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### Analysis of the Conditions of Legitimate Defense (self-defense) in Iranian Criminal Law, with Emphasis on Judicial Procedure

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#### ABSTRACT

Legitimate defense (self-defense) is one of the justifiable causes of crime. When a person commits a crime to defend the life, honor, property, and freedom of self or anyone else, the crime would not be prosecutable in the case of the community of defense conditions. The judicial procedure has an underlying position, along with law, legal doctrine, and other legal references. Due to the necessity of interpreting general regulations of legitimate defense and meeting their ambiguities, it is necessary to obtain the judicial procedure in this case.

In this study, some votes issued by the General Board or branches of the Supreme Court are used to investigate the conditions of self-defense in judicial procedure and are divided into three general sections. In the first section, the conditions of self-defense are discussed in the Iranian Penal Code and judiciary to meet their ambiguities. In the second section, legal perceptions on the cases of accepting claims on self-defense in the judiciary are discussed. The third section discusses the rejection of a claim on self-defense in the judicial procedure.

The judicial procedure before the revolution used to change the death penalty into life imprisonment or temporary imprisonment on lack of observance of conditions of defense resulting in murder on behalf of the defender in case of presence of mitigation directions. After the revolution, in case of authentication of the principle of defense and lack of proportionality and silence of law, the defender is charged to pay the blood-money due to the credited sentences. In case of lack of authentication of the principle of defense, the aggressor is sentenced to retaliation.

#### INTRODUCTION

##### a) Statement of problem

The present study investigated self-defense from this perspective that is presented as one of the underlying establishments of criminal law in

the votes of judicial courts, and the conditions and regulations in it are discussed regarding the courts.

In other words, the main focus of the study is on the examples of self-defense regarding the courts. The study tends to answer the question that how the provisions and general regulations inserted in the law on self-defense can be reflected in the mirror of the judicial procedure? In other words, how it has been translated to judicial language?

Some general and interpretive conditions finding real meaning in the judicial procedure include lack of easy access instruments to neutralize assault, lack of access to state powers and police, or ineffectiveness of their interference to prevent the danger. When judicial procedure can reasonably interpret the conditions and considers all conditions affecting the case in a regulated way, public order and natural rights of people for self-defense are integrated properly, and good balance is created among various social considerations. If the judicial procedure takes too strict a position to explain the self-defense, it can result in the promotion of soul of fear and humility among the people of the society and freedom of the delinquents. On the contrary, if negligence is used to interpret the conditions of self-defense, some people may misuse the appearance of self-defense with the assault on the life and physical integrity of others.

In this regard, the significance of this study is cleared, and the author tries to find out that has the judicial procedure been capable to maintain the balance level and make compromises among the different and disputing considerations in the field of self-defense or not? The problem in this way is that the judicial procedure has been rarely codified systematically and analytically. Usually, in cases of expansion of judicial procedure, the inference of the courts is expressed shortly and ambiguously. It could be mentioned that the judiciary of Iran has nothing to say as a legal reference, and its role is restricted to the extent of following the votes of the unity of procedure. However, it is not expected in no comprehensive legislation in no powerful legal system that all details and assumptions of every discussion are cleared by legal regulations. The daily experience of the courts seeks real justice, which should accept some part of the responsibility of providing justice, and make legal institutes reach the peak point of prosperity.

Under such a situation, this study can be valuable with all shortcomings and insufficiencies as one of the rare cases in Iran law analyzed as an underlying discussion in the judicial procedure with the classification of votes of the courts and analyzing them.

#### **b) The key questions *Mahdour al-dam***

In this study, judicial procedure is studied systematically to answer the following questions:

1- In case of lack of observing the conditions of defense, what is the sanction of such measure in terms of the judicial procedure? Is the judicial positioning confirmable in terms of legal references?

2- What criteria are used in the Iran judiciary to authenticate the principle of self-defense? What documents can be used to reject the self-defense on behalf of the aggressor practically in the judicial votes?

### c) Hypotheses

To answer each key question, a hypothesis is presented in the following:

The judicial procedure of Iran before and after the revolution has emphasized the similarity of the tools used by the defender, and the similarity of the injuries applied on the offensive and the defender. These cases are considered as the criteria of authentication of defense conditions; although it seems that the method is negligent and unjust, and the main criteria should be the same juridical principle of "the easiest, the easiest." It means that the facilities available for the defender and the judgment should be considered in terms of the level of danger under dominant conditions of that time.

