

Reviewing the dissociation forms of the political offences, the revolt and the fighting offence from the jurisprudence viewpoint

hossein ghanbari ghomi kala

MA of Criminal Law and Criminology , Islamic Azad University of Tehran Center, Tehran, Iran
hossein_gh1357@yahoo.com

Abstract: Islam, as a comprehensive religion, has inspected the offence designations such as the political offences, the revolt and the fighting. Political and revolt offences have been neglected in the penal code of Iran and have not been paid enough attention to them. In the laws of Iran, designations (titles) which are reckoned as a revolt from jurisprudence point of view are evidences for fighting. Nowadays, attentiveness about the distinction between the fighters and the revolters seems to be very essential. To administer justice, it is time to reinvestigate this subject, so that injustice disappears.

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Introduction

A) The Political offence from the viewpoint of the Islam

Political offence is the action in which a group of Muslims (who have gained powerful organizations and, because of some unfounded dubieties, disobeyed Muslims' guardian- *valye- amr*) do some actions intentionally, Whether these actions are done through corruption, fighting, spying for foreign governments or through armed war against Islamic government and also other actions. And political offenders are those who have such characteristics in the domain of this definition. So, if the action has not been committed as a group, but as a personal action, and if the action has been committed as a group without strong organization, that offence will not be considered as a political action. If the offenders are armed and create fear and horror in the society, they will be considered as the fighters. And if their action isn't based on mistake opinion and unfounded dubiety, rather is for gaining power and suppressing the Islamic rightful government, their action will be considered as a political offence. And if they are armed, according to conditions of fighting, they will be considered as a fighter. In any case if they aren't armed, the government will forgive them. The reason for stipulating the word «Muslim» in the definition is that; based on law, if the mentioned offenders are apostate or fighting unbeliever, they will be judged according to special decrees of apostates and unbelievers.

Muslim jurists in religious jurisprudence books have discussed this issue on detail. So in the case of political offence, believing in the Islam and school is one of the elements of political offence, thus we can't recognize apostasy as a political offence.

B) The Revolt offence from religious jurisprudence viewpoint

The late *Seyyed Esmaeel sadr* says in the foot-article of his book, *al-tashrio-aljenayi* p.144:

(البغي في عرف الفقه الجعفري هو الخروج عن طاعة الامام كما في كتاب جواهر الكلام للشيخ الكبير الشيخ محمد حسن النجفي و كتاب المنتهى آية الله العلامة حلي)

And then says:

(و الباغي هو من خرج علي امام عادل و قاتله و منع تسليم الحق اليه كما جاء في تاب الخلاف لشيخ الطائفة محمد بن الحسن الطوسي ره).

That is, in the *imami-ye shi'a*, jurisprudence terminology, the revolt offence (baqi) consists of disobeying the fair governor (Imam). As mentioned by *sahib javaher* and *ayat-ollah Allame Helli* in the book, *Montahi*, p.183: belligerent Muslim (baqi) is one who disobeys fair the governor (Imam), fights with him and abstains giving his rights. High-ranking Muslim jurist, *sheikh Ja'far kashef-olqeta*, says in his *kitab-e-jihad* p.98:

(ويدخل في البغي كل باغ علي الامام او نائبه الخاص او العالم ممتنع عن طاعته فيما امر به و نهى عنه فمن خالف في ترك زكوه او خمس اورد حقوق حاربوه).

That is, fight with those who revolt against religious leader (Imam) (peace be upon him) or his private and common deputy and disobey him, and abandon his forbidding. And disagree with him by giving up charity (*zakat*) and *khoums* (almsgiving one- fifth of his wealth).

C) The Fighting offence from the Muslim jurists point of view

1) Sheikh Baha'i (God bless him):

The Fighter is one who unsheathes his sword in the city, desert or sea, at night or during the day, for frightening Muslims. Whether be man or woman. Whether be weak or strong. Whether be from Muslims or not. (*jame-ol-abbasi*, p418).

