



Islamic Legal Defence and Its Comparison to The Afghan Penal Code

Zabihullah Mufakker^{1*}, Azizulrahman Aziz², Samiullah Azam³, Mumtaz Ahmad Munqad⁴

^{1*}Assistant Professor, Faculty of Sharia, Department of Jurisprudence and Law, Kandahar University

²Assistant Professor, Faculty of Sharia, Department of Islamic Studies, Kandahar University

³Assistant Professor, Faculty of Sharia, Department of Jurisprudence and Law, Kandahar University

⁴Assistant Professor, Faculty of Sharia, Department of Islamic Culture, Kandahar University

***Corresponding Author:** Zabihullah Mufakker

*Assistant Professor, Faculty of Sharia, Department of Jurisprudence and Law, Kandahar University

Abstract

The research focuses on the concept of legal defense within Islamic law and its comparison to the Afghan Penal Code. Islamic law and general legal principles grant individuals certain rights, including the right to legal defense. This term, known as the "attacker's payment" according to ancient jurists, encompasses the necessary actions taken to defend oneself, even if it results in the aggressor's death. Additionally, it allows the aggressor to bear responsibility for their prohibited actions, while absolving the defender of any criminal intent. The study addresses the research problem, previous studies conducted, research methodology employed, and subsequently divides the article into four main topics. These topics cover the definition of legal defense in Islamic jurisprudence and law, the origin of its legality in Islamic jurisprudence and positive law, the direct scope of legitimate defense in Islamic jurisprudence and law, and the conditions for its use as outlined in Islamic jurisprudence and law. The research incorporates jurists' opinions and draws comparisons to the Afghan Penal Code to provide a comprehensive analysis of the subject matter.

Keywords: Defense, Sharia, Islamic law, Afghan penalties

Introduction

We express our gratitude to God, the Lord of all worlds, and send prayers and peace upon His Messenger Muhammad, his family, and his companions.

After acknowledging the greatness of God's blessings, we recognize Islam as one of the greatest blessings bestowed upon humanity. Islam has rescued people from the darkness of misguidance and brought them into the illuminating light of faith. It has provided security, justice, and protection for life, honor, rights, and sanctities. Through its teachings and rulings, Islam emphasizes its pride and commands its followers to adhere to its principles without deviation. God Almighty has chosen glory, strength, dignity, and a true life for His servants, while humiliation and degradation come from deviating from His path.

Islamic criminal legislation, with its divine rulings and laws, plays a significant role in establishing a secure and reassured Islamic society. It rejects crime, chaos, deviation, corruption, and those who perpetrate them. It also discourages surrender and stagnation in the face of injustice, corruption, and harm. Conversely, man-made laws often disregard the provisions of noble Islamic Sharia and confront the authority of God Almighty. Such laws fail to effectively repel criminals and eradicate corruption and its perpetrators. In contrast, the Islamic criminal provisions, which prioritize justice, fairness, the preservation of life, and the prevention of crimes, serve to fulfill human interests and safeguard the necessities of life.

It should be noted that these provisions, even in special cases where prohibited acts are not punished, may include actions such as killing, wounding, or subduing the aggressor. These acts aim to halt the aggression and protect individuals from the danger and harm posed to their lives, honor, or possessions.

Importance of the Topic

1. This topic holds great significance as it pertains to both jurisprudence and law, supported by evidence from the Qur'an and Sunnah. It directly relates to the objectives of Sharia, which is designed to preserve and protect the rights of individuals.
2. The Islamic Sharia explicitly prohibits oppression and aggression against the lives, honor, and wealth of others, granting individuals the right to defend themselves.

Objectives of the Study

1. To provide a comprehensive explanation of legitimate defense and related terminology in both jurisprudence and law.
2. To present the viewpoints of jurists concerning self-defense, protection of honor and property, and to compare them with the provisions outlined in the Afghan Penal Code.

3. To outline the conditions under which the payment of the debtor is permissible according to jurisprudence and law.

Research Problem

1. The existing literature lacks in-depth analysis and organization regarding this topic. Muslim jurists of the past have addressed this subject briefly in their works under the title "Daf' al-Sa'il," often comprising only a few pages.
2. While numerous references and sources touch upon this subject, ancient and modern jurists have provided limited details in their writings.
3. The Afghan Penal Code has not been adequately compared to the discussions on this topic, creating a research gap.

Previous Studies

After extensive research and analysis of ancient texts, it is evident that comprehensive and detailed studies specifically focusing on the topic of legitimate defense or attacking defense are lacking. The ancient jurists addressed the subject briefly and without much elaboration, often not exceeding a few pages in their works. No dedicated book solely dedicated to this topic was found among their writings.

However, modern jurists have undertaken research on this subject and have published works that delve into the topic of defending the attacker in Islamic jurisprudence. One such publication is "Defending the Attacker in Islamic Jurisprudence" by Dr. Faisal Al-Youssef. Another notable work is "The Private Legal Defense (Daf' al-Sa'il)" by Dr. Muhammad al-Sartawi. Additionally, Dr. Yusuf Qassem has contributed to the understanding of this subject through his book, "The Theory of Defense." These publications provide valuable insights into the topic and contribute to the existing literature on the subject matter.

Research Methodology

In this study, a descriptive, analytical, deductive approach was employed, supplemented by legal rooting. The opinions of the four imams and other scholars were presented for each research question and compared to Afghan law.

The study carefully attributed the noble verses from the Quran and extracted relevant and reliable hadiths of the Prophet in a scientific and accurate manner.

The research was divided into four main topics, and under each topic, specific objectives were addressed.

Search Plan

1. The first topic: Definition of legitimate defense in Islamic jurisprudence
 - Definition of the term in the language
 - Definition of "al-Sayyal" in the terminology of jurists
 - Definition of "Sa'il"
 - Modern jurists' definition of legitimate defense
 - Definition of legitimate defense in the law
 - Final chosen definition
2. The second topic: Origin of the legitimacy of legal defense in Islamic jurisprudence and positive law
 - Origin of legal defense in Islamic jurisprudence
 - Evidence of the right of legitimate defense in the Quran
 - The right of legitimate defense in the light of the Sunnah
 - Consideration of practical facts
 - Origin of the legitimacy of legal defense in man-made laws
3. The third topic: Scope of direct legal defense in the law
 - Rule of self-defense
 - Defense of property
 - Defense of others in Islamic jurisprudence
 - Defense of others in the law
4. The fourth topic: Conditions for using legitimate defense in Islamic jurisprudence
 - Conditions for using legitimate defense in Islamic jurisprudence
 - Conditions of legitimate defense in the law

Research Results

The research findings and conclusions derived from the study are detailed in the report.

Sources and References

The following sources were consulted to explore the definition of legitimate defense in Islamic jurisprudence:

1. Commentaries and works of Islamic jurists: Islamic legal scholars have extensively discussed the concept of legitimate defense, referring to it as "paying the onslaught." This term is widely known among commentators and jurists.

2. Language books: Language references were used to understand the meaning of the term "Sayyal." Various sources define it as "rob," "robbery and jumping," and "assaulting and insulting others."¹ Examples include the linguistic interpretation of "Sayyal" found in books on language.²

3. Jurists' terminology: Al-Milibari defines "Al-Sayyal" as "elongation and jumping on others." This definition expands upon the linguistic interpretation, emphasizing the aspect of aggression directed "against others."³ Al-Damiati comments on this definition, highlighting that the act of "Sayyal" involves an unlawful aggression and implies an attack, enmity, and oppression. He further describes it as the act of an "infallible" individual without right. The research drew upon these sources to analyze the linguistic and terminological aspects of "Sayyal" and its understanding within Islamic jurisprudence. The distinction between lawful defense and unjust aggression was explored, considering the absence of elongation or injustice in the description of legitimate defense.

Note: The specific citations and references from these sources should be included separately based on the original research materials used.

4. The fourth requirement Definition of the Sa'il (attacker) Jurists characterize the attacker as the unjust aggressor. Al-Sherbiny defines the attacker as "the unjust attacker," while Al-Dasouki states that the attacker refers to the one seeking aggression. From this definition, it can be inferred that the term "attacker" applies even if the person has not physically arrived but has the intention or is on the verge of arriving.⁴

The commentator of Ashl al-Masalik describes the attacker as someone intending to cause harm to another's life, without any intention to take money or similar motives.⁵

Mr. Madkour provides a broader definition, stating that the aggressor can be any individual, whether they are of sound mind, a minor, mentally unstable, or even an animal. The assault can target a person's body, honor, or property. This definition encompasses the various scenarios in which an attack can occur. Mr. Madkour further states that the right to defend oneself against the attacker is known as the right of private legal defense.

