

Jurisprudence Investigation of the Loss of Retaliation from Criminal because of the Provocation of the Victim

Retribution is a punishment that, although it causes the destruction of a member of society, but due to its role in preventing crime, murder, rape, and bloodshed, it causes the survival of individuals and maintains social security and justice. In Iranian law, special laws have been enacted for retribution in order to prevent any kind of murder and crime. In addition to the enactment of retribution laws, the abolition of retribution for a criminal has also been proposed in some cases. Also, in the Islamic legal system, despite accepting the principle of retribution for crimes against the physical integrity of individuals, it has emphasized the preference for forgiveness and forgiveness and has prioritized it over revenge for a criminal. In the beginning of criminal law, the punishment of behaviors was based on the type of behavior and the degree of their blameworthiness; Therefore, not only children and people lacking reason, but also objects and animals were punished, and this belief has existed throughout the history of Western law that reprehensible behavior, whether it originates from anyone or anything, is distasteful in the eyes of people and deserves punishment in the eyes of society. After the changes that gradually occurred in criminal law and the recognition of its criminals, not only did humans remain within the scope of criminal law, but also some people who did not have maturity, reason, or complete knowledge and awareness were excluded from the scope of criminal responsibility. This achievement did not end there; rather, people who commit crimes due to lack of control over their behavior and actions do not have full responsibility. The excuse of severe provocation, or cruelty and aggression, is one of these cases that, due to the arousal and excitement it creates in the perpetrator, must be treated differently. This idea has penetrated not only into minor crimes, which have a small share in violating social norms, but also into serious and old crimes, such as murder, which are always dealt with most severely in the criminal laws of countries. It is well known that life is equal to life and retribution is carried out against intentional killing of a person, but sometimes the victim himself also plays a role in the commission of the crime, while practically no punishment or effect is imposed on his role in the realization of the criminal act. In the discussion of retribution - whether of the soul or of a member - sometimes the victim, by inciting the criminal, forces him to commit a crime in some way; for example, the victim attacks or insults and insults the criminal; in a way that takes him out of his normal state and pushes him towards committing a crime. The jurisprudential view of the issue of retribution for the soul and body is generally that such matters do not play a role in the fulfillment of retribution and do not exempt the perpetrator from the punishment of retribution. Currently, according to the Islamic Penal Code, such victimized behaviors are not held responsible; therefore, reconsidering the possibility of retribution for the perpetrator in cases of severe provocation or cruelty and aggression by the victim is of great importance, and this issue is considered in the present article, so that the responsibility for part of the punishment is placed on the victim and, in light of this, deterrence, which is one of the goals of punishment, is achieved. Some research has been conducted in this regard; Syriai, Mahdavi-pour and Hosseini, 1401, in a study entitled: "A jurisprudential and legal study of the fall of qisas in the assumption of the victim's effective provocation", believe: Victimological studies, based on the realities of social life, indicate the effective and accelerating role of the victim in many crimes leading to murder, and the level of punishment for the offender should also be determined by considering the circumstances of the act and in proportion to the level of his responsibility. Gholamloo and Mir Majidi, 1400, in a study entitled: "The defense of loss of control; legal developments in murder caused by intense emotional provocation", believe: The defense of loss of control is a new and special defense for perpetrators who lose control and kill the victim due to provocative behaviors, and if they successfully invoke this relative defense, they are convicted of unintentional murder instead of intentional murder.

The study of criminal law indicates that sometimes, due to specific circumstances and lack of control over their behavior and actions, people are exempt from criminal liability, and as a result, in certain cases, conditions can be considered for the fall of retribution; one of these special circumstances is the situation where the victim, due to the injustice he commits against the criminal, provides the cause of his arousal and

incitement and causes the crime; in fact, the presence of inciting factors causes the power of recognition and the power of controlling behavior, in general and in part, to be destroyed. In this case, the intention of the perpetrator may be destroyed and the necessary psychological element for his criminal liability may not be present. In such a case, it is necessary to consider the role of the inciter in determining the punishment. In fact, it can be said that the belief that the victim is an innocent and oppressed person is not always true, and sometimes the victim helps the crime by his actions and words and accelerates the crime. In Iranian criminal law, although Article 38, Section 5 of the Islamic Penal Code, declares the provocative behavior and speech of the victim as a mitigating factor in the punishment of the offender, yet, no detailed and comprehensive consideration has been given to the criminal liability of the perpetrators of murder in the situation of intense emotions resulting from excitement and loss of control, so that this factor can be considered a direction for mitigating the arbitrary application of punishment; therefore, intense excitement and cruelty and aggression of the victim do not have a specific and precise legislative aspect in Iranian criminal law; therefore, the legislator must make every effort in this regard. Based on some jurisprudential narrations, including Sahih al-Halabi, it can be said: If the victim is the initiator and instigator of aggression against another, and the perpetrator is provoked and reacts immediately and naturally as a result of that provocation, which leads to a crime against the victim, the right to retribution is waived from the victim, who was the instigator, and the punishment is reduced.