the law. However, in practice, this issue has caused ambiguities in the proceedings related to apostasy. Because there is no precise definition of this crime and no punishment has been determined for it in the Islamic Penal Code. This situation leads to the judiciary accusing individuals of apostasy based on its own interpretation of Sharia, which conflicts with Article (36) of the Constitution, which considers punishment to be imposed only through a competent court and in accordance with the law. (Darudi, 2001: 66)

### **The Prophet's Murder**

Different jurists have different opinions about the killing of the Prophet's Murder: Sheikh Tusi, Sheikh Muhammad Hassan Najafi, Shahid Awal, Ayatollah Khomeini and Imam Khomeini (RA) believe that: Whoever insults the Prophet (PBUH) or one of the

Also, according to Shahid Thani and Ayatollah Khomeini, insulting Hazrat Fatima (PBUH) is also considered as insulting the Prophet (PBUH). Sheikh Muhammad Hassan Najafi has also been recognized as a Mahdur al-Dam who insults any of the divine prophets.

Sheikh Muhammad Hassan Najafi and Imam Khomeini believe that the listener of such insults, if safe, can kill the insulter and does not need the permission of the Imam (PBUH) or the Islamic ruler. However, Sheikh Mufid and Allamah Hilli do not consider such an act permissible without the permission of the Imam (PBUH) and consider the implementation of this ruling to be one of the powers of the Islamic ruler.

### **Seyyed Ali Khamenei's view on Mahdour al-Dam**

The Supreme Leader also has a special view on this matter. He said: "The right to life is absolute in relation to all other persons except the Imam. When we say right to life, we mean right to life in relation to the Imam, not in relation to other persons. So when we say absolute right to life, this is fundamentally wrong. We only have one category of right to life, and that is relative right to life. But what is the difference? Relative right to life, some are right to life

in relation to the Imam; some are right to life in relation to the relatives of a deliberately murdered person; some are right to life in relation to a woman's husband. So we do not have the principle of absolute right to life in this sense, and we have the same right to life in relation to relative right to life, and in contrast to it are people who are right to life.”

### **Legal conditions of the murder of Mahdur al-Dam**

According to Article (302) of the Islamic Penal Code of 1392, certain individuals are recognized as Mahdur al-Dam and their killing is not subject to qisas or blood money. These cases indicate that killing Mahdur al-Dam is considered obligatory or permissible in some circumstances.

- a) Natural apostate: A person who has left Islam and converted to another religion.
- b) Sab al-Nabi: A person who insults the Prophet of Islam.
- c) Kafir Harbi: A person who has participated in a war against Muslims and has no peace agreement with them.
- d) Aggressor: A person who is committing a crime or rape against others and his danger to others is imminent.
- e) Zani Mohsin: A person who has committed adultery and meets certain conditions. Such as: having a wife.

However, Note (1) clarifies: Taking action in accordance with paragraphs (a), (b), and (c) of this article without the permission of the court is a crime and the perpetrator will be sentenced to the punishment prescribed in Book Five of the Penal Code.

### **Legal and Judicial Challenges**

After a comprehensive review of the laws related to Mahdur al-Dam, we are faced with numerous challenges in the legal and judicial system. The provisions of Articles (302) and (303) of the Islamic Penal Code conflict with some of the principles and rules of Islamic jurisprudence. (Qasemi, Nasser, Hajipour, Tohid, 1402: 253) These conflicts include the following.

#### **Principle of Innocence**

Every person is presumed innocent until proven guilty, and for a person to be found guilty, a competent court must issue a verdict against him. This issue is also clearly stated in Article (37) of the Constitution of the Islamic Republic of Iran, which states that the principle is innocence and no one is found guilty by law unless his crime is proven in a competent court. Therefore, the principle of innocence is not only a legal rule but also a fundamental human right that must be observed at all stages of the trial. However, it should be noted that although freedom is a necessary condition for human existence and must be respected by everyone and it is unacceptable to violate it; however, individuals' violation of each other's rights leads to the acceptance and establishment of the principle of criminal liability and the imposition of restrictions on this freedom. According to Article (4) of the Criminal Procedure Code approved in 2013, the principle of innocence is based on. Any restrictive action, deprivation of freedom,

and intrusion into the privacy of individuals is not permitted except by law, in compliance with regulations, and under the supervision of a judicial authority.