The fifth requirement: Definition of legitimate defense according to modern jurists

In his definition, Professor Abdul Qadir Odeh states, "The private legitimate defence in Sharia is the duty of man to protect himself or the souls of others, and his right to protect his money or the money of others from any unlawful attack with the necessary force to repel this attack"⁶.

This definition gathered together the jurisprudential branches introduced by the jurists in the chapter on payment and the ruling on payment. Because the expression of the human duty to protect oneself or others refers to jurists' divergent views on whether self-defense is obligatory or permissible? It also refers to the permissibility of defending others, and the expression of his right to secure his or others' money refers to the opinion of those who believe defending money is permissible. Because the owner of the right has the right to retain or relinquish it, characterising the assault as an unlawful situation refers to the conditions for its emergence, and expressing it with the necessary force refers to the conditions for its application.

It is noted that Mr. Odeh divided the defence into two parts: the private legal defence and the general legal defence. He referred to the attacking defence as the private legal defence and the promotion of virtue and the prevention of vice as the general legal defence. The private legal defence was restricted to the criminal aspect of Islamic jurisprudence, and no one had done so before. Some of the jurists who advanced to this division did not include the phrase "private legal defence" in their terminology.

The sixth requirement is the legal definition of a valid defence.

Dr. Ramses Behnam defined it as "the act of a person guarding himself or others in the absence of police and police guards" ().

¹ () Domyati, Abu Bakr (known as al-Bakri) Othman bin Muhammad Shata al-Shafi'i (deceased: 1310 AH) Helping students to solve the words of Fath al-Ma'in (it is a footnote to Fath al-Ma'in explaining Qurrat al-Ain bi missions of religion), (Publisher: Dar Al-Fikr for Printing, Publishing and Dissemination, Edition First: 1418 A.H. - 1997 A.D.). P: 281.

² Ibn Manzoor, Muhammad bin Makram bin Ali, Abu al-Fadl, Jamal al-Din al-Ansari al-Ruwaifi'i al-Ifriqi (deceased: 711 AH). Lisan al-Arab, number of parts: 15. (Publisher: Dar Sader - Beirut, Edition: Third - 1414 AH). Material: (s.a.l.).

³ A'anat al-Talibeen, al-Damiati, al-Halabi Press (1343 AH), Dar Ihya al-Kutub al-Arabiyyah), vol. 4, p. 170. (

⁴ Al-Dasouki, Muhammad bin Ahmed bin Arafa Al-Maliki (deceased: 1230 AH). Al-Dasouki footnote on the great explanation. (Publisher: Dar Al-Fikr Edition: without edition and without date). J4, p.: 357 Siraj Al-Salik Sharh AshlAl-Masalak, Barri, latest edition (1292 AH), Part 2, p. 227. *ibid*.

⁵ (6) Al-Sherbiny, Shams Al-Din, Muhammad bin Ahmed Al-Khatib Al-Shafi'i (deceased: 977 AH), the singer of the need to know the meanings of the words of the curriculum. Scientific Books House, Beirut - Edition: First, 1415 A.H. - 1994 A.D. (vol.4, p.: 194).

⁶ Odeh, Abdul Qadir. Islamic criminal legislation compared to positive law, (Publisher: Dar Al-Kateb Al-Arabi, Beirut). C 1, p.: 473. The General Theory of Criminal Law, Ramses (printed by Manshaat al-Maarif, Alexandria, 1971 AD), p: 378. Explanation of the Egyptian Penal Code, Hosni, p.: 199, item: 195)

And Dr. Mahmoud Naguib Hosni defines it as: "Using the necessary force to repel the danger of an illegal event that threatens to harm a right that is protected and preserved by the law" ⁷.

Professor Mahmoud Ibrahim defines it as "preventing an imminent criminal attack by warding off and repelling its danger on behalf of the defender, his money, or someone else's money" ⁸.

The second definition is more all-encompassing than the first. Because its phrase includes the conditions for the emergence and initiation of the defence and its use, just as the right protected by the law includes in general all the rights that the laws came to protect, such as the right to self-defense, honour, and money, and the right to defend others, and because it contains the same meanings as Mr. Odeh's definition. For legal defence, and that the third definition does not depart from the second definition's content.

The Afghan Penal Code did not include a definition of permissible defence, but it is understood from Article No. (126) which states: "It is permissible to defend the right of each and every one of its kind, regardless of whether it is a reasonable defence, logical reasoning, or evidence. Namos, Azadi O money Band d exceeded the risk's course and y».

It means that a person has the right to legitimate self-defense when he or she is certain, based on reasonable grounds and logical evidence, that he or she, his honour, his freedom, his money, or others are in danger.

This paragraph explains that a defence is legitimate if the defender is certain that his life, honour, money, or freedom, or the life of another, honour, money, or freedom, is in peril from the aggressor.

And Article (130) of the Penal Code states, "This is a dangerous threat with no protection, it is employed by the family, and it is a project to defend its right to protection." This means that there is no right to legal defence when an individual has sought protection from the government.

As far as I can tell, the Afghan commentators did not discuss the definition of legal defence. This is because they do not require a fiqhi terminological definition when considering cases, instead relying on the clarity of the texts that address each incident. And the inadequacy of the field of cases for definitions and legal explanations, with the exception of the field of inference.

The selected definition is the seventh requirement

When jurists were exposed to the statement of the provisions of the legitimate defence, they knew the attacker and the defender, and that the definition of the attacker tends to the meaning of the definition of aggression, and that the definition of the defender tends to define the aggressor person, and that both directions do not contain the jurisprudential branches that fall under the concept of legitimate defence, and that the definition that falls under the concept of legitimate defence does Beneath it are the jurisprudential definitions dealt with by the theory of legitimate defence, in the field of jurisprudence and law, is the definition of Professor Abdul Qadir Odeh, as we explained it a little while ago, and he meets with him in its content the definition of Professor Mahmoud Najeeb Hosni, and it is also clear from Article (126) of the Afghan Penal Code that the legitimate defence is a right Fixed for the person at the time of assault on him or others.

And we select Professor Odeh's definition as a definition of legal defence in the terminology of Islamic jurisprudence because it is exhaustive and incorporates all branches of jurisprudence.

The second topic is the origin of legitimate defence.

Legal defence is a right derived from human nature and instinct, because humans are naturally self-loving and concerned with their own survival and continuity. As a result of this solidarity and interdependence, he joins its passengers and defends others just as he defends himself.⁹

The Islamic Sharia sanctioned the right to defend oneself, one's property, one's honour, and on behalf of others, and jurists deduced the source of the legitimacy of legal defence from verses in the Quran, hadiths from the Sunnah, and empirical evidence. And specifics are as follows:

The first prerequisite: Proof of the right to lawful defence in light of the Holy Quran

The Supreme Being proclaimed, "The sacred month for the sacred month, and sacred things are retribution." And revere God, knowing that God is with those who revere Him" ¹⁰.

God Almighty commanded in this verse to repel aggression and transgression with its like, and it is permissible, despite the fact that repelling aggression and recompense for it is not aggression in reality; rather, it is the aggressor's right, so it was referred to as a metaphor, and such as the problem and contrasting words with the same ().

Al-Jassas explains, "The penalty is referred to as aggression and assault because it resembles it in terms of gender and the measure of entitlement, based on what necessitates it.

It is evident from this that the verse is general, and its generality implies the source of the legitimacy of the legitimate defence, even if its revelation was for a specific purpose. Because the lesson is conveyed through the general nature of the language and not the specific rationale.

⁷ () Ismail, Mahmoud Ibrahim, Explanation of the General Provisions in the Egyptian Penal Code, (Second Edition). Item 273.

⁸ Afghan Penal Code, Ministry of Justice, Official Gazette, date of publication 1396.

⁹ Surah Al-Baqarah, verse: 194. (

¹⁰ () Al-Qurtubi, Abu Abdullah Muhammad bin Ahmad bin Abi Bakr bin Farah Al-Ansari Al-Khazraji, Shams Al-Din, The Comprehensive of the Rulings of the Qur'an = Interpretation of Al-Qurtubi. Investigation: Ahmed Al-Bardouni and Ibrahim Atfayyesh, (Publisher: The Egyptian Book House - Cairo, Second Edition, 1384 AH - 1964 AD). C 2, p: 356.

