



MURDER LICENSE FOR MURDER IN THE MARCH; REITERATED IN 2013 APPROVED ISLAMIC PENAL CODE REGARDING MAHDUR AL-DAMM (DESERVING DEATH)

Mohaddeseh Sadeghian Lemraski, Kalantari, Iraj Goldoozian

Abstrak: Dalam hukum kasus Iran, hukuman untuk pembunuhan yang disengaja adalah qisas. Tetapi beberapa aturan mengenai ini telah dihapuskan. Di antara kasus-kasus tersebut adalah pembunuhan yang dilakukan oleh suami yang menemukan istrinya berzina dengan laki-laki lain; kemudian sang suami membunuh keduanya (Murder in March). Pasal 302 dari Hukum Pidana Islam 2013, sesuai dengan pendapat ahli hukum terkemuka dari Imamiyah, menganggap bahwa pembunuhan istri dan pezina oleh suami menjadi pengecualian dalam hukum retribusi. Terlepas dari semua kritik terhadap hukum pidana Islam yang baru, hanya ada sedikit perubahan pada pasal-pasal yang tersebut. Salah satunya adalah Pasal 630 dari Hukum Pidana Islam tentang sanksi. Dari perspektif hukum, Klausul "E", Pasal 302 dapat disalahgunakan oleh pembunuh profesional dan dinyatakan sebagai Murder in March. Meskipun, legislator telah menetapkan hukuman ta'zir atau "pencegah" dalam undang-undang baru untuk menghindari tindakan sewenang-wenang tanpa izin dari pengadilan dan tindakan yang salah, pelaku menganggap diri mereka benar untuk melakukan pembunuhan ini. Dari itu, universalitas dari aturan hukum tersebut harus dikurangi untuk menghindari tindakan sewenang-wenang dalam kasus semacam itu. Penelitian ini mengkaji

pendapat para ahli hukum dan kritiknya mengenai lisensi pembunuhan dalam Murder in March yang ditegaskan dalam Hukum Pidana Islam yang disetujui pada 2013 tentang Mahdor al-Adam.

Kata kunci: Murder in the March, Islamic Punishment Code, Mahdor al-Adam, adultery, qisas, defense

Abstract: In the case of Iran, the punishment for a deliberate murder following the religion of Islam is retribution of the soul (*qisas*), but in some cases, several retaliation orders have been eliminated. Of such cases is Murder in the March, where a husband finds out that his wife committing adultery with another man, and the husband then murders them. In Iran, Article 302 of Islamic Punishment Code of 2013, complying with Imamiyah jurisprudence, considers the murder of the wife and the adulterer by the husband the exclusion of retribution. Despite all criticisms made in the new Islamic Penal Code, it has again been reiterated and is slightly changed in the content of the articles. They are still binding in accordance with the Article 630 of Islamic Punishment Code of sanctions. From the perspective of the case law, the Clause "E", Article 302 of Islamic Penal Code can be misused by professional killers and be set forth as the Murder in the March. Although, the legislator has put punishment for Ta'zir or "deterrent" in the new law for arbitrary action without permission from the court and also taking measure based on the wrong belief since in many cases, the perpetrators consider themselves right to commit this murder. It seems that the universality of the above decree has to be reduced and the punishment level for the arbitrary actions in such cases has to be added. This research studies the well-known comment of the jurisprudents and its critique regarding Murder in the March related Murder License; reiterated in the Islamic Punishment Code approved in 2013 concerning Mahdor al-Adam.

Keywords: Murder in the March, Islamic Punishment Code, Mahdor al-Adam, adultery, qisas, defense

Introduction

This paper aim at explaining the issue of Murder in the March related Murder License; reiterated in the Islamic Punishment Code approved in 2013 concerning Mahdor al-Adam, which the legislator has set forth despite all criticisms.

It can be said that the Article 63o of the 5th book of the Islamic Punishment Code “Sanctions”, known as Murder in the March, is the most controversial article related to honor killings. In Article 639 of the Sanctions part, the legislator has considered the murder of a man committing adultery with a married woman and also the killing of the woman in case of the woman’s subjection (*tamkin*) to this action permissible. In other words, in such case the husband is permitted to murder or assault the wife and the other man. Since this practice is allowed, no punishment will follow (Mehrpour, 1996, 173).

This article was annexed to the Islamic Penal Code in 1996. The above order in this article has been reiterated in the General Penal Code and based on the ex-article 179. The philosophical basis of Article 630 can be viewed from three perspectives: 1) the basis of prescribing such an order is the legitimate defense of grace and honor. 2) It is based on the disposal of dishonor and protecting and preserving the ethics and security of society. 3) This article is rooted in the perpetrator’s emotional excitement and stimulation and his/her departure from the normal state and fail to accurately decide due to facing the above-mentioned state (Kazemi Sarkane, 2019, 96-97).

The provision for this murder being allowed is that, first, the man only sees his wife committing adultery with another man; thus, it will not include other women like sister, daughter or mother. Second, the husband has to observe them while committing adultery to make murder allowable. Also, the husband must prove the action of adultery commitment. Third, the murder has to occur at the time of observing the action of adultery. Fourth, for the license to kill and to be exempted from punishment. There is no difference between adultery and non-adultery. Fifth, it does not matter if the husband encounters the scene of the illegitimate relationship between his wife and the other man accidentally or knowingly and as preplanned. The provisions of the Article 639 are cited in many jurisprudential books, and most of the jurists issued the Fatwa in accordance with this order; though

some have argued about it and doubted its basis (Mehrpour, 1996, 173-174).