In the silence of the legislator, it has been cleared in the current judicial procedure that if the conditions of defense are not observed, the retribution is not enforced with the authentication of the principle of defense; although the defender is sentenced to pay blood money. It seems that the procedure is a proper procedure based on the doubt in retribution of the defender under such conditions. However, in terms of punishment (Ta'zir) of the aggressor, it would be better to avoid the punishment of the defender (regarding article 612 of the Islamic Penal Code).

To accept the self-defense claim, various criteria can be documented, such as the age of the defender compared to the claimant aggressor, gender of parties, number of aggressors or defenders due to case, the time and place situation, and claims of the witnesses, and records of the aggressor. To reject the self-defense claim, subjective evidence and the causes obtained in forensic research are used, and reading that causes reasonable fear is used in absence of that

### d) Research organization

This study is formed of three topics, and each section is divided into several speeches. In the first topic, the conditions of self-defense in the Iran Penal Code, and the role and importance of judicial procedure is discussed in regulations on self-defense, defendable values, the necessity of defense, current or upcoming danger, the generality of the regulations in statutes, and need to judicial interpretation of problems with the judiciary and the references. The second topic has discussed general inferences on the self-defense criteria, the evidence used in the courts to recognize the self-defense realization, the instruments used by aggressor and defender parties in defense, and other criteria of defense, the plurality of aggressors and defenders, defense leading to murder, defense in the home of the defender, claims of the witnesses, records of the aggressor, academic evidence or medical evidence. The second topic is associated with lack of authentication of the principle of defense, the inexistence of reliability or rational fear, access to other means than defense, or the possibility of using state power and police officers, the existence of evidence against the claim of the aggressor, unreasonable offense, lack of observing defense conditions and the sanctions in the judicial procedure before and after Islamic Revolution.

### e) Method

The field study was selected at the first; although a few votes relevant to the pre-revolution and post-revolution period were obtained by the author, because the history of judicial court in Iran is about one century, and it was impossible to find examples of self-defense in a huge wave of murder cases to obtain judicial procedure because of insignificant communication with the judges of Supreme Court. The major problems with the judicial procedure in the pre-revolution and post-revolution period was in terms of lack of availability and lack of the system of codifying the supreme court votes. Therefore, the library method was the only choice. Only the library was useful to make research on the judicial procedure and it was impossible to have access to Keyhan Legal Archive, Publication of Justice Week, and Judicial Standards before the Revolution, Supreme Court Library. For other sections, judicial and legal books, the dissertations in libraries were used. Also, the opinions of judges of Criminal Courts of the province, and courtier lawyers were used. The judicial procedure was investigated in the field of the Supreme Court as much as possible.

### *January 2017*

#### *First topic: the conditions of self-defense and the position of judicial procedure in meeting their ambiguity*

In this section, the first speech has discussed the conditions of self-defense in pre-revolution Iranian Criminal Law, and the second speech has discussed the conditions of self-defense in post-revolution Iranian Criminal Law after the revolution.

#### **First speech: conditions of self-defense in pre-revolution Iranian Criminal Law**

The jurists have recognized that the Imam's permission or the Imam's request to fight with the rebels is necessary to wage war against them (Hosseini Rouhani, 1992, vol. 13, p. 108).

On the conditions of obligatory fighting, Ibn Hamzah also argues that the request of the Imam to fight against the rebels is a condition for obligatory fighting (Tusi, 1988, p. 205).

According to Islamic jurisprudence, all members of society need to pay attention to two important points about how to deal with rebels and insurgents against the Imam. The first is that if the Islamic ruler calls them to confront the rebels, they shall answer to the call and confront them, and second, they shall do all they can to fight against them and thwart their tricks and conspiracies.

After defining rebels and explaining the role of the Imam, Sheikh Tusi argues that “it is obligatory on those whom the Imam calls to fight the rebels, and it is not permissible to procrastinate in doing so (Tusi, 1980, p. 297)”

Ghazi Ibn Braj also states that “it is obligatory on the believers to respond to the call of the Imam calls to battle with the rebel and procrastination therein is not permissible for anybody” (Ibn Braj, 1986, vol. 1, p. 324).

Ibn Idris stresses this point in a similar account (Ibn Idris, 1990, vol. 2, p. 15). In addition to what others have said, Allameh Helli and Sahib

Jawahir, have considered underacting in this regard as a great sin. (Allameh Helli 2000, vol. 2, p. 229; Najafi, 1984, vol. 21, p. 335)

Therefore, jihad against the rebels is obligatory if it is called by the Imam (as) or his deputy, the refusal of which would be a great sin. The second point is that it is necessary for the members of the Islamic society to refrain from any arbitrary action against the rebels and not to wage a military campaign against them without the prior request of the Islamic ruler.

