

**MAHDUR-AL-DAM (A PERSON WHOSE BLOOD IS VOID) IN IRAN'S CRIMINAL LAW
WITH EMPHASIS ON THE ISSUED VERDICTS BY JUDICIARY COURTS**

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Mahboub Jabbari Aranchi

**Islamic Azad University, Department of the
Law, Branch Bilesavar, , Bilesavar, Iran**

Dr. Latif Ebadpour

**Islamic Azad University, Department of the
Law, Branch Bilesavar, , Bilesavar, Iran**

Abstract: The subject of this article is Mahdur-al-Dam (a person whose blood is void) in Iran's criminal law with emphasis on the verdicts issued by the judiciary courts. Killing individuals who are Mahdur-al-Dam (a person whose blood is void) or the murderer kills his/her believing he/she is Mahdur-al-Dam (a person whose blood is void). Despite the disgust and ugliness of killing according to Islam and Islamic Penal Law, however, some conditions are necessary for retaliating the killer one of which is the conditions of not being Madhur-al-Dam (a person whose blood is void) and not deserving to be killed of the killed person. The individual's blood is wasted because of her/his infallibility's deterioration. Infallibility's deterioration is either because of deterioration of cause or because of committing certain crimes. Infallibility's deterioration and shuffling of human blood may also be as absolute or relative. The detection reference of being blood wasted is principally the judicial reference and proving that the mad person's blood deserves to be wasted is on the criminal. If the criminal proves that the killed person deserves to be killed, he/she will not have to be retaliated or pay blood money. But if she he cannot prove the killed person, but proves that he/she had believed in the killed person's blood to be wasted he he/she would survive the retaliation sentence and must pay the blood money of the killed person. Perpetrators of some crimes by law and by religion (shariah) deserve to be killed and their blood is void. The apostates, enemies of a person who insults the prophet , adulterers, acts of buggery, etc. are among these individuals. Committing murder by trusting in the person whose blood deserves to be wasted causes the murderer to be known as wrong provided that the killer proves his/her belief. Prescribing the killing of the persons who deserve to be killed has bias and effects. From the legal viewpoint, based on the law of Islamic penal codes 302 and 303, it is in contradiction with the principles 22 and 61 of the constitution of responsibility and duties of the judiciary force and the principle of innocence and taking legal action for proving his/her blood deserving to be wasted is not legally acceptable. In social terms, also such verdicts lead to chaos in the society and from international viewpoint, considering the numerous cases of the Universal Declaration of Human Rights, regarding such murders as legal will cause to present an unfavorable image of the country's judicial system and as a consequence the deterioration of the regime in the global community.

KeyWords: Mahdur-al-Dam, Iran's Criminal Law, with Emphasis on the Issued Verdicts, Judiciary Courts

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1. INTRODUCTION

Killing the blood wasted (a person whose blood is void) is obligatory for the obliged person in some cases, such as killing the a person who insults the prophet, and in some cases, it is allowed and permissible such as perpetrating murder at the position of legitimate defense, the criminal attribute is removed from the person when he/she is at the position of doing an obligatory act by shariah (religion) or a lawful act or when defending oneself.

The individuals who are excluded from the support of law and shariah (religion) by committing a crime, can be divided into two general categories: the groups who are regarded as blood wasted (outlaw) against all the Muslims, absolute blood wasted (and the group who are considered blood wasted (a person whose blood is void) against a certain person or persons (relative vein-blooded) act 302 of Islamic penal code and its notes are mentioned by the legislator as the justifiable reasons for committing the crime which are the vivid examples of the permission by law. Thus a person who deserves to be killed by Shariah, and is namely called waste blooded, his her killing not only does not have retaliation, but also the blood is void of such a person. Of course, identifying the blood wasted or deserving the retaliation is a judicial issue which requires legal awareness and many judicial experiences. Given the rules of former and new penal codes of punishment concerning killing the blood wasted, it is necessary to determine what changes have come in the new law.