However, through investigating the jurists' evidence and phrases, it is clarified that for the killing license of the wife, even in case of the knowledge of Motaveh (compliance), there has no valid reason for, and from the narrations about, permitting the abusive killing. In the case of observing adultery with the wife, the verdict of the situation does not mean to be used as "the *Zani* being Mahdor al-Adam" and the only thing to do when accepting the document and the implication of narratives is not to execute retribution against a murderer who has seen *Zani* (adulterous man) in adultery with his wife and killed him. Subject to this condition is that four just witnesses to be presented before the court or confirmed by the victim's avenger-of-blood. The present research aims to discuss and analyze and review Murder in the March's Murder License, reiterated in the Islamic Punishment Code approved in 2013 concerning Mahdor al-Adam.

This study uses a library and content analysis method on the jurisprudences and related documents in order to discuss and analyze the abovementioned Article and its drawbacks.

History and Terminology of the Subject

The subject of license for murder of the *zani* (male adulterer) and *zanyah* (female adulterer) by the *zanyah's* husband is also an issue in the oldest civilizations. From the Assyrians' view, the murder of a woman committing adultery by the husband due to betrayal is considered the ultimate right of the husband. In Japanese empire, if a husband sees his wife betraying and committing adultery with another man, the husband could kill both of them on the spot. In Greece and the 5th century, direct retaliation (*qisas*) was permitted in certain circumstances. For this, if a man observed an illegitimate relationship between a woman and a man or comforter or his wife or daughter with another man, he was allowed to murder them. In the ancient Rome law, in addition to the husband, the father had such right to kill in case of finding his wife or daughter committing adultery with a man (Habibzade, 2001,93).

In Iran, the first legal text on the subject of Article 179 of the General Penal Code was adopted in 1925. Pursuant with this

article, the husband viewing his wife with another man in march or while conceiving the existence of a march and the perpetrator of the murder committed murder and assault and battery or the murder or the murder of one of them or both were exempted from punishment. Furthermore, if a man found his daughter or sister with a man and committed murder and assault and battery, a significant commutation on the punishment was taken into account for him. This Article is adopted from Article 324 of the French Penal Code approved in 1810, in which legal exemption was given to the man killing his wife doing adultery with a man in shared marriage home. This order was revoked in France in 1975, and no effect was observed in the New French Penal Code approved in 1994 (Mir Mohammad Sadeghi, 2013, 334).

After the Islamic Revolution, the provisions of this article were not mentioned in the Islamic Penal Code of 1983 and the law of limitations and reprisals (*qisas*) approved in 1991. However, it was brought in Article 639, "Sanctions Code" approved in 1996 and Clause (E) and Article 302 of the New Islamic Penal Code approved in 2013.

In order to acknowledge the status of those Articles in this research and its association with the Article 630 of the Islamic Penal Code of the Sanctions Section, it is crucial to discuss the terms used in those Articles.

Analyzing the Term "Adultery."

وطء المرأة من غير عقد شرعي الزنا: Adultery is "intercourse with a woman without marriage (illegitimately), its infinitive is, زنى and the fashion and palace of زناء have been both accompanied (Raghib Esfahani, 1412 AH, 3854; Ghoreshi, 1412 AH, 182).

And in term, زنا refers to the state in which an adult and wise person penetrates his or her penis in the genital organ of a woman as much as circumcision (Hashfa); while that woman was forbidden for him and without being married and or in her property; also it was not the sex in doubt, and be the knower of the prohibition and free in the action (Shahid Thani, 1410 AH, 14).

Analyzing the Term “Murder.”

In the Mufradat, Raghīb gave this meaning for the term “murder”;

أصل القتل: إزالة الروح عن الجسد كالموت، لكن إذا اعتبر بفعل المتوكل
لذلك يقال: قتل، و إذا اعتبر بفوت الحياة يقال: موت»

Murder means the experience of exiting the soul from the body like death, however since it refers to the killer, it is murder, and under the effect of loss of life, it is called death (Raghīb Esfahani, 1412 AH, 655; Ghareshi, vol.5, 231).

By referring to several jurisprudential books, it can be figured out that there is no definition given for the term “قتل”(murder). Despite this, several definitions are presented by referring to the books of the jurisprudential terminology.

Murder means eliminating the soul of a person: إزهاق النفس (Shahīd Sadr, 1429AH, vol.8, 512).

Generally speaking, to eliminate life from one human being by another can be visualized in the three ways as it follows: 1) Deliberate murder; 2) quasi-intentional and pseudo-error; 3) murder of pure error. However, the pure deliberate murder as Allame stated occurs in two forms as mutually exclusive. First, it is not the intention to carry out a deadly action though there is often no murder weapon. Second, the weapon to be deadly though there is no intention to carry out a deadly action. Then the intentional murder is realized in four forms: 1) both there is the intention to kill, and there is murder weapon; 2) There is the intention to kill, but the weapon is not deadly; 3) There is no intention to kill, but the weapon is deadly. 4) There is neither the intention to kill nor the murder weapon is deadly but incidentally, it led to murder. The three first ones are called pure intentional murder (Khorasani, bita,427).