2) Sahib Javaher (God bless him):

«المحارب كل من جرد السلاح او حمله
لاخافه الناس ولو واحد لواحد علي
وجه يتحقق به صدق اراده الفساد في
الارض... و لعل الموافق لعموم
الكتاب و السنه و معقد الاجماع
تحققه باخافه كل من يحرم عليه
اخافته من الناس من غير فرق بين
المسلم».

و غيره و في بلاد الاسلام و غيرها... و
محاربه الله و رسوله تصديق بالاخافه
المزبوره لكل من حرم الله اخافته... في
بَرّ او بحر ليلا او نهارا في مصر و
غيره» (جواهر الكلام، ج 41، ص 564).

Then he propound the idea of *shahid sani* about the kind of armor which is used in this offence and says; «perhaps this opinion is due to the outward of the verse, otherwise the word "armor" (*selah*) doesn't include "stone" and "stick"». At the same time he doesn't agree with the *shahid sani*'s idea about the substance of the armor, and at last he found some reason in the idea of *shahid sani* about entitling the action of oppression and bullying as an evidence of fighting, even without using armor.

3) Imam khomeyni (God bless him):

«المحارب هو كل من جرد سلاحه او جهّزه
لاخافه الناس و اراده الافساد في الارض
في بَرّ كان او في بحر في مصر او غيره
ليلا او نهارا. و لا يشترط كونه من اهل
الربيه مع تحقق ماذكر... و في ثبوته
للمجرد سلاحه بالقصد المزبور مع كونه
ضعيفا لا يتحقق من اخافته بل يتحقق في
البعض الاحيان و الاشخاص، فالظاهر كونه
داخلا فيه (تحرير الوسيله، ج 2، ص 492).

Second chapter: evidences and documentations about the political, revolt and fighting offences from the religious jurisprudence point of view:

A) Political offence in the criminal law of Islam

Since political offence is formed against special kind of sovereignty of political system or against some fundamental liberty and rights of individuals in the society, naturally when we speak about the sovereignty, which has religious nature, especially in Islamic government or sovereignty, political offence found its own especial components in relation to elements and formatters of that political system. In other words, according to this idea, political offence consists of aversion with political system sovereignty, and this system has its own especial rules and conditions. Therefor political

offence should be distinguished based on norms and criteria of Islamic laws. So in the legal norm 168, Islamic republic legislator has delegated the definition and demarcation of political offence to the general legislator, based on Islamic norms.

Lawyers and scientists from many Islamic countries, when defining political offence within canon law of Islam, have pointed to revolt offence (*baghy*) and took it as the most obvious example of political offence or sometimes synonymous to it. Also some authors assorted it as an evidence of offences against country's internal security.

From jurisprudence point of view, the revolt offence (*baghi*) is discussed in the holy-war book (*ketab-e-jahad*), and primarily there is some dissension about the title of mentioned offence, that is, whether the offence is a case in point which deserves amercement? *Sunnah* tradition scholars have distinguished revolt (*baghy*) as an explicit offence which deserve amercement and have mentioned related subjects to it in the amercement book (*ketabe-e-hodud*)¹. (oode,1,p.79), whereas the *Imaiye jurists* didn't consider amercement applicability for it. (Imam-khomeyni,2000:455- shahid sani,9:11) and while mentioning it in the holy-war book (*ketabe-e-jihad*), they consider confronting with revolter (Belligerent Muslim) a kind of holy war (*najafi*,21:324); but both of the religions agree that fighter's punishment is to battling them, that is fighting and conflicting with them.

Whereas only one kind of political offence, ie revolt (*baghy*), has been indicated plainly in Islam's retributive jurisprudence, and realization of this offence is also concomitant with fighting, some people misconceived that political offence takes place only in the wartime, fighting and revolution, but this issue is only one characteristic of the revolt, and it is likely that other political offences take place in the peace time.

In the positive laws of Islamic republic of Iran, the revolt offence isn't included in the offences which deserve amercement, and in some of the Islamic penal statute Articles such as: the Articles 186,187 and 188, the legislator has proclaimed that, some actual examples of revolt and its preliminaries are included in fighting titles.