The principle of innocence is respected by everyone as one of the most important guarantees of human rights. This respect and influence is not only the result of the emphasis of domestic laws or international treaties; it is supported by numerous philosophical and moral thoughts; so much so that it can be claimed that the principle of innocence is among the natural rights of our era. The ugliness of the eagle before it is expressed is one of the important moral and intellectual foundations of the principle of innocence. Understanding this principle is so obvious and in accordance with nature that even people in the alley and market get angry when it is violated and open their mouths to protest: If you pass through an alley where there is no sign of prohibited passage at the entrance and they want to fine you for this action, you will undoubtedly be disturbed and protest why they are punishing an unspoken duty. (Katouzian, 2004: 253)

The principle of exemption from the four well-known practical principles is a new principle in the thought of principles, in which the fundamentalists have proposed exemption from doubtful obligations based on the aforementioned rule; in the sense that if something whose obligation or prohibition is doubtful is stated, whether it has not been received from the lawgiver as a primary or secondary matter, it will not be an obligation for the person obligated. The exemption that is obtained based on the aforementioned rule is called intellectual exemption. (Hashemi Shahroudi, 2004: 316)

### **The principle of caution in blood**

The principle of caution in blood means that the judge must exercise the utmost caution and precision in the rulings he issues regarding human life and life, and if he has any doubts about the implementation of such rulings, he should not implement them; because in cases that have been made based on caution, the alternative doubt is eliminated. The jurists emphasize that doubt in blood, renunciation, and property is one of the three forms of caution, and caution in the blood of a Muslim is obligatory. The Islamic legislator has a special concern for the preservation of the blood of individuals, and for the post-Islamic legislator, nothing is more important than the preservation of lives and blood; therefore, the first principle in these matters is sanctity, and in ruling and subject-matter doubts, when the main ruling of a matter is sanctity, specific cases can be excluded from the scope of the principle of caution in blood only with certain evidence. (Habibzadeh, Aghaei, and Darwishzadeh, 1403: 106-107)

### **The principle of imposing punishment by the ruler**

The rule of “imposing limits on the Imam” is one of the jurisprudential rules derived from texts. In order to understand the validity of such rules, one must refer to their original documents. The content of the rule is also largely rational. One of the explicit documents for this rule is the narration of Hafs ibn Ghiyath, which states: “I asked the Imam (a.s.): Is imposing limits one of the duties of the ruler or the judge? The Imam (a.s.) said: Imposing limits is the responsibility of the one who has the power to rule”.

Also, in Sahih Hammad, it is stated from Imam Sadiq (a.s.) about the amount of ta’zir: The amount of ta’zir is at the discretion of the ruler and depends on the guilt of the offender and his



ability. Sheikh Tusi has referred to the content of the judicial rule of punishments on several occasions. He says: It is not permissible for anyone to impose limits except the ruler of the time who has been appointed by God and the one whose Imam has appointed him for this task. It is not permissible for anyone other than these two to interfere in the implementation of the Hudud. Elsewhere, he has considered the person in charge of implementing Qisas to be the supervisor of Muslim affairs. According to Sheikh Tusi, a personal attempt at Qisas is permissible only with the permission of the supervisor of Muslim affairs. (Zulfiqari and Noubahar, 2014: 96-97)

### **The Rule of Not Invalidating the Blood of a Muslim**

Sheikh Hurr-Amil, quoting Muhammad ibn Sinan, states about a narration from Imam Reza (a.s.) that the burden of proof in all cases is on the claimant and the oath is on the claimant, except in the case of blood. The reason for this is that the claimant denies and cannot bring any evidence to support his denial, because he is unknown. Therefore, in the case of blood, the burden of proof is on the claimant and the oath is on the claimant, in order to prevent the blood of a Muslim from being wasted and to put the murderer under the burden of proof. Also, the rule of "not invalidating the blood of a Muslim", meaning that the blood of a Muslim who is shed unjustly is not invalidated, is an important jurisprudential rule, which is also known as the rule of "not being wasted in vain" and is derived from similar narrations.(Hurrah-e-Amali, 1412 AH: 27/235)

Islam attaches special importance to the preservation of human life to the extent that it considers killing a person who is justified in his blood to be equivalent to killing all human beings, and this issue is clearly stated in verse (32) of Surah Al-Ma'idah. In Islam, the intentional killing of an innocent person not only carries severe punishments in this world; but it will also bring severe consequences in the Hereafter. Including the wrath and curse of God (An-Nisa: 93). Therefore, the value and respect for the blood of Muslims is clearly evident in this school of thought, and in Islamic jurisprudence, the importance of the blood of Muslims is recognized as a clear and demonstrable principle.

