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**CHANGES IN SELF-DEFENSE IN THE ISLAMIC PENAL CODE IN 1991 AND 2013 TO
DISCUSS SELF CRIMES**

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ABSTRACT

Since justifiable defense has a social benefit, the community does not gain any profit of the punishment of whom has committed an offense in the place of defending. One of the remarkable points in the modern legislation is its referring to the need for "being extemporaneous and primitive" of the defense. This important point is emphasized in paragraph 3 of Article 155 of the modern legislation. Whereas there has been no mention to this subject in the current law, however, the practical procedure of many courts has been consistent in the acceptance of being primitive of the defense as one of the terms of justifiable defense. Another issue that has been considered in the modern legislation is the issue of "burden of proof" in justifiable defense. The modern legislator, in Clause 2 of the Article 155 where the principle of defense established but its terms not proved, has directed the invader's attention to the burden of proof of the allegation of non-compliance with the terms of defense along with assuming the compliance and occurrence of conditions necessary for the defense. The Islamic Penal Statute of 2013 in Articles 156, 157 and 158 has discussed the subject of justifiable defense. Article 156 says: If everyone commits an

action which is an offense according to law for self-defense, honor, reputation, property or liberty of their own body or the other against any kind of current or impending violation or threat in compliance with stages of defense, they will not be punished in case of the union of following terms and conditions:

A- The action conducted has been essential to ward off a violation or threat;

B- The defense is evidenced by reasonable indications or rational fear;

C- The threat or violation has not been committed due to a conscious act or the person's own violation and the other's defense;

D- Resorting to state powers without delay is not possible to all intents and purposes or their interference to counter the violation and threat is not effective.

Key words: Defense, justifiable defense, Necessity or emergency, Modal factors of crime, Terminator factors of criminal responsibility.

INTRODUCTION

Justifiable defense is occurred when someone commits an action which is an offense in normal circumstance to protect themselves or the other. Necessity which may be called emergency is a state in which individual is made to commit a deliberate offense; so that he is able to remove himself or the other from the threatened with threat. Justifiable defense is always and in all laws accepted. Justifiable defense and necessity has been in some conditions accepted in penal regulations of Islam; furthermore, it is anticipated in Islamic Penal Statute derived from penal provisions of Islam. Some present justifiable defense as one of the factors of termination of responsibility; including Doctor Diyauddin Piymani, he maintains that the base of legitimacy of justifiable defense

is the will disappearing, moreover, individual is not of his own authority while protecting himself. That a person is not of his own authority is dull, whereas, the person is of his own authority while self-defending and commits a criminal act at the decision of his own authority. Whereas the vast majority nearly consider it as modal factors of crime; that the person commits a voluntary act in a particular situation and circumstances due to which his civil and criminal responsibility is taken away from him. Legislator in the Islamic Penal Statute, 1996, in Articles 61, 62, and 625-630 has accepted justifiable defense in some conditions and found the violator on-guilty of responsibility. Meanwhile, justifiable defense has been also forecasted by Articles 155 and 156 of the

Islamic Penal Statute, 2011, and known as modal factors. However, about the case of necessity, some professors including Doctor Gulduziyan has separated the case of necessity from the state of emergency, they maintain that emergency is one of the terminator factors of criminal responsibility. Certainly, most lawyers including Doctor Nurbaha and Ardibili suggest that because there is no notable difference between the effects of necessity and emergency, separation between these two is not essential that again the majority still believe in it and consider these two as one and the modal factor of crime. Iran's Penal Codes has allowed commission of an offense in the case of necessity that it derives from the rule ((al-Darurat Tabih al-Mahzurat)), i.e. necessities make forbidden things permissible. Justifiable defense happens where there is no possible way to repel the threat except commission of an offense. In this case, the defender neither is prosecuted nor punished and never guarantees the damages that he has made. Justifiable defense is a principle accepted in all legal systems. Although there are many disputes about the origin of the creation of the right, its conditions are the same with a minor difference in all legal systems. In Iranian laws, people have the right to protect their life, property, honor,

reputation and their own liberty against imminent-certain threat or violation by committing an offense; provided that the defense is proportionate to the threat, and resorting without delay to state forces is virtually impossible. The same conditions are also true on the defense of other people provided that they have been incapable of defending or are in need of help.