In defining political offence, the writer represents the ideas and definitions of the jurists about the concept of the revolt and inspects its other aspects such as: evidences, documentaries, elements and the conditions of occurring revolt, and also, rules related to belligerent Muslims. And lastly the writer inspects

¹ - A law book in which the amercement of the fighters is distinguished.

revolt and political offences and their relationship comparatively.

B) Evidences and documentaries about the revolt offence:

We alleged the holy Koran (*Quran-e-karim*), tradition, general agreement (consensus) and the reason for the revolt offence:

The holy Koran: the jurists have invoked many verses about revolt offence, the most important are as follow:

«وإن طائفتان من المؤمنين اختلفتا في شيء فأصلحوا بينهما فإن بغت إحداهما على الأخرى فقاتلوا التي تبغي حتى تفيء إلى أمر الله فإن فاءت فأصلحوا بينهما بالعدل وأقسطوا إن الله يحب المقسطين» (حجرات، آية 9).

That is; when two groups of Muslims fight and conflict with each other, reconcile them. And if one group transgresses upon the other group, fight the oppressor tribe till they obey God's command. Whenever they obeyed (and the way paved for peace), reconcile them according to the justice and do justice, since God loves righteous people. (Surah: Hojarat, verse: 9). This verse is the most important documentary for the revolt offence, which jurists and exegetists have had many discussions about it. the statues of this verse is as follow: there was a quarrel between *oos* and *khazraj* tribes, some group of these tribes conflicted and beat each other by stick and shoe: two men from *Ansar* had grudge against each other and one said to the other: I would got my right by force, since my tribe is populace. The other man answered: let's refer to the prophet for judgment. The first man rejected this proposal, so the quarrel continued harshly, and some men from two tribes attacked each other, so the mentioned verse descended from God and made clear the responsibility of Muslims in such situations (*shirazi Makarem, Tafsiire Nemune, 1999,22: ps.166-165*).

In the above mentioned holy verse, the word "*baghat*", belligerent Muslim, which is derived from the word "*baghi*", means; cruelty and unjustly infringe upon the right, and the word "*fay'i*", which is the root of the verb "*taf'y*", means; "to return", and the word "*amr-ollah*" is God's commands. The meaning of this verse is as follow: "If one of the two tribes attacked the other unjustly, the infringer tribe should be battled in return, till they return and submit to God's commands" (*Tabatabaiy, riyaz-ol-masael fi bayane ahkam beldalayel, 1988, b: 18, p: 469*). There are some opinion differences between jurists about the indication of above verse on revolt offence (*baghi*).

The writer of the *kanz-ol-erfan* believes that; this verse doesn't indicate revolt offence, because revolt against Imam (peace be upon him) causes profanity, while conflict between Muslims only cause

vice (commission of cardinal sin), so the holy Quran entitles two groups as being Muslim and brother-in-faith. So we can't generalize the laws of belligerent Muslims to such individuals. *Ravandi* also has denied the indication of this verse about revolt offence. (*sivari, kenzol-erfan fi fegh-el-Quran, b:1, p:386*).

Some other jurists, such as: *Allame Helli* (gavaed-ol-ahkam, 1419 A.H., b:9, p:391), *Sheikh Tusi* (Al-tazhib, bita, b:7, p:262) and *Gazi Ebne Baraj* (Mohzeb, 1406, b:1, p:322), consider this verse denoting to the revolt offence.

Consensus of opinions:

In many jurisprudence books, it has been recommended for referring consensus, in the case of necessity of fighting against belligerent Muslims. For example, *Sahib Javaher* says:

«و كيف كان فلا خلاف بين المسلمين فضلاً عن المؤمنين في أنه يجب قتال من خرج على إمام عادل - عليه السلام - بالسيف ونحوه... بل الإجماع بقسميه عليه...» (نجفی، پیشین، ج 21، ص 324)

And *Allame Helli* says in his book, *Takerat-ol-fogaha*:

: «قتال اهل البغي واجب بالنص و الاجماع» (1419، ج 9، ص 391).

In any case, there is no difference of opinions among Muslims; about the question of necessity in fighting against belligerent Muslims, and the discovery consensus¹ indicates this question. Of course, it is likely that this consensus is as a document, under these circumstances it won't have any authenticity and legal justification, and its details are settled and well-reasoned.