Sheikh Tusi states that “war against the rebels is not permissible for anyone without the order of the Imam” (Tusi, 1980, p. 296), arguing elsewhere that “war against the rebels is subject to the Imam's war against them, and hence ordinary people have no right to war against them independently (Tusi, 1967, vol. 7, p. 263). Ghazi Ibn Braj and Ibn Idris have also stressed the same thing (Ibn Braj, 1986, vol. 1, 325; Ibn Idris, 1990, vol. 2, p. 15)

In addition to verses like “O you who believe! Obey Allah, and obey the Messenger, and those charged with authority among you. If you differ in anything among yourselves, refer it to Allah and His Messenger, if you do believe in Allah and the Last Day: That is best, and most suitable for final determination” (Holy Quran, 4:59), The following narrations from the Holy Prophet is also noteworthy “whoever is dissatisfied with some of the deeds of his ruler and guardian, be patient and obey him, because if anyone disobeys the orders of his (just) ruler by the slightest of margins, would die an ignorant death (Isfahani, Majlesi Dovom, 1990, vol. 29, p. 331).

In overall, upsetting the political hierarchy and avoiding any chaos in the society is one of the rather important tasks that is not possible without observing the laws and obeying the Islamic ruler (Kalantari, 2011, pp. 110-111).

It is also narrated in *Sokouni* that when Imam Ali (as) triumphed over the people of Nahrawan, he said: “Do not fight them after me except with the permission of someone who is more intimate with the truth than them.” (Hor-e Ameli, 1989, vol. 15, p. 81). Such person is often interpreted to be the Imam and the Islamic ruler. This narration forbids the involvement of the believers in fighting the rebels and considers this as one of the duties of the Islamic ruler. Therefore, with the above jurisprudential reflections, it seems that rebels being *mahdour al-dam* does not have a principled and logical premise prior to the adoption of practical solutions for armed and military confrontation by the Islamic ruler.

Regarding the manner of dealing with the rebels with gardeners, the Islamic Penal Code stipulates in Note 1 of Article 302 that “acting on paragraphs (a), (b) and (c) of this article is a crime without the permission of the court and the perpetrator is punished by *ta'zir* prescribed in the fifth book (Punishment).”

Article 302 of the Islamic Penal Code stipulates that “If the victim has one of the following conditions, the perpetrator will not be sentenced to retaliation and payment of *diya*: (a) the victim is the perpetrator of a *hadd* crime deserving death.”

Regarding the imposition of *hadd* punishment in the mentioned cases, the legislator explicitly states that acting in these cases without the permission of the court is a crime. Therefore, members of society do not

have the right to punish rebels, and the punishment of rebels is the exclusive duty of the Imam and his deputy, and at the present time, when the Supreme Leader has delegated this authority to the courts of justice, it is within the scope of their duties. As the jurists have stated, the principle is that the imposition of *hudud* and the execution of punishments is related to the ruler (Allameh Helli, 1993, vol. 9, p. 460).

**Third condition: the necessity of defense**

The aim by the necessity of defense is interpreted by lawyers as follows: there is no other choice for the defender except disposal. For example, the person is unable to run away from the assault or danger, or defense is taken as much as required. For example, killing the assaulter after disarmament is not authorized. Some lawyers believe that defense is the right and obligation of the defender, and say that running away is not authorized in case of having the capability of self-defense; although nothing is said on running away by the legislator.

**Fourth condition: using state powers is impossible without death**

The condition shows that in case of using state powers and the possibility of disposing the assault or attack by the police officers, any kind of behavior causing hurt of other person is not a case of defense

**Fifth condition: recognizing the proportionality of defense with attack**

The condition of proportionality of defense with attack means that the defense shall not be severe, and the defender can't use whole power to dispose of the danger, because the purpose is a legitimate defense for danger disposal.

Some lawyers believe that the aim by proportionality of defense with an attack is a rational correlation between the probable damage caused by the attack and unnecessary damage (Aminopour, 1951, pp.111-112). In other words, the defender has no right to kill the person, who has the intention to make minor damage.