2. Theoretical bases of the study

Terms of attack and violation:

1. Having actuality or imminence:

Violation must have actuality. If a violation has been done in the past but later it is framed an answer, it is not the defense but a kind of revenge. Actuality of violation is a physical act against which must be immediately defended. It is unnecessary that a threat will be fully realized, and then the person deals with defending against; insomuch that the imminence of threat is conspicuous by some indications, it is sufficient to defend against. Having actuality means the coincidence between the attack and defense. Meanwhile the danger of imminence is when the threat has not reached the level of actuality, but it is in such a way that any further action for the defender is impossible other than defense. For this reason, in paragraph 4 of Article 155 of the IPS, 2011, it has been raised: "... when it is

impossible to resort to state powers without delay" [Ukhuvvat, 2006]. If someone injures the guilty person out of revenge, he may not rely on the justifiable defense to justify his act. The imminence of the attack will be determined according to the particular circumstances and terms of each case [MirMuhammadSadiqi, 2007]. Defense must be coincident with violation in order to realize justifiable defense. Article 155 of the IPS,2011,has explicitly notedany current violation or imminent threat. Hence, if the violation has been done in the past, and the attack has been ended, and subsequently the person who has been attacked is in the situation of defense, resorting to justifiable defense is waived. If a probable violation were in the future, it would give no right to the person threatened to be in the situation of justifiable defenses prevention and commit criminal acts against the threatened, because there is the possibility of recourse to legalandlawfulauthorities [Gulduziyan, 2007].

Paragraph 4 of Article 155 of the Islamic Penal Statute,2011,orders in this case. If someone attacks the other with a knife, gun andswordstick, and the person who is attackedtakes the attacker's knife or gun etchant kills him, it will not be consideredas justifiabledefense. Because the actuality and

imminent of threat has failedafter taking the knife or swordetc. It should not be expected that the threat is fully realized, then it shall be defended, but in that it has had actuality and imminent, the person may use the justifiable defense against it. If a person is able to remove himself from the violation without committing criminal act, he may no longer rely on the justifiable defense. This is anticipated in paragraph 4 of Article 155 of the IPS,2011; "resorting to state forces without delay is virtually impossible or the intervention of saidforces to remove the violation and threat is not effective". Justifiable defense does not relate to personality characteristics andthe violator's features. If these individuals, whether a child or an adult or an insane, violate someone, it will be lawful and justifiable to defendagainst them. For people are seeking to preserve their life, property, reputation, their own honor or the other against the other's invasion.

Justifiable defense is not applicable if the violation is somehow removable like the possible use of public forces. The condition of getting help from state forces depends on the geographicallocation, transportation facilities, facilities of communications and other issues that the court will consider [Nurbaha, 2011]. The question that arises is

that if there is the possibility of escaping, will it be feasible to justify the justifiable defense? There are different opinions in this case. In this regard, one of the professors writes: it depends on the character and position of the violator and the defender (both). Usually, it is justifiable to defend military man with satisfying justifiable defense conditions despite the possibility of escape, however, it may not be accepted and considered to rely on the justifiable defense against a child or an insane man who has violated despite the possibility of escape [Gulduziyan, 2007] Decree 2052 dated 03.11.1938 of the fifth branch of Supreme Court indicates that "the defense does not have a lawful authority by the possibility of escaping. In Tahrir al-Wasilah in issue 11 of the defense it accepts that:

In English:

If the defendant is able to escape or ward off the violator by any other way apart from fighting, he must apply the very method.

In Arabic:

Romanized:

"Law Amkinul-takhallus Anil-qital Bil-harb Wa Nahwahu Fal-ahwatul-takhallus Bihi, Falaw Hajama Ala Harimah Wa Amkanat-takhallus Biwajhi Ghayral-qital Fal-ahwata dhalik".

It is prudent not to war if escaping out of the attacker's claw is possible other than fighting. Therefore, if the attacker attacks the reputation of a person and he is able to free his reputation other than fighting, it will be prudent to do so [Tahrir al-Wasilah, 2001].

If it is impossible to dispel the violation, it may be possible to defend against it. If a person may counter the violator in any other method such as escaping or resorting to state forces etc., he has to use the very method, and as far as possible he has to avoid fighting. If he could, he would apply easier methods in order to dispel him.

2. Illegality and unjustness of violation:

If a person carries out an act legally and by judgment of law, defending against it may be impossible, for example, a person appoints to carry out an order, defending against him is in vain, if he exceeds his authority, it will be possible to defend, and it has legitimacy. Illegality of aggression means that the aggression fails to have a legal definition, or in other words the aggression is not based on an order of law or against it. Meanwhile, unjustness of aggression means that those aggressions that have legal origin, say, law-enforcement officers and bailiffs have the right to arrest perpetrators of crime in transparent offenses; however, if officers act ultra vires and cause a threat to individuals'

liberty and rights, it will be considered unfair [Validi, 1993]. If the violation is in pursuance of law, defending against it will be impossible. To resist against lawful authorities who are on duty in case of being aware of their mission has not taken account of defense in Article 156 of the Islamic Penal Statute, 2011. Nonetheless, if they do not act ultra vires so that it causes the fear of murder or laceration or aggression against honor and reputation, the defense is permitted. The fear of property is not expressed in Article 156 of IPS, 2011. Probably, the legislator has had the opinion that aggression against honor and reputation leads to defense not violation of property. Definitely, it seems that Article 628 of IPS is more complete than this article in which the defense against the violation of property is also taken into consideration. Certainly, this article has been abrogated by the modern legislation of 2011.