The second condition: the right to legitimate defence in accordance with the Sunnah

According to hadiths attributed to the Prophet, the following legal defence provisions are clarified:

A- What Al-Bukhari reported on the authority of Abdullah bin Amr, may God be delighted with them, who said: I heard the Prophet, may the prayers and peace of God be upon him, say, "Whoever is killed without his money is a martyr" ¹¹.

On the authority of Saeed bin Zaid, he reported: "I heard the Messenger of God, may God's prayers and peace be upon him, say: 'He who is killed without his wealth is a martyr, and he who is killed without his faith is a martyr, and he who is killed without his blood is a martyr, and he who is killed without his family is a martyr.'" ¹²

The hadith, with its various narrations, permitted the individual to fend off all aggression against his religion, himself, his family, or his money, and to fight the aggressors, even if the fighting resulted in their destruction; because it is neither religious nor rational that one act is considered both a martyr and a punisher if the actor is killed. ¹³

If slain. And Al-Ramli said: "The evidence is that when the Prophet, may God's prayers and peace be upon him, made him a martyr, he indicated that he had the right to kill and combat" ¹⁴.

B- Al-Bukhari also reported, on the authority of Anas, may God be delighted with him, that the Prophet of God, may God's blessings and peace be upon him, said, "Help your brother, whether he is unjust or oppressed." They said, "O Messenger of God, may God's prayers and peace be upon him, we help those who have been wronged, but how?" He stated, "Take over his hands."

And the Prophet of God, may God's blessings and peace be upon him, labelled the aggressor "oppressor" and commanded that he be prevented from perpetrating verbal or physical oppression. Because through his aggression he oppresses himself and others, preventing him and discouraging him from oppression is a victory and a form of assistance for him.

And the jurists inferred the generality of this hadith regarding the legitimacy of self-defense, which is evidence that a person has the right to defend others against injustice, aggression, and transgression, just as he defends himself. He is prevented from inflicting harm on him.

The third requirement: empirical evidence

And from the applied and practical evidence demonstrating the legitimacy of the legitimate defence A: The decision of our master Omar Ibn Al-Khattab, may God be delighted with him:

It was reported on the authority of Omar - may God be delighted with him - that he was having lunch one day when a man came running with a blood-stained sword in his hand, followed by other people who were also running. Omar asked him, "What does it say?" He said, "O Commander of the Faithful, I struck my wife's thighs, and if anyone was between them, I murdered him." Omar asked, "What is he saying?" They reported, "O Commander of the Faithful, he was struck by the sword, and it fell between the man and woman's thighs." So Omar took his weapon. He shook him, pressed him to him, and said, « If they return, you must return » ¹⁵.

B: It was reported on the authority of al-Zubayr that he had fallen behind the army with a slave female in tow one day. Two males approached him and requested something. They instructed him to release the slave girl after he gave them the provisions he had with him. As if he admitted murdering him in retaliation or in the case of someone who necessitates killing him, and if that is supported by evidence, so is ¹⁶.

In the first incident, the aggressor effectively repelled the aggression, and Omar, may God be delighted with him, determined that the aggressor's blood should be wasted in what was presented to him. In the most recent incident, he attacked them with weapons; if defence was not permissible, they would not have retaliated with weapons, and he is aware of the Sharia's limits and the consequences of using weapons in terms of retribution or blood money. ¹⁷

The origin of the legitimacy of the legitimate defence in positive statutes is the fourth requirement.

Just as the Sharia sanctioned this right, man-made laws sanctioned the principle of legitimate defence, allowing a person to defend himself, his property, and others against an aggressor when he lacked the protection and maintenance of the state and his act did not incur criminal or civil liability, even if he committed a crime. He should externally describe the crime, but should not be described as a felon. ¹⁸

¹¹ () Al-Jassas, Ahmed bin Ali Abu Bakr Al-Razi Al-Hanafi, The Rulings of the Qur'an. Investigator: Muhammad Sadeq Al-Qamhawi - Member of the Qur'an Review Committee at Al-Azhar Al-Sharif. (Publisher: Arab Heritage Revival House - Beirut. Date of publication: 1405 AH). C 1, p.: 307.

¹² () Bukhari, Muhammad bin Ismail Abu Abdullah Al-Bukhari Al-Jaafi. Sahih Al-Bukhari, investigator: Muhammad Zuhair bin Nasser Al-Nasser. (Publisher: Dar Touq al-Najat (photographed from al-Sultaniyya, with the addition of the punctuation of Muhammad Fuad Abd al-Baqi) Edition: First, 1422 AH)., Volume 3, p.: 196.

¹³) Al-Tirmidhi explained by Ibn Al-Arabi, vol. 6, p.: 190. Al-Albani's ruling, may God have mercy on him, is true. (

¹⁴ Al-Ramli, Shams Al-Din Muhammad Bin Abi Al-Abbas Ahmed Bin Hamza Shihab Al-Din (deceased: 1004 AH) Al-Ramli footnote. (Source of the book: <http://www.al-islam.com>)

¹⁵ Sahih Al-Bukhari, vol. 3, p. 159.

¹⁶ Asni al-Matalib, vol. 3

¹⁷ () Ibn Qudamah, Abu Muhammad Muwaffaq al-Din Abdullah bin Ahmad bin Muhammad bin Qudamah al-Jamaili al-Maqdisi, then al-Dimashqi al-Hanbali, the famous al-Maqdisi al-Mughni by Ibn Qudamah. C 8, p: 270, and he said: It was narrated by Saeed in his "Sunan."

¹⁸ (Ibid., Part 8/171).

And the Afghan legislator established the legality of the legitimate defence, its rules, restrictions, and conditions that define its scope in Articles (125-130) of the Penal Code for the year (1396 AH). Article No. (125) in the first paragraph of the Penal Code states, "A work project with a perspective d The act of committing a crime is not a malicious crime."¹⁹ In the sense that an act that occurs when the right of legitimate defence is legitimately exercised is not considered a crime, the legislator has made defence a legitimate right for the aggressor, expressed it as a right in all articles mentioning "the right of legitimate defence," and denied the act of defence the status of a crime, making it a permissible act that does not constitute a crime. The aim is to incur any criminal or civil liability.

Which was meant to make the defence a privilege within the law's text. It is impossible for the law to grant a right and then punish its exercise, as this would be a contradiction, and there is no dispute that the complementarity and consistency of the norms of the law do not permit contradiction. And Bani Ali has the right to two principles:

The first is that the state's security authorities are not present everywhere and in every area, and a person must secure himself if there is no protection.

According to the second ecclesiastical principle, the first duty of man is to assist and support himself by himself.

Some commentators have argued that defence is a right recognised and established by natural law, so it is a natural right of living individuals to defend themselves, dictated by their inherent instinct to seek survival and safeguarded by the law of nature. Because the right of ownership is not an inherent right for man, such as the right to preserve and protect life²⁰, this incredible self-defense image is primarily intended to defend money.

Some commentators asserted that the right of the individual to defend himself is the principle, and that the right of the state in retribution and punishment is only ancillary to him; he supplements it if it proves insufficient, and he is prohibited from going too far in it²¹.

And among the commentators, there are those who believe that the basis for the continuation of the legitimate defence is balancing the conflicting interests of individuals, so if two interests conflict and it is necessary to keep one of them to waste the other, then the public interest necessitates the waste of the less valuable interest (as stated in the books of the rules of jurisprudence), and in such a case, the less valuable interest must be discarded. Legally, the aggressor's interest is stronger and more valuable than the aggressor's interest. Because the assault itself weakens the aggressor's right and places the assailant in opposition to that right, the aggressor's interest is more vital and deserving of greater protection²². And some commentators believe the legal defense's basis is to fight evil with evil in order to uphold the rule of absolute justice.

And regardless of how divergent the opinions of commentators are regarding the basis for the right of legitimate defence, if it is based on objective considerations that refer to the circumstances surrounding the act committed in the position of defence, then it eliminates the criminal nature of the act and makes it permissible that does not entail responsibility, or it is up to the individual. The perpetrator is excused due to a special circumstance, and his punishment and punishment are lifted, while the act retains its original criminalization without legalisation. Regarding his directive, the Afghan legislator must resolve his position on these differences and make legitimate defence a right for the aggressor, which is a right that permits the act in and of itself. Defence is one of the reasons for permissibility, and whoever uses his right in it is actually permitted.²³

Third topic: direct legal defence scope

In Islamic criminal jurisprudence, direct legal defence is limited to repelling aggression on behalf of oneself, one's honour, or one's wealth, and to responding to aggression against others, all of which are referred to by legal commentators as crimes that permit defence. The jurists have explained the rule of defence in every case of assault, whether it is against oneself, one's honour, or one's wealth, and they have described defence as obligatory in some cases and permissible in others. Defending the sanctity of residence, money, and other individuals.