Analyzing the Term “Qisas”(Retaliation)

The word “qisas” has two possible forms. Thus *Qisas* is the gerund form of “قَصَّ، يَقَصُّ”; which means following. However, it is vivid that it is the convergent mode of infinitive, i.e., it is said that: قاصه، مقاصه، وقصاصاً: when the murderer is punished and do with him like what he has committed (Meshkini, bita, p.427; Shahīd Thani, 1410 AH, vol.10, 11).

And in the jurisprudential terminology, *qisas* means القصاص: و هو عقوبه الجرمه بمثلها فيالنفس و الجروح, that is, *qisas* (retaliation) is the very punishment and penalty that the murderer has done something similar on the person's life and imposed bodily injuries on the person (Shahid Sadr, 1420AH, vol.8, 514).

Murder in the March in the Qur'an

From various Quranic verses, it is perceived that every kind of punishment is prohibited for the commission of an illegitimate relationship unless, before that, four reasons and evidence (Binate) should be established. This is a Quranic principle, and there is consensus among all Muslims that verse 19 of An-Nisa' surah indicates the necessity behind the precedence of the reason establishment to punishment:

وَ اللَّاتِي يُأْتِينَ الْفَاحِشَةَ مِنْ نَسَائِكُمْ فَاسْتَشْهَدُوا عَلَيْهِنَّ أَرْبَعَةً مِنْكُمْ فَإِنْ شَهِدُوا فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلًا. (Tabrizi, bita, 532).

Accordingly, the primary principle requires that Murder in the March be forbidden legally and legitimately unless we could prove the murder by the husband through other jurisprudential evidence.

Murder in the March in Narrations

In order to prove the legitimacy of their fatwa based on the permission of killing the wife and the barbarian man, the majority of the jurists have cited narratives the main of which we address here to prove the murder license:

1. The narration by Mursala, as Shahid I:

«روي أنه لو وجد رجلاً يزني بامرأته فله قتلها»

It has been stated that if a man finds another man committing adultery with his wife, the husband could kill both (Ameli "Shahid I", 1417, 48/2). This narration was quoted in the early authentic narrative resources and the first one mentioning it was Shahid I, so he was called Mursala.

2. Davood Bin Farqad narrated Imam Sadiq (AS) as saying: The Prophet's companions (PBUH) said to Sa'd Ibn Ebadeh: what would you do if you saw a man on your wife? He replied: "I would kill him with a sword. The prophet said: Then, Sa'd, would you do with the four witnesses? Sa'd stated:"O' the Messenger, after seeing with my own eyes and that God knows it that he did this action? The Messenger stated: Since God has set limit for everything and the same limit for the one exceeding that limit (Barghi, 1992, 134/29).
3. A person accused of the Murder in the March was taken to Imam Ali. Imam stated that *qisas* was just for him unless he could present evidence for the correctness of your claims (Tabarsi, 1378 AH, 48/7, Ahasae, 1405 AH, 60/3).
4. Saeed Bin Masayeb narrated that a man called Ibn Khaybari from Sham found a man with his wife and killed him. This event was reported to Mu'awiyah, so he wrote a letter to seek the ruling of this case from Imam (AS). Imam said: I say if he brings four witnesses to prove the truth of his claim, we will set him free. Otherwise, *qisas* will be carried out for him (Qomi" Sheikh Saduq", 1413AH, 172/4).
5. Imam Baqir (AS) narrated this way that: "If a man enters a house with the intention to assault your family or property, if you could, get rid of him with a hit, because a thief is in the battle with God and the Prophet, and if he's injured, I will take charge (Sheikh Hor Ameli, 1409 AH, 384/28).

Murdering *Zani* and *Zanyah* by *Zanyah's* Husband from Jurisprudence Perspective

In this section, we deal with surveying the perspective of Sunni jurisprudents and Shiite jurists and their arguments:

A) Sunni jurisprudents' Perspective:

In the book, the Jurisprudence on the Four Schools of Thought (الفقهاء اعلیٰ المذاهب الاربعه), in this regard, suggests that: the view of the majority the Sunni scholars' about the issue on killing a woman and a man is that the murder of the *zani* is not permissible (Jaziri, 1406 AH, 65).

This is based on a hadith in which Sa'd Ibn Ebadeh asked the Prophet (p.b.u.h): "O' the Messenger, if I saw my wife with a man, should I set a deadline to testify against him with four witnesses? The Prophet said: Yes, sure (ibid).

Another lacking consensus among the Sunnis is that if a person murders an unmarried *zanyah*, the murderer is not punished. The reason is the judgment of Omar when a man with a bloodstained sword came to him, and a crowd followed him, saying: this man killed our friend beside his wife. That man said to Omar: I hit my wife with a sword between her two legs, I killed the person if existing in that place. Omar said to that man: If they came again, repeat your action and announce the blood of the victim was void (Udeh.1993,540).

Abdul Qader Udeh considers the reason behind the not undergoing retribution (*Abaha* of Murder) in this case are two issues quoting the Sunni scholars. 1) Provocation those believing provocation differ in that the marriage with the daughter of a madman (*Mezny Baha*) is of the man's relatives or the brute ones and only in the first case, they view murder permitted. 2) Forbidding the evil, which in this case is obligatory for all persons and makes no difference between the adultery with the relatives or a brute one. The view of the three different legal schools of the Sunni (other than Shafi'i) is the same. While in Shafi'i school, it is ruled that non-adultery killing while dissembling adultery (*Talbuss*) is not permissible, unless it is not possible to prevent crime from being committed in other ways than murder and consider provocation as the permit for murder. Furthermore, they do not know the disposal of evil as the license for murder unless murder is the only way to get rid of evil (ibid, 549-542).