The reason:

As an evidence from the holy Quran, verse 9 in surah *Hajarat*, we deduce that revolt offence is a case point of cruelty, on the other hand, the reason can deduce the abomination of cruelty independently, without depending on the law and the order to suppressing cruel and fighting against cruelty. According to the following doctrine:

«كلما حكم به العقل حكم به الشرع».

This law also is confirmed by the holy legislator. Furthermore, one of the duties of the government is creating security and arrangement in the society and this necessitate enough authority for the government, so eliminating authority barriers is exordium of the government and making security.

c) Evidences and documents for fighting offence and moral turpitude:

- 1- Discovery (by a religious scholar) as the result solely of personal scholarship of the existence of previously unknown consensus over an issue among religious scholars.

fighting offence and moral turpitude, which in Islamic texts sometimes are discussed as "battling" (*harabe*), "highway robbery" (*gat-ol-tarig*) or "grand larceny", are included as offences against public security and peace, and it also is included in the offences which are agreed by all of the Islamic religions. (Musavi Bojnurdi, *feghe tatbigy*, 2003, p.:219).

The noun "moharebe" (fighting) is infinitive of the verb "mofaele. Its third person singular is "haraba" which means "to plunder somebody", and "harba" means: "to battle", and its plural is "horub". As we read in the *lesan-ol-arab*:

«الْحَرْبُ بِالْتَحْرِيكِ نَهْبٌ مَالِ الْإِنْسَانِ وَ
تَرْكُهُ لَا شَيْءَ لَهُ» (ابن منظور، 1412، ج 3
ص 99)

Fazel megdad says in *Kanzol Erfan*:

«أصل الحرب السلب و منه حرب الرجل
ماله أي سلبه فهو محروب و حريب»
(سيوري، پيشين، ج 2، 352).

Mohaggeg Helli says: the fighter (mohareb) is one who draws his weapon for frightening people. The following comment is from *Javaher-ol-kalam* about the above mentioned expression: "av hamala", (to carry), that is; the fighter also is one who carries arm with himself. Thus, fighting actuality is drawing weapon for frightening people or disposing security of the society.

Imam Khomeini says about the definition of the fighter: the fighter is one who draws and unsheathes his weapon or makes it in the state of shooting and cause corruption in the land. (*fesade felarz* 20001379,b:2, p.:439).

Based on this opinion, for occurring fighting, in addition to using arms and the intention for frightening people, the intention for causing corruption is another condition. This opinion is based on the interpretation of a verse from surah *Maede*, based on this verse the subject of the law has two parts: one is the fighting, another is the corruption. That is, the main subject is the "fighting in the form of the corruption". So if one of the conditions of fighting doesn't realize, the subject of the mentioned decree will not realize in the verse. Because both, fighting and corruption, are parts of cause; when two parts of the cause occur, the effect, i.e. the fourfold punishments mentioned in the verse, will be capable of coming to force. As a result, based on this idea, the subject of the fighting, corruption and its punishment is the subject of the cause and effect, in which, occurring part of the cause doesn't lead to applying the effect, rather, when the fighting leads to the corruption, the punishment will be performable, otherwise, if the fighting doesn't cause the corruption, it will not be in the scope of the decree in the verse.

The words "battle" and "fighting" have many different meanings in Quran, one meaning is; war and battle, opposite of the peace. This meaning which has been cited in the surah *Maede*, verse 33, is the most important document about the fighting offence:

«إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ
وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ
يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ
خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي
الدُّنْيَا وَ لَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ».

That is, the retribution for those who fight with God and his prophet, and those who excite a sedition on the earth, is killing or hanging them or cutting their hand and foot conversely, or to exile them. This retribution is their notoriety in the world, there is also a great torment for them in the afterlife.

