

Comparative study of self – defense against Government officials in Iran and Imamate jurisprudence

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ABSTRACT: human in the era of history, when faced with aggression, to protect life and property and their right to self-defense is considered to be disposed. Because such action stems from the nature of man and can say its history with the history of human life on earth is linked. This feature has led to the rule of law in societies, institutions of self-defense is one of the oldest problems of the criminal law.

Keywords: Government officials, Iran, Imamate jurisprudence.

INTRODUCTION

Self – defense topic was as one important juridical and legal rule as a long time according to the various nations and has been evolved during times, especially in Islam penal law, this issue has been studied and discussed by Islamic jurists.

Study of human life history and curiosity in the life of primary societies shows that in the primary life communities, one or some people enacted the law.

Research objectives

The main objective

To study the point of view of jurists and Iran law about self – defense

Secondary objectives

1. To identify the similarities and differences of Iran law and Imamate jurisprudence with respect to self – defense against state agents
2. To identify the conditions of self – defense against state agent

Research questions

The main question

1. What is the view of Islamic jurisprudence and Iran law

Sub – questions

1. In what circumstances, the of self – defense against government agents is correct according to Islamic law
2. What is the limit of law support of self – defense against officers?

Hypotheses

1. Islamic jurisprudence and Iran law enacted rules and orders about self – defense.
2. Considering that the society conditions, in some cases, defense against government officials is even necessary.
3. The conditions for legitimate defense against the forces of law and the limit of law support according to the time requirements is not clear.

Definition and elements of legitimate defense

The term legitimate defense has been made up of two components: legitimate and defense. In Dehkoda vocabulary "defense" means: the great wave of sea, each great thing that its like is disposed, the great thing that disposed its like and also to defend means to resolve the invasion. (Dehkoda, 1994:9623). Legitimate word has been derived of religious law (sharh), this means: religion, straight and clear, God religion that has been brought for servants by prophets and revealed by God on us.

About the legitimate defense, legislator has not presented a definition and he just mentioned his orders and the issues. Some lawyers believe that the legitimate defense is to act the criminal action that the person repulses other crime with it and in some writings, it has been defined as a reward right from legislator to repulse the attack (Attar, 1997:29) and some other persons know it as a duty to protect themselves (odeh, Bitā: 473).

The protection issue in the legitimate defense

The ultimate goal of the legitimate defense is to protect the law that is protected by the law and there are different attitudes toward the range and its topic in different legal systems. Expect that the present commons about the protected issues, each legal system is effected by culture custom, its view to person and society. Although at the present many legislators consider it as a permissible right to defend against attack to esteem, chastity (relatives), property, but this protection has a complementary route and this today development and evolution is obtained from the progression of individual rights protection so that today in many legislatures, person is allowed to dispose in attack to esteem, hastity (relatives) freedom of body, prestige, honar and property, the prescription of defense from other that need help is visible manifestation of this case development (shams Nateri & Abdollahyar 2010: 106).

Elements of legitimate defense

If we consider the legitimate defense process as an action from attacker and we consider the defensive action as an reaction from defender, then we face to 2 main elements in the legitimate defense. The first element that is result is to violate one of the rights that law protects it and it means attack and the second element is to protect the right and it is called defense. To consider legitimate the defender action each of these two elements must have the characteristics that will be the subject of review of the next section (shams Nateri & Abdollah yar, 2010: 108).

The proportion of self – defense and aggression in terms jurisprudence

About legal defense, jurists only mention the last condition and they believe that proportion means that the act committed to repel the invasion, is not necessary too much. Accordingly, what is the proportion of defense with invasion and danger except that condition? Are the current regulations also means that number only to defend property is not permitted (as articles 188 and 189 of former public penal code state them)? (Sarikhani & Doroudi, 2011: 31). At a glance "proportion" means that "extremely harmful, tough and harassment acts as a defense have been appropriate with highly offensive act that there is a fear to accure it" (peimani, 1978, p 193/Attar, 1403, p 212). This definition can be said that the purpose of proportion is the relative loss equality and risk of aggression with loss and risk resulting from defense.

«As noted, defense is instinctive and innate. On the other hand the tendency to justice and ugliness of invasion are innate.

It is clear that exceeding the necessary limit for defense was against justice and indecent. Obscenity and binding of liability of exceeding the amount necessary to defend are in fered and extracted from public statements and orders of many verses and narrations (Sarikhani & Doroudi, 2011: 33).

Legitimate defense in Iran penal law.

Human never obey the injustice and illegitimate act and defends against it, when he/she encounters to danger, he/she defends him/her self and considers it as a right for him/her and a duty relative to others and law does not punish these individuals. Lawyers for the justification of self – defense consider two general theories and know defense one of them (Robani, 2010):

- First: obligation
- Second: to do right or duty

According to obligation theory, the act done in the legitimate defense is a crime, but not a punishment crime. The supporters believe that illegitimate invasion destroys the freedom and crime is committed by the effect of autonomic disturbances. In the other words, human will is not acceptable to do it. Because compulsion resulting from illegitimate invasion forced human to commit a crime. Based on the second theory in the legitimate defense, person has done a right and performed his/her duty to do justice. In this case the legitimate defense is not a crime.

The legitimate defense in new law

"legitimate defense (self – defense)" has been change as one of the allowable crime factors in the new Islamic penal code (approved 2011) compared to Islamic penal code (approved 1991 and 1996) that is as follows:

The articles of new and present Islamic penal code with topic "legitimate defense":

Article 155 of Islamic penal code (approved 2011): «If a person in a position of self – defense, chastity, property» freedom of his/her body or other against any current or imminent danger or aggression commits a behavior that is considered as a crime legally by the observance of defense stages, he won't be punished if:

1. The act committed to repel aggression or danger was necessary
2. Defense is documented with reasonable evidence.
3. Threat and aggression are not done due to self – conscious act and invasion and defense
4. The help of government authority, without delay is practically not possible or their interference in disposal of invasion and threat is not effective.

CONCLUSION

Given what happened in this case can be concluded that: firstly, to legitimate the defense, in addition to the invasion, the defensive act must be appropriate to invasion and this proportion is not based on the threatened benefits or the proportion between instruments and tools, but is based on defender actions with threat, so that the most appropriate means and the lowest possible cost, the threat resulted from rape is disposed on the other hand, defensive action is necessary to repel aggression. There for, in case of lack of necessity of defense and or non-compliance with the observance of reasonable proportion that is the gradual observance of steps, defense has not legitimate (shams Nateri & Abdollah yar, 2010: 124)

Secondly, as passed, about the legitimate basic of defense various theories have been presented. Although each one of the presented theories is allowable from the certain aspects, but none of them can justify basic and philosophy of legitimate defense.

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