3. Lack of provocation before violation

Defender should not commit an act that provokes one who has violated and attack him, and then he makes an attempt to defend against the attacker that in this case it will not be considered as defense. This term is completely right and consistent with social realities. Because it is mostly observed to all intents and purposes that a person provoked the other out of joking or ridiculousness or

seriousness, and when the opposing party had the intention of attacking due to the anger aroused, this very first provoker committed some offenses apropos of him such as assault and battery and even murder, and then he claimed at court that he had self-defended owing to be subjected to attack, but the main reason of the occurrence of crime had been primary provocations of this very person. That is why the legislator in reforms of 1975 has predicted that "the source and origin of primary attack and aggression does not result from his provocations" [Muhsini, 1997]. The one who has in person provoked the other to attack and violate must not conduct criminal acts against the attacker rationally and commonly under the pretext of dispelling the very violation and must not be exempted from punishment. If a person grapples with the other without a legitimate reason, and the other has the intention of murdering him under the efficacy of this provocation, the guilty person who has provoked the other because the defense of opposing party which has now taken the aspect of attack has not been commensurate with the person's initial attack may defend and be exempt from punishment [Saniyi, 1995].

Doctor Gulduziyan believes that: violation must not be the consequence of the provocation of his own defender. If a person

swears until the opposing party is provoked and is having the intention of attacking him, and, so, he beats or injures and/or murders him, the person may not consider his act (the cause of provocation) as justifiable defense. The Islamic Penal Statute has not referred to this condition [Gulduziyan, 2007]. The person himself must not make a situation (the cause of provocation) that the opposing party due to that commits a criminal act against the person (the cause of provocation) and holds himself in him (the cause of provocation), so to speak, if the person owing to his own action (the cause of provocation) makes the opposing party provoke and then the opposing party gets provoked and defends against the person (the cause of provocation), the person's action (the cause of provocation) is not considered as justifiable defense, and if the attacker is hurt, only the defender will be responsible.

4. Provisions of defense

The establishment of order and security and maintenance of individuals' rights and liberty warrants that defending against illegal aggressions is limited to the conditions and qualities. Otherwise it is impossible to legitimize the act by resorting to this rule. For this reason, committing acts that are considered an offense under normal conditions, if they are conducted in certain

circumstances, they will not be considered an offense and its perpetrators will not be prosecuted and punished. Based on Article 155 of the Islamic Penal Statute, 2011, and other articles of the IPS, it may be realized that the legislator has permitted to defend against the other's attack or violation in a particular terms and conditions that the commitment of the very acts in normal circumstances are considered as an offense. Preventing the chaos and ensuring the rights and people of society's liberties are taken account of factors that has led the legislator in some circumstances to accept justifiable defense. In what circumstances it would be possible to apply justifiable defense may be mentioned in the following cases:

1. being commensurate of defense with violation and attack:

It is explicitly mentioned on the necessity of defense in paragraph one of Article 155 of the IPS, 2011, but nothing on being commensurate of defense with violation.

It is not reciprocity, so to speak, it may not say that it is possible for the attack against life to attack the attacker's life, for the attack against the body attack the attacker's body, and for the attack against property attack the attacker's property. Article 629 of the

Canonical Punishment Act (ta'zirat¹, or discretionary), 1996, (abrogated by the Act of 2011) admits expressly that the attacker may be killed even for the defense of property [Mir Muhammad Sadiqi, 2007].

On the said case in Tahrir al-Wasilahin issue 5, it is written that if a person's property, wife and children are attacked, it is obligatory for the person to counter the violator even if he is killed. The property mentioned in this case shows the import and reverence of one's property that the violation of which could even cause the violator to be killed. Reciprocation does not necessary in this case; in case of attack against property, the attacker may be killed.

In Arabic:

Romanized:

«Wa Law Hajama Ala Malahu Aw Mala Ayalahu Jaza Lahu Dafahu Biayyi Wasilah Mumkanah Walaw Anjara Ila Qatlal-muhajim».