The first requirement is the self-defense rule

Jurists concur on the legality of self-defense against any form of aggression in order to defend one's honour, property, and reputation. And despite their accord on its permissibility, they differed regarding its obligation or permissibility to adhere to legal rulings. Or is it permissible when the aggressor has the option of either directly repelling the aggression from himself or forsaking him and meeting the aggressor by surrendering to him and allowing him to do whatever he pleases with him? To determine its proper adaptation in terms of obligation or permissibility, we must examine the opinions of legal scholars.²⁴

First Al Hanafia

The Hanafi view is that self-defense is obligatory, regardless of whether the aggressor is an individual or a group, and the obligation is derived from their phrases "it is for him" and "they have a right" "Because he transgressed and attacked, so

¹⁹ Explanation of general provisions - Mahmoud Ibrahim, p.: 466, item 275.

²⁰ The Criminal Code, p.: 644.

²¹ Explanation of the General Law, Mahmoud Ibrahim, p.: 465, item 274.

²² Same as the previous reference.

²³ Explanation of the Penal Code, Morsi and Al-Saeed, Part 1, p: 431.

²⁴ Previous references.

his protection falls due to his aggression and attack, and because he identified a way to ward off killing from himself, then it is for him to kill him and his words are upon them. And Muhammad said in *Al-Jami Al-Saghir*, "It is permissible for the Muslims to kill him," indicating that this action is obligatory and that the harm must be repelled. And the meaning of his statement "to kill him" is not the same as killing, but rather to protect oneself from injury. Unless killing the aggressor is the only way to get clear of him and no other legitimate means of defence are available, the aggressor has the right to kill the aggressor without incurring any criminal or civil liability ²⁵.

Additionally, Maliki Khalil stated that it is permissible to pay the attacker and aggressor after warning the one who understands, even if it is about money and he intends to murder him if he knows that he will not rush without payment ²⁶. And they mean the *Maalikis* by the permissibility of the permission that certifies the obligation and certifies the permissibility in which it is equivalent to entering defence and leaving it, and the majority of them went on to say that self-defense is obligatory, if the aggressor fears for himself, or his member perishes or suffers severe harm, then he must push the aggressor and the attacker for himself. Even if he murders him, he is still required to repel what is less than killing, and this is the more accurate of the two sayings in the doctrine. Because memorization is required by all of the prophets' laws, and it cannot be memorised in this situation without repelling the attacker and intending to murder him if he is not repelled by it ²⁷.

Ibn al-Arabi and al-Qarafi continued by stating that it is permissible to defend in the sense of a compromise between abandoning the cause and undertaking it.

Finally, the Shafi'is

And according to the Shafi'is, self-defense has two aspects: one is obligatory and the other is permissible, based on the description that distinguishes and defines the aggressor and the aggressor. The aggressor must defend himself, but it is permissible for him to cease defending himself and instead surrender and submit to the aggressor. ²⁸

And if the aggressor is an animal, deranged, an infidel, even if he is infallible, or a Muslim who wastes blood, then he must defend himself ²⁹.

The fourth Hanbali sect:

And the Hanbalis believe that the aggressor must repel every aggressor and transgression, whether he is an aggressor against himself, his women, or his money, and he explains that if the aggressor was prevented from defending, the prevention would cause him damage and harm and deprive him or kill him, and because he would be wronged if he did not permit that defence. ³⁰ People are at odds with one another, which has led to chaos and disorder, and they recognise that the ruling on self-defense varies depending on the circumstances surrounding the aggressor (i.e., in normal circumstances they obligate him, but during times of sedition, self-defense is neither necessary nor obligatory). ³¹

It can be inferred from these two expressions that it is permissible, equivalent to abandoning it and beginning it. Because they denied him the quality of obligation and did not prevent him from beginning it, it remains permissible, and it is permissible to do it and abandon it. ³²

We conclude from what we have presented of the opinions of the jurists that the Hanafis see the obligation of self-defense absolutely, and the majority of Malikis see it as obligatory when he fears for himself, his member, his family, or his relatives, death or severe harm, and other than the majority of Malikis see the permissibility of leaving it in the time of sedition, and The Shafi'is have two sides in it, one that it is obligatory - and this is the opinion of the majority of them - and the other that it is permissible to leave it, and the Hanbalis see the necessity and permissibility of self-defense in other than the time of sedition, and the most correct view of them is that it is obligatory, and by comparison between the four schools we conclude that the Hanafis, the majority of Malikis and Shafi'is agree on the necessity of Self-defense without restriction in the time of sedition or other, and that the Hanbalis see that it is obligatory in a time other than the time of sedition, and the majority of Shafi'is see the permissibility of leaving it absolutely without restriction, and only the majority of Maliki and Hanbali say that it is permissible to leave it in the time of sedition.

The rule of self-defense revolves between obligation and permissibility, and the majority holds that it is absolutely obligatory. This is supported by the saying of Al-Jassas, which indicates the correctness of the majority's position. Furthermore, he who intends to kill another unjustly and as an enemy deserves to be killed, and all people must kill him, as Allah says: "For this reason, We decreed for the Children of Israel: 'Kill him.'" It belongs to everyone, and whoever saves it is considered to have saved everyone." ³³. So the meaning of the verse was the permissibility of killing the corrupt

²⁵ () Al-Marghinani, Ali bin Abi Bakr bin Abdul-Jalil Al-Farghani, Abu Al-Hassan Burhan Al-Din (deceased: 593 AH) *Al-Hidaya fi Sharh Bedayat Al-Mubtadi*, (Publisher: Dar Ihya Al-Turath Al-Arabi - Beirut - Lebanon) 4, p.: 448.

²⁶ Al-Inaya, Al-Babarti, vol.6, p.:545.

²⁷ Al-Marghani, the same reference and page.

²⁸ Talents of Galilee, vol. 6, p.: 323.

²⁹ A brief explanation of Khalil, vol. 8, p.: 112.

³⁰ Fath al-Mun'im Sharh Sahih Muslim, vol. 3, p. 177.

³¹ Talents of Galilee, vol. 6, p.: 323.

³² Mughni al-Muhtaaj, vol.

³³ Surat Al-Ma'idah, Verse: 32.

in the land, and the greatest corruption is the intention to kill the forbidden soul, so it is demonstrated that whoever intends to kill others unjustly crushes slaying and makes his blood permissible (). In addition, the aggressor must pay for his own damage, which is a religious obligation that is rewarded, and it is sinful to abandon it.

The second requirement is the legal scope of direct legal defence.

As Islamic law sanctioned the defence of self, money, and others, the campaign also sanctioned positive laws, and among those laws that set its restrictions and limits and regulated its use, the Afghan Penal Code, Article No. 125, Paragraph 2, states: "Defending a threat to a person who is authorised to do so, and who has any such criminal act as a legal act, is a violation of the draught." This article makes it plain that if a person, his money, or another person is at risk because of an aggressor, then the aggressor must pay for this risk for himself or his money using appropriate payment methods. This article also makes it plain that if a person or his property is subject to the aggression of another person and there is no state to protect him from this aggression, then a third party can repel the aggressor's aggression. In addition, Article No. (126) of the Afghan Penal Code stipulates, as we discussed a moment ago.

Comparing Sharia to the law reveals that the Afghan legislator's legalisation of self-defense against crimes harmful to the body, whether from a theoretical or practical standpoint, is consistent with the majority of jurists' legalisation of self-defense; however, the majority of jurists make self-defense a duty for the transgressor. It is a sin for him to forsake it, as he is obligated to do it.³⁴

The third necessity is to defend the offer.

Honour is the praiseworthy character and character, and it is what a person protects from himself, his ancestors, or whoever commands him, and it is the subject of praise and disparagement from him, as well as what he is pleased of in terms of lineage or lineage.

And when the jurists discuss the ruling on defending honour, they use terms whose meanings relate back to the definition of honour, such as wife, family, sanctity, harem, and couple.

Regarding defending honour: The majority of jurists stated that a person must defend his honour and the honour of others, and that it is forbidden for him to tolerate or be lenient in this regard, even if the defence results in the loss of life and the killing of the aggressor, and that the aggressor's blood is in vain and he bears no responsibility for it.

Whoever witnesses someone committing adultery, attempting adultery, or desiring to conduct adultery with his wife or his mahrams, or committing a transgression against the honour of others, he must prevent it. Regarding the aggressors of honour and the owners of significant sins, Ibn Najim states, "It is permissible to kill everyone, and their murderer will be rewarded"³⁵.