The conclusion is that the Sunnis have no documented and rational opinions about allowing killing the wife and a brute man in adultery. Provocation and or forbidding the evil is not the murder license in terms of the rules and regulations and have their special conditions and regulations. Thus in the words of the Sunni scholars, the *zani* and the wife in case of being seen in adultery are not applicable for Mahdur al- Damm. Meanwhile, the license for dissembling adultery is generally set forth in the words of the Sunnis in terms of provocation (about adultery with close relatives) or forbidding the evil (with all people).

B) Shiite Jurisprudents' Perspective

The well-known argument of the Shiite Jurisprudents is that if a person finds his wife committing adultery with another man and has knowledge about the compliance and satisfaction of the woman, he is allowed to kill the woman and the barbarian *Zani* (Mohaqiq Helli, 1401 AH, 140, 145; Allameh Helli, 1410 AH, 1410, 147; Shahid Thani, 1413 AH, 398; Gilani, 1427, 96). However, some jurists such as Sheikh Toosi and Ibn Idriss consider Ehsan (with two meanings to the terms of marriage with the wife or concubine and purity) in addition to the satisfaction and compliance of the woman as binding (Najafi, 1981, 368).

But some of the contemporary jurists did not support the well-known argument and rejected it. Of such is Mohaqiq Khoiyi in the Fundamentals of the Almanhajj Compilation wrote about it: "The noted argument is that if someone finds a person committing adultery and the woman cooperates with him, he can kill both of them and this well-known argument is not fault-free, rather it can be forbidden (Mousavi Khoiyi, bita, 84). Rejecting this famous argument, the traditional hadiths have been narrated in this regard: The narration by Sa'id bin Mosiyab according to which Mu'awiyah wrote a letter to Abu Musa Ashari that "Ibn Abi al-Jazerin" saw a brute man with his wife and killed him. In this respect, ask Hazrat Ali (AS) in my place. Abu Musa said: I met Hazrat Ali (AS) and asked him. He replied: "My sentence is that if he brought four witnesses for what he found, I would not anything. Otherwise, I would kill the murderer (Hor Amali, 1409 AH, sect. 69, 169).

Istifta (Asking for a Fatwa) from Some Major Shiite Jurisprudential Referrals

Ayatollah Khomeini: If seeing a man committing adultery with your wife and knowing that the woman willingly did it and was satisfied, he is right to kill both, and he has committed no sin, and no blood money (Diyeh) should be specified for him and there is no difference between the case of being both married or non-married and or temporary or permanent wife and intercourse with her was made or not (Khomeini" Imam", 1403, 491/1).

Ayatollah Makarem Shirazi: If a man finds his wife in a sexual intercourse with a brute man, he has the right to kill the *Zani* only, but if later he could not prove this matter with credible evidence, he may undergo *qisas* as the murderer and if the *Zani* and *Zanyah* kill that woman's husband, they will undergo *qisas*, unless this illegitimate relationship is not proved and they could prove that the victim has attacked them indiscriminately and in defending themselves, they had no choice but to kill the victim.

Ayatollah Safi Golpayegani: Generally speaking, if a person sees a brute man committing adultery with his wife, he has the legal right to kill the *Zani* and also he has the right to kill the *Zanyah* (the wife) in case of knowing the wife was not forced and this action was done with her satisfaction. In addition, regarding the *Zani*, he has to prove that the *Zani* knew the wife had a husband and yet committed adultery with her.

Ayatollah Alavi Gorgani: It seems we should not commit murder (due to its consequences and the difficulty to prove this claim), despite killing them and proving that he saw them in the process (committing adultery), he does not undergo *qisas*.

Nature of Murder in March

The significant issue discussed in this study, deserving argument is the nature of the murder committed by a husband:

A) Murder in Terms of the Limit of Adultery

Some jurisprudents consider the right of the husband to kill the *Zani* or the wife in terms of executing the limit of adultery. That is, the husband, in Shari'a and the honor of the ruler, possesses the right to execute the limit of adultery (Esfahani, 1406AH, 476/10).

The jurists mentioned the conditions for the husband being allowed to murder regarding the limit of adultery:

First, to affirm the existence of a marital relationship, thus if the father or the brother finds the woman in adultery process, he does not have the right to kill her. Second, the woman and the *Zani* committed adultery with satisfaction; then if done as the result of reluctance, coercion and urgency, it is not permissible to kill them, and in case

of murdering, the husband will undergo *qisas*. Third, seeing the scene of adultery by the husband directly, then if someone described it to the husband that his wife committed adultery, there is no license for the husband to kill. Fourth, doing sexual intercourse in the limit of adultery, then if the husband sees a relationship between his wife and a brute man but not in the limit of adultery, he is not allowed to kill them. Fifth, the ground for the illegitimate sexual relationship should not have been set by the husband; then, if a man knows it already and or due to moral corruption, he prepared the possibility for a woman or a man, for example, his friend for sexual relationship, he has no right to commit murder. Sixth, the existence of the general conditions of religious duty for the *Zani* and the wife; both have to be wise and mature and informed (Mohammadi, 2010, 44-57). Seventh, the necessity for proving the husband's claim at the court; the husband is required to prove his claim about the victim's adultery and the existence of the above conditions at the court with the testimony of four witnesses to adultery, adultery confession of the avenger of blood (Next of kin, but the tail, the parents of the victim)(so that they no longer have the right to demand retaliation), otherwise *qisas* would follow ; though in case he told the truth, in the Hereafter, and with the Lord, there is no sin against the husband, but the court is obliged to impose *qisas* on the husband if he could not prove his claim (Abbazade, 1999,302).

