

Dr. S. Elizabeth

Subject: Some Conditions of Judgment in Islam

Nationality: British/ Major: Law

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Elizabeth: Is retaliation a decided form of judgment in Islam that cannot be changed under any condition?

Ja'fari: To begin with, we need to pay more attention to the essence of judgment as such. Before any assessment of this judgment, it must be taken into account that retaliation is one of the judgments of willful homicide rather than all kinds of murder, since if a homicide happens involuntarily due to a misunderstanding, it does not have any reprisal in the form of blood ransom; this is particularly the case with felonious homicide. On the other hand, retaliation is not the only [final] judgment of murder; in fact, retribution is merely one of the three forms of judgment that have been determined for homicide in Islamic Shari'ah Law:

1. Paying blood-money to the family of the murdered person.
2. Remission by the family of the murdered person.
3. Retaliation as the last option on the table that is executed if the family of murdered person does not to accept the blood-money or the remission.

Elizabeth: Although retaliation is one of the forms of legal judgment, do you not see it as against human feelings? When a man has been killed, what advantage or payoff could be obtained by taking another individual's life? Isn't it better to decide a lesser brutal and more cultural judgment for homicide so that it may discipline the individual who has committed murder?

Ja'fari: This question has to be analyzed in a thorough manner. The idea that retaliation is against human sentiments should be precisely appraised, since human sentiments are divided into two major groups:

- 1- Naïve natural sentiments that are undoubtedly being incited even by killing a python that can threaten many human lives. Moreover, what is supposed then to recompense the emotional and existential loss of the family and relatives of the slain?

2- Transcendental sentiments that insist on the execution of judgment.

Accordingly, retaliation is a kind of judgment that is to be issued for willful murder when there is no mistake, compulsion, mental disorder or slant involved. In such a case, the murderer has encroached upon all human individuals. As the Holy Quran has stated:

Whoever slays a soul, unless it be for manslaughter or for mischief in the land, it is as though he slew all men; and whoever keeps it alive, it is as though he kept alive all men.

(The Table Spread 5:32)

However, it must be noted that according to an accepted jurisprudential principle which states that *judgments are rescinded by the emergence of doubts*, any form of uncertainty over the murderer's ignorance of the judgment or the probability of any kind of mental and psychological disorder in the murderer could halt the execution of retaliation.

On the other hand, the legal inclusion of retaliation as one of the triple forms of punishment for voluntary homicide is a very significant act toward the recognition of the essential value of human life, since it exposes all human individuals to the grave consequence of encroachment to other peoples' right to life.

Having said these, if we compare the loss of an innocent life with the breaking of a chandelier or setting a wooden table on fire, it will be even more evil and more disgusting than the act of homicide itself. We are humans living in a complicated network of relations. A homicide is not merely a matter of killing one individual; in fact, it involves many other people as well. How one can recompense the possible losses incurred in such a scale?

Elizabeth: As you know, today's human relations are not as tight as the past. As a result, the annulment of the judgment of retaliation does not impose any loss upon anyone. Isn't it so?

Ja'fari: This is merely the reification of the dynamic phenomenon of human life and changing it into an unconscious cog of a machine. Thus conceived, suicide is not more serious than the breaking of a glass. Giving impunity to a willful murderer would not only stigmatize human dignity, but also change homicide into a social paradigm!