Allama Majlisi narrates in Bihar al-Anwar a narration from the Holy Prophet (PBUH) in which the Prophet (PBUH) said: O God Who sent me with the truth; If all the inhabitants of the heavens and the earth participate in the killing of a Muslim or are pleased with that act; God will throw them all face down into the fire. (Allamah Majlisi, 1403 AH: 75/150)

### **The Principle of Human Dignity**

Human dignity means the greatness and high value of all human beings. A concept that is clearly stated in Islamic teachings. The Holy Quran refers to this fundamental principle in various verses. For example, in Surah Al-Isra (verse 70) and Surah Al-Hujurat (verse 13), which emphasize the sanctity and dignity of every individual.

Imam Ali (AS) says to Malik Al-Ashtar in Nahj al-Balagha: O Malik; know... Fill your heart with mercy, love and kindness towards your people and do not be like a beast of prey towards them, considering their food as a spoil; Because they are not more than two groups: either your religious brothers or human beings like you in creation." (Sharif Razi, Dashti translation, 1379: Letter 53)

Acquired dignity, according to Allama Tabataba'i, is the honor and dignity that a person acquires voluntarily and through the optimal use of his God-given talents and abilities on the path of growth and perfection. Although all humans have amazing talents and abilities; only those humans who have a correct worldview and use their God-given talents to achieve human perfection by following Islamic law achieve acquired dignity. Therefore, acquired dignity is the perfections of existence that are bestowed upon man as a result of observing divine piety and moving on the path of servitude. (Mohseni, 2014: 85-86)

From the perspective of Imam Khomeini (RA), man was created with dignity, and human dignity is a virtue and honor that distinguishes him from other creatures. In his opinion, people who do not respect human dignity and act against humanity do not have dignity themselves and must be fought against it; this is why the divine prophets were harsh on the infidels and fought against them. (Khomeini, 2003: 1/378)

He divides dignity into inherent and acquired, and considers inherent dignity to be related to existential perfections that differ in individuals according to their talents. This inherent dignity itself is of two types; first; physical dignity; It is related to the natural creation of the body that God has distinguished man from the animal kind in physical nature; just as the covering of the private parts and clothing are among the honors of God that are specific to man and have not been bestowed upon other beings. Second; Spiritual honor; This honor is related to the essence of man's essence and identity. It also introduces the criterion of man's acquired honor in divine piety and believes that whoever has greater piety; his honor is greater in the sight of God and that being male or female, the difference in accent, language, and color does not cause any honor, and the Prophet (PBUH) and the infallible Imams (AS) are the most honorable of them because they were the most pious people. (Khomeini, 2010: 6/314)

### **The Leader's Opinion on Caution in Mahdur al-Dam and Prohibition of Killing Without a Judicial Order**

His Holiness emphasizes that Mahdur al-Dam is not respectful towards the Imam; but one should be cautious towards others. He emphasizes the rule of caution in bloodshed and believes that no ordinary person has the right to commit murder without a judicial order. He has made it clear in his speeches that the issue of Mahdur al-Dam should be under the supervision of the judiciary and no ordinary person can commit murder without a court order.

His Holiness also stated in his Friday prayer sermon dated 9/7/1378: "I need to make another point. I have heard from all corners about the same thing that has been written; some have said that we will take action, we will punish; absolutely. In the Islamic system, this is up to the officials. Now, at one time, the system was a system of tyrants and infidels; at the head of the country there are those who, like the Pahlavi era, are against religion and do not understand anything about religion; At the head of the judicial power are corrupt and immoral people. In the parliament, there are dependent people who are weak-minded or corrupt and immoral; if someone feels obligated there; that is another discussion. In the Islamic system, these things are related to the government.

