



Human dignity and man retaliation against woman

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ABSTRACT

The principle of respecting human dignity plays a vital role in fundamental ethical norms related to human rights. In the first glance and through scrutiny in Iranian laws, we face with a kind of challenge in the context. For instance, some punishment such as retaliation, stoning to death, rigid body, amputation are wrong attributed to human dignity but what are the views of opponents and proponents of such punishments? On the same basis, present paper provides a brief explanation on human dignity and studies one of these punishments (retaliation).

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Introduction

In international conventions approved on human rights, different articles are observed to defend human dignity such as Human Right Declaration (article 5), Political and Civil Rights International Covenant (articles 6 & 7), Convention on Torture Forbiddance (article 1 & 16), and many other conventions that have supported the forbiddance of torture, physical abuse, violence and insulting human dignity. In Iranian Constitutional Law to which other laws should be adapted, there are principles that have clearly considered human dignity such as principle 2(6) which reads: Islamic Republic of Iran is a regime based on belief in ... (6) high value and dignity of human and freedom alongside responsibility against the Divinity". In many principles, human dignity is implicitly emphasized: principle 3(14) (meeting the multiple rights of people), principle 19 (no superiority of people due to color, race or language), principle 20 (equality of man and woman in their human rights), principle 32 (the prohibition of illegal arrests and detentions), principle 38 (torture forbiddance), principle 39 (prohibition of defalcation). Followed by the Constitutional Law, Islamic Penal Code which addresses to sole, property and dignity of humans has paid attention to human dignity and in many cases, lawmaker has implicitly supported this fundamental principle: articles 570 (forbiddance of depriving human freedom), 575 (illegal confinement), 578 (physical abuse negates human dignity) and 580 (breach of close). By contemplating in Iranian laws especially criminal ones as the title of present study, we find conflict or, in other words, to cases seem are in challenge with Constitutional Law principles and, consequently, penal code. To this end, one can point retaliation, stoning to death, rigid body and amputation which should be studied on their compatibility or incompatibility with human right principles, violence and serious treatments in such punishment and the fact that what is the status of such punishments in Islamic penal policy? In the meantime, the cases such as paying blood – money in retaliate a man who has killed a woman are studied in which also there is no violence but it apparently is in conflict with equality principle emanated from human inner dignity. On this basis, current paper provides a brief discussion on human dignity and addresses to

retaliation especially retaliating the man against woman by paying blood – money.

Concept, Background and types of dignity

Human dignity concept

Due to clarifying human status, dignity is one of the most important items in human life since protecting all human assets owes to their dignity. Such respect requires dignity in all human moods. Irrespective of its scope, human dignity principle is at least accepted by most connoisseurs (Movahed, 2002: 424). There are different insights on the reasons and basis of human dignity emanated from different views on human reality and humanity. Among Islamic connoisseurs, the main reason of human dignity is that the man is the Caliphate of Allah and the comprehensiveness of his existence. Allah has considered dignity for human and has respected man from the beginning of creation and as given his superiority to other creatures (Asra, 70). Despite of his material body, it is prayed by angels since human enjoys the sole of the Divinity (Hajar, 29 & 30). Therefore, human is respected since he/she enjoys the sole of the Divinity and all humans enjoy such inner dignity.

In West, the common theory is that human dignity backs to his "autonomy" and freedom. Dignity has different meanings, the most important ones include value, respect, dignity, honor, esteem, humanity, position, situation, degree, rank, status, being free of corruption, forgiveness, generosity and stalwartness (Direx, 2010: 140 – 144). Kant defines dignity as an inner quality, absolute value, higher than any other value and without any imagination of similarity (England, 2000: 16). Kant's attitude toward human dignity is based on the will of free human and his/her competency for a rational selection. Human dignity points out individuals' value. When all people are internally equal, it is emanated from ethical and rational autonomy as a basis for human rights (Maxine, 2006: 32).

Background

In international era, human fundamental rights and dignity was recognized by UN founding and the members of human community were asked to respect it irrespective of beliefs, race and gender and to punish its violation.

