

The fifth lecture

Second Requirement: Qisas Crimes

The second requirement: crimes of retribution is not supposed to form and meaning to inflict on the offender as inflicted on the victim of physical harm, if his crime was intentional murder took the life of the offender as well, and if his crime was assault on physical integrity inflicted by the same harm inflicted on the victim, but retribution meaning means that the conditions for the implementation of retribution are not fully available, it is replaced in such a case with blood money, by obliging the offender to pay money to the victim by following and observing certain rules, where In such a case, blood money takes the rule of retribution only meaning, as it is retribution because it is in return for the wounds and physical harm that befell the victim, but it is not retribution because it does not resemble it and does not match it completely, as it is equal to hypothetical equality only.

In order to remove all ambiguity, the definition of retribution will begin, through a statement of its cause and the extent to which the right of God Almighty and the right of the slave to retribution are combined, ending with clarifying the role of pardon in imposing retribution as well as the procedures for its implementation.

The first section :Definition of Qisas

Retribution is a punishment that is really prescribed by Sharia for God Almighty and the slave, which are the crimes for which the wise street decided retribution, which are intentional blood crimes and include crimes of assault on life and assault on the integrity of the body, where the offender deserves a penalty for him in such two cases of retribution, by inflicting as he inflicted on the victim from harm, so the offender is killed if he kills the victim, and he is physically harmed to the same extent that he inflicted on the victim of physical harm and wounds caused.

And finds retribution legitimate support in the saying: "And we wrote them that the soul with the soul and the eye for the eye and the nose for the nose and the ear for the ear and the tooth for the tooth and wounds retribution who believe

in it is an atonement for him and who did not judge what God has revealed those are the oppressors", where God Almighty decided in this verse explicitly retribution in Islamic law in such crimes, as it was prescribed in the Torah, it is an ancient and modern punishment may not be devoid of an old society was or A hadith from its report, as it is necessary for every social organization, its damage is one constant that does not differ according to times or places, which necessitated the intervention of the wise street and the determination of retribution in confronting it until God inherits the earth and those on it.

He also finds retribution supported in the saying of the Almighty who said: "Whoever assaulted you assaulted him as he assaulted you and fear God," and he also said: "O you who believed, you wrote retribution in the dead," and said Izz who said: "And you have in retribution life, O people of heart, so that you may be pious."

He also said Almighty in the immunity of souls and forbidden: "Do not kill the soul that God has forbidden only the right", and decided retribution for the guardian of the murdered not to exceed the limits of what he decided for him of retribution, he said Almighty who said: "And killed oppressed has made us to his guardian Sultan does not overkill that he was Mansour."

The penalty for murder is earthly and eschatology, as the Almighty explained the reward of the murderer in the Hereafter and said: "Whoever kills a believer deliberately, his reward is hell, in which he will be immortal, and the wrath of Allah will be upon him and curse him and prepare for him a great punishment."

Retribution also finds its support in the Sunnah of the Prophet, where the Messenger of Allah, may God bless him and grant him peace, said: "Whoever is injured by blood or dementia is a choice between one of the three, and if he wants the fourth, take it on his hands: to retribution, or pardon, or take blood money", where the Messenger of Allah, peace and blessings be upon him, indicated that the victim or his guardian has the right to retribution, and he may also pardon or take blood money instead, if he wants the fourth option, which is Extravagance in killing is not allowed or authorized to do so, but Muslims must prevent it, even by the power of the Sultan.

The second section: The Reason for Retribution

God Almighty explained the gravity of intentional killing, its seriousness and its serious damage to society in the words of the Almighty in Surat Al-Ma'idah verse 32: "Whoever kills a soul without a soul or corruption on earth, it is as if he killed all people", and therefore the report of retribution is a penalty for blood crimes due to the seriousness of the deliberate attack on the right to life and the integrity of the body as a sacred right, where the social damage resulting from such crimes is serious and grave and difficult to remedy or remedy, It is represented in the destruction of a number of members of society or their becoming distorted and unemployed to provide the desired addition and social benefit, as they are a productive force in society that benefits and benefits, which results in weakening society economically and reducing its ability to progress and prosper, and on the other hand, leads to the spread of crimes of taking revenge in the event that retribution is not really decided for the victim or his family, so security is disturbed, chaos spreads and spreads within society this made this type of assault deserve a severe punishment decided by God Almighty, without delegating it to any party, whether the guardian or the judge, not even the victim or his family, because the judge or guardian may not appreciate the appropriate deterrent punishment on the one hand, but the victim or his family may exaggerate the punishment in retaliation, so and a chapter in all of that, the wise street intervened from above seven heavens and decided to inflict the same harm on the offender that he inflicted The victim, and this is credible for the words of the Almighty in Surat Al-Baqarah verse 194, in which he explained the symmetry: "Whoever assaulted you, assault him as he assaulted you", and the saying of the Almighty who said in Surat An-Nahl, verse 126: "And if you are punished, punish as you were punished by it", it was in the report of retribution fair equality.