In English:

If the property or property of children and wife of a person are attacked, he is permitted to defend by any means against the attacker even lead to killing the attacker (Musavial-Khumiyni, 330: 2001) Thus If the defense is gone beyond the limit of attack or violation,

¹ The act of penalizing so for an offense for which there is no prescribed punishment in the Islamic law.

it will lose its legitimacy, however, the punishment of such a criminal may be commuted on the plea of being provoked. As such, a slap must not be answered by a knife or a bullet.

It is brought up on wrongful act or misuse and proportion in Tahrir al-Wasilahin issues 7 and 8:

Issue 7

In Arabic:

Romanized:

“Law Lam Yattahid Anil-haddil-lazim Wa Waqaa Alal-muhajim Naqsi Mali Aw Badani Aw Qatla Yakunu Hadran Wa Ladimana Alal-fail”.

In English:

«If the attacker suffers from financial or physical deficiency or is killed without the excess of violation, the damage inflicted will be vain, and he will not be responsible».

Issue 8

In Arabic:

Romanized:

“Wa Law Amma Huwal-kafi Fil-dafi Binazarah Wa Waqian Fa-huwa daminu Alal-ahwat”.

In English:

If the attacker exceeds, although, according to his own confession and despite the possibility of countering the enemy with less damage, and inflicts more damages, he will

be responsible in a precautionary manner[Musavial- Khumiyni, 2001].

It is stated in the issue that if the defender exceeds while defending and due to which some damages are inflicted on the attacker, the defender will be responsible; moreover, it is when the person has knowingly attempted to do an excessive act, namely, he knows that he is indulging in his act to excess, and the person defends in such a way that a harm is inflicted on the opposing party whether financial or bodily one and so on and so forth, the person (defender) is not responsible.

2. Necessity of defense

In fact, necessity is one of the most important terms of justifiable defense provided that dispelling the attacker is not feasible by any means like resorting to state powers and the only way to dispel is to defend against the violator; in this case a state of necessity will happen that the defender may defend against the attacker. However if, for example, a child attacks an adult and unnecessarily in order to dispel him murder or injure or beat him, here the necessity of defense will be tarnished; or a person attacks the other with a knife and the defender himself take the knife from him, here because there is no danger anymore, so the defender may not injure and/or kill the attacker. The legislator has anticipated the

necessity of defending in paragraph 3 of Article 61 of the Islamic Penal Statute.

Consequently, dispelling of attack is possible only through the commitment of crime, furthermore, when it is probable to ward off a danger, it will be illegal to commit an offense in the situation of defending. The term of necessity of defense requires that when it is feasible and fruitful to resort to state powers and forces in order to counter the threat, the defense will lose its legitimacy[Bahiri, 2002].

3. Applying the simplest means of saving by the defender:

Defense should be made by the simplest method, and when it is possible to use severe method that the necessity of dispelling warrant such rule:

In Arabic:

Romanized:

“Al-ashal Fal-ashal Ya Al-aysar Fal-aysar”.

In English:

That is, it must be observed to begin from the simplest action and then to far more drastic one.

An individual who self-defends should act in such a way that if he were a public officer he would do so. In paragraph "C" of Article 627 of the Canonical Punishment Act, when defending is as of right that resorting to state forces or any easier means to rescue will not be possible. That, of course, this

Article was repealed by the new law enacted of 2011.

In al-Ruwadah al-Bahiyah it is raised that the easiest method should be applied while defending and step by step going ahead, so to speak, if possible, the defender should dispel via officers and avoid restoring to defense.

In Arabic:

Romanized:

“... Mutaammidan Fil-difa Mutlaqan Alal-ashal Fal-ashal”.

In English:

That is, the easiest methods must be applied one after another while defending [Shahid Thani, or martyr II, 1992].

In Imam Khumiyni's (RH) Tahrir al-Wasilah issue 6 says that it is obligatory to apply the easier method at first and then the easiest one while beginning to defend. For example, if the enemy leaves his act by punishment and warning, do the same thing, and if he is not countered by that, an awful loud cry and threat should be used to dispel him and be content with it, and if he is not dispelled but by hand, be content with it, and if it is not but a stick, be content with it and so on and so forth. Observing these steps of defending depends on the possibility, opportunity and no fear of overcoming the attacker. Nonetheless, if the defender knows that he is wasting time due to following the

steps of defending and the thief overwhelms him, needless to follow it, however, the requirements of the steps are also disappeared for the fear of it and so on and so forth [Musavi al-Khumiyni, 2001] it may be said given these cases that it must not resort to defense as long as it is feasible to dispel the person by using easier and convenient methods unless there are certain evidences that the attacker is going to violate; then, the person must defend against him. Observing the steps of defending is not necessary if the person knows that due to which he is losing the time and the attacker will beat him.