Followed by such approach, the policies of many lawmakers were based on regulating penal code to support human dignity. Historically, although the claim that human dignity as a basis of human rights is as old as human social history and human thought, it is not empty of reality. In the meantime, one should not ignore the fact that theoretically, precise and scientific clarification and analysis of human dignity roots in 18th century philosophical thoughts. In fact and for the first time, Emanuel Kant (1724 – 1804) clarified human right thinking fully rationally by “human inner independence and ethical autonomy” as well as other “ethical absolute decrees and principles” including “human ultimate principle “and then other philosophers such as McDougal, Lassol and Chen provided “dignity – based theory” to support and justify human rights. Practically, confessing human dignity is not so old in official and obliging texts. The maximum historic records in national level are French Human and Citizenship Rights (1789) and UN Charter (1945) in internal level (Rahiminejad, 2008: 64).

Types of dignity

There are two types of dignity: inner and acquired. Inner dignity refers to human esteem and honor shared by all humans due to their inner independence, rational ability and Divine aspects. It is due to the fact human is the Caliphate of the Divinity: inner position of Divine Caliphate is not something can be breached by corruption and blooding. They cannot damage human Divine Caliphate since when the Divinity talks with angels on Caliphate on the earth (*when your lord said to the angels: 'i am placing on the earth a caliph,*), angels ask and object (*they replied: 'will you put there who corrupts and sheds blood*) while Allah answers (*'i know what you do not know. '*). Such response indicates the fact that inner position of the Divine Caliphate cannot be breached by corruption and blooding. In fact, what blamed is his/her behavior and action and human action is separated from his nature. Therefore, criminal behavior does not negate human inner dignity (ibid: 40). Acquired dignity is a kind of esteem and honor acquired by humans willfully through using inner talents in the route of growth and perfection and ethical virtues. In other words, although all people are equal in terms of esteem, they are able to pass perfection steps by using their own talents and achieve highest degrees. Thus human behavior creates different statuses by which some are superior to others (ibid: 30). The most important criterion of acquired dignity based on religious teachings is “belief and abstinence”. Verse 13 of Hajarat Chapter reads: “*people, we have created you from a male and a female, and made you into nations and tribes that you might know one another. The noblest of you before Allah is the most righteous of you*”. Contemplating this verse shows some points: firstly, gender, race, language, liberty and slavery have no relations to human dignity; secondly, this verse does not consider human dignity uniquely to valued dignity. It shows that all people have dignity while the noblest people are the most righteous ones. Thirdly, dignity based on abstinence and belief in Allah can be a benchmark of superiority to others in the Next World not in this world. In other words, valued dignity has no impact on social rights; in social rights all humans – irrespective of belief and abstinence – enjoy such rights (Montazeri cited by Rahiminejad: 30 – 31). According to above points, we mean human inner dignity in current study.

Retaliation

Retaliation elucidation

In article 16 of Islamic Penal Code (2013), Iranian lawmaker has defined retaliation as religious punishment as below: “retaliation is the main punishment of intentional crime on body, organs and interests.” Retaliation is a kind of execution

in response to intentional homicide and the attendance of plaintiff is highlighted so that it is seen as a right rather than a punishment. The most important reasons mentioned by retaliation opponents are that killing is violation and the punishment of killing is violation for violation. Killing is in conflict with the feeling of philanthropy in today civilization which respects the right of life for all humans and would damage human dignity. Concerning article 3 & 5 of Human Rights Global Declaration, execution is to negate human fundamental right (retaliation is a kind of execution).

The proponents of Islamic punishments believe that anyone has human dignity and he/she is responsible for keeping it and he/she should not violate others' rights. If human does not perform his task and violates the rights of others like animals, is punishing him in contrary with human dignity? He has not kept his dignity and such punishment is the practical result with two effects: violating others' rights and eliminating his dignity. Based on the same thinking, Abdulghader Audeh says that punishments like lash would not mitigate the honor of a person who has not respected his human dignity. Clarifying and interpreting any philosophy should be based on social and individual interests including this and next words. It can be only make to practice by legislator. On the one hand, such verdicts may be seemed harsh while they are Divine gifts on the other hand. It is like a father who is anger of his child since he likes him/her and is interested to his/her future. He will be annoyed if he/she commits an offence while he may see more offensive behavior but not be annoyed the same. Such demeanor is due father's interest to child and not paying attention to others. What interested should be real not false and superficial namely the feeling governed by wisdom. Concerning the execution of punishments against men and women, Holy Quran clarifies: “*in the religion of Allah, let no tenderness for them seize you if you believe in Allah and the last day*” since there is no room for compassion whether the crime is committed in silence or in social. Islam has assigned it to the Next World while if it has social reflections, some punishments are approved by a series of aims since by sins of someone and its dissemination in the society, the society comes closer to precipice. It is like a virus released in computer networks and causes huge losses. Here, lawmaker should intervene and pose appropriate punishments due to its interest to society. Any negligence can pose irrevocable damages on society (Raei: 243).