Firstly; the judicial system must recognize; because sometimes someone writes out of negligence; sometimes he does not know that it is an insult; sometimes he has forgiven;

sometimes he has done it intentionally; these are the rulings that differ. These people who are responsible for matters in judicial work; certainly their interest in the Guardian of our souls, for Islam and for these issues, is no less than those who make these statements. They have religious zeal; they also have religious zeal. They are also responsible before God Almighty and before the people; therefore, we must look and see how it was. Whatever form it takes, there is a ruling. What was important; It was done, and that was the reaction of the Iranian nation. The Iranian nation showed that it would rage against such things; this is true. Great scholars and personalities all showed that their emotions, intellect, and faith would boil in unison against such things; this is good. But now, what punishment to give, how to punish, who to punish, these are no longer the responsibility of the individuals; these are the responsibility of those in charge.

Of course, we are also careful that there is no shortcoming on either side, nor is there any excess on the other side. You should know that in Islam, shortcoming is wrong; excess is also wrong. There is a correct and correct line, which is the line of Islam, and it must be implemented without any excess or deficiency. This is God's will. Someone who should be flogged ten times by divine decree; cannot be flogged nine times; cannot be flogged eleven times. No one should go to any excess; Control your emotions. If someone has emotions; very good, those emotions will definitely be rewarded by God Almighty. But if an action or action is against the standards; from any individual, it will definitely not be rewarded by God. I have also forbidden it now. That is, in addition to legal prohibition, it has also acquired religious prohibition; be careful. If someone is, for example, a copycat of someone else; I have forbidden it; it will be forbidden for him. This is the fatwa of all scholars. No one has the right to do something rash at one time.” (Information website of the Office for the Preservation and Publication of the Works of His Eminence Ayatollah Seyyed Ali Khamenei - 9/7/1378)

### **The murder of Mahdur al-Dam in the Islamic Penal Code**

Note (2) of paragraph (c) of Article (295) of the Islamic Penal Code approved in 1991 states: “If a person kills someone in the belief that he was a victim of revenge or a murderer, and this is proven in court; but it is later determined that the victim was not a murderer, the murder is considered a similar mistake to intentional murder and the murderer only pays blood money”.

The approval of this note led to the fact that in some murder cases, the murderer, instead of denying it, confessed to the matter and claimed that he committed the murder believing that the victim was a murderer. This challenge provided the possibility of abusing this law to escape punishment. One of the most important challenges in the current legal system was the legal situation at the time, which not only endangered security; but also conflicted with the principle of legality of proceedings, and thus threatened judicial security. Especially considering the limited nature of cases of mahdur al-dum in the penal system of Islam and Iran, proving such a belief in practice has become difficult and requires detailed scientific and technical investigations.

In contrast, Article (303) of the Islamic Penal Code approved in 1392 clearly states that if the perpetrator of a crime claims that he was the victim of mahdur al-dum or committed the crime with such a perception; this claim must be proven in court according to legal standards and the court is obliged to first investigate this claim. By clarifying the need to prove the claim of being

mahdur al-dum in court, this article attempts to establish a balance between the rights of the accused and the victim and, in a way, tries to correct the shortcomings in the law approved in 1370 and emphasizes the importance of detailed and legal investigation.

In fact, the legislator, while realistically understanding the importance of public order and security in society, has found a desire for an approach that can pave the way for better ensuring public order in society. The legislator, under Article (302) of the new Islamic Penal Code, has determined the guarantee of criminal execution for the murder of Mahdur-ul-Dam. Considering that issuing a license to kill for individuals who commit crimes punishable by death or amputation can cause disorder or abuse for some individuals; Note (1) of Article (302) has determined that taking action in the cases of paragraphs (a), (b) and (c) without the permission of the court is a crime and the perpetrator is sentenced to the ta'zir prescribed in the fifth book of regulations. In addition to the above, the legislator has also determined the guarantee of criminal execution by establishing Article (303) for those who make a mistake in determining Mahdur-ul-Dam. In fact, the legislator has foreseen a situation based on which it is proven that the intentional crime was committed based on a mistake and the victim did not deserve the crime. (Mir Mohammad Sadeghi, 2014: 75)