Terms of realization of justifiable defense

Justifiable defense had been presented in two sets of regulations before carrying out the Islamic Penal Statute of 2013 in Iran. One of these cases was general principles of Penal Statute that was in articles 61 and 62 and the other in closing provisions of Penal Statute on the 'zirat and the offenses against persons. Justifiable defense is of some general requirement and it should be emphasized that the terms of its realization in the current and former law has not been of much different from each other. In fact, the general principles are the same but along with minor changes in writing of legal texts. The first condition for the realization of justifiable defense is to have an immediate

and serious attack. A person's life, property and reputation is hurt and there is no other way to repel the attack.

The Islamic Penal Statute of 2013 in Articles 156, 157 and 158 has brought up the subject of justifiable defense. Article 156 says: If a person commits an act considered an offense under the law for self-defense, honor, reputation, property or freedom of his own body or the other against any violation or current or impending threat with observing stages of defense, he will not be punished in case of the unite of following terms:

A- The act committed in order to ward off the threat or violation must be necessary.

B- The defense must be based on reasonable indications or rational fear.

C- The threat and violation has not been occurred owing to knowingly action or violation of his own person and the other's defense.

D- It is not practically feasible to resort to state forces without delay or their interference is not effective in repelling the violation and threat.

On this article, some cases are raised that one of which is the subject of violation. In fact this question is raised that what characteristics the violation must have? In what cases must it occurred? And that how the defense must be?

Article 156 of the Islamic Penal Statute has pointed out to one's defense of self, honor and reputation not the self: therefore, it should be said that this kind of defense is only possible for a natural person. At that, the subject that can be defended is the self with the meaning of life. On honor and reputation, it must also be said that the concept of them is largely equivalent to each other and that is prestige. On the term freedom of the body, it must be noted that no one can arrest the other as well, and it (their own body or the other) has the very meaning that it may be possible to self-defend and the other against the current or imminent threat or violation too.

Self-protection

Self literally means the body and spirit, and any act such as murder, assault and battery is considered as the aggression toward the self. If the self and life is violated, it must be defended. Aggression toward the self includes some acts that create a direct threat for the human's life and/or is responsible for a danger that threatens the physical health like refusing to give food and medication to a person who is in custody [Ardibili, 2004] Protection of the self and physical integrity and human health is one of the prestigious and valuable interests that have been always considered and supported by the legislator. Self-protection is one of the

fifth necessities and valuable interests in the Penal System of Islam, and the punishment of lextalionis (Qisas) including the lextalionis of self and the body lextalionis has been legislated to prevent any encroachment and unjust attack against the body, self and life of humans. Accordingly, if someone put unjustly the life and/or health and/or the other's body in danger, the person who was attacked is allowed to do an offense and defend himself [Validi, 1993]. Self-defense refers to a person's life. As such, defending against any attack or violation that endangers a person's life is permitted in accordance with observing some terms, conditions and circumstances. Consequently, when the life or body of other human being is attacked, he may take any necessary action in the situation of his own justifiable defense or the other.

Self-defense

One of the most important categories of criminal law in most countries of the world are crimes against persons. These crimes include any offense that is committed against physical integrity and spiritual prestige of human beings. The first category of crimes known as crimes against spiritual prestige will comprise any crime that compromises the spiritual aspect and ecclesiastical dimension of human being such

as; types of personal insult, practical and impractical slander, defamation of character, satire, kidnapping, forcible entry to another house, arrest, imprisonment and illegal detention, opening the postal correspondence, unauthorized wiretapping, a telephone pest and so on and so forth that, however, all of them are subjectively out of our discussion which is "reviewing the modern legislation of Islamic Penal Statute" despite the import of these crimes and due to being discretionary of their dominant and non-changing of the said law. The second category of crimes against persons which has appropriated the most important and severe punishments for them will be crimes against physical integrity of human or crimes. In this paper, what is related to these types of crimes in the modern Islamic Penal Statute will be the topic of discussion. Here, at first, Article 289 which is the major code of crimes is checked in order to become familiar with them, and then types of crimes and their pillars will be discussed in the next topics. Article 289 of the Islamic Penal Statute Code considers kinds of crimes as "Crime against the self, the organ and benefit in three types of intentional, quasi-intentional and sheer fault." In this article we are faced with the following points:

1. Crime has not been defined by the legislator in the article; nevertheless, here it means all crimes against the body in consequence of jurisprudential texts unlike the Penal Code, 1925, which represents all crimes that were against minor criminal offense and misdemeanor. Thus, the perpetrator in these types of crimes is called "felon" and the party injured of crime is "victim" [Ardibili, 2004].