Based on the first note of act 302 of the new Islamic penal code, taking action about the clauses a, b and c (this act is a crime without the court's permission and the perpetrator will be convicted to the sanction provided in fifth book of sanctions. In its analysis, it should be asserted that this issue means that the perpetrator of the crime of act 302 is sentenced to punishments provided in the 612 and 614 acts of sanctions law about punishing a killer who is not retaliated due to any reason, or the retaliation, punishment is not possible for the perpetrator of intentional crime on the body's organ provided that the perpetrator's action does not cause

disruption in the public order and society's security or so on, he/she is convicted; in other words, the guarantee for execution of the arbitrary action of the perpetrator of the same former sanction punishments is provided by meeting the required conditions and the legislator no only has not limited the outlaws' cases, but by explicating the cases in detail, imposing damage to the organ and amputation of organ about the perpetrator of excessive crime and has clarified him/her as deserving the amputation of a body member. And about note 2 of article 302, it should also be stated that about clause d (if the soul defense, is true, but its conditions are exceeded, retaliation is rejected, but the perpetrator as described and provided by law will be sentenced to blood money and sanction punishment). The provisions of article 303 of the new Islamic penal codes like act 2 of the clause c of the former article 295.

2. GOALS OF THE STUDY

The main goal

Analysis of the rules governing Mahdur al-dam (a person whose blood is void) in Iran.

Sub-goals

1- Reviewing the meaning and the concept of Mahur al-Dam (a person whose blood is void)

2- Examining the Madhur al-Dam (a person whose blood is void) case in Iranian criminal law

3. Examination of Mahdur al-Dam's (a person whose blood is void) case in Iran's judicial system

The reason for being a Mahdur al-Dam (a person whose blood is void)

In spite of the support given by law and religion (shariah) to individuals and their lives, sometimes the respect of the lives of some people from the legislature's protection circle comes out, and their blood and property are allowed. The only reason is the death of a person's infallibility. The death of infallibility is either due to the disappearance of it or

because of the perpetration of the crime that causes them to become outlaw.

2.1 The loss of infallibility due to its deterioration

The general rule in the Islamic Sharia (religion) is that blood and property are respectful, that is to say, unclean and the basis of it is faith or safety. The purpose of Belief in the conversion of Islam and the purpose of Aman (Security) is to make a covenant.

2.2 Deterioration of infallibility by committing some crimes

As infallibility ends with apostasy and expiration of the duration of the ledge of security or breach of the covenant, it will also be eliminated by the perpetration of the permissible-making crimes, and by the term permissible-making crimes it is meant the crimes that constitute a definite offense for which certain punishments are obligated which make a death or a pardon. Permissible-making crimes by the shariah are exclusively as follows:

1- Adultery, 2- Robbery or resorting to arms in order to frighten people, 3- Armed rebellion, 4- Limb amputation, 5- Burglary

The reference point for identifying the Mahdur-al-Dam (the person whose blood is void)

According to article 302 of the Islamic Penal Code: "The murder of a person, is to cause retaliation, if the victim is not entitled to be killed by shariah, and if he/she deserves to be murdered, the killer must prove that he/she is entitled to his/her murder in accordance with the rules of the court." The phrase "By the shariah he/she does not deserve to be killed" is ambiguous and the legislator has not specified who is the reference source of the identification of Mahdur-al-Dam (a person whose blood is void)?

For the person to be identified as Mahdur-al-Dam (a person whose blood is void), first the act that he/she has committed, must be among the crimes whose punishment necessitates murder; the crimes deserving to be killed are specified in the Islamic Penal Code. The

problem arises when an act necessitates death penalty by shariah, but it is not regarded as a crime in the Islamic Penal Code. For instance, these cases which are considered as examples of Mahdur-al-Dam (a person whose blood is void).Based on article 302 of Islamic Penal Code, proof of deserved killing the victim of an offense committed against the person, for getting free from the retaliation and even the blood money is the criminal's responsibility which should be proved based on the provisions of the court. Ways of proving the crimes necessitate the retaliation limit, are specified in Islamic shariah and Islamic Penal Codes so that the crime of adultery is proved after four times of confession for the ruler (article 199 of Islamic Penal Code) or testifying of four just men or three just men and two women (article 199 of Islamic Penal Codes). Similarly buggery is proved by four times of assertion for the ruler (clause a of article 172 of Islamic Penal Codes) or by testifying of four just men (article 117 of Islamic Penal Code) or the crime of using guns to frighten people and corruption on earth with one confession or by testifying of only two just men (article 189 of Islamic Penal Code).

