

## **The sixth lecture**

### **Section Five: Procedures for implementing retribution**

Retribution is carried out as a public asset in accordance with the provisions of Islamic law from the guardian of blood or the victim personally in one of the most pompous and finest forms of justice that are unparalleled in man-made legislation, even those that praise democracy and respect for human rights and dignity, where the victim or his guardian himself inflicts retribution on the offender, and this is done after handing over the offender to the victim or his blood guardian based on the judgment that includes the imposition of retribution on the offender by the judge, until he proceeds to implement. The latter shall not intervene unless he fears the arbitrariness of the victim or the guardian of blood during the execution of retribution, or his inability to implement it due to objective considerations or his failure to observe in his implementation the rules of Sharia execution, and accordingly the guardian himself or through his workers shall carry out retribution instead of the guardian of blood or the victim.

In addition to the personal execution of retribution from the guardian of blood or the victim, many jurists have permitted the guardian to decide to carry out retribution through his workers as a general rule and in all cases in which it is adjudicated, due to several considerations, the most important of which are:

- The diversity of methods by which it is envisaged that retribution is carried out, especially in the wounds.
- The unity of the crime requires equality between the perpetrators in execution and the union of the method and rules of execution.
- The general nature of the penalty, especially at the implementation stage, requires the state to monopolize its implementation, which leads to avoiding many of the negatives that may result from the execution of the penalty by a private person, including what the victim or his family may claim of miscarrying retribution and not respecting the conditions for that, especially with regard to transgression, exaggeration and arbitrariness, which would result in demands to hold him accountable for that or attempts to take revenge on him.

□ There is nothing in the principles and rules of Islamic law that prevents the approval as a general rule that the state, through its workers, executes the penalty of retribution after it has been sentenced.

It should be noted that retribution takes two forms: retribution image and meaning and retribution meaning only, in the first inflicts the offender as inflicted by the victim of physical harm, kills if his crime is intentional murder, and inflicts him from the wounds as inflicted on the victim if his crime is physical harm, while the second relates to cases in which the conditions for retribution are not met, replaced by and instead oblige the offender to pay money to the victim called blood money according to certain rules, blood money in this form is retribution Meaning only, it is retribution because it corresponds to physical harm, but it is not retribution because it does not resemble it.

### **Third Requirement: Diyat Crimes**

Third, blood money crimes are the crimes for which the wise legislator stipulated the legally estimated blood money as a punishment, without relying on a specific criterion such as damage or any other consideration. They are fixed and do not differ - in principle - according to the circumstances of the victim, as Islamic law protects everyone equally without any considerations. Another character. The blood money takes the form of money paid by the offender, his family, or the public treasury to the victim, his guardians, or his family. It is therefore a financial punishment, and one of its characteristics is that it combines punishment with compensation, which results in the impermissibility of demanding compensation from the victim who received the blood money in addition to it. To combine the latter between the two characteristics together, and in an attempt to understand the crimes of blood money, we will stop, starting with the legal texts contained in this regard, passing through an explanation of the areas of their application as well as the rights in blood money, and ending with exposure to cases where ta'zir and blood money combine, respectively.

Requirement: Diyat Crimes

### **The first section: Sharia texts regarding blood money crimes**

One of the most important of these texts is the saying of the Almighty in Surat An-Nisa, verse 92: "It was not for a believer to kill a believer except by mistake,

and whoever kills a believer by mistake, freeing the neck of a believer and a friendly Muslim to his family except to believe", as the Messenger of Allah (peace and blessings of Allaah be upon him) said: "However, in a dead person who deliberately makes a mistake, the whip, stick and stone are killed by a hundred camels."