The Vote of Branch 12 of the Supreme Court 1328/7/25-1588 has mentioned that proportionality of defense with the attack is in similarities of applied instruments by the defender and the aggressor. The defense can be proportional to the attack when the parties have similar weapons. It means that both of them shall use similar sticks or weapons (Matin, 1961, p.287)

**Sixth condition: sanction for lack of observing proportionality in defense**

Whenever the defender uses defense power more than the required amount to dispose of the attack (e.g. if the defender kills the aggressor instead of injuring him/her), the defense is extreme and the law is violated. Such action is not legitimate anymore; although the legislator has appointed no explicit punishment for that, and is silent. Some lawyers believe that in case of lack of proportionality of defense with the attack, the punishment would be mitigated; although the defender has violated the legal conditions. Regarding article 41 of General Penal Code approved in 1925, "anyone who commits a measure to defend the life, property or honor of self and the

action is regarded as a crime, the person would not be punished; unless in case of murder, in which three degrees of mitigation of punishment is appointed".

### **Second speech: the role of judicial procedure in the interpretation of relevant regulations of defense**

On the importance of the position of judicial procedure, it could be mentioned that the judicial procedure is in line with the law, and is one of the most underlying sources of law.

Judicial procedure: this term refers to the judicial votes made by the courts or some groups on a problem using the same method (Katuzian, 1992, p.201).

As the judicial procedure is established as a result of many efforts, it is natural that the courts use the previous experiences in the hearings. According to the hierarchy among the courts and as supreme courts use usually the opinions of superior courts, judicial procedure is a special form of the custom of the wise men of the society. The courts can play a key role by establishing legal provisions to complete the law and to adjust them with social needs (Katuzian, *ibid*, p.205).

In this section, the significance of the role of judicial procedure is discussed in two parts. In the first part, the generality of the regulations in statute and the need for judicial interpretation are presented. In the second part, the objections of judicial procedure and identification of existing references are discussed.

### **First: generality of regulations in the statutes and need to judicial interpretation**

The regulations relevant to legitimate defense (self-defense) such as reasonable fear, the proportionality of defense, the way of proving the defense, and other regulations can be interpreted. It would be better to present examples of these regulations. Now, several regulations are analyzed here.

#### **a) Reasonable fear**

The aim by reasonable fear is the possibility of predicting the assault and attack by conventional wisdom (Shambayati, 1994, vol.1, p.308).

Some other lawyers believe that the criterion for reasonable fear is thematic criterion, which is dependent on the situation. As the legislator has provided no exact criterion, the defender is charged to prove the claim to express the scene status honestly and carefully (Goldozian, 2006, vol.1, p.309).

#### **B) Proportionality of defense**

The proportionality of defense with an attack is neither accurate nor implementable because it is against justice and logic to regard the action of the defender as illegitimate if the defender has to commit a big crime to dispose of small danger. This is because; it is impossible to predict the amount of danger and assault most of the time. Hence, it has made disputes among the lawyers and judges.

The vote of the Third Branch of Supreme Court 28/7/15-1588 says: "the defense is proportional to attack in case that the parties have used similar weapons; meaning that both of them shall use similar stick or weapon" (Matin, 1961, p.287). This vote has considered the criterion for the proportionality of the defense the proportionality of two instruments used by the defender and the aggressor. It means that if the aggressor attacks by a knife, the defender can use a knife or a milder instrument instead for self-defense. If the defender uses a sword or ax, such defense is not proportional.

The theory can be objected in this way: if the aggressor has attacked by a knife and the defender has had nothing else except a sword or gun, whether he/she can't use that weapon to make self-defense and dispose of the assault? As defense is a natural right of humans and the legislator tends to support the defender by appointing this law to make self-defense in case of impossibility of using the state powers, the law in the field of determining the proportionality in the defense shall be interpreted in such way that the defender can select defense instrument freely and defend self against the attack and assault.

It should be noted that the theory has been continued after the revolution as a well-known judicial procedure used before the revolution.

### **Second: the objections to judicial procedure and identification of existing references**

In this section, the objections to the judicial procedure are divided into two parts: a) judicial procedure references in the pre-revolution period in terms of access to case details, b) the judicial procedure references in the post-revolution period in terms of classifications and shortcomings

a- The judicial procedure references in the pre-revolution period in terms of access to case details

As the history of the court of justice in Iran reaches about one century and the major part of the period is associated with the pre-revolution period, and as it is possible or hardly possible to analyze the examples in judicial procedure in a huge volume of cases in terms of the registry, and due to antiquity of the cases and the traditional maintenance method, the study has used the central library of Supreme Court of Iran to obtain the collections such as Keyhan Law Archive. This was one of the main problems and limitations of judicial procedure in the pre-revolution period.

b- Judicial procedure references in the post-revolution period in terms of classifications and shortcomings

After about three decades of the Islamic Revolution up to 1997, the problems and shortcomings have remained in the judicial procedure. The process was continuing until the time that the need to determine judiciary and to upgrade the legal knowledge and increasing advancement of social justice caused for the first-time publishing Collection of the Negotiations and Votes of General Directorate of Supreme Court of Iran in 1997.