This theory has attracted several serious criticisms; first, by referring to the evidentiary arguments and consensus of the jurists considering the punishment of murder for adultery just in three cases: the adultery with close relatives (Mahram), dhimmi (non-Muslim) committing adultery with a Muslim woman and adultery by force (rape) and in other cases, the limit of adultery, stoning or flogging not murder; thus how it is possible to consider the husband's action of murder as the execution of the limit of adultery? (Ameli "Shahid Thani", 1412,352/2). Second, the majority of the jurists have granted absolute permission to the husband for killing, lack of provision of Ehsan(Helli,1410 AH,17/2). While, the punishment for adultery with an unmarried woman, if proved at the court with four witnesses, is flogging, so how the husband is allowed to kill that person? Third, through analyzing all the arguments and opinions, we figure out that besides the confession and testimony (proofs), they've merely

considered the judge's recognition as the reason to prove not that of anyone else, especially that some jurists have not taken the judge's recognition in proving the crimes that respect the rights of Allah, especially the affairs of chastity, as the proof.

The goal behind the judiciary and criminal laws is to keep the order and safety of the community and to safeguard the interests of the community, and the judge is also in charge of providing these goals; thus, he can merely cite his knowledge in the rights of people since the rights of Allah, are related to the individual affairs and the principle is on the concealment (Tusi, 1408 AH, 218; Toosi" Sheikh Ta'ifah; bita, 711; Halabi, 1403 AH, 428-432).

B) License to Kill Zani from Defense Perspective and Being Mahdor Al-Damm

It seems to be correct that the narratives giving the verdict to *Zani's* murder permit are of the ones on the permission to kill the perpetrator who entered another's privacy and has violated his life or honor or has serious intent of assault. Accordingly, pointing to the requirement of four witnesses in narrations in terms of stating the proof evidence on the important matter, that is, adultery whose severity of corruption and urgency of disposing of it in many cases as appropriate is the murder of an aggressor, but in other cases of aggression, it may be possible to get rid of the aggression in ways other than murder .

In this field, four points are worth to be mentioned: first, if we consider the permit for murder from a legitimate defense point of view, observing the defense levels should not be neglected, thus murder is not allowed before the physical action by the husband for removing the rape or danger but if the husband takes action when the rape or sexual intercourse is still ongoing, in order to immediately repel it, killing is not forbidden. Second, however, the necessity of murder in order to repel the offense of adultery and non-adultery must be observed, then until the requirement of necessity and for example, through crying or assault and battery, it could be viable to repel the aggression where certainly murder would not be the only choice. Third, based on defending the husband's actions, then the wife's murder is not permissible. Fourth, consistent with the previous explanations, it is vivid that the realization of the adultery relationship is not required, then if the assault is less

than that limit, the right to defend the husband is reserved and even Ehsan(chastity) will not be needed any longer. Rather, there is no difference between the wife's reluctance or satisfaction anymore, even if the wife was not satisfied with the illegitimate relationship; defense of honor remains intact.

The Position of Murder in the March in Criminal Law

The first legal text on the Murder in the March in the Iranian law is Article 179 of the General Penal Code adopted in January 1925. According to this article: "Whenever a husband finds his wife with a brute man in the march or as the existence of the march and commits murder or assault and battery of one of them or both, he is exempted from punishment. Whenever, he sees his daughter or sister with a barbarian man, and in fact, there is no pussy interest between them and commits murder, he will be sentenced to one or six months of misdemeanor imprisonment and if about the recent part of this article, he commits assault or battery, he will be sentenced to the misdemeanor imprisonment ranging from 11 days to 2 months.

In accordance with the Article 630 of the Islamic Penal Code approved in 1991: "Whenever a man sees his wife in adultery with a brute man and knows the compliance of the woman for this action, he could murder then on the site, and if she was reluctant, he could only kill the brute man. The order for assault and battery is also similar to murder in this case ".In the new Islamic Penal Code approved in 2013, it is stated that:" The Article 302-if the " defendant (the injured) has one of the following circumstances, the perpetrator will not be convicted to retribution and the payment of the *Diyah* (blood money); Clause "E" and *Zani* and *Zaniyah* in the process of adultery to her husband, in cases other than reluctance and urgency".

Orders on Murder in the March about Article 302 of New Islamic Penal Code

The Article 302 states that: If the defendant has one of the following circumstances, he is not convicted to *qisas*, the payment of the blood money (*Diyah*): in Clause "E" of this article, it is reiterated that: "*Zani* and *Zanyah* in the process of adultery to the *Zanyah*'s husband, in cases other than reluctance and urgency as described in the law ".