3. EXAMPLES OF MAHDUR-AL-DAM (a person whose blood is void)

As it was stated before, Mahdur-al-Dam (a person whose blood is void) might be absolute or relative, also there are cases of Mahdur-al-Dam (a person whose blood is void) whose blood is wasted according to shariah, but in the written law, it has not been mentioned as a crime and being Mahdur-al-Dam (a person whose blood is void) has not committed it which among them are war infidel and apostle. Besides these adulterer and buggery doer, a married woman and a stranger who are doing adultery, a person who says bad words to the prophet (peace be upon him, deserve retaliation, the invader's blood at the position of legitimate defense, one who resorts to guns to frighten people and armed rebels are Mahdur-al-Dam (a person whose blood is void) by shariah but these cases can be considered as example of being Mahdur-al-Dam (a person whose blood is void) in the written laws. In sum, the important

examples of Mahdur-al-Dam (a person whose blood is void) are as follows:

- ✧ Apostasy
- ✧ Persons who insult the Prophet
- ✧ Using guns to frighten people
- ✧ Killing at the position of self defense

The problems and effects of permitting the killing of Mahdur-al-Dam (a person whose blood is void)

- ✓ Legal Problems
- ✓ Contradiction with the principle 22 of the Constitution
- ✓ Loneliness (Rejection) with the responsibilities and duties of legislative force
- ✓ Opposition with the principle of indulgence
- ✓ Impossibility of proving the Mahdur-al-Dam (the person whose blood is void) to be of the killers
- ✓ Unjustifiability of making a legal case for proving the killed person's being

Mahdur-al-Dam (a person whose blood is void)

- ✓ Involving the mental beliefs in the material element

4. SOCIAL PROBLEMS

In a society with a strong legal code and legislation, such regulations create chaos in the society. If anyone believes that another is Mahdur-al-Dam (a person whose blood is void) or obligatory to be retaliated, then he/she must pursue the case in a competent court in order to enforce the punishment. Not by believing in Mahdur-al-Dam (a person whose blood is void) being of a person, he/she kills another, and then wants to prove it. And if he/she fails to prove it, he/she only pays the blood money.

5. POLITICAL AND INTERNATIONAL PROBLEMS

According to Article 3 of the Universal Declaration of Human Rights, "Everyone has the right to life, freedom and personal security.

5.1 Judicial Procedure of Mahdur-al-Dam (a Person whose Blood is Void)

The right to life is the most fundamental right of human beings, which no one can deny, and people always defend this right of themselves. But in some cases, the legislature inevitably permits the deprivation of life or retaliation, and it is also in cases where a person is committing a murder, and in principle, it should be said that deprivation is one of the most severe punishments that the legislator prescribes in cases of perpetrating a soul. In other words, in cases where intentional murder has been committed, the killer will be entitled to retaliation or life deprivation for the crime he/she has committed. However, in some cases, the legislator also regards the murder of the soul as permitted and in other words, it has been stated that in some cases and subject to certain conditions, the person is regarded as Mahdur al-Dam (a person whose blood is void) and pouring his blood is permissible, and of course, all the conditions in the Islamic Penal Code have been counted.

However, there are also cases in this area in the courts that the handling and judgment of these types of cases is usually not easily carried out; because proving the circumstances of a Mahdur-al-Dam (a person whose blood is void) person or proving the victim's belief in being Mahdur-al-Dam (a person whose blood is void) is a little difficult and time-consuming.

6. CONCLUSION AND SUGGESTION

1. Socrates and Galileo can be named among the first Mahdur-al-Dams (persons whose blood was vain) of history who have given their lives in their beliefs.

2. The law of Hamurai, the laws of ancient Persia, Greece, the basic rights of the Romans, the religion of Moses and the Sharia of Islam, regard the perpetrators of some crimes entitled to murder and their blood wasted.

3. In the General Penal Code, enacted in 1973, a legitimate defender was immune from the punishment in the case of committing a crime, but in the Islamic Penal Code, the murderer is absolutely exempted from punishment if he/she proves that the victim deserved to be killed and the victim was Mahdur-al-Dam (a person whose blood is void), and in the case of belief in and the victims being Mahdur-al-Dam (a person whose blood is void), although the victim's deserving to be killed is not proven, the perpetrator will be free from punishment for retribution.

4. Mahdur is from the word, waste and he/she is the one whose life or a body member of his/her members has become permissible Mahdur-al-Dam (a person whose blood is void) is either intrinsically or transversely.

5. The Holy Quran, in several verses and the innocent Imams (AS), considers the killing of perpetrators of some of the crimes and sins as permissible. And judicial proceedings also exclude some perpetrators of murder on the basis of the victim's being Mahdur al-Dam (a person whose blood is void) or the belief of the murderer in the victim's being Mahdur-al-Dam.

6. The killer's retribution is permissible if, in addition to the aggregation of other conditions, the victim is not Mahdur-al-Dam (a person whose blood is void) or deserving to be killed.