However, the judiciary still encounters many problems in terms of the plurality of issuance references and diversity of votes, such as General



Assembly votes, Supreme Court rulings, Legal Department views, and Judicial hearings. Therefore, collecting examples of legitimate defense is hard to do for the seekers of Knowledge of Law.

### **Second topic: legal perceptions of the cases of accepting self-defense claim in judicial procedure**

In this section, the general inferences should be analyzed on the criteria of proportionality in defense and the documented evidence of courts to identify the realization of defense at the first to obtain the judicial procedure on the attitude and legal perceptions of accepting self-defense claim. To facilitate a better understanding of these issues, they are studied in two speeches. The first speech discusses the general inferences on the proportionality criteria in legitimate defense, and the second speech is associated with the documented evidence of courts to identify legitimate self-defense.

#### **First speech: general inferences on the proportionality criteria in legitimate self-defense**

In this section, the instruments used for self-defense are compared to the instruments used by the aggressor, and other proportionality criteria are discussed in two parts.

a) The instruments used for self-defense compared to instruments used by the aggressor

In this section, the instruments and weapons used by the defender are compared to the instruments used by the aggressor. Also, the conditions of proportionality of defense and the theories in the judicial procedure are discussed.

The vote of branch 31 of the Supreme Court of Iran 69/12/12-1927 says: "using a knife against stick is not a proportional defense" (Vaezi, 2000, p.147). In this vote, the criterion for legitimate defense is that the defender shall use a similar instrument to the instrument used by the aggressor. The theory of proportionality criterion for self-defense shall not be interpreted strictly based on the aspect of protectiveness of legitimate defense regarding the law.

After the revolution, the branches of the Supreme Court made another theory on the proportionality of defense with attack and assault. The vote of branch 26 of the supreme court (1371/6/5-1334) regarded the proportionality of defense in the similarity of the injuries imposed by the aggressor. For example, if the aggressor has injured somebody by nanchiko, and the defender used the knife for self-defense, and if a murder occurs, the principle of defense is authenticated. However, the defender shall make injuries similar to those made by the aggressor, and shall pay blood money for that (Bazgir, previous reference, p.121).

The theory is not a proper criterion for proportionality of defense with the attack and assault, because the defender defends the right of self, and this is not a crime. Hence, there is no need for equality in terms of injury, and the right to self-defense and right to retaliation are two separate issues. In some cases, the defense may be a preemptive defense. For example, if an armed thief enters a house at night, and the landlord beats the

aggressor by stick to dispose of the assault, no injury is made by the aggressor to regard the equality of injuries as the proportionality criterion. On the other hand, how one can be aware of the intention of the assaulter that what damage is going to be applied so that the defender can make the same injury?!

b) Other proportionality criteria

In this section, other criteria of proportionality are divided into three groups thematically: first, proportionality in defense causing the murder of the aggressor; second, defense in the home, and third, other criteria for proper identification of proportionality are discussed.

**First: proportionality of defense causing the murder of the aggressor**

The vote of Branch 27 of Supreme Court (1373/11/4-2051) says: as the defender is threatened by the victim and his accomplices in terms of sodomy, and has defended his honor by a knife, due to the young age of the defender and plurality of the assaulters, the defense could be done only by murder to dispose of the assault. In this case, the conditions and situations, and the young age of the defender against the assaulters causes accepting the defense and his acquittal (Bazgir, *ibid*, p.581).

**Second: defense in the home**

The vote of branch 16 of the Supreme Court (1370/9/24-503): the defender is a woman, and his husband has been absent. The woman has hit the aggressor on his head with a hard body, which has led to his murder. The woman has defended her honor by this. However, as the defender is a woman and is weak against a male aggressor, and has hit the aggressor only for self-defense, this can be a case of legitimate self-defense; although later her brother in law and father in law arrived at the place. Hence, the defender and accomplices are acquitted (Bazgir, *ibid*, p.586).

**Third: other criteria for proper identification of proportionality in defense**

Other criteria documented by the courts include the conditions and situations affecting the defense.