Accordingly, God Almighty has made manslaughter two penalties are the liberation of the neck of a believer and his parents, and in this context, the liberation of the neck of a believer takes the rule of penance, which is a compensation for the Islamic community for the loss of one of its members, by freeing the believing slave, considering that the free believer is more useful and beneficial to society than the slave believer, so that the liberated slave forms the addition of a new productive and effective individual to the Islamic community, as compensation for the injured believer who is no longer able to benefit the Islamic community and the Islamic state, which is This highlights the social nature of the crime of manslaughter and its social resonance, in addition to its personal impact, and the consequent social damage that requires social compensation.

## **Section Two: Areas of application of blood money**

The offender shall pay a sum of money to the victim or his family as a blood money in the following areas, respectively:

- **Unintentional blood crimes:** include manslaughter and wrongful wounding, as well as semi-premeditated murder, which is known in positive law as wounding and beating leading to death without intention to cause it, where the will did not go to the events of death, but was limited and originally directed to the events of the wound, so the death occurred as a result of error, represented in frivolity and lack of precaution to stop the effects of the act when the results that the intention tended to occur, which requires the predominance of the side of the error on the intentional in such a case, and that The evidence of these crimes in the Holy Qur'an is the Almighty's saying in the surahs of women: "It was not for a believer to kill a believer except by mistake, and whoever kills a believer by mistake frees the neck of a believer and a friendly

Muslim to his family except to believe", and the saying of the Messenger of Allah (peace and blessings of Allaah be upon him): "But in a person who deliberately kills a mistake, a whip, a stick and a stone is a hundred camels."

- **Intentional blood crimes if one of the conditions for retribution is not met:** Intentional murder and wounding crimes fall in the field of blood money if one of the conditions for the imposition of retribution falls as a penalty for the murderer or offender, it originally requires retribution, but the absence of one of its conditions makes his signature impossible and then blood money replaces it.

One of the cases of the absence of the conditions of retribution is the pardon of the victim for the offender in exchange for any money handed over to him, and this money takes the rule of blood money that replaces retribution, and the conditions of retribution are also negated by the impossibility of inflicting the same harm inflicted on the victim to the offender in crimes without the soul, which is the injury of the victim with bodily harm without resulting in his death, as it is impossible in some of these cases when imposing retribution to provide the condition of similarity between the harm of the crime and the retribution required in these crimes, An example of the impossibility of similar crime to cause paralysis in the hands of the victim, as it is impossible to cause paralysis of the same amount in the hands of the offender required by retribution, and this condition is also negated in the case of fear of damage to the same offender, i.e. exceeding the signature of retribution and exaggerating it even if the same is possible, and his example is that the crime of breaking a rib in the chest of the victim may result, as the implementation of retribution in such a case may lead to the death of the offender, which is not permissible, as Qisas may not take the form of murder if the crime is a felony below oneself.

Accordingly, many intentional blood crimes, with the exception of murder, are difficult, if not impossible, in many cases to achieve the condition of similarity, which cannot be waived in retribution, which requires the transformation of retribution into blood money and replaced by it, which is a dedication to the jurisprudential rule that: "Assault on the parties deliberately as

his fault in many cases", any crimes without the soul, even if deliberate, the penalty that often results from them It is the penalty for unintentional crimes or crimes of error due to the impossibility of carrying out the retribution required in such a penalty.

- **What happened the course of the error:** Islamic law takes into account when committing crimes the person who issued the criminal act, unlike the previous laws that neglect this aspect completely, it is not enough to commit the material of the crime and look at it separately from the person who committed these materials, but must be taken into account later the person who issued the act, if you must take into account what is related to his psychological and mental state, which may lead us to consider some crimes fall within the framework of what is known as what happened the course of error, The judgment of what happened takes the course of error intentional blood crimes issued by a person from whom the assignment has lapsed, i.e. the issuance of the felony against the person or the parties by a person who is not qualified for assignment, because of his young age, insanity or the lapse of punishment for a legitimate reason, i.e. the availability of an impediment to punishment decided in his favor.

In such a case, blood money is payable in a person's money, if he has no money and his gang is due, if they have no money, blood money is payable on the house of money, and the crime in this case is called "the course of error".