The jurists have justified the obligation by defending honour from enjoining good and removing and preventing evil by hand, and forbidding evil is obligatory, there is no room for immorality, and in defending honour, the two rights of God Almighty converge, which is to prevent the aggressor from committing immorality. And the right of the aggressor to prevent immorality in his family, neither of which can be waived.

It is evident from the opinions of the jurists that they concur that defending one's honour is permissible, regardless of whether the offender is his wife or a Mahram. Whoever discovers an adulterer with one of his wives or female relatives must and is obligated to repel him with less than lethal force. There is no retaliation or blood-money involved, and only the Shafi'is believe that the murderer is punished if the adulterer is a virgin.

The fourth requirement is legal support for the offer.

Article No. (126) of the Afghan Penal Code states: "It is permissible to defend the rights of any person, a legal person, a legal person, a legal person, a legal person, a law, a person, a law, a person, a law, an abuse victim, or a law." The threat is approaching us»³⁶.

It means that a person has the right to legitimate self-defense when he or she is certain, based on reasonable grounds and logical evidence, that he or she, his honour, his freedom, his money, or others are in danger.

Given that the threat of this assault affects him, it is evident that the law grants a person the right to defend his offer against any ongoing or impending attack.

Comparison:

And by comparing the provisions of Islamic Sharia with the law, it is evident that they agree on the permissibility of defending one's honour. Just as in Sharia the defence of honour is a legal right that gave Sharia to a person to defend his honour, similarly the Afghan positive law recognised this right, and one can benefit from this right when his honour is attacked or questioned by others. It was stated in both the Sharia and the law that if self-defense results in the death of the aggressor, the defender bears no criminal or civil liability.

Sharia and the law also granted the individual the right to defend the honour of his female relatives, as doing so constitutes a defence of his own honour.

Fifth necessity: defending the sanctity of the household and concealing it.

³⁴ Al-Jassas Ahkam Al-Qur'an, Part 2, pg.: 490.

³⁵ Explanation of Facts, Part 3, pg.: 208.

³⁶ See, Al-Bahr Al-Ra'iq, vol. 5, p.: 45.

Every person has the right to live in society, and he is an independent individual, but he cannot live alone because he has relationships with others. Among these relationships are kinship and neighbourhood, and for his benefit, they interact and mingle in order to prevent evil and transgression. It is permissible to view the nude of others, but it is forbidden to enter another's home without permission.

God Almighty said, "O you who have believed, do not enter other people's homes until you've asked permission and greeted the occupants." That is preferable for you. How much you may remember"

This verse indicates the sanctity of homes; therefore, it is forbidden to violate the sanctity of another person's home by entering without his permission and assent, unless it is an absolute necessity. Because entry is an assault on the right of ownership in and of itself, and because it is likely that the veil will be breached and exposed, it is likely that the veil will be breached and exposed.

The jurists have agreed that it is permissible for the homeowner to prevent the intruder, and if he does not refuse, he may use the mildest or harshest means to repel him so that he ceases his aggression, even if it leads to his demise. Or, if one of its components is damaged, it will be discarded, and there is no guarantee for the homeowner and the homeowner³⁷. The ruling is the same regardless of whether he actually entered the house, its Lord commanded him to depart, and he did not, or whether he attempted to enter the house but was prevented and did not refuse.

And the situation in which the insider is known, whether he is an aggressor or a seeker and a protected one, is subject to the discretion and diligence of the home's proprietor in light of the insider's entrance. Therefore, it is not permissible for the harsher person to shove him away, even if he most likely believes that the individual has entered his home to seek refuge from thieves and the like. Because this is one of the cases of necessity that allow uninvited entry into a person's home,³⁸.

Shield defence: Just as it is impermissible to enter someone's home without his permission, it is also impermissible to intentionally gaze inside his home, at his private parts, or at his forbidden items. If the payment results in the harm or loss of his eye, jurists had differing opinions regarding the necessity of guaranteeing it or wasting it and the consequences of this crime.

Therefore, according to the Shafi'is, Hanbalis, and some Malikis, if a person peers at a person's house and the owner of the house throws something at him and occludes his eye, he has no protection and his eyes are wasted. Therefore, you used an implement to remove his eye. There was no fault on your part."³⁹. Additionally, in a narration: "There is no blood money or blood money"

According to the hadith, it is forbidden to observe people's dwellings. And his saying, may God's prayers and peace be upon him, "There is no blood money or blood money" is explicit in the fall of retribution and blood money, because retribution and blood money are sins, and the Prophet, may God's prayers and peace be upon him, denied the wing of the person who accuses him of being informed.

- Hanafi and the majority of Maliki:

Hanafis and the majority of Malikis are of the opinion that the proprietor of the house is obligated to guarantee if he removes the eye of the initiator, inferring the generality of the Prophet's proverb, peace and blessings be upon him: "In the eye, half of the blood money"⁴⁰. And the act of merely looking does not authorise him to commission a crime against the beholder, as if he had peered through the open door of the house. It is also forbidden for a person who entered the home of another, viewed it, and took possession of his wife without the vagina to gouge out his eye.

Al-Jassas stated, "There is no dispute that if he enters his house without permission, he remains guarantor; if it was intentional, he is liable for retaliation; if he was negligent, he is liable for damages"⁴¹.

Abu Hurairah's hadith is interpreted as a form of harshness to avert sight⁴².

And the Malikis concluded, based on rational evidence, that gazing is a sin, eye blindness is also a sin, and sin does not repel sin. Because it is illegal to gouge out a person's eye if he looks at his private parts without permission, it is more essential to look at a person's home than it is illegal to gouge out the eye of the beholder.⁴³

The sixth requirement is legal protection of the sanctity of the home

In the same way that the Sharia sanctified the home, the law surrounded it with protection as a person's property, a place for his rest and the storage of his possessions. Article 127 of the Afghan Penal Code clarified the circumstances under which the aggressor may intentionally murder the aggressor, and the sixth paragraph of Article 127 stated, "It is an act of righteousness, and it is a defence."⁴⁴

³⁷ Reply of Al-Muhtar, vol. 3, p.: 560, al-Mabsoot, vol. 24, p.: 370, and al-Muhadhdhab, vol. 3, p.: 225.

³⁸ Afghan Penal Code, Ministry of Justice, Official Gazette, date of publication 1396.

³⁹ Al-Mabsoot, Part 10, p. 199

⁴⁰ Ahkam Al-Qur'an, Part 3, p. 385.

⁴¹ Al-Mabsoot, vol. 10, p.: 177.

⁴² Sahih Al-Bukhari, vol. 9, p. 8.

⁴³ Mutafiq Alia

⁴⁴ Musnad Ahmed, vol. 11, p.: 223. Hadith No. (7033).

The article clarified the places whose entry is illegal and considered a criminal encroachment, which are (the house and its appurtenances), and the encroachment on a person's house is done by entering it or attempting to enter it illegally, or by entering it legally and staying in it illegally, with the intent to commit a crime in it, Or terrorising, insulting, or harassing its inhabitants.⁴⁵

The law allows a person to legitimately defend his money and repel anyone who trespasses or attempts to transgress on his property by entering it at night with the intent to commit a crime.⁴⁶

Shield defence: Just as it is impermissible to enter someone's home without his permission, it is also impermissible to intentionally gaze inside his home, at his private parts, or at his forbidden items. If the payment results in the harm or loss of his eye, jurists had differing opinions regarding the necessity of guaranteeing it or wasting it and the consequences of this crime.

Therefore, according to the Shaff'is, Hanbalis, and some Malikis, if a person peers at a person's house and the owner of the house throws something at him and occludes his eye, he has no protection and his eyes are wasted. Therefore, you used an implement to remove his eye. There was no fault on your part."⁴⁷. Additionally, in a narration: "There is no blood money or blood money"

According to the hadith, it is forbidden to observe people's dwellings. And his saying, may God's prayers and peace be upon him, "There is no blood money or blood money" is explicit in the fall of retribution and blood money, because retribution and blood money are sins, and the Prophet, may God's prayers and peace be upon him, denied the wing of the person who accuses him of being informed.⁴⁸

- Hanafi and the majority of Maliki:

Hanafis and the majority of Malikis are of the opinion that the proprietor of the house is obligated to guarantee if he removes the eye of the initiator, inferring the generality of the Prophet's proverb, peace and blessings be upon him: "In the eye, half of the blood money" ⁴⁹. And the act of merely looking does not authorise him to commission a crime against the beholder, as if he had peered through the open door of the house. It is also forbidden for a person who entered the home of another, viewed it, and took possession of his wife without the vagina to gouge out his eye.