7. The permissibility of the victim's blood is the result of his/her infallibility loss. The infallibility loss also, or due to loss of its cause such as exiting from Islam or committing crimes such as resorting to guns to frighten people and corruption on earth, adultery, a person who insults the prophet, and so on.

8. The blood of a person may be wasted in front of everyone (absolute permissibility) or in front of a specific person or certain persons (blood money guarantor).

9. Regarding the criminal liability of the murderers, the perpetrators of the crimes of God, there are three viewpoints among the Islamic jurists: the belief in the proving of retaliation, the denial of the guarantor, the guarantor of blood money.

10. In order to get rid of the punishment, it is necessary for the victim to be Mahdur-al-Dam (a person whose blood is void) at the time of the crime or at the time of the outcome.

11. The reference for identifying the Mahdur-al-Dam (a person whose blood is void) is the judicial authority.

12. Proof of the victim of an offense committed against the person's being Mahdur-al-Dam (a person whose blood is void) is on the criminal.

13. If the victim's being Mahdur-al-Dam (a person whose blood is void) is proved, the killer is exempted from both retaliation and blood money, but if he merely proves his belief in the victim's being Mahdur-al-Dam (a person whose blood is void) and cannot prove his being Mahdur-al-Dam (a person whose blood is void), he/he is a murderer.

14. The apostasy, resorting to guns in order to frighten the people, the a person who insults the prophet, the victim of invader in the position of legitimate defense, the adulterated women, the person who does buggery, and etc. deserve retaliation, and are the sins and crimes whose perpetrators deserve to be executed for killing and are regarded as Mahdur-al-Dam (a person whose blood is void).

15. Apostasy is a sin that is not recognized as a crime in law, but in the Qur'an and narratives, and also from the point of view of Shiite and Sunni jurisprudents, the blood of the person who commits offense is wasted. Although some of the religious scholars have commented on its being Mahdur al-Dam (a person whose blood is void), and some others, as being absolute Mahdur al-Dams (a person whose blood is void) is absolute.

16. A person who insults the prophet also deserves to be murdered both in the Qur'an and in the narrations, and some of the religious scholars regard the murdering of the a person who insults the prophet as obligatory for the apostasy. It seems that the legislator in Article 513 of the Islamic Penal Code, tends to being relative Mahdur-al-Dam (a person whose blood is void) of the person who insults the prophet, however, according to the legislature those who are subject to a person who insults the prophet,

are entitled to be sentenced to death if somebody kills him/her and proves the commitment of this crime from the victim, he/she will be exempted from the retaliation punishment and blood money.

17. In article 156 and according to this law, the murderer at the position of legitimate self-defense is not punished provided that getting rid of the danger would not be possible except through committing murder.

18. Resorting to guns to frighten people is also one of the crimes the blood of whose perpetrator is wasted. Using guns is one of the elements of material act of this crime, and the mental element of the crime is the ill will of the public, use of gun and its special ill will is public intimidation and frightening and depriving the people of their freedom and security. In Islamic Penal Code, numerous examples have been mentioned for this crime.

19. The purpose of article 303 of Islamic Penal Code seems to be that the principle has regarded the absolute murder a mistake and the murderer's blood also after committing the crime confesses that he/she has mistakenly killed the person released from killing that he/she thought that the person was Mahdur-al-Dam (a person whose blood is void) or obligated to retaliation and it is proven for the court that he/she is telling the truth.

20. Legally, the sentences stipulated in articles 302 and 303 of Islamic Penal Code are binding and inconsistent with the principle 22 of Islamic law and have been the responsibilities of the judicial force and overt opposition with this principle has indulgence. Proving the victim's being Mahdur-al-Dam (a person whose blood is void) is not possible and making profiles to prove his or her being Mahdur-al-Dam (a person whose blood is void) is also in contradiction with the explicit text of article 6 of the law of the general and revolution court proceedings about the criminal issues. Moreover, this fact is involving the mental beliefs in the mental element of the crime and has no status in criminal law.

21. Socially, these sentences cause chaos in the society and the preaching of arbitrary actions in the country.

22. Politically and internationally, implementation of these sentences related to Mahdur-al-Dam (a person whose blood is void) persons or killing them with the belief in their being Mahdur-al-Dam (a person whose blood is void), causes the violation of universal Declaration of Human Rights and will have a negative effect on the international relations of Islamic regime.

23. Based on what mentioned before, it is suggested that through the Islamic council action be taken to legally modify or at least make instantaneous decision about the judiciary proceedings to moderate the above mentioned verdicts so that the above mentioned legal sentences do not become an excuse for the unbridled murder of the citizens and people of the country.

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