

## **The fifteenth lecture**

### **The second requirement: Punishments of retaliation and blood money**

The crimes of retaliation and blood money, as previously explained, are: premeditated and semi-intentional murder, intentional wounding, manslaughter and manslaughter, and the punishment for them deserves: retaliation, blood money, expiation, deprivation of inheritance, deprivation of a will, as will be explained in succession:

#### **Section One: Punishment of retaliation**

Retaliation is the original punishment for killing and wounding in the event that they are committed intentionally. As previously explained when discussing the crimes of retaliation, it means punishing the perpetrator with the same action as he did, so he is killed if he kills, and he inflicts harm on him just as he inflicted on the victim, that is, wounding if he wounded. Its legal support is verses 178 and 179 of Surat Al-Baqarah, and the verse 45 of Surah Al-Ma'idah, which is the most just of punishments, as the criminal is only punished for the same as his action. It also guarantees the establishment of security and the maintenance of order. The victim or his guardian has the right to pardon the punishment of retaliation because it is closely related to the person of the victim and because it affects the victim more than it harms the security and order of the group, whether this pardon is in exchange for blood money or without compensation. In both cases, the punishment of retaliation is dropped, and in this case the guardian has the right to decide. The criminal shall be subject to an appropriate discretionary punishment, the latter of which, along with blood money, shall be an alternative punishment that replaces retaliation if he abstains or is forfeited by pardon.

#### **Section Two: The penalty for blood money**

It is an original punishment for quasi-intentional and accidental killing and wounding, and its legal basis is verse 92 of Surat An-Nisa. It is a specific amount of money that varies according to the severity of the injuries and according to the perpetrator's intention of the crime and his lack of intention of it. It enters the victim's money and not the state treasury despite it being a punishment, as it does not stop. It is ruled upon the request of individuals, which has led some to call it both punishment and compensation. It is a punishment because it is prescribed as a punishment for the committed crime. It is replaced by the appropriate discretionary punishment if the victim pardons it. It is compensation because it is the pure property of the victim and it may not be sentenced if the victim waives it. . Blood money is a specific penalty in which there is no room for the judge's discretion, and there is no place for him to exercise his discretionary authority regarding it, because its amount is fixed for each crime and for each case without regard to persons. It is a common penalty between intentionality in which there is no retaliation, semi-intentionalness, and error. However, its amount varies between the three cases. The ransom for intentional and semi-intentional acts is the same, which is the heavy blood money. The blood money for a mistake is the light blood money, and its amount, as a general rule, is one hundred camels. The greater or lesser amount does not affect the number, but rather depends on the type of camels and their teeth.

### **Section Three: Punishment of expiation**

It is an original penalty that proceeded to manslaughter and its content is the emancipation of the neck of a believer, so whoever does not find it or finds its value, he must fast for two consecutive months, and therefore fasting is an alternative punishment for manumission is not decided unless he refrains from implementing the original punishment, and the latter finds its legitimate support in verse 92 of Surat An-Nisa.

And must expiation when Ahmed and Shafi'i on the killer, whether adult or non-adult, sane or crazy, Muslim or non-Muslim, and Malik believes that it is obligatory on the boy and adult, and sane and crazy, because it is a financial penalty, but it is not obligatory only on the Muslim because of its connection to the devotional side, which is addressed only by the Muslim and no other, but Abu Hanifa believes that it is only obligatory for the adult Muslim, because the boy and the madman are not addressed originally and inexpensive, and the non-Muslim is not required What is worship should be excluded, because atonement carries the meaning of both punishment and worship.

If the murderer does not find the neck to free it and has no value to pay it, he resorts to fasting as an alternative punishment to the original punishment, which is manumission, and if he finds it, he does not have to fast.

### **Section Four: The penalty of deprivation of inheritance**

It is a consequential punishment to the original punishment that affects the murderer after he is sentenced to the death penalty, and its legal basis in that is the hadith of the Messenger of God, may God bless him and grant him peace: "The murderer has nothing of inheritance", and the issue of deprivation of inheritance has raised a great disagreement among jurists, as two schools of thought do not agree on this issue.

Malik believes that the killing inhibitor of inheritance is premeditated murder, whether direct or causation, and whether the killer is small or crazy, but manslaughter does not deprive the killer of inheritance according to this opinion, but only deprives him of blood money that was obligated to kill, and Abu Hanifa believes depriving the killer of inheritance whatever the type of murder provided that the killing is direct not causation, and that it is aggression, as excluded small and crazy from deprivation of inheritance, and the owners of Shafi'i differed between the guaranteed murder Which leads to deprivation of inheritance, and unsecured murder that does not prevent inheritance.