The status of this verse is as follow: A group of the nonbelievers were admitted to the presence of the prophet and converted into Islam, but the weather of Madine did not agreed with them. They got pale and ill. The prophet ordered them to go out of the city, which has nice weather and the donated camels graze there, so that they could use the nice weather and nourish from camels milk. They do so and got better soon, but instead of giving thanks, they cut off herder's hands and foot and made blind them, then killed all of them and despoiled the camels and heathenized again. The prophet commanded to capture them and do the same act with them as punishment, blinded them, cut off their hands and foots and killed them, till be a byword for others. (*Mokarem shirazi*, 1999, p.:358, *Tabatabayi, Tafsirool mizan*, p.:231).

Second part: the comparative reviewing of the trial offences; political, revolt and fighting offences:

Frist chapter: the comparative review of revolt and political offences:

Undoubtedly, we should not expect to find mentioning about political offence or something like that in the Islamic penal jurisprudence, which its antiquity is about one thousand and four hundred years. Since, the Political offence is a new terminology which doesn't have much historical record. But by reviewing the history of the political offence, we notice that, the "high misdemeanor" or "high treason" terminologies have been used in the same meaning in the criminal law; but primarily, in Islamic penal jurisprudence, criminal titles are specified and political offence doesn't match with them in concept. There are many cases and examples of minor criminals in this legal system, which nowadays we can account them as examples of the political offences.

We mentioned above that a group of Islamic scientists, who have had valuable studies and researches on Islamic penal jurisprudence, have

proposed this theory that; there is a title and concept in Islamic penal jurisprudence which is synonymous of political offence and reflects its concept exactly. These scientists believe that revolt offence is the very same the political offence and the belligerent Muslim is the very same the political offender (*oode, Al-tashri-ol-jenai-ol-salami, mogarna belganunnel vazii, book:1, p.:100*).

There are many similarities between the terms and conditions of assessment and principles on the realization of the revolt offence in particular and the political offence in common. We can find similar and sometimes equal effects and consequences in both phenomena, on the other hand, these similarities cannot synonym them in concept but can propound the revolt offence as one of the evidences of the political offence among its other evidences. Some similar aspects between the political offence and the revolt offence are as follow:

- 1) In the political offences extradition of criminals is rejected primarily and no criminal is returned because of political reasons. And belligerents, who run away from battlefield, are not sued or captured.
- 2) In comparison with other criminals, under an international custom, political offenders get much leniency. Such that the belligerents, in case they are not against the government, after being arrested they are forgiven without any punishment or annoyance.

There are also many differences between political offence and revolt offence; these differences are the reason for multiplicity of the concepts and distinction. Some of these differences are as follow:

- 1) In the revolt offence, the belligerent, as a member of coherent and organized group, should revolt. Even some jurists have this opinion that: these organizations should have enough glory and power so that can create danger for the government. So, if somebody revolts against the government solely or confront with the system as a member of a weak group, his act is not considered as a revolt offence. While in political offence, the number of offenders or the quality of their strength in party political offences is not determiner.
- 2) One condition for fighting back belligerents and quelling them is that they should have armed rebellion and physical fighting. Thus, merely expressing opinions and creating organization for enouncing ideas against government, till these actions don't lead to armed rebellion, doesn't considered as the revolt offence, and the Islamic government doesn't take action against them. While in the political offence, necessarily it is not the armed revolt and the confliction which are

considered offence and are blamable, but many political offences are not with confliction and war, and political offences can be punished based on law.

Second chapter: comparative review of fighting and political offence:

After inspecting the political offence and the corruption, and citing jurists' ideas about definition and nature of it, and recognizing the concept of fighter, using verses and traditions, now we proceed to the most important part of this chapter; that is, the comparison of the fighting and the political offence. In this article, we will proceed to this point: whether fighting offence, in comparison with new divisions of the offences, according to the psychotic element or offender's motive or based on the subjects and effects of committing offence and based on the criteria of this division, is included within the common offences or it belongs to the political offence group and is considered as an evidence of the political offence?

Referring to the last part, about the conditions of recognizing political offence, we concluded that political offences take place for defending from the freedom, the human dignity and conflicting with cruel and dictatorial governments or dependent to alien. So political offenders are prized and supported by the public and the society. So we conclude that two basic conditions are necessary for occurring political offence:

The sense of justice and benevolence motivation in the offender. 2- The Unlawfulness of the government, even though because of dubiety in the offender's mind.