Of the basic hints in the Clause “E” of the Article 302 of New Islamic Penal Code, it is perceived that the man could only kill the *Zanis* in adultery and other words, in order to benefit from the exemption included in the Article 302 of New Islamic Penal Code, the husband has to murder the wife and the brute man as soon as seeing them in adultery. Thus if the man finds his wife committing adultery, but due to some reasons, he does not want to kill them in that circumstance, but later he takes action as killing them in adultery, he cannot benefit from the exemption included in the Article 302 of New Islamic Penal Code, since the legislator’s term “to kill them in that state” means the murder for a man is permissible when seeing the adultery event happening, not later than that time.

It is worth noting that if a husband sees a barbarian man and his wife in adultery and commits murdering one or both of them, he is not required to obey the defense rules, since the legislator with the community has prescribed all the provisions for the husband in the Article 302 of the Islamic Penal Code about killing the adulterous wife and the brute man. In cases where the husband murders the mentioned circumstances, he is not required to pay the blood money for committing the murder, because the blood of those in adultery lacks legal and religious sanctity.

In the Article 302 of New Islamic Penal Code, the legislator has considered the killing of a barbarian man committing adultery with a married woman as well as the husband murdering a woman if satisfied with this action as admissible. The permissibility of murder in this case by the husband is subject to the conditions known as the confirmatory stage of the event. The mentioned conditions are as follows:

First: Bond of Marital Relationship

The legislator considers the provision of this article to be a case in which a person witnesses his wife committing adultery. Thus if a man witnesses another woman’s adultery, even his sister, daughter or mother with a brute man, he is not allowed to commit murder and even assault or battery and in case of committing murder and assault or battery, he will be punished according to the case; while the Article 179 of the former Islamic Penal Code, about the father or brother finding his daughter or sister in adultery with a barbarian man and murdering them, he benefitted from the relative exemption from punishment, the exemption which is

currently excluded. Attaining the existence of a conjugal relationship regarding the provisions included in the seventh book of the civil law, in which with respect to the application of the term, by marriage it means temporary or permanent. Though, some jurists consider this order merely subject to a permanent marriage contract (Haeri Shahabagh, 1974, 90). However, in the jurists' verdicts and quotes, there is no difference between the marriage of temporary or permanent type (Hassan Najafi, Mohammad, bita, 368). Even in some jurists' mind, revocable divorce does not interrupt the marriage, and if the husband finds the above circumstances during the revocable divorce period and commits murder, he benefits from the above exemption (Najib Hosni, 1992, 394-395)

Second: Husband Finding Wife and Brute Man in Adultery

The emphasis of the Article 302 of the Islamic Penal Code on seeing the woman and a barbarian man in adultery by the husband requires the court to examine this claim; that is, they have to be in adultery process to allow murder committed by the husband. Thus watching a movie and the photo of the incident is not a legitimate murder license, and the physical sight of the husband is the criterion, not that of others. The jurists are also in accord with the condition that a man must observe his wife's adultery with a brute man (Khoyi, bita, vol.2, 84&85). However, it should be noticed that for the court to view the killer's action as lawful (mobah) and to be able to exempt the husband from the punishment; he must prove the action of adultery. Thus if the action of adultery is not conclusive and it is solely based on the husband's suspicion, It is not permissible to commit murder. If the woman and the brute man have a conventional cover, and busy doing other actions rather than adultery, such as bed fellowship (Mozajh) or not in a relationship with each other Taqbyl means co-opting and kidding and so on, due to not fulfilling the condition (being in the adultery process), killing them is not allowed, and the perpetrators will not be exempted and will receive retaliation.

In the definition of adultery, the court has to pay attention to the Article 221: "Adultery refers to a man and a woman with no bond of the marital relationship between them and not subjected to Proximity to Doubt". For the realization of adultery and proving it based on the Shari 'a's arguments, the legislator paid attention to in the Islamic Penal Code, some circumstances are required that in practice proving it is the case of

suspension is impossible or at least unlikely and for this, in many cases, to attain the fulfilment of the Article 302 of the Islamic Penal Code is difficult.

Third: Committing Murder While Observing Action of Adultery

According to the above article, the husband is merely allowed to kill immediately after seeing the scene of the adultery, and if does not take measure promptly, after the separation of the wife and the brute man, there is no such permission for him. The concept of this article implies that a man is exempted from *qisas* only when takes action to kill immediately after finding adultery between his wife and the barbarian man and if commits murder after the action of adultery terminated and out of time and place where the action is being done, such murder gets a sort of revenge and the legislator forbids the commission of such a killing; though, maybe it is possible to consider such cases of the woman and the barbarian man as the Mahdor Al-Damm examples that of course its proof demands reason and the murderer has to prove the murder merit on the basis of religious and legal grounds at the court(Zaki Abu Amer,bita,15).

Fourth: Knowledge of Compliance (Tamkin)

For the man being allowed to murder his wife in addition to the above provisions, he must have the knowledge of the woman's compliance and satisfaction with the adultery by the brute man. This provision is due to the fact that in the jurisprudential discussions of adultery, the jurists suppose the existence of intention and will in the man; however, about the woman, they consider the likelihood of a man's reluctance towards the woman and therefore, in this hypothesis, it is also considered necessary for the husband being certain to assume his wife's consent in order to allow him to murder her. To attain this provision in proving is difficult and it is very important to prevent the exemptions granted only due to the suspicion and doubt. In case the husband gets certain of his wife being reluctant, the husband is only allowed to kill the brute man.