- 1- The physical and mental conditions of the defender towards the aggressor
- 2- The gender of the defender, e.g. the aggressor is a man and the defender is a woman
- 3- A plurality of aggressors against alone defender
- 4- The place is a city of desert
- 5- The attack is done in the daytime or at night
- 6- The quality of defense and the way of using defense instrument

The examples of the conditions and situations of assault towards the defender vary per case just for the mentioned cases for what is evident. The judge decides to prove or reject the defense by studying the details of evidence just like solving a puzzle in perfect impartiality.

### **Second speech: the evidence used by the courts to recognize the legitimate defense (self-defense)**

As the evidence used by the courts to recognize the legitimate defense can be underlying due to necessity, this section has discussed this field in 4 parts. In the first part, the truth of the claim of the defender and confess to murder is discussed. In the second part, the statements of the witnesses, and thirdly, the records of the defender or aggressor are discussed. In the fourth part, the evidence or medical evidence of parties is discussed independently.

#### **First: the truth of claims of the defender and confession to murder**

One of the proofs for legitimate defense is honesty and truth of the claims of the defender and explicit confession in the trial. For example, the negotiations of General Directorate of Supreme Court (1376/3/13-6) by deceased Sepahvand: "thirdly, the defenses of the offender are not explicit and are contradictory. Sometimes he says that he attacked, took the knife from Mr. ... and attacked, and wanted to rape. Sometimes, he says "I was angry, and I don't know that who injured him by knife, me or him!". It means that the offender is not an honest person. Lie varies every moment, and the reality is always the same and unchanged. The phrases may vary in saying the truth, although the content and provisions are intact".

Another example is some part of the talks of the General Directorate of Supreme Court (76/2/16-4) by Amuzegar: "the accused party has firstly confessed that he has hit the defender, and changed his sayings later. He was not aware that changing the words in next steps can be used against him in trial" (Aliabadi, 1984, vol.1, pp.234-246).

According to these theories, it could be found that firstly, the offender shall be honest to prove the legitimate defense; secondly, he should confess to murder; thirdly, he should never deny after confession, because confession and denial can't be adjusted, and this can be in the loss of the defender.

#### **Second: sayings of the witnesses**

The other evidence to prove the legitimate defense or reject that can be a testimony of the witnesses. Here, some part of the talks of General Directorate of Supreme Court (1348/2/3-159) is presented: as the testimony of the witnesses shows that the offender has confessed to one of the witnesses that he has paid 35Rials to buy a bear and has confessed to another witness that he has been present in the hotel to watch the Tehran view in the penthouse. The theory of contradiction in claims of the offender: by this, the offender wanted to be secretive (Abazari, 2000, p.176).

Therefore, the claims of witnesses are documented to reject the legitimate defense.

#### **Third: records of the defender or aggressor**

The main evidence to prove the claim of the offender for legitimate defense can be his good history and good reputation. On the contrary, criminal records or the bad reputation of the offender can affect his claims.

The claims would not be accepted in the court easily. Also, the history of the wickedness of the aggressor and moral corruption can be in favor of the defender. Some part of the negotiations of General Directorate of Supreme Court (1376/3/3-6) in a case by Tadayon: "the witnesses say that the aggressor has had moral corruption generally, and it could be said that the money paid to the defender by the victim has been the bedrock for the same purpose to prepare him. Also, the victim has bought a video player for another young man to show porn videos. The evidence shows that the victim has been an assaulter, and the offender (defender) has killed him to defend his honor" (Abazari, *ibid*, p.77).

As a result, proving the moral corruption of the victim can be effective in proving the rightfulness of the defender and his innocence.

#### **Fourth: academic or medical evidence**

Nowadays, with the academic advancements, especially in the field of law and medication and criminal laboratory, getting a sample from the crime scene and analyzing them can be significantly helpful for crime detection and criminal identification. The academic evidence can be analyzed based on material causes and medical evidence by the emergence of the fingerprint of the offender in the place of a crime or the stain of blood, sperm, hair, gun, bullet, and similar materials from the crime scene by relevant experts. The expertise results provided can be helpful for the refusal of the judge's conscience and achievement of the truth.

In a case in branch 27 of Supreme Court (1373/11/4-3051), the results of forensic medicine are documented as evidence for the assault of the victim on the offender, who has defended his honor (Bazgir, 1997, vol.2, p.581).