Contrary to popular belief, the issue of murder in the belief of Mahdur-ul-Dam does not always lead to the killer's retribution; because the methods of proving this claim are limited and complex. In the penal system of Islam and Iran, cases of murder are specific and have specific conditions that murderers are generally not aware of in detail. Even if the murderer committed the murder believing that the victim was a murderer, the legislator does not consider his ignorance of the conditions of being a murderer as a waiver of criminal liability, and as a result, the murderer's claim is rejected in most cases. This strictness stems from the principle of respect for the blood of Muslims and requires careful legal examination in the courts. It is suggested that the legislator pay attention to the full implementation of Article (11) of the Constitution, which emphasizes the negation of arbitrary punishments, and amend the criminal laws in a way that does not conflict with this principle. Also, the Ta'zir punishments for arbitrary actions should be intensified to protect the principle of prohibition of arbitrary punishments. (Javidi et al., 1403: 86-87)

### **Deficiencies in the Islamic Penal Code of 1392**

Despite the legislator's efforts to resolve legal problems in Articles (302) and (303), there are still substantive and formal deficiencies in this area that can affect public order and social security. Substantive deficiencies, such as disruption of public order, and formal deficiencies, such as conflict with fair trial standards, create serious challenges for the investigation process and require further review and reform to ensure judicial security and respect for the rights of individuals in society.

### **Lack of full support for the principle of exclusive enforcement of punishment by courts of justice**

Full support for the principle of the monopoly of punishment execution by courts of justice is one of the issues that the Islamic legislator should pay attention to in order to better ensure public order and security in society. Although the Islamic Penal Code of 2013 has paid some

attention to this principle in the case of the murder of Mahdur al-Dam, full support for it can help achieve legal goals. Article (36) of the Constitution considers the jurisdiction to sentence and execute punishment to be exclusive to legal courts, but the Islamic Penal Code of 1991 did not pay sufficient attention to this principle. However, the 2013 law, by dedicating Chapter 4 to the legality of crimes and punishments, recognized the principle of judicial punishment and considered some non-judicial interventions as crimes. Nevertheless, there are still cases that allow for arbitrary action to execute punishment. Adherence to the principle of judicial punishment not only helps prevent abuse by unauthorized persons, but also guarantees the right of defendants to a fair trial and is consistent with jurisprudential standards and religious teachings. (Majidi, 2018: 345)

### **Conflict in criminal policies**

This is one of the shortcomings observed in the Islamic Penal Code approved in 2013, similar to the previous law, and has led to some chaos. The legislator, with some formal changes, still considers murder in the belief of the deceased as an obstacle to the punishment of retribution and has determined the provisions of quasi-intentional murder (blood money) and ta'zir punishment for it. Although this measure is considered a kind of support for public order, the removal of the criminal title of the perpetrators of these crimes from intentional murder can have undesirable results. One of these results is the emergence of conflicts in penal policies that are reflected in various articles of the previous and new Islamic Penal Code. On the one hand, the legislator does not allow the killing of the murderer by people other than the relatives of the deceased, and if this act is done without their permission, it considers the perpetrator worthy of the punishment of retribution. On the other hand, in other provisions, it prevents the determination of the punishment of retribution for people who have simply acted on their beliefs and killed innocent people. This conflict indicates a lack of coordination between two types of criminal policies, one of which supports a person convicted of intentional murder, and the other neglects to provide serious criminal protection to innocent people who are only believed by some to have been killed. (Majidi, 2018: 349)

### **Future legal needs**

In two main axes related to Mahdur al-Dam, the legislator can, following the fatwa of the late Khomeini, on the one hand, fully support public order and security, and on the other hand, practically realize the principle of judicial punishment. One of the disadvantages of the new Islamic Penal Code is the legislator's understanding of the concept of Mahdur al-Dam, which is still dependent on the famous view of the Imamiyyah jurists and does not allow the determination of retaliatory punishment for perpetrators of intentional murder of Mahdur al-Dam individuals. By changing the jurisprudential basis and leaning towards the approach of the late Khomeini, who considers absolute Mahdur al-Dam permissible only for the ruler of the society and does not allow other individuals to kill him; the legislator can, in addition to maintaining the principle of judicial punishment and ensuring better public order and security, demonstrate the capacity of Imamiyyah jurisprudence in resolving the problems and difficulties of the society. (Ibid., 351-352)

### **The impact of the Supreme Leader's government decree on the issue of Mahdur al-Dam**

Considering the jurisprudential view of the Supreme Leader and his order in the Friday prayer sermon dated 9/7/1378, specifically addressed to the jurists of his time, the following points have been clearly stated that punishment and legal measures in the Islamic system are related to officials and not to individuals. The judicial system must carefully address issues based on religious and legal standards and take into account the differences in the type of behavior of individuals. Also, both negligence and excess are wrong in Islam and legal measures must be implemented without any reduction or reduction. People's feelings are important, but action based on religious principles and standards is essential. He also warns that any unconsidered action by individuals is not acceptable and must be taken under the supervision of officials; because they are in charge of the correct implementation of divine laws and maintaining social order.