Al-Jassas stated, "There is no dispute that if he enters his house without permission, he remains guarantor; if it was intentional, he is liable for retaliation; if he was negligent, he is liable for damages" ⁵⁰.

Abu Hurairah's hadith is interpreted as a form of harshness to avert sight ⁵¹.

And the Malikis concluded, based on rational evidence, that gazing is a sin, eye blindness is also a sin, and sin does not repel sin. Because it is illegal to gouge out a person's eye if he looks at his private parts without permission, it is more essential to look at a person's home than it is illegal to gouge out the eye of the beholder.

The sixth requirement is legal protection of the sanctity of the home

In the same way that the Sharia sanctified the home, the law surrounded it with protection as a person's property, a place for his rest and the storage of his possessions. Article 127 of the Afghan Penal Code clarified the circumstances under which the aggressor may intentionally murder the aggressor, and the sixth paragraph of Article 127 stated, "It is an act of righteousness, and it is a defence."

The article clarified the places whose entry is illegal and considered a criminal encroachment, which are (the house and its appurtenances), and the encroachment on a person's house is done by entering it or attempting to enter it illegally, or by entering it legally and staying in it illegally, with the intent to commit a crime in it, Or terrorising, insulting, or harassing its inhabitants.⁵²

The law allows a person to legitimately defend his money and repel anyone who trespasses or attempts to transgress on his property by entering it at night with the intent to commit a crime.

Comparison

And by comparing what the jurists have determined and what the law has adopted, it is clear that both the Sharia and the law permit a person to defend his immovable and movable money, and that it is permissible for him to fight whoever fights him over it, even if that leads to the killing of the perpetrator, if the killing is necessary and appropriate for the act of defence. It also permits him to pursue the trespassers on his money, so long as the money is in their possession and their assault on him continues, and to recover it from them with the necessary force.⁵³

Similarly, Sharia and the law concur on the same criminalization of an act committed in defence of money, so there is no criminal or civil liability for the perpetrator.

⁴⁵ See, Hashiyat al-Shalabi, vol. 6, p. 110.

⁴⁶ Al-Jassas, Ahkam Al-Qur'an, Vol. 5, p.: 169.

⁴⁷ Al-Durr al-Mukhtar al-Rad al-Muhtar, vol. 5, p. 50.

⁴⁸ Raddul Muhtar Economic Principles in Islam, Dr. Ali Abdel Rasoul (Dar Al-Fikr Al-Arabi). Pg.: 9.

⁴⁹ Al-Tirmidhi, explaining Al-Arabi. Part 9, p.: 4.

⁵⁰ Al-Durr Al-Mukhtar Ward Al-Mohtar, vol. 4, p.: 117. And Haashiyat al-Dasouki, vol. 4, p.: 357, and Mughni al-Muhtaj, vol. 4, p.: 195. Al-Mughni, vol. 10, p.: 352.

⁵¹ Sahih Al-Bukhari, vol. 3, p.: 169.

⁵² Al-Nawawi's Explanation of Ali Sahih Al-Muslim, Vol. 2, p. 165.

⁵³ See Al-Mabsoot by al-Sarkhasi, vol. 24, p.: 143.

Similarly, the majority of jurists concur on the absolute defence of money, whether it be a small amount or a large sum, and the texts of the law appear as well, so it did not specify the minimal amount of money that is permitted to be defended, and exceeding it is not permitted.

The ninth requirement in Islamic law is to defend others.

The Islamic law was characterised by its breadth, comprehensiveness, and generality, so it clarified the provisions and established solutions for all aspects of a person's life, whether good or bad, as well as determining his negative and positive attitude towards others.⁵⁴ It permitted him to defend the life, honour, and wealth of others with the same ability with which he defends himself, and he was not held accountable for the consequences of his actions, as is evident from the guidance of jurists. The decision regarding whether or not self-defense is obligatory or permissible.⁵⁵

A: The opinions of jurists on defending the souls of others are as follows.

The Hanafis believe that defending others is an absolute obligation, even if it means killing the aggressor. Al-Sarkhasi states, "If a man was killing another and he had the ability to stop him, he could only stop him." Doesn't it occur to you that if he intends to kill him and remove his life, he is under no obligation to do so? The same holds true for a person who intends to murder another person and then kills him.⁵⁶

And because preventing the harm is obligatory, it is obligatory for them to murder him if it is not possible to prevent the harm without killing him, while the killer is not required to act. Because he developed an obsession with it.⁵⁷

Shafi'is and Hanbalis deduced the hadith, "Help your brother, whether he is unjust or oppressed." However, they say that the dispute that occurs in the ruling on self-defense also applies to the ruling on defending a person from the life of others, so it is obligatory where a person must defend himself and permissible where it is permissible, and Al-Nawawi says: "And defending others is the same as defending himself, and it was said that it is definitely obligatory, and Al-Jalal justified the obligation by stating that a person prefers his own right over."⁵⁸

And in the Maliki books that we have seen, there is no explicit text that defines their position on the rule of defending the life of others, and if we examine their expressions, we find that they generalise the words (self) and (all infallible) when they are exposed to the rule of self-defense. Ibn Abd al-Salam states, "It is permissible to pay it for every infallible soul, regardless of whether they are Muslims or dhimmis"⁶⁰. And Al-Kharshi states, "And if he harms a person, money, or a harem, then it is prescribed to ward him off from that."⁶¹

Therefore, it is included in the generalisation of (souls) and (all infallible) souls, so it must be defended when it is exposed to peril; because it is also infallible. Thus, they do not deviate from the majority, particularly if we interpret the soul in its linguistic sense (in the sense of brother), so that it includes the same person and the same person as his brother with the bond of lineage or Islam.⁶²

A: Protecting the property of third parties

As it is permissible for a person to defend his own money, it is also permissible for him to defend the money of others if he is subjected to aggression, because the protection of the right of others is one of the tenets of the fundamentalist rule "that the right of others is preserved by the Shari'a" (). Some jurists consider the defence of the money of others to be permissible, while others consider it to be obligatory; the following is a summary of their positions:

If we follow the Hanafi expressions, we discover that they deem it permissible. Al-Sarkhasi says: "It is possible for him to fight him over it, and it is also possible for whoever witnesses this to help him against it, even if it comes upon himself if he refuses and he is in a position where he is not able to have authority to take his right for him because he knows that it is his property and just as He has the right to fight to defend his property if the wrongdoer intends to take it from him, so in retrieving it for him to fight »⁶³.

He believes that it is permissible for a person to fight the person who usurps his money until he regains it, and that it is permissible for a witness of the usurpation to assist the owner of the money in regaining his money. This assistance requires fighting the aggressor and is considered a contribution to the act of defending the money of others, which is permissible. This enables an individual to defend the funds of others.

The Hanafis believe that it is permissible to defend the property of others, and whoever kills for the purpose of safeguarding Muslim property will receive the greatest reward.

⁵⁴ Al-Mabsoot al-Sarkhasi, vol. 10, p.: 182.

⁵⁵ Explanation of Al-Jalal in the margins of Haashiyat Al-Qalyubi and Omaira, vol. 4, p.: 207.

⁵⁶ Al-Hukam's insight, vol. 3, p. 356.

⁵⁷ Explanation of Al-Kharshi, vol. 8, p.: 112.

⁵⁸ Radaal Al-Muhtar Wal-Durr Al-Mukhtar, vol.4, p:63.

⁵⁹ Mughni al-Muhtaj, vol. 4, p. 195).

⁶⁰ Al-Muwafaqat, Part 2, p. 322.

⁶¹ Al-Mughni, vol. 9, p.: 183.

⁶² Revival of Religious Sciences, Vol. 2, p. 323, and al-Mughni, Vol. 4, pg.: 196.

⁶³ Asna Al-Matalib, vol. 4, p. 167.

Malikis, along with the majority of Shafi'is and Hanbalis, concur that protecting the wealth of others is permissible. And Ibn Qudamah says, "If the aggressor attacks a person who wants his money or himself unjustly, then someone other than the aggressor may help him in payment" ⁶⁴.

Al-Ghazali stated, "Defending the money of others is obligatory, so long as the defender does not suffer bodily harm, monetary loss, or a loss of reputation." Because his right is respected in the benefit of his body, his money, and his reputation, just as others' rights are, he is not required to sacrifice himself for others" ().

In conclusion, the majority of jurists believe it is permissible to defend the money of others without regard to safety or anything else.