#### **Third topic: rejecting the legitimate defense claim in judicial procedure**

In this section, to obtain the judicial procedure, the inferences of the courts, and the branches of the Supreme Court, the votes of the General Directorate of Supreme Court shall be considered. Also, to determine the subject of rejecting the self-defense claim, it has been divided into three speeches. In the first speech, the lack of authentication of the principle of defense is discussed. The second speech is associated with access to other means except for the defense, or the possibility of using state powers. The third speech has discussed on lack of observance of proportionality in defense and its sanction in the judicial procedure.

#### **First speech: lack of authenticating principle of defense**

In this section, the evidence and the inferences of the courts on the subject are discussed. First, the evidence against the claims of the offender is discussed. Second, the unreasonable nature of the suspicion of the offender is focused.

#### **First: evidence against the claim of the offender**

The vote of General Directorate of Supreme Court (50/4/2-256) says: therefore, as the claim of the offender is contrary to the forensic medicine certificate, and the way of beats on the sensitive points of the

body of the victim, and the claims of the offender in the phases of investigation, and shooting to him, and other evidence in the records; the situations are against the claim of the offender. Hence, legitimate self-defense is not true (Abazari, 2000, p.176).

In this vote, the General Directorate of the Supreme Court has documented evidence against the offender's claim based on legitimate defense and has found that there has been no legitimate defense. The claim is void and the case is assigned to the court for an appeal session.

### **Second: unreasonable suspicion of the offender**

The vote of General Directorate of Supreme Court (1348/8/21-183): the offender says in the defense session: "on 10 p.m., I was in the bed. Somebody knocked on the door. I opened the door and saw somebody, who called me outside and also said that they are two people. I said him to come in. Then, he went to inform his friends to come in. I wondered! What is their intention at this time at night? I took my hunting rifle. Immediately after opening the door, I saw the armed men. I fired and hit both." It is evident from the claims of the offender and the content of this case that the victims have not tended to kill him. If they wanted to kill him, they could shoot him the first time that he opened the door. Hence, the suspicion of the offender is not reasonable. The vote shows that defense against allusive danger is not authorized, and the defense shall be based on reasonable evidence (Deputy of Education, Judiciary, 2008, p.37).

### **Second speech: access to means except the defense or using state power and police**

One of the conditions of legitimate self-defense is the impossibility of access to other means for rescue or impossibility of using state powers, and police, which can be divided into two parts: a) access to means except for defense, b) possibility of using state powers, and police.

#### **A) Access to means except for defense**

In case of availability of other means except for the defense, such as running away or screaming, there would be no place for the right to defense anymore. In article 186 of the Civil Code, when police or state powers are in access, there would be no chance for self-defense with no loss of time. Also, regarding paragraph c of Article 627 of the Criminal Code of Iran approved in 1996, in case of impossibility of using state powers or any easier means for rescue, it could be inferred that defense can't be legitimate in case that one can dispose of the danger without defense. For example, when a thief can be forced to run away by screaming, there would be no permission to kill him or hurt him. If a gun is in the hand of an insane, one shall run away if possible, and shooting the insane is illegitimate.

The vote of branch 27 of Supreme Court (1371/1/25-448): therefore, one of the conditions of legitimate defense is that the offender has no way except defense because the offender could run away due to his claims. Hence, he was not permitted to kill the aggressor. Also, the committed measure is not proportional to the assault. Self-defense by a knife against somebody attacking by stone is unacceptable (Aliabadi, *ibid*, p.310).

### **B) Possibility of using state powers or police**

Another condition of legitimate defense is the impossibility of using state powers with no loss of time, or their interference can't be effective to dispose of the danger and assault. Hence, if it is possible to use state powers or police, self-defense is not authorized. The vote of the General Directorate of Supreme Court (1379/2/6-2) says: the offender could refer to the police station to rescue his 4-year old kid from the kidnappers instead of calling his relatives. By this, he could prevent the murder of the kidnappers. It was not necessary to hit the victim on his head. As using state powers was possible with no loss of time, the defense is regarded illegitimate (Bazgir, *ibid*, p.595).

### **Third speech: lack of observance of proportionality in defense and its sanction in judicial procedure**

On lack of observing proportionality of defense causing murder in post-revolution laws, such as the Islamic Criminal Code approved in 1996, and Islamic Penal Code approved in 2013, no sanction is predicted. Hence, regarding article 167 of the Constitution, the courts charge to find the sentence of the situation in the codified regulations. If the law is silent, the order can be issued with referring to credited juridical references or credited fatwa. Hence, in this section, the non-proportional defense is discussed in pre-revolution and post-revolution judicial procedures.