Since Islam is a comprehensive religion and considers all aspects of events, it has considered as a priority to conduct people toward ultimate perfection and to destroy the barriers of their perfection through modification and correction of criminals to personal interests. Not punishing the criminals would lead into the courage of other criminals or crime extension in the society, tendency to good deeds is decreased and, in contrary, inclination to sins is improved (ibid: 224). Holy Quran believes that reviving one person is life for all and killing one person is to kill all: “*whoever killed a soul, except for a soul slain, or for sedition in the earth, it should be considered as though he had killed all mankind*” (Al – Maedeh: 32). On this basis, the importance of life and death of one human is fully revealed in Holy Quran. “*Believers, retaliation is decreed for you concerning the killed*” and “*owners of minds, for you in retaliation are life*” (Al-Baqara: 178 & 179). On this basis retaliation is the punishment for murderer and retaliation is gives life to human society. The reason that retaliations is seen as the factor of life for society is that life in Holy Quran differs from planet life whose owners have no goal out of the scope of nutrition, growth and proliferation and out of animal life, they

are people out of the region of imagination and have no motivation rather than lust and anger; rather is human and spiritual life along with rational argument consistent with attitude of beloved of God and such life cannot be achieved without aspiration and it is the excellent meaning of rare life in the light of believing in retaliation and operating it by which the dead person by retaliation can be achieved to spiritual life if he asked forgiveness and accepted by Divinity and others too. It means that not only a body achieves spiritual life by retaliation, it can guarantee social life since if there was no verdict of retaliation in Islamic teachings and offenders felt security, people's life was jeopardized. Hence, retaliation prevents killing many non-sinful persons by stone – heart individuals. In other words, retaliation is useful for both murderer since if he knows before crime that he/she will be retaliated, he/she would refuse committing murder and he/she would achieve spiritual life if he/she repents. It is also useful for victim since he will not be remained in oppression. It is also useful for heirs of a victim since they revenge. It is useful for the society since others learn and fear of retaliation and tyranny blooding and murders are prevented. As mentioned, Holy Quran reads: “*owners of minds, for you in retaliation are life in order that you are cautious*”. It has two messages: one religious namely wise people and the other one for outside religion. The internal one means clear understanding of retaliation without going to extremes, depth knowledge on the quality of executing retaliation without any prejudice and fairness without ignorance and negligence and avoiding bribery and tribalism and other ethical, social and political bad deeds. The external one means to understand philosophical, verbal and legal interests and benchmarks clearly and profound knowledge on Islamic laws basics and the main resources to induct such basics by which no one will consider justice as violence or old (Jawadi Amoli, 2010: 1)

One should know that Islam does not support any kind of retaliation. Rather, retaliation has its own borders and it is not tens of murders are happening for one murder or to revenge one murder, one tribe or family is revenged unreasonably as happened before Islam and even common nowadays in some nations. On the other hand one cannot ignore the rights of innocent people and told the Heirs of victim that they do not have the right of defense and retaliation since it would give the room to criminals and to eliminate the blood of non-guilty persons and ignoring revenge. Both are dangerous. Therefore, eye-for-eye is not a good rationality. Based on abovementioned verses and arguments, accepting retaliation is Islamic penal code is based on human dignity.