2. Although the crime against the self is postnatal popped more into the mind as crime against an alive human being, still, since fetus is also of life and respect in penal system of Islam and Iran, in case of committing any crime against it, it will be among the crime against self or organ or benefit according as the case.

3. Legislator has divided types of crimes in the article in terms of amount of hurt; against the self, organ and benefit. The division like this, however, is considered novel by incorporating the benefit, whereas, crime against the dead has been also mentioned in law and all triple cases are referred to cases where the person is alive, as a result, it may be possible that the case is of exception.

4. What is meant by crime against the organ consists of types of hurts such as assault with signs (swelling or fractures, ecchymosed), injury and amputation.

5. What is meant by benefit is the efficiency and effectiveness of an organ which may lose its property and efficiency despite the lack of damage to the physique of organ like dementia or the loss of vision or hearing considered a kind of benefit.

6. Triple types of crime in terms of mental element; including deliberate, quasi-deliberate and sheer fault adopted jurisprudential texts that the last two types may also be applied to a variety of undeliberate crimes. Legislator has observed his loyalty to these triple categorizations in the other parts of the law. Whereas legislator in the former law had adopted a dual approach. Because he believed in the other two kinds of crimes tantamount to quasi-intentional and mere fault as well in other Article (Clause 1, the former Clause of Article 295) despite the belief in this triple division in Article 204. Now legislator has not mentioned any name of the former kinds in the law and summarized them among two types of quasi-intentional and mere fault. Definitely, it will be discussed elaborately on the kinds of crimes described in the following sections [Ardibili, 2004].

Terms of defense

Defender is not free to do a defensive act that in any way and/or by any means that he desires or in any of the ability he had to self-

defense; as such, he is required to observe conditions foreseen in the law.

1. The necessity of defense: that is, defense must be in order to discharge a right and perform a duty. At that, the conditions of escaping are impossible, and the defense is not accepted despite the possibility of escaping; then, the necessity of defense and impossibility of dispelling the threat are complement.

2. Proportionality of defense to violation and threat: defense must be proportionate to the threat and violation based on paragraph o of Article 61 of the Islamic Penal Statute and paragraph B of Article 627 of the Canonical Punishment Act. For example, the defense of property no matter how legitimate it is, it does not justify the killing of a human being; besides, in other cases similar injuries must be inflicted on the attacker by the defender as well.

3. Al-ashal Fil-ashal: that is, defense must not be more than necessity. Defense is of some degrees that the defender must begin with the easiest one: 1. Yelling; 2. Using hands, feet and a stick; 3. Applying weapons and causing injury; 4. Murder.

The efficacy of justifiable defense of the defender

Defender will be exonerated of any penal and civil responsibility in case of proving the

legitimacy of self-defense; however, as long as it has not been proven, he will be fully responsible judicially against his actions.

Cases on which the defense is permitted

1. Self-defense: the need for self-defense is conspicuous as a deposit which God has endowed human. In this case, any action that violates the self even it is from state officers and any resistance to defend will be permitted.

2. Defense of honor and reputation: chastity and temperance has also been emphasized in the Holy Quran. Penal Statute has used these two together and in one sense that according to traditional concepts the meaning of honor is dignity and nobility and the meaning of reputation is the women of family.

3. Defense of property: it is the cause of difference in opinion between scientists and legal authors. Some of them agree on justifiable defense and some not. They say the damage to property is not comparable with the damage to the self, moreover, according to the law the defense and attack must be proportionate to each other.

4. Defense of the liberty of the body: No one has the right to restrict the freedom of man. Penal Statute has specified a heavy punishment to perpetrators of divestment of liberty.

Based on Article 570 «each of the authorities and state officers who divests someone of liberty against the law or deprives them of their own regular right in the law will be condemned to dismissal from civil vocations for 3 to 5 years and imprisonment from 6 months to 3 years in addition to dismissal from service». According as Article 629 of the Canonical Punishment Act «it is legitimate to defend against the one who has the intention of stealing and kidnapping person or his property [Ardibili, 2004].

Reasons for the necessity of self-defense and honor

As passed, there is a consensus opinion among all jurists on the necessity of self-defense and honor. Because the defense of life and honor is the clear example of defense, and all reasons mentioned as the necessity of defense comprise the defense of self and honor. Particular narrations have been quoted on the defense of self and family in addition to these indications. Including Ghiyath ibn Ibrahim in al-Mutabarahas quoted Imam Sadiq (a) that Imam Baqir (a) said: When a person attacks you and has the intention of your life and property, if you are able: forestall! And knock him down! As a result, indeed! thief is in battle with God and His Messenger. Any knock on your side is up to me.