### **First: non-proportional defense in pre-revolution judicial procedure**

On non-proportional defense causing murder in the pre-revolution period, nothing is expressed explicitly. However, the behavior of the offender is regarded as intentional murder. According to the situations (forgiveness by next of kin, the motivation of murder, or the mistake of a defender as a result of illiteracy), regarding articles 170, 171, 44, and 192 of General Penal Code, the Death Penalty used to be mitigated to two degrees and changed into imprisonment with penal servitude.

The vote of the General Directorate of Supreme Court (1348/2/3-159): as the claim of the offender on defense is rejected, he is uninformed of the regulations, and has had no criminal history. the punishment, in this case, is mitigated up to two degrees to 12 years of imprisonment with penal servitude (Aliabadi, *ibid*, p.310).

### **Second: non-proportional defense in post-revolution judicial procedure**

The post-revolution judicial procedure on the non-proportional defense in the Islamic Penal Code of 1996, and the newly approved code has no specification, and no sanction is predicted for that. The order, in this case, is issued based on juridical references or credited fatwa. In these cases, juridical opinions of Imam Khomeini in Tahrir Al-Vasilah are used. The source says on defense: "if the proportionality and amount are not observed in defense by the defender and causes the death of the aggressor, liability emerges; although the type of liability is not specified, and the lawyers believe that lack of proportionality lacks spiritual element. They consider such case as quasi-murder and the defender shall pay blood money

to the next of kin".

The vote of the General Directorate of Supreme Court (1375/8/29-20): the people beginning the attack were the victim and his two brothers. They used a stick and handlebar of Land Rover. The offender was alone and had no chance to refer to police officers. Hence, the offender took measures for self-defense. However, in terms of non-proportionality of defense, the offender is acquitted from the liability and punishment (Deputy of Education, *ibid*, p.335).

### **Conclusion**

The legislator approved the New Islamic Penal code in 2013 and made some amendments in some articles relevant to the Criminal Law approval of 1996. For example, on legitimate defense, an innovation was used, and the regulations associated with legitimate defense (self-defense) mentioned in Islamic Penal Code (1996) in articles 61 and 625-629 were placed in article 156 of the new code. Another innovation of the legislator was the elimination of some provisions of legitimate defense, which seemed unnecessary. Some of the articles could make challenges and disputes caused by legal interpretation among lawyers and judges of the courts, which were ended by the amendment. For example, notes 1 and 2 of article 61 of the Islamic Penal Code can be mentioned:

- 1- The defense is proportional to the assault and danger
- 2- The committed measure is not more than the required level

Also, note b of article 627 of Penal Code: defense shall be proportional to attack.

In this case, providing examples of proportionality of defense could not be effective because of the existence of two theories. One theory believes that the criterion of proportionality of defense is proportionality in the instrument. The theory says: the defense is proportional if parties have similar weapons.

The latter theory says: the defender shall make injuries just like the injuries made by the aggressor.

In paragraph 2 of article 61 of the Islamic penal Code "the committed measure shall not be more than required level" is also eliminated. Instead, note a of article 156 says: "a- the measure committed to disposing of the assault shall be necessary. The defense shall not be more than required." Also, the article has mentioned that the dispute on the necessity or lack of necessity of escape causing a severe dispute among lawyers is presented under the title of "disposal of an assault should be necessary". It means that defense is not necessary in case of the possibility of running away. For example, defense against an armed insane party is not required in case of the possibility of running away. This has led to a dispute caused by the interpretation of easier means for defense.

Another advantage of the elimination of proportionality of defense with assault is that in case of necessity of disposing of the danger and assault, the defender is free to select defending instrument, and has used the rule of "the easier, the easier".

By applying the juridical rule, the disposal of assault by easier means is inferred in addition to freedom of defender to select the means. It means that if the defender takes disposal of the assault by intense and

severer means, he has not observed conditions of defense, and is liable to pay blood money. However, note 2 of article 156 of the Penal Code says: "when the principle of defense is authenticated, but the observance of conditions is not authenticated, proving lack of observance of defense conditions is the liability of the aggressor". Here, the legislator supports the defender and makes the aggressor responsible to prove lack of observance of defense conditions. If the aggressor is killed, the liability of proving lack of observing defense conditions is assigned to the next of the kin.

In the end, obtaining judicial procedure in terms of unavailability and registration system and classification of the case is hard to do. According to the academic and technological advancements in the registry and computer archive, the information of votes of the courts shall be organized by the judiciary. The advancements can be applied to upgrade the science of law and to achieve experiences of judges and votes of Supreme Court, and appointment of criminal law regulations for the knowledge seekers.

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