Retaliating man against woman

Another issue discussable on retaliation as a serious challenges of human dignity in Islamic penal policy and, consequently, in Iran, is to pay blood – money difference to a (male) murderer who has killed a woman. In article 382 of Islamic penal code (2013), the lawmaker states: “when a Muslim woman is killed intentionally, the right of retaliation is determined but when the murderer is a Muslim man, Heirs of victim should pay half of his full blood – money.” There is a consensus among great Shiite jurists on paying blood – money difference to a man who has killed a woman deliberately and there is no disagreement in this regard. Likewise, in no jurisprudential book, one can see no disagreement between antecedents or precedents and such consensus is sufficient (Solukalayi, 2004: 60). The main reasons mentioned by Shiite jurists on paying half of full blood – money to a man who has killed a woman is the existence of paramount narrations and

concurrence among jurists and it is less referred to Holy Quran (Safei Sarvestani, 1999: 66).

In contrary to Shiite jurists, Sunni ones believe that one can retaliate a man against a woman without any need to pay blood – money difference by Heirs of victim. There is concurrence in this regard among Sunni jurisprudents. The reasons mentioned by Shiite jurists on the necessity to pay blood – money difference on retaliation of a man against a woman include:

Hold Book: Shiite jurists have less referred to holy Quran and have put their argument on the basis of narrations and consensus. The only referable verse is verse 178 of Al-Baqara Chapter: “*believers, retaliation are decreed for you concerning the killed. A free (man) for a free (man), a slave for a slave, and a female for a female.*”

The **important** point is that “whether this verse has the meaning or not? Some believe that “Emamieh jurists have used their concurrence on the possibility to kill a man against a woman. Therefore the concept of the verse is similar to this reason. Here, the concept is hallmark while we ignore it since we mentioned a stronger reason” (Ardabili: 671 – 672). In contrary, some jurists like Ebn Edris believe that one can perceive no concept from this verse: “female for a female does not mean that man is not killed for a woman” (Ebn Edris: 309). In contrary to opponents, we should note that if mal is not retaliated for a female, a female should not be also killed for a male while no one believes this. Female for a female is not a barrier on a male for a male since this verdict does not breach another verdict. In the meantime, the verse shows that only murderer should be retaliated not anyone else. For instance, if a free human killed another free human, he should be retaliated not his/her slave. It is justified by this statement that murder is superior to murdered and murderer's slave should be killed since murdered is in his social rank. Noteworthy, it is compatible to the dignity of this verse descent. It is described in Majma Al-Bayan as: “this verse was sent for two Arabian tribes since was superior to another one. They get married with their females without dowry. They promised that if one of their slaves is killed, they will kill people from other tribe namely one male from their tribe for one female from ours and two males from their tribe for a male from ours (Al-Tabarsi, vol. 1: 264). If we do not consider opposition to this verse, we should refer to the conditions of descent by which one cannot induct inequality of male and female.

Narrations: The most important documents by Shiite jurists are news and narrations which include 15 ones in well – known books of which 10 ones have valid evidences. However, it should be noted that the narration mentioned in Shiite books are clearly in contrary to Holy Quran. For instance, in Al – Kafi, it is said that stoning to death is mentioned in holy Quran: “Stone to death old man and woman since they have passed the time of lust. Can we say that such verse is eliminated from Holy Quran (Sanei, 2004: 58). Likewise, some contemporary jurists believe that the main deficiency of such narrations is their opposition to book and wisdom and they should be put aside. Concerning the opposition of such narrations to Holy Quran, they believe: “if a man kills his wife and heirs of victim demand to kill him, they should half of blood – money so that he can be killed and retaliated while if a woman kills her husband, we pay nothing to her which is a kind of tyranny. My view is that this is discrimination which is a tyranny and such narrations cannot be helpful even if they are high in number. Therefore, the norm is that narrations in contrary to Holy Quran are not valid, right and fair and I compared the narrations whit this verse that Islamic laws are just and justice is a pillar not minor principle of religion and I observed that they are not the same. I believe that this is