Jurists' Views

Surveying Imamieh Jurisprudential books, it gets vivid that the subject of the permit for the husband murdering the woman and a

brute man in adultery has been outlined in the book by Sheikh Toosi, for the first time. Following Sheikh Toosi, Mohaqiq Helli in the book, *Al-Nahayah* stated such an order definitely and absolutely in addition to discussing the subject (Montazeri, bita, vol1, 134). In the book *Shariah al-Islam* (of the jurisprudential reference books) and about the matters on the orders of adultery, this order has been expressed and after that most of the jurists have stated the same order. Ultimately, Shahid I in his book, *Al-Duras* dealt with mentioning Mursala narrations (so-called science of understanding) explicitly authorizing murder, and this narration has been cited by many jurists after that. Out of the late jurisprudents, Sahib Jawahar (Ayatollah Sheikh Mohammed Hassan) in his book, the limits have addressed this issue. After stating various doctrines of the jurists, he claims that maybe prescribing murder is to express the verdict of the case, though there is no sin between him and his God, apparently, retaliation against the murderer (husband) is fixed, unless he brings authentic witnesses for his claim or the tail or the victim's heir acknowledges him (Shahid Thani, *Jahār al-Kalam*, bita, vol.9, 120). Reviewing the mentioned documentation, the late Ayatollah Khoyi considered some of the narratives inconsistent in terms of the document and others as defensive and concluded that none of the defense based traditions implies the famous argument. In the 89th problem of his book, he does not consider the famous argument free from defect but to the point and refuses to give Fatwa for allowing murder (Khoyi, bita, vol.2, 84 and 88). Other jurists have strongly rejected the documents related to the murder license, refusing to grant fatwa as the license for murder (Montazeri, bita, vol1, 134). However, it can be said that the reason for the order of the Article 302 of the Islamic Penal Code is the famous argument of the jurisprudents granting fatwa pursuant to Sheikh Toosi and Mohaqiq Helli this way. Looking at the problem 28 of the book, *Defense of Al-Wassilah* by Imam Khomeini (RA) and comparing it with the content of the Article 302, we perceive that the term "law" is the translation for the above phrase that he explicitly prescribed such murder; though, they assume that such permission is based on reality and the *Nafs al-Amr* (absolute affirmation and fulfillment credit), while apparently, the judge judges based on the religious law, and if the husband does not bring authentic witnesses, he will be sentenced to retaliation (Seyyed Ruhollah Khomeini, bita, vol.2, 491 and 492).

From the collection of the Sunni jurists' opinions, it is understood that the majority of them are in agreement that if the husband finds a brute man in adultery with his wife, and he murders him (the brute man) and proves the adultery with a married woman, the husband will not be sentenced to *qisas* and some others consider the provision of Ehsan and in case of proving the issue, the husband will be exempted from *qisas*. Of course, there is a difference in the number of needed witnesses to prove the case (Almoghni, vol.7, sect.7, 649).

Murdering *Zani* and *Zanyah* by Husband from Case law's Perspective with Criticism Orientation

Despite laying out the subject in the General Punishment Code before the Revolution and the explicit fatwa by Imam Khomeini based on the murder permission for the *Zani* and *Zanyah* by the husband in case of seeing them committing adultery (Mousavi Khomeini, 1404 AH, 83), in the Islamic Penal Code in 1982, the Iranian legislator has not mentioned the license for murdering in the march, but in practice regarding the fatwa by Imam Khomeini and observing the Article 167 of the Constitution, in such cases of murders, the judges consider the fatwa by Imam Khomeini as the criterion for operation and in an argument from the Judiciary's Legal Department, in addition to stating the former Article 179 of the General Penal Code as obsolete, it is claimed that: In accordance with the Shari'a (religious) standards and the fatwas by Imam Khomeini, if a man finds a barbarian man in adultery with his wife and could prove the march by four witnesses and the acknowledgement of the tail or the victim's heir and or the recognition of the judge, if commits the crime of killing one or both of them, he is not sentenced to *qisas* and does not undergo paying blood money or *Diyeh* (Karami, 1998, 217).

Concerning this procedure, ratifying sanctions law, the legislator has reaffirmed the permissibility of murder in the march in the Article 630 and subsequently in Clause "E", the Article 302 of the Islamic Penal Code approved in 2013, as it follows: This Article is subject to a defect on the jurisprudential and legal grounds. Jurisprudentially speaking, as stated the ultimate things adopted from the narrations is lack of the husband's *qisas* in case of killing an aggressive woman doing adultery in the match, and it is difficult to file a reason for a murder license as the verdict of the situation, and given murdering the