The report of retribution is also due to the fact that the punishment of this type of crime in the estimation of God Almighty may not be considered time or place, as its danger and social harm are one and the same in all times and places, and does not take into account the personal circumstances or the social status of any party or party, whether the victim or the perpetrator, for any reason except those related to the assignment, and this is true of the saying of the Prophet (peace and blessings of Allaah be upon him): "Muslims have equal blood, and their blood

is sought below them," and therefore its criminalization may not differ according to a specific legislative policy, and therefore its punishment had to be fixed and unified without modification, distortion or change.

Section Three: Determination of rights in retaliation

In retaliation, the right of God Almighty and the right of the servant come together clearly, as the first is evident in the serious social harm that the crime caused on the social level and the turmoil it caused within society, and the second appears in the damage that the crime caused to the victim or his family, by depriving him of his right to life. Or the safety of his body, as will be explained successively:

First: The right of God Almighty is related to retribution: God Almighty has singled out Himself to determine retribution and determine its amount by force in a peremptory manner, without allowing the guardian or the judge to intervene in that and decide for her the punishment he deems appropriate.

One of the manifestations of the attachment of the right of God Almighty to retribution is that in the event that the victim or his blood guardian pardons his right to retribution, whether in return for or without it, the guardian eliminates the offender with a ta'zir penalty despite the pardon that represents the part related to the right of God Almighty, thus replacing the punitive punishment with retribution, because the pardon relates to the right of the victim or his family to punishment, and did not obtain the right of God Almighty to the punishment that remains in place, and is manifested in the case of pardon through The punishment is shifted from retribution to ta'zir, as pardon drops punishment as retribution, but punishment does not fall at all.

Second: The right of the slave to retribution: Although the right of God Almighty is evident in the crimes of retribution because of their clear attachment to the security of society and the safety of its members, which is the maximum interests and goals that the latter seeks to achieve, but the right of the slave remains in this type of crime, and the manifestations of the attachment of the right of the slave to retribution are as follows:

- The retribution lawsuit is based only on the claim of the victim or his family in the event of his death, and without this claim or claim, retribution does not occur, as the punitive penalty is replaced by care for the right of God Almighty, which remains in place, as previously explained on the one hand, and protection of the right of society on the other hand.
- The victim or his family retain their right to pardon the offender even after claiming retribution and claiming it before the judge, as they continue to enjoy this right at all stages of the prosecution, even after the pronouncement of retribution until its execution, all of which are stages in which the victim or their family enjoys their right to retribution.
- The execution of retribution is carried out after the issuance of the judgment by the victim personally or his guardian, who is entrusted with the personal execution of retribution, the victim who suffered physical harm himself retribution from those who inflicted this harm on him by inflicting similar harm on the offender, and the guardian of the blood of the murdered kills the murderer of the deceased himself based on the judgment of retribution, and accordingly, the implementation of the judgment of retribution is the right of the victim personally, under the supervision and supervision of the guardian.

However, if the judge or guardian fears that the victim or his guardian will not observe the Shariah rules in the execution of qisas, or if he fears the victim's injustice or arbitrariness in the execution of qisas, or his physical inability or mental competence to execute the judgment of qisas personally, he may delegate in such a case a person to replace the victim or his guardian and undertake the execution in accordance with the Shariah rules.

Section Four: The role of pardon in imposing retribution

The role of pardon in inflicting retaliation is evident through the Almighty's saying in Surah Al-Baqarah, verses 178 and 179: "O you who have believed, retaliation has been decreed upon you for the slain: the free for the free, the slave for the slave, the female for the female. So whoever is pardoned from his brother anything, then follow what is right and pay back to him with kindness. This is an alleviation from your Lord and a mercy. He commits aggression after that,

for him is a painful punishment, and for you there is life in retaliation, O people of understanding, that you may become righteous.”

Where the verse highlights the right of the slave is evident in the crimes of retribution, which prevails in them, and this is evident by enabling the victim or his guardian to pardon at all stages of retribution, as the verse desired pardon and preferred it to retribution, which is evident from the description of God Almighty the victim who pardons the offender as his "brother", as the pardon will inevitably remove the hostility, grudge and hatred between the offender and the victim and make them brothers, as God commanded Almighty in obtaining the offender pardon "following the known", with the provision of compensation in the event that he stipulates a counterpart for pardon "benevolently".

God Almighty has described retribution as: "mitigation and mercy" from God, it is a relief for the offender by dropping retribution from him, and a relief from society as it restores the relationship of affection between the offender and his family on the one hand, and between the victim and his family on the other hand, unlike the implementation of retribution, which may leave bad effects in the souls as it may spoil relations between the families of the offender and the victim.

Despite the fact that the pardon is a discretionary power for the victim or his family, who have full authority and freedom to decide whether or not, but after choosing the pardon, the latter has a mandatory and final character if decided by the victim or his family, which is confirmed by the Almighty's saying: "Whoever assaults after that has a painful torment", whoever pardons the perpetrator of the crime of blood, whether it is murder or without that of the crimes of self-assault, whether in return or without consideration, then retracted and retribution, Such an act is not considered retribution but an "assault" on his part according to the verse mentioned above, and his reward in such a case is according to the same verse "painful torment", which is worldly torment where he is punished in this world, and eschatological torment where he is rewarded in the hereafter.