tyranny rather than justice and most people believe that it is tyranny (ibid: 59). However, some object that this is not acceptable: "it can be accepted if it can be proved that woman and man difference in blood – money and retaliation is tyranny since both human personalities are equal and, consequently, they should enjoy similar rights. Is the origination of blood – money and retaliation a human reality so that one can conclude man and woman are equal or other factors such economic structure may be the origination of blood – money namely the blood – money and retaliation for man and woman are different since economic role by male is more than female's?" (Hajidehabadi: 6). In response, one should say that such objection has no religious and scientific basis since such verdict is true for small children, old men and disabled men to whom household economy is not dependent and such justification does not involve this. Meanwhile, blood – money is based on breadwinner so that we can compare it with justice. It is a financial discussion which was common before Islam. The fact that in a crime, one can pay money to kill but in another case one can kill without paying money is in contrary to justice and negates verses on tyranny. They are also in contrary to verses on retaliation (verse 179, Al – Baqara Chapter). These verses argue for countermeasures while when we believe in paying blood – money difference by woman's heirs of victim, it is not a countermeasure since in addition to retaliation, we have received blood – money. It means that we have considered two punishments for a single crime which is in contrary to principles and no jurists believe that since when blood – money is accepted, blooding is haram and retaliation should be prevented.

Another argument is that Islamic jurists believe that when a woman kills a man, one can only retaliate her and there is no need to pay blood – money difference. The basis of their argument is the forbiddance of double punishment. On this basis, if we believe in this rule, victim should not demand more than his life from society or murderer. How we do not convict murderer to more than his life while we order the victim (female) to whom murderer has committed tyranny to pay blood – money difference in addition to her life! It is in contrary to double punishment forbiddance rule and considering two punishments (retaliation and blood – money difference payment by victim).

Another argument by proponents of blood – money difference payment – inequality of male and female in blood – money – is male breadwinning. It can be easily rejected since the basis of this reason is that woman should pay blood – money in both conditions (whether she is murderer or murdered) to the family of man since in both crimes, breadwinner is dead – as the origination of blood – money proponents.

Noteworthy, some have argues that there are two types of verdicts: on is on esteem in which there are punishments equal for both men and women and another is on property such as heritage in which female's share is half a man. Since retaliation is a verdict of esteem, men and women are equal while since blood – money is a verdict on property, the share of female is half a male (Al-Maverdi Al – Basry, vol. 12: 9).

Consensus: The third reason mentioned by Shiite jurists to pay blood – money difference by Heirs of victim is consensus. One should say that there is no room for consensus on Ijtihad (practice of divine science). It can be used when there are no evidences by Holy Quran or Tradition. Mohaghegh Ardabili has rejected consensus and has said that "as if there is consensus". Additionally, consensus is tangible and many consensus claimants have breached such claims in many cases. Sahib Al –

Hadayegh asserts: "in over seventy cases, Sheikh Toosi has breached his consensus claim" (Sanei, ibid: 63 – 64).

Conclusion

According to above points, retaliation in penal policy is not in contrary to human dignity since Islam is a comprehensive religion and considers all aspects of events, it has considered as a priority to conduct people toward ultimate perfection and to destroy the barriers of their perfection through modification and correction of criminals to personal interests. Holy Quran believes that reviving one person is life for all and killing one person is to kill all: (Al – Maedah: 32). If there was no verdict of retaliation in Islamic teachings and offenders felt security, people's life was jeopardized. Hence, retaliation prevents killing many non-sinful persons by stone – heart individuals. Retaliation is useful for both murderers since if he knows before crime that he/she will be retaliated, he/she would refuse committing murder and he/she would achieve spiritual life if he/she repents. It is also useful for victim since he will not be remained in oppression. Concerning inequality in male and female retaliation, one should say that it is not compatible with human dignity. If we believe in paying blood – money difference by heirs of victim, it will not be countermeasure and it is in contrary to "not consider more than life punishment for murderer" while the victim (female) who has lost her life), the heirs of victim should also pay blood – money difference to criminal. Likewise, have considered two punishments for one crime (retaliation for murderer and blood – money difference payment for heirs of victim) which is in contrary with principles and none of the jurists believe it. According to such arguments and owing to the fact that blood – money difference payment is not mentioned in Holy Quran and the opposition of blood – money difference payment narrations with Holy Book and human dignity principle, we should try to remove such challenge. As lawmaker has considered the blood – money for Muslims and non-Muslims (religious minorities recognized in the Constitutional Law) based on the governmental decrees by Legal Guardianship in article 554 of Islamic penal code (2013), it is expected that a similar law is devised for equality on male and female retaliation by considering human dignity principle.

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