So offenders of the political offence are those who take action for emendation of the society, but, from government administrator's point of view, these actions are considered as offences. Consequently, we can say; such persons, who have positive characteristics, never do actions such as murdering, coarse actions, depredation of the government or public properties, in challenging with the government, for emending society conditions. And primarily they are bound to the security of the country, although they take different methods for weakening government, the main purpose of these offenders is protecting the liberty of the country, securing the legal liberties and expanding the social equanimity. Even though offender takes wrong way in detecting evidence (in legal systems), he/she is doing the right action in his own opinion.

So, the way that political offenders use, is resorting to the freedom of the speech principle, freedom of the societies and the other freedoms, which with a view to materiality, it cause lesion to the government political authenticity, and with a view to personal, offender has a political motivation. But by

no means, fighting is an evidence of the political offence, because its doer's intention is creating intimidation and divesting security and freedom from people. In addition, the main purpose of the fighter is not challenging with the government or the political sovereignty, rather he draws his weapon for depredating and violating to the population.

One reason of taking for equal these offences is that both of them will cause disorder in public arrangement. Although the fighting takes place for frightening people, indirectly, it is considered an offence against the government, because the protection of the public security is government's duty. In fact it is an offence against the government indirectly.

The fact is that, benevolence and honorable motivation are grounds for occurring fighting and frightening population by using arm, though through frightening one person. As mentioned by *Javaher*: "even, if the fighter frightens only one person, in the event that, corruption purpose is obtainable, offending has been occurred" (*Najafi*, book: 41, 564). So the fighter doesn't have honorable and amendatory motivation, so there is no evidence, by which, dubiety of his offence, as a political action, can be proved.

But the fact is that benevolence and honorable motivation in the political offence, totally conflict with the intention of frightening, opposing and attacking to the population, which are elements of the fighting offence (*zeinali* p:78).

In addition, in political offence, the aim is governments and political systems, but in fighting the aim is divesting the public peace. So, just these two basic differences are reasons for differentiating these offences. Consequently, the fighting offence is a public offence and it is not possible to be an evidence of the political offence. (And Allah is erudite).

Third chapter: comparative review of fighter and belligerent's offence:

The questions which mentioned above show that; the "fighter and the belligerent Muslim are different; both in the subject and the decree. Following is a few outlines about these distinctions:

- 1) Difference in definition: the fighter and the belligerent concepts have two different definitions; the first one is to draw arm for frightening population, the second is revolting against Imam (peace be upon him). The components involved in the definitions are different completely, as follow:
 - a) Purpose: the purpose of the fighter is depredation, murdering, rioting or vicious ostentation. The fighter is either a burglar or one of the rascals and villains. In any case his aim is the people not the government. But the aim of the belligerent Muslim is overthrowing

the government and rebellion against Imam not people (*Ayat-ollah Khoyi, Menhaj-ol-salehin*, 1, :357).

- b) The Criminal device: for many jurists, the fighter draws his arm upon people, but belligerent doesn't use arm.
 - c) The Quality of commission: sometimes the fighter is alone, sometimes more or with a group. But, the revolt offence is always committed by a group who has power and is numerous. Perhaps it is not possible to imagine a revolt offence can be committed by only one person.
 - d) Doer of the offence: there is controversy about this matter; whether the fighter can be a Muslim or not? There is no explicit wording about this matter. Perhaps it can be said; though being a Muslim, while committing offence the fighter is apostate. But, according to the explicit wording of the Quran, the belligerent has been Muslim formerly, and has involved in apostasy now.
 - e) The Radix of committing the offence: perhaps it can be said that: the belligerent's insurrection against Imam is based on a belief and a deviational theory, but the fighter doesn't have such characteristic, instead he/she is a wicked person, thief or rascal and villain, who frighten defenseless people (*Mohaggeg Helli*, 1, p: 522).
- 2) Difference in the decree:
 - a) Assigning punishment: in surah *Maede*, verse 33, penalty of a fighter is in four forms?????And Imam executes one or some of these punishments according to the proportionality of the offence or his own consultation. But penalty of the revolter is fighting with him and no other amercement has been cited.
 - b) The conditions of executing punishment: as soon as the fighter begin his/her criminal act, he is prosecuted and punished. Even though his action doesn't lead to murdering or plundering population's property, while this is not true about belligerent. "Having different opinion from Imam or even citing that opinion doesn't lead to punishment, only when the belligerent begin his activities against Imam, he is prevented. In other words the commencer of the war is the belligerent not Imam." (*Sheikh Tusi, Mabsut*, p: 260).
 - c) Imam shows the belligerent the right way and removes his doubt, if the belligerent Muslims accept his advices, the war won't start. But such an action and behavior is not done about the fighters.