The tenth requirement is legal defence of others

The second paragraph of Article No. (125) of this law states, "D is a draught defence against a threat against a person who has been authorised to commit or has committed a crime." D Excessive risk or monetary harm to his property, koi, necessities, liquids, guarantors, guarantors, and evacuation." This article states that if a person, his property, or another person is at risk because of an aggressor, then the aggressor must pay for the risk to himself or his property using appropriate payment methods.

In addition, Article No. (126) of the Afghan Penal Code states that a person has the right to legitimate defence if he or she is certain, based on reasonable grounds and logical evidence, that he or she, his honour, his freedom, his money, or others are under attack.

According to this article, everyone has the right to legal representation:

A- For his body or the body of any other individual, against any offence that affects the body's integrity.

B- For any act that is considered a crime according to the definition prescribed for the crimes of theft, looting, devastation, or trespass of the offender, or any attempt to commit one of these crimes.

It gives the person the right to defend himself and his money against crimes, and it also gives the person the right to defend others, for themselves and their money, without exception.

In conclusion, the law allows a person to defend the life, money, and honour of others against all crimes affecting the safety of the body, money, or honour, and by comparing that to what the Sharia took, it is evident that the Sharia and the law agree to defend the soul, money, and honour of others within the scope in which a person is permitted to defend himself, his money, and his honour.

Conditions of legitimate defence in jurisprudence and law constitute the fourth topic.

First, the conditions for using the legitimate defence under Islamic law:

Conditions for the assailant's payment: We will briefly describe the conditions that must be met for both the assailant and the victim to be considered to be in a state of defence regarding the assailant's payment.

The first condition is the presence of aggression: the act inflicted on the person being pursued and the person being assaulted must be an act of aggression, and if it is not, it is not permissible to repel it. The thief's hand and exacting vengeance when the murderer is killed or a limb is severed as retribution. These actions are neither aggressive nor aggressive, but rather the exercise of a legal right or the performance of a legal obligation.

There is no fixed limit for assault; it is acceptable for the attack to be both severe and simple, and the simplicity of the attack does not preclude defence, but it limits the defender's ability to repel the attack with the necessary force.

It is valid for the attack to be against the same person and the attacker, his honour or his money, just as it is valid for the attack to be against the same person, his honour or his money, and it is correct for it to be against the same attacker and the attacker or his money, such as a person who attempts to kill himself, amputate a limb, or damage his money ⁶⁵.

According to Malik, al-Shafi'i, and Ahmad, it is not necessary for an assault to be a punishable crime, but it is sufficient for it to be an illegal act. Furthermore, according to these jurists, it is not necessary for the attacker to be criminally responsible for his act, so it is permissible for the attacker to be insane or a minor, and it is sufficient for a state of self-defence. That the attacker's action, whatever it was, is unlawful.

Abu Hanifa and his companions require that the assault be deemed a punishable crime and that the attacker be criminally liable for it; otherwise, the defence is based on necessity. Abu Yusuf disagrees with them on this point because it is stipulated that the act is a crime even if the assailant is not criminally liable.

According to the three imams, the act is deemed aggression, regardless of whether it originated from a human or an animal. However, Abu Hanifa and his companions do not see any justification for the existence of a state that defends against an animal attack. Due to the fact that his actions are not considered criminal and they view the assault as a response to a case of necessity. This is the case if we interpret the requirement as a necessity, which is the most accurate interpretation. Because the act of the animal is not a crime in and of itself, but it is conceivable in some cases to consider the act as a crime committed by the animal's owner; There is a defence, but it is not present in other cases ⁶⁶.

Knowing the commencement and end of the assault is of the utmost importance, as defence is dependent on this information.

⁶⁴ Same as the previous reference.

⁶⁵ Criminal Legislation, Part 1, p.: 477.

⁶⁶ Hashiyat Ibn Abdeen Vol. 5, p. 482, and Asna al-Matalib, Vol. 4, pg. 167.

The second condition is that the assault must be immediate; if the assault is not immediate, neither the attacker nor the victim are in a state of defence. Because the defence does not exist unless the assault is accomplished in deed or thought, it is the attack's resolution that produces the defence ⁶⁷.

Thirdly, the aggression must be incapable of being repelled in any other manner. In order for a state of defence to exist, there must be no alternative means of repelling the assailant. If the victim is able to repel the aggressor, for example by shouting, calling, and seeking assistance, the aggressor is not required to strike, injure, or murder him. If he did so, he committed a crime; however, if he could have taken refuge with the men of the public authority at the appropriate moment, or if he could have prevented himself or someone else without using violence and cruelty, he is not required to do so ⁶⁸.

The fourth condition is to repel the assault with the force necessary to repel it. In order to qualify as a defence, the force must be sufficient to repel the assault; otherwise, it is an attack, not a defence. If a man enters another's house without permission and he forces with an order to leave or by threatening to beat him, he has no right to strike him. Because the intention is to press him away, and if he pushes a little, there is no need to do more. If he knows he will be armed with a stick, he has no right to strike him with an iron because, unlike a stick, iron is a lethal weapon.

The second requirement: the legal requirements for a valid defence

After we have extracted the conditions of legitimate defence in Islamic jurisprudence, it is beneficial to discuss the conditions of legitimate defence in the law, so that the point of comparison between the total conditions is clear, and because the conditions, whether they are derived from Islamic jurisprudence or law, are the controls that negatively restrict the behaviour of the defender. Additionally, he defines the scope of his task and stops there.

Article 127 of the Afghan Penal Code stipulates the following conditions for a valid defence:

The Dr. Right Defence Project is directed by Dr. Dogo Shertono. Land ζ its raji.

- 1- D a controversial or unjust law because it was implemented without a defence.
- 2- By using it or not to transport it or display it.
- 3- A transgressor of a person with a secret grasp on him, Hamzman Wali's defence.
- 4- A threat with a concealed hazard or a proportional countermeasure.
- 5- This method is equal to defending against a hazardous threat.
- 6- This is what I mean when I say this, and what is the antithesis of a truck.

This article requires that the defence does not exist and does not arise except against a criminal act, and it is understood that the following conditions must be met for the use of a legitimate defence:

First: There is a right to legal defence whenever an individual commits an injustice or an illegal act.

If the person promptly assaulted him or was about to commit the crime.

Third: Defence and offence should occur simultaneously.

Fourth, the defence must be proportional to the infraction.

Fifth: Defence is one method for avoiding peril.

Sixth, the defender must not be the cause of an intentional assault against an opponent.

- Comparison:

The set of conditions that we extracted from the content of the texts and the opinions of the commentators that we consulted are identical to the set of conditions that we extracted from the works of Islamic law jurists. The area where the defender operates and pauses.

That the act to be repelled is aggression, and that the aggression is imminent or imminently imminent, and that the response is necessary to repel the aggression, and that it is appropriate to repel the aggression, except that the law added that the defence is to ward off the danger directed at him and that he has the right to defend himself. Intentionally criminalising the counterparty, and that both Sharia and law direct the response to the source of the danger and not to a source other than him; because directing the response to a source other than the source of the danger constitutes an assault on the target.

Results

Our findings from this study:

1_ The Sharia and the Afghan Penal Code enshrined the right to legitimate defence in order to defend oneself, one's honour, and one's property against others who have committed an offence.

And the ancient jurists termed the payment of the onslaught, because the onslaught has the connotation of a plunder and a garment.

Professor Abdul Qadir Odeh provided a comprehensive definition of the legal defence and separated it into private and general legal defence.

4_ According to the Hanafis and the majority of Malikis, self-defence is obligatory, whereas the Shafa'is have two opinions on the matter, one obligatory and the other permissible, and the Hanbalis consider the circumstances.

Four schools of thought concur that defending the programme is acceptable.

⁶⁷ Al-Umm, vol.6, p.: 27, and Asna al-Matalib, vol.4, p.: 167.

⁶⁸ Al-Mughni, vol. 10, p.: 351, 352

The jurists concurred that it is permissible to defend money.

7_ Defending others as self-defense was consistent with Islamic Sharia in the aforementioned sources and the Afghan Penal Code.

8_ The conditions stipulated by the jurists for the payment of the attacker are identical to those mentioned by the law, with the exception that the law added that the defence is to ward off the peril to which he is directed and that the defender does not intentionally incriminate the person in return.

Recommendations:

At the conclusion of this study, we offer the following suggestions:

- 1- We advise the leaders of all Islamic nations to protect their people from the aggression of others and to implement the Sharia's restrictions.
- 2- We advise all Muslims to defend themselves, their money, and their honour, as well as the lives, money, and honour of others, by any means necessary if they are unable to contact the authorities.
- 3- We advise scholars in this field to seek for additional articles of the Afghan Penal Code and compare them to the Islamic Sharia.