Considering his government ruling, not only is it necessary to observe religious principles in punishments; Rather, the need for a regular and fair judicial system should also be considered, which can have positive effects in reforming laws and protecting citizens' rights. Therefore, the following points can be deduced from His Holiness's views:

**a) Determining the limits of punishment**

His Holiness's view emphasizes that the execution of punishments must be carried out under the supervision of the judicial system and based on specific laws. This helps strengthen the judicial system and prevents chaos.

**b) Observing the law of Mahdur al-Dum**

In the Islamic Penal Code, Mahdur al-Dum refers to a person whose blood is permissible and whose killing does not require retribution or blood money. According to Article (302) of the Islamic Penal Code, groups such as the infidel warlord and the natural apostate are known as Mahdur al-Dum; which is consistent with His Holiness's emphases.

**c) The necessity of reforming the laws**

He emphasized the necessity of reforming the laws related to Mahdur al-Dum in order to prevent possible abuses. These reforms could include strengthening the role of the courts and establishing more precise criteria for determining whether an individual is a human being.

**d) Protection of human rights**

Human rights include principles based on universality, accountability, indivisibility, transparency and non-discrimination. These principles clearly state that human rights should be granted to all individuals without exception and that states have a responsibility to protect these rights and to be held accountable for their violations.

International instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights clearly emphasize that the right to life must be respected and that no one may arbitrarily deprive him of this right. Article (6) of the International Covenant on Civil and Political Rights states that the right to life is inherent and must be protected under all circumstances. This is in conflict with some interpretations of human rights and may lead to violations of the rights of others.

## **E) Balance between Sharia and Law**

His Eminence emphasizes the importance of striking a balance between Sharia and legal principles in order to maintain the judicial security of citizens. This balance can lead to the creation of a more just legal system that both respects Islamic principles and guarantees human rights.

### **Conclusion**

According to the discussions raised, it can be concluded that the issue of killing a person who is a murderer in Islamic jurisprudence and law, especially in the Iranian legal system, is a very serious and sensitive issue that requires a lot of scrutiny and reflection. On the one hand, the principle of sanctity of the soul and protection of human life is considered one of the most important Islamic principles and human rights, and on the other hand, in special circumstances and by observing strict Sharia regulations, it is prescribed to take the life of some individuals as a murderer.

In the meantime, the views and opinions of the Supreme Leader, His Holiness Ayatollah Khamenei, play a decisive role in the interpretation and implementation of these rulings. By emphasizing the principle of “precaution in bloodshed” and the need for “Shariah proof” of individuals being a murderer, he prevents any arbitrary action and incorrect interpretations of this concept. The Leader of the Revolution, stating that “the killing of a person is a crime against humanity, except for the Imam, for all other persons” and “we do not have the principle of absolute killing of a person in this sense,” emphasizes the necessity of referring to the Sharia ruler and competent judicial authorities to determine instances of killing of a person.

This view, while complying with Sharia standards and legal principles, is a response to concerns related to the misuse of the concept of killing of a person and the violation of individual rights. With this approach, while maintaining the security and order of society, the violation of individual rights and injustice is prevented and the ground is prepared for the correct and just implementation of Islamic laws. In this way, it can be said that the analysis and examination of the issue of killing of a person without paying attention to the views and guidelines of the Supreme Leader will be incomplete and incomplete.

In order to implement the principles related to the issue of mahdur al-dam and prevent arbitrary actions, it is suggested that the laws related to this issue be reviewed and amended to make the conditions for recognizing mahdur al-dam more precise and transparent. Also, holding training courses for judges and judicial officials can increase their awareness of the jurisprudential and legal aspects of this issue. It is also necessary to establish independent oversight bodies to monitor the strict implementation of laws and prevent possible abuses. In addition, increasing public awareness of citizen rights and emphasizing the monopoly of the judiciary in the implementation of punishments can strengthen public trust in the criminal justice system and promote social security.

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