- d) Decrees issued after the war and punishment are different about these two groups. After fighting with the belligerent Muslims (those groups who don't have leader or organization) and dispersing them, the war wounded and the reminded belligerents after war are pardoned, while this decree is not executed about the fighters, they are pursued and their wounded and fugitives are punished. But the wounded and runaway belligerents are not punished. Totally Imam's treatment about the belligerents is remission, while about the fighter is severity (Javaherolkalam, 21. 328).
- e) The Repentance of the belligerent Muslims is accepted both before and after being arrested, and they are not punished, but the repentance of the fighters is only accepted before being arrested and they are punished after being arrested.

In short, these two offences are different in the quality. Fighting is a public offence, but the revolt offence is considered as a political offence. Consequently, the only source for recognizing the revolt offence is Amir al-momenin- Ali's (peace be upon him) policy in treating with *Khavarej* (apostates), Saffein and Jamal people. It is worthy to deliberate about his treatment.

I have chosen some pages of the book "*Jazebe va dafeye Ali*" (Ali's charisma and???) from the author *Motahari* (may God bless his soul):

Ali's (peace be upon him) democracy:

Ali (the chief of the faithful) behaved with *Khavarej* in the most extent of the democracy and the freedom. Ali is the caliph (successor) and they are the peasant. Ali was in a position to do every kind of diplomatic acts, but he neither imprisoned nor lashed them, and even he did not discontinue their allowance from treasury. He behaved with them as others. This is not a strange subject in the history of Ali's life. But this is a rare case. They had the freedom of speech, Ali and his followers treated and spoke with them with free opinion and they answered each other's argumentations.

Perhaps this degree of freedom is unique in the world, and a government has democratic demeanor with its adversaries. They came to the mosque and caused jam in Ali's orations. Once, the chief of the faithful was orating, at that time a man came and asked a question from him, and Ali answered extemporaneously. One of the apostates said aloud among people: God kill him, how wise he is. The other audiences objected to him, but Ali (peace be upon him) stated: leave him, because he cursed only at me.

Apostates (*khavarej*) did not follow Ali in collective prayers, because they considered him as an

unbeliever, they came the mosque but did not pray with him. Occasionally they annoyed him. Once Ali (peace be upon him) was saying his prayer and the people were following him, one of the apostates; called Ebn-el-ku', yelled and cited a verse of the holy Quran as an allusion to Ali (peace be upon him):

«ولقد اوحى اليك و الي الذين من قبلك
لئن اشركت ليحبطن عملك و لتكونن من
الخاسرين» (زمر، آيه 65)

This verse is addressing the prophet, «it is inspired to you and to the prophets before you, that, if you became dualist, your deeds would annihilate and you would be from prejudicious». *Ebnel-kava's* aim in citing this verse was to speak allusively to Ali, and allude to him that "we are aware of your past, you are Muslim, the prophet has chosen you as his brother and you endangered yourself in the *Leilat-ol-Mabit* and slept in prophet's bed and endangered your life in front of swords, and your services to Islam is not deniable. But God has said to his prophet; if you became unbeliever, your deeds would be spoiled, and since you are unbeliever now, your deeds are spoiled.

What did ALI do in response? While the man was reading verse, Ali was silent so that the verse finished and then he started his prayer, again *Ebnelku* repeated the verse and ALI (peace be upon him) became silent again, because it is the command of Quran that says: «when somebody is reading Quran, listen to it and be silent».