Rajeh's view was that murder prohibits inheritance in all cases, whether intentional, semi-intentional or wrong, whether direct or causational, whether the killing is right or wrong, and regardless of whether the murderer is an adult or a child, or insane or sane, and their argument in this is that deprivation of inheritance is intended to fill the pretexts and prevent the heir from rushing the inheritance.

### **Section Five: The penalty of deprivation of the will**

It is an accessory punishment to the original punishment resulting from murder, and its legal support is the hadith of the Messenger of God, may God bless him and grant him peace: "There is no will for a murderer." This punishment, in turn, has sparked disagreement among jurists: Malik made a distinction between premeditated

murder in which the murdered person does not know that the legatee is his killer, as the will is not valid in such a case. If he knew that he killed him and made a will for him after the crime, then the will is valid with regard to money and not valid with respect to blood money, but accidental killing is not valid according to This opinion may be a reason for deprivation of a will. As for Abu Hanifa, he believes that the killer is deprived of a will, regardless of the type of killing, provided that it is direct, aggressive, and that it is from a sane adult. As for the doctrine of Al-Shafi'i and Ahmad, their opinions differed: some argued that the will is not valid. For a murderer, even if the heirs authorized it, because what prevented the will was murder and not the interest of the heirs who authorized it. While others saw the validity of the will with the approval of the heirs, and in contrast, another opinion tended to say that the will was valid for the murderer in all cases without the need for the heirs to approve it.

### **The third requirement: discretionary penalties**

Taazir is defined as the sum of the penalties that are not estimated by legal texts, where the judge or guardian is given the opportunity, and ta'zir means discipline for sins that have not been initiated by the hudud, where the judge or guardian selects the appropriate for each act or disobedience and has complete freedom, starting with the most trivial, which is advice and warning, ending with the most severe such as imprisonment, flogging and even murder, taking into account the gravity and seriousness of the crime, taking into account the moral and psychological aspect of the offender, as Sharia accommodates each punishment Suitable for the offender, discipline him and protect the group from criminality, they are not limited to exclusively.

Accordingly, ta'zir in such a case takes the rule of the original penalty that is decided for an act that is criminalized in accordance with the legal controls that the criminalizer, whether the judge or the guardian, must observe, whether for the act subject of criminalization or the punishment that will be decided to confront it, and may also take the rule of alternative punishment in the face of hudud crimes, retribution and parental punishment, when it is impossible to apply the original penalty for any reason, such as the lack of hadd conditions, and may also take the rule of complementary punishment as the punishment of alienation in the crime of adultery that It was decided to add to the limit.

Based on the above, the most important differences between condolences and other penalties can be extracted as follows:

- ✓ Retribution penalties and hudud and blood money are estimated by Sharia in the face of which the judge does not have any discretionary power, so he does not replace them with others, and does not increase or decrease them, unlike the condolences, they are unestimated penalties, and then the judge could choose the appropriate ones for the crime and the criminal, and the judge can move within the framework of the lower and higher punitive penalty limits.
- ✓ Retribution penalties and hudud and blood money do not pay attention to the personality and psychology of the offender, as it does not concern the moral aspect, while ta'zir takes the psychology of the offender

and his personality into account, as it is concerned with the morale of the crime in addition to its materiality.

- ✓ Penalties of retribution and hudud and blood money are not extinguished by the pardon of the guardian or the judge or by statute of limitations - except for the crimes of defamation in some schools of thought -, but condolences in which pardon is permissible from the guardian, which makes them subject to the statute of limitations after a certain period that the jurists differed in specifying.

If Islamic law defines certain ta'zir penalties, they are not mentioned exclusively, because the scope remains open to consider them ta'zir any punishment that leads to the discipline and reform of the offender and deters others from committing the crime, as it is thus considered a legitimate punishment.

Among the most important condolences defined by Islamic law and included in force are the following:

The penalty of murder, the penalty of flogging, the penalty of imprisonment, whether for a fixed period or indefinite, alienation or deportation, crucifixion, the penalty of preaching and below, the penalty of abandonment, the penalty of reprimand, the penalty of threats, the penalty of defamation, the penalty of a fine, in addition to some other penalties that do not apply to all crimes, the most important of which are: dismissal from office, deprivation, confiscation, removal.

Therefore, these penalties mentioned are, for example, but not limited to the fact that condolences are not specified, but leave it to the guardian, i.e. the legislative body, which determines what it deems most appropriate according to the circumstances of each Islamic society, as they may differ from society to society, and even within the same society from time to time, taking into account the legal controls and the general foundations on which the theory of punishment in Islamic law is based.