At that, in Sukuni'sal-Mutabarah we read that Imam Sadiq (a) quoted by his father (a) said: «Verily! God considers a servant whose house has been attacked and he does not battle and fight as the enemy». Furthermore, in Halabi's Sahiha, it has been raised that "the Commander of the Faithful (a) quoted by Imam Sadiq (a) said: when you are attacked by a belligerent thief; kill him! So whatever happens to him is upon my responsibility."

The order of self-defense

Hanafi jurists say: everyone draws the sword at Muslims, so their killing is obligatory. They have produced two evidences for this idea. The first one is this narration:

In Arabic:

Romanized:

“Man Shahara Alal-muslimayn Sayyifan Faqad Abtala Damah”.

In English:

"One who draw the sword at Muslims, so his bloodshed is permitted".

The second one is the intelligence that due to which it is obligatory to ward off loss. Hanafi jurists believe in four opinions (in different states) that all of which may be totally divided into two groups: A) Those who maintain that self-defense is obligatory. Their reason is the verse:

Romanized:

“Wa La Tulqu Biaydikum Ilat-tahlukah”.

In English:

"Anddo not cast yourselves with you own hands into destruction".

Their second reason is that as committing suicide is forbidden, killing any other person with impunity because the latter has committed a crime or an irreligious act is also forbidden. B) Those who disbelieve that self-defense is obligatory. Their first reason is the narration of Ibn Umarby the Prophet (PBUH):

In Arabic:

Romanized:

"Ma Yamna Ahadakum Idha Jaa Man Uridu Qatalah An Yakuna Mithla IbniAdam: al-Qatil Fin-nar Wal-maqtul Fil-jannah".

In English:

"Do not prevent the one who is going to kill you that you will be like my son Adam: the killer would be in the hell and the person killed in the paradise".

Their second reason is the speech of the Prophet (PBUH):

In Arabic:

Romanized:

"IdhaDakhala Ahadakum Fitnatan Falyakun Kakhiyra IbniAdam."

In English:

"When one of you faced with a tribulation, so be like the nobility of my son Adam".

At that, their third reason is the speech of the Prophet (PBUH)on the tribulation:

In Arabic:

Romanized:

"Ijlis Fi Baytika Fain Khifta An Yabharuka Shuais-sayfa Fakhatta Wajhaka".

In English:

"Sit at home, if you fear of panting by the ray of sword and your face is cracked".

Their fourth reason is also that Uthman did not defend of himself (Ardibili, 205: 2004).

Conditions andlimitations of justifiable defense in the Islamic PenalStatute

Every human being has the right to defend of his life, property, reputation and those who defending of them is obligatory at perilous time. It is called justifiable defense that Iran's Islamic Penal Statute and criminal regulations of other countries have also dealt with it in addition to jurisprudence of Islam. Definitely, the realization of this subject and a non-criminal action which is in normal situation incident to punishment necessitates some particular conditions that have also been subject to innovations and changes in the modern Islamic Penal Statute of 2013. The following conversation with Doctor Muhsin ahiri Jibili, the faculty of Islamic Azad University of of Pishva (Varamin) and senior attorney-at-law, is further to study different aspects of justifiable defense:

On justifiable defense as one of the modal reasons of crime, he asserted: justifiable defense has not defined in the Islamic Penal Statute, and the most cases that are listed on this issue relate to mentioning some actual examples and cases of such a thing. However, on its definition, it may be said that justifiable defense means the right of sudden dispelling or removing of an untimely threat that must be taken into action immediately. He added: modal causes or factors justifying are also cases that the criminal description of crime will be disappeared by their realization; it means that an act which has usually been an offense will not be considered as an offense by the legislator any more in particular circumstances, and it is not an offense to be punished due to considering it as a justified act [Gulduziyan, 2007].

Modern Penal Statute on justifiable defense

Stating that the method of writing of this regulation on justifiable defense has changed and more preciseness may be seen on its articles, Doctor Ahiri Jibili added: The first condition of justifiable defense is that it must be against a sudden and serious attack, a person's life, property and dignity are subject to hurt, and also it is obligatory that there is no other way to ward off the attack.

He, along with stating that justifiable defense is discussed by the modern Islamic Penal Statute in Articles 156, 157 and 158, said: Article 156 says: if a person commits an act which is crime according to the law in the situation of defending of self, honor, reputation, property or liberty of his own body or the other against any kind of violation or current or imminent threat by observing the stages of defense, he will not be punished in case of the union of these condition: A) an act committed must be considered as necessity to counter the violation or threat. B) Defense must be evidenced by reasonable indications or intellectual fear. C) The threat and violation have not been happened due to a knowingly action or the person's own violation and the other's defense. D) Resorting to state forces without delay is practically impossible or their interference in warding off the threat and violation is not effective. He stated: some cases are raised on this article that one of which is the topic of violation. It means that; what properties must violation have? What cases must violation happen toward and how must the defense be?