wife, no valid jurisprudential doctrine exists and the above hadith of Mursala in the book *Al-Duras* by Shahid I, regardless of the drawback of the document, has not been absolutely cited by Shahid I himself and on the other hand, basically the subject of the murder in the march does not exist in theological texts of the companions of the Imams –being closer to Testament of the Infallible Imams (AS). The first one setting forth this subject was Sheikh Toosi in the book, *Al-Mubsoot* and for the permit for murder, he considered the Ehsan provision for the brute man and the wife required and mentioning the permit for murder in the late jurists' books does not absolutely mean as the robust documentation for stating the order contrary to the principle and precaution. Legally, the Article content has been stated as to be criminal and deprives the judicial security and encourages a type of murder under the banner of law and without the possibility of defending the accused persons (Mir Mohammad Sadeghi, 2013, 338). This Article can be misused by the professional killers and the murders committed with revengeful motives can be viewed as the murders in the march. For example, in the cases where the husband with decision priority and preliminary preparations invites the person suspicious of illegitimate relationship with his wife and kills him and in another case, the person kills an individual elsewhere and then transfers him to his bedroom and forces his wife to confess to the adultery and in these cases, in case of not discovering the reality, if he could not prove the adultery with the four witnesses, with reference to the Article 303 of the Islamic Penal Code approved in 2013, through proposing the belief in the victim being Mahdor Al-Damm, he gets rid of *qisas*. While the law must be set up to ensure not being criminally liable and not fraudulent. Therefore, it is proposed that if the legislator views this Article's presence required in the Criminal Law, in these cases of measure to murder on the husband's side, the legislator has to grant commuted excuse by modifying the Article content, to block the use of the permission to kill as the verdict of the situation and to put the murder license exclusively for the *Zani*, and that just in the case where the adultery is proved by the valid jurisprudential and legal reasons.

What has been described and analyzed in the current research is that despite frequent criticisms about enforcing the Article 630 of the Islamic Penal Code on the *Ta'zirat* section by the lawmakers, the legislator again

has included the Claus “E” of the Article 302 of the Islamic Penal Code approved in 2013 in the same nature with slight changes and has left the room for private revenge and grudges of the private criminal justice.

Conclusions

The issue of the murder permit of the *Zani* and *Zanyah* by the husband and his not being punished is of the matters being argued even in the earliest civilizations such as the Assyrians, the Greeks, the empire of Japan and Rome. In Iran also the first legal text on this subject was envisaged in the Article 179 of the General Penal Code in 1925 and the scope of this Article even includes father and brother in case of finding adultery by the daughter and sister and their murder or battery license. After the Islamic Republic of Iran Revolution victory, the provisions of this Article have not been mentioned in the Islamic Penal Code approved in 1983 and 1991, but again in the Islamic Penal Code approved in 1996 and also the new code approved in 2013, despite analyzing and reviewing the jurisprudential basis and their level of influence on honor killings ,the lawmakers repeatedly mentioning the necessity behind changing or eliminating them, in spite of all these efforts and studies , the mentioned cases remained either unchanged or effective or with little change on the surface ,no appropriate change has been made in line with neutralizing the negative effects of these articles and finally, they have been ratified.

Then it can be stated that regarding the background of honor killings in terms of the culture and traditions and customs in our society, it is advisable that the codes of this category, which prescribe honor killings, be reviewed with greater precision and sensitivity by the legislator.

In the present study, we have dealt with analyzing the subject of the Murder in the Murder License; Reiterated in 2013 Approved Islamic Penal Code Regarding Mahdur al- Damm and the clashes of ideas among the jurists based on the permission to murder both-the wife and the brute man-by the husband to absolutely forbidding murder.

The analysis of Ejtahadi (by the specialist jurists’) evidences, first in the Qur’an, we have got to the principle of prohibiting the accusations of adultery and imposing the punishment for it , based on which it should be suggested that the husband’s action to murder is in contrast with it unless providing special reliable reason . In the narrations, there are four

kinds of reasons: Mursala by Shahid I, which is the only reason by the jurists on the wife's murder permission by the husband, being open to various defects in terms of the document and also in accordance with the jurisprudential rules and it is not lawful that despite these drawbacks to distance from precaution and norms and to grant the wife's murder permission. The second reason is Davood bin Farqad's narration that on the one hand, it is open to drawbacks in terms of inference manner and on the other hand, it does not indicate the wife's murder permit by the husband. The third reason, the news of the judgment of Amir al-Mu'minin (AS) that in brief has strengthened it in terms of the document and we have proved its indication on the *Zani's* murder permission by the husband. The fourth reason is the narrations of the perpetrator's murder license in the position of defense, whose implication is correct, but it is not specific for the husband and, of course, we proved it that the murder in the march is of defense examples in nature and the sum of the murder in the march narrations is to explain honor defense examples since the opinion of those jurists who consider the murder in the marcher as case of limit execution by the husband is challenging with various defects such as lack of conformity of the husband's actions with all kinds of adultery limits, granting the right to the punishment to the Shi'a ruler, and also not observing the terms of adultery in the application of the reasons for the murder in the march. Of course, in the new law, the legislator set the penalty of discipline (Ta'zir) for arbitrary action and without the court's authorization, as well as the action based on the wrong belief, but since in many cases the perpetrators of honor killings consider themselves competent for such murder by referring to this order, it seems that the order's generality must be decreased and the rate of arbitrary action has to be increased in these cases.

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Mohaddeseh Sadeghian Lemraski¹, Kiomars Kalantari^{2,3}, Iraj Goldoozian⁴

¹ PhD Candidate of Criminal law and Criminology, Law Department, Gorgan Branch, Islamic Azad University, Gorgan, Iran.

² Associate Professor of Criminal Law and Criminology, Faculty of Law, the University of Mazandaran, Babolsar, Iran. (Corresponding author)

³ Associate Professor of Criminal Law and Criminology, Faculty of Law, Gorgan Branch, Islamic Azad University, Gorgan, Iran.

⁴ Professor of Criminal Law and Criminology, Faculty of Law, Gorgan Branch, Islamic Azad University, Gorgan, Iran.

E-mail: ¹mohaddeseh.sadeghian@gmail.com, ²kalantar@nit.ac.ir