References

- The Holy Quran.

1. Ibn al-Hammam Kamal al-Din Muhammad ibn Abd al-Wahed al-Siwasi, the well-known (deceased: 861 AH). Opening the Almighty. (Publisher: Dar Al-Fikr Edition: without edition and without date).
2. Ibn Taymiyyah, Taqi al-Din Abu al-Abbas Ahmad bin Abd al-Halim bin Abd al-Salam bin Abdullah bin Abi al-Qasim bin Muhammad al-Harrani al-Hanbali al-Dimashqi (deceased: 728 AH). Summary of the Egyptian Fatwas, (Muhammad Sunna Press, 1368).
3. Ibn Hanbal, Abu Abdullah Ahmad bin Muhammad bin Hilal bin Asad Al-Shaibani (deceased: 241 AH). Musnad Imam Ahmed bin Hanbal. Number of parts: 8, investigator: Ahmed Muhammad Shaker (Publisher: Dar Al-Hadith - Cairo Edition: First, 1416 AH - 1995 AD).
4. Ibn Abdeen, Muhammad Amin bin Omar bin Abd al-Aziz Abdeen al-Dimashqi al-Hanafi (deceased: 1252 AH). The Confused Response to Durr Al-Mukhtar, Publisher: Dar Al-Fikr - Beirut Edition: Second, 1412 AH - 1992 AD.
5. Ibn Qudamah, Abu Muhammad Muwaffaq al-Din Abdullah bin Ahmad bin Muhammad bin Qudamah al-Jami'ili al-Maqdisi, then al-Dimashqi al-Hanbali, the famous al-Maqdisi (deceased: 620 AH) the singer of Ibn Qudamah. .
6. Ibn Kathir, Abu Al-Fida Ismail bin Omar Al-Qurashi Al-Basri, then Al-Dimashqi. Interpretation of the Great Qur'an (Ibn Katheer). Investigator: Muhammad Hussain Shams al-Din (Publisher: Dar al-Kutub al-'Ilmiyyah, Muhammad Ali Baydun Publications - Beirut Edition: First - 1419 AH).
7. Ibn Najim, Zain al-Din bin Ibrahim bin Muhammad, the well-known Egyptian (deceased: 970 AH). Al-Bahr Al-Ra'iq explain the treasure of minutes. Number of parts: 8 (Publisher: Dar Al-Kitab Al-Islami Edition: Second - undated).
8. Ismail, Mahmoud Ibrahim. Explanation of the general provisions in the Egyptian Penal Code, (second edition).
9. Al-Afriqi, Muhammad bin Makram bin Ali, Abu Al-Fadl, Jamal Al-Din Ibn Manzoor Al-Ansari Al-Ruwaifi'i (deceased: 711 AH).
10. Al-Babarti, Muhammad bin Muhammad bin Mahmoud, Akmal Al-Din Abu Abdullah Ibn Al-Sheikh Shams Al-Din Ibn Al-Sheikh Jamal Al-Din Al-Roumi. Al-Inaya Sharh Al-Hidaya, (Publisher: Dar Al-Fikr, Edition: Without Edition, Without Date).
11. Al-Bukhari, Muhammad bin Ismail Abu Abdullah Al-Jaafi, Sahih Al-Bukhari, investigator: Muhammad Zuhair bin Nasser Al-Nasser, (Publisher: Dar Touq Al-Najat, Edition: First, 1422 AH).
12. Al-Bazzar, Abu Bakr Ahmed bin Amr bin Abdul Khaleq bin Khallad bin Obaidullah Al-Ataki (deceased: 29 AH). Al-Bazzar's Musnad published in the name of Al-Bahr Al-Zakhar. Investigator: Mahfouz Rahman Zainallah (authenticated parts 1 to 9), Adel bin Saad (authenticated parts 10 to 17) and Sabri Abd al-Khaliq al-Shafi'i (authenticated part 18) (Publisher: Library of Science and Governance - Madinah Al-Munawwarah Edition: First, (started 1988 AD) and ended in 2009 AD).
13. Al-Bahooti, Mansour bin Yunus, the deceased Hanbali (1051 AH) the mask scout. Scientific Books House, Beirut - Lebanon, first edition 1418 AH - 1997 AD.
14. Al-Tirmidhi, Muhammad bin Issa bin Surah bin Musa bin Al-Dahhak, Abu Issa (deceased: 279 AH) Sunan Al-Tirmidhi, the number of parts: 6, investigator: Bashar Awad Maarouf, (Publisher: Dar Al-Gharb Al-Islami - Beirut, year of publication: 1998 AD).
15. Al-Jassas, Ahmed bin Ali Abu Bakr Al-Razi Al-Hanafi (deceased: 370 AH). Provisions of the Qur'an, investigator: Muhammad Sadiq al-Qamhawi - member of the Qur'an review committee at Al-Azhar Al-Sharif. (Publisher: Dar Revival of Arab Heritage - Beirut, printing date: 1405 AH).
16. Al-Juwayni, Abd al-Malik bin Abdullah bin Yusuf bin Muhammad, Abu al-Maali, Rukn al-Din, nicknamed the Imam of the Two Holy Mosques (deceased: 478 AH) the end of the demand in the knowledge of the doctrine. Achieved and made its indexes: a. Dr. Abdul-Azim Mahmoud Al-Deeb (Publisher: Dar Al-Minhaj Edition: First, 1428 AH-2007 AD).
17. Darwish, Muhammad bin Muhammad, Abu Abd al-Rahman al-Hout al-Shafi'i (deceased: 1277 AH). The worst demands in conversations of different ranks. Number of parts: 1, investigator: Mustafa Abdel Qader Atta.

18. Al-Dasouki, Muhammad bin Ahmed bin Arafa Al-Maliki (deceased: 1230 AH). Al-Dasouki footnote on the great explanation. Number of parts: 4 (Publisher: Dar Al-Fikr Edition: without edition and without date).
19. Al-Damiati, Abu Bakr (known as Al-Bakri) Othman bin Muhammad Shata Al-Shafi'i (deceased: 1310 AH) Helping students to solve the words of Fath Al-Ma'in (it is a footnote to Fath Al-Ma'in explaining Qurrat Al-Ain with missions of religion), (Publisher: Dar Al-Fikr for Printing, Publishing and Dissemination, Edition First: 1418 A.H. - 1997 A.D.).
20. Ramses, The General Theory of Criminal Law, (Printed by Manshaat al-Maarif in Alexandria, 1971 AD).
21. Al-Ramli, Shams al-Din Muhammad bin Abi al-Abbas Ahmed bin Hamza Shihab al-Din (deceased: 1004 AH). The End of the Needy to Explain the Curriculum, (Publisher: Dar Al-Fikr, Beirut, Edition: Last Edition - 1404 AH / 1984 AD).
22. Al-Ramli, Shams al-Din Muhammad ibn Abi al-Abbas Ahmad ibn Hamza Shihab al-Din (deceased: 1004 AH), footnote to al-Ramli. (The source of the book: the website of Islam <http://www.al-islam.com>).
23. Al-Zailai, Othman bin Ali bin Muhjan Al-Bara'i, Fakhr Al-Din Al-Hanafi (deceased: 743 AH). Explaining the facts, explaining the treasure of minutes and the footnote of Al-Shalabi.
24. Al-Zayla'i, Jamal Al-Din Abu Muhammad Abdullah bin Yusuf bin Muhammad (deceased: 762 AH). Nasb Al-Raya for the Hadiths of Guidance with his entourage, with the aim of Al-Alma'i in the graduation of Al-Zailai, investigator: Muhammad Awama. (Publisher: Al-Rayyan Foundation for Printing and Publishing - Beirut - Lebanon / Dar The Qibla of Islamic Culture - Jeddah - Saudi Arabia, first edition, 1418 AH / 1997 AD).
25. Zain al-Din, Zakaria bin Muhammad bin Zakariya al-Ansari, Zain al-Din Abu Yahya al-Sunaiki (deceased: 926 AH), Asna al-Matalib in explaining Rawd al-Talib. (Publisher: Dar Al-Kitab Al-Islami Edition: without edition and without date).
26. Al-Sarkhasi, Shams al-Imaam Muhammad ibn Ahmad al-Sarkhasi (d. 483), investigated by Abu al-Wafa' al-Afghani, (Dar al-Ma'rifah for printing and publishing, Beirut).
27. Al-Shatby, Ibrahim bin Musa b