Article 156 of the Islamic Penal Statute has mentioned the one's defense of self, honor and reputation not a person, therefore, it is clear that this kind of defense in only

possible for the natural person. At that, the topic that may be defended is the self with the sense of life. On honor and reputation, it should be said that the concept of these two terms are largely equivalent to each other and means prestige. He continued: Regarding the meaning of the freedom of the body, it must be noted that no one may arrest the other, and “their own body or the other” also means that it is feasible to defend of the self or the other as well against current or imminent threat or violation.

The law of 1996 on justifiable defense

Article 61 of the Islamic Penal Statute (1996): «Everyone commits an act which is an offense against any kind of current violation and/or imminent threat in the situation of defending of the self or honor and/or reputation and/or their own property of the other and/or the liberty of their own body or the other, in case of the union of the following conditions they will not be punished:

A- Being afraid of self, honor or reputation or property must be evidenced by reasonable indications.

B- The proportionality of defense to attack.

C- Resorting to state forces or any other easier means to rescue is impossible.»

Terms of justifiable defense in the modern Islamic Penal Statute

Doctor ahiri Jibili expressed: The other case is the Clause 3 of Article 156 of the modern Islamic Penal Statute that says: blood money, or Diyya, is also lapsed in cases of justifiable defense except in the case of defense against violation of a madman that the blood money is paid by the treasury of an Islamic state. In this regard it should be noted that lapsing the blood money in cases of justifiable defense is acceptable, nevertheless, usually, when an act is not an offense, the blood money will not be paid to it. He continued: the Clause 1 of Article 156 also says: when the defense of self, reputation, honor, property and the liberty of other’s body is permitted that the person has been the next of kin of the defender, or the responsibility of defending him has been upon the defender, or the person has been incapable of defending or asking for help, or the person has been in a situation that there is no possibility to call for help. In this clause, legislator has commingled all terms, and in my opinion it is a noteworthy innovation and in fact a kind of commingling of conditions. He reminded: In the past, terms of justifiable defense had to be searched among different articles. Now it should be noted that putting together of these conditions is consistent with the principles of legislation, meanwhile, legislator has had a

better performance on this issue which is admirable [Gulduziyan, 2007].

CONCLUSION

Comparing the articles of Islamic law of 1996 with the modern legislation of 2013, it may be said that everyone will not be prosecuted and punished in case of the union of following conditions for self-defending or honor and/or reputation and/or their own property or the other and/or liberty of their own body or the other against any current violation and/or the imminent risk of an action which is an offense. Given the modern legal articles and changes made in comparison with the current law, it is specified that the modern legislator has put out of the question the clause of "being consistent" of defense against the threat and violation – as the major and most important clause of justifiable defense in the current law- to prove it, moreover, in contrast he has emphasized dually on the "necessity" of defense in warding off a threat and violation as a main and major condition of occurrence of justifiable defense. Although, in the current law, the legislator has also taken into consideration the necessity of the commission of criminal action in the situation of defense by mentioning phrases such as "exhaustion of state powers or any easier

means for saving" and "the defense culminating in killing".

One of the most remarkable points of the modern legislations its reference to the necessity of "being extemporaneous and primitive" of the defense. Paragraph 3 of Article 155 of the modern legislation has emphasized this important point. Whereas there has been no reference to it in the current law, however, the practical procedure of most of courts has been consistent in the acceptance of being primitive of defense as one of the conditions of justifiable defense. Another issue considered in the modern legislation the issue of "burden of proof" in justifiable defense. The modern legislator has lied the burden of proof of the allegation of non-compliance with terms of defense upon the attacker in Clause 2 of the Article 155 where the defense principle confirmed but its terms not proven along with presuming the occurrence and compliance of requisite conditions for defense.

Islamic Penal Statute, 2013, in Articles 156, 157 and 158 has discussed the subject of justifiable defense. Article 156 says: when every person perpetrated an action which is a crime under the law against self-defending, honor, reputation, property or liberty of their own body or the other or against any

violation or current or impending threat with respecting the stages of defense, they will not be punished in case of the union of the following conditions:

A- The action conducted is to ward off a threat or invasion;

B- The defense must be evidenced by reasonable indications or rational fear;

C- The threat or violation has not been committed due to a conscious actor the person's own violation and the other's defense;

D- Resorting to governmental forces without delay is not feasible to all intents and purposes or their interference to repel the threat or violation is not effective.

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