And this is why, when the chief Mullah is reciting prayer, the followers should be silent and listen to him. When *Ebnelku* recited the verse several times, and created disorder in the prayer, ALI (peace be upon him) cited this verse:

«فاصبر ان وعد الله حق و لا يستخفك الذين
لا يؤمنون»

That is: have patience, God's promise is true, don't let these unbeliever people shock and make you frivolous.

Conclusion:

According to the above mentioned discussion about political offences, we conclude that, if political offenders are Muslims, they will be divided in two groups: the first group is those who never committed an armed rebellion, so the governor should guide them, if they are not guidable and are not dangerous to the system, they shall not be punished, but if they are dangerous to the government and do propagatory activities against the system, for overthrowing it, the governor shall encounter them harshly and ensue them, and, on the base of their cases, imprison them as their punishment, and another group is those who have committed armed rebellion, and this group also is divided in two subgroups: the first group is consist of those who have a leader and an independent government, the second group is consist of those who

don't have a leader. In regard to the first group, who are dangerous, the wounded are killed and the fugitives are sued, but in regard to the second group, who are not dangerous, the wounded are treated medically, and their fugitives are not sued but they are forced to repent, and if they did not repent and were not dangerous, they would be set free, and if they were dangerous, they would be imprisoned till they repent, and if they did not repent, they would stay in prison till they die. Now it is necessary to mention two points: the first is that; if political offenders commit a crime in fighting, they will not be punished, because the chief of the faithful, Ali (peace be upon him) did not punish somebody after Jamal war, though they were sentenced to the punishment, because the retaliation is the right of the authorities of the killed person (*oliyaye dam*). And he should ask them to decide about the retaliation, but Ali (peace be upon him) not only did not take action about punishment, but also he forgave all of them. The second point is that, as the Muslim jurists has cited; if the wounded have an independent government, they shall be killed; they are killed because they did not repent and are dangerous to the Islamic government, but if they repent they will not be dangerous to the Islamic government, and in case they don't repent but avoid accompanying and helping with the belligerents or the belligerents surrender before killing the wounded or leave revolting and fighting with the Islamic government.

The legislator of the Islamic republic of Iran has defined the fighter and the seditious beside each other, not the fighter only. Using the words "fighting" and "corruption in the country" (*efsad-fel-arz*) beside each other in the title of seventh chapter of the Islamic penal code of Iran, ratified in 1991, and also in the articles of this chapter show that, these two words have been used synonymously and are considered as a unique offence in our law. (*Mir-Mohammad Sadegi, private penal law*3, 2001, p: 45). According to the definition of the legislator, it is plain that in his view the fighting and the corruption are as follow: "using arm for frightening the people and spoiling the freedom and security from the society."

As we mentioned in the definition of the fighting, for occurring the fighting offence, the intention of using arm or carrying it or showing it in order to frightening people is a necessary conditions. And according to material elements, the offender should use arm, show it or carry weapon, in the law this action is called «drawing weapon», so the definition of the law coincide with the jurists pinion, and even despite the fact that many of the penal laws of Iran has been

arranged based on the jurisprudential theories of *Imam Khomeini*, but the legislator has not followed Imam's ideas about «the intention of corruption» that Imam has considered it one condition.

In surah Meade, verse 33, the punishment for the fighter has been explained as follow:

«... أَنْ يُقْتَلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ...».

So the legislator of the Islamic republic of Iran has issued in the article no. 190 of the Islamic penal law that; the amercement for the fighting and corruption is one of the four punishments: 1) the killing; 2) hanging; 3) cutting off right hand and then his left hand; 4) to exile.

So, in relation to the kind of punishment for the fighter, the above mentioned verse is explicit and the fighter's punishment is one of the four aforementioned punishments, and there is no disagreement about the explicitness of this theory and the holly book and the tradition are evidences for it. (*Fazel lankarani, tafsil-ol-sharyie Fi Tahrir-ol-Vasile, 1406.A.H. p.513*).

Corresponding Author:

hossein ghanbari ghomi kala

MA of Criminal Law and Criminology,

Islamic Azad University of Tehran Center, Tehran,

Iran. hossein_gh1357@yahoo.com

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