

Legitimate defense leading into death in England law, Iran and Imamic (or Islamic) jurisprudence

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Abstract: The rules of Iran law about legitimate defense leading into death in various aspects in terms of nature and providing dimension has some problems as in some files, the verdicts are sometimes contradictory. Concluding all differences in verdicts as overemphasizing them in terms of the relation with the human beings self, such conditions of defense leading into death, guides us to Imamic jurisprudence as the basis of Iran law and its comparison with a foreign law to develop the view horizon that in this case, we can take a step toward justice. The current study is titled as "The basics and conditions of legitimate defense leading into death in Iran law, Imamic jurisprudence and England law". Due to its comparative nature and using Imamic jurisprudence and the underlying law of England, it shows the deficiencies and requirements of Iran law and some recommendations are proposed to improve the quality of the rules. It can remove some problems in this regard. The multiple verdicts in Iran law system in legitimate defense leading into death, from the accused release to capital punishment order is a challenging issue that can not be ignored.

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1. Introduction

The history of legitimate defense in Islamic sources

One of the most important sources in Shiie jurisprudence is the Holy Quran. The Prophet (pbuh) applied Hikmat as the basis of his invitation. The basis of this selection is the verse: ادع الى سبيل ربك " Invite to the way of your Lord with wisdom and good instruction, and argue with them in a way that is best(and he was always in this way otherwise in a special time and the order of Allah and to reject the enmity of pagans.

As Qureish by continuous injuries yielded to Quranic reasons of the Prophete, was agreed to kill him. Ali (pbuh) at young age (20 years old) slept in the bed of The Prophet to save him. To that time, The Prophet during 13 years fought with pagans just with patience and reasoning and Hikmat. In Medina, some verses considered killing for self-defense and defending Islam as unsuitable were sent down. The first verses explaining Jihad were the saying of Allah as: اذن للذين يقاتلون بانهم ظلموا وان الله على نصرهم لقدير.

Permission [to fight] has been given to those who are being fought, because they were wronged. And indeed, Allah is competent to give them victory.

The history of legitimate defense in Rome and west law

The theory of "self-defense" that is important based on the position of human being and human rights in legal, political and social fields, is of great

importance in the past history. As besides England law in ancient Rome and other legal sources, we can identify its works. The public law of Rome with comprehensive system being evolved gradually since the establishment of Rome Emperor in 449 BC was dominant for some centuries in the west and their social and political behaviors. In Europe, North Africa and even west Asia, Rome legal system was the only system defining the relations between civilized societies and even after the collapse of western emperor in 5th century AD was kept as the basis of Europe law. In colonization of Latin America, Africa and Asia, this legal system was important and even in major parts of the countries being conquered by Napoleon later 1. Since 1901 the articles of international law were influenced by Grutius, the historical law expert and major parts of international law were influenced. This new system was based on natural rights that continued until now 2. In Roman law, "self-defense" recognized killing the king directly because self defense against the crimes of the kings is a part of self-protection.

By the establishment of the eastern Roman or Byzantine Empire in Middle Age, the enforcement of self-defense continued and even during 600-800 in Rhodes in the eastern Mediterranean, the first signs of international law are observed. This Island was a part of Byzantine or eastern Roman 6.

It seems that the term "self defense" with a good position is the product of human being position in law and it is one of the effects of new view to human being, society and the world "Humanism".

The current study is titled as “The basics and conditions of legitimate defense leading into death in Iran law, Imamie jurisprudence and England law”. Due to its comparative nature and using Imamie jurisprudence and the underlying law of England, it shows the deficiencies and requirements of Iran law and some recommendations are proposed to improve the quality of the rules. It can remove some problems in this regard. The multiple verdicts in Iran law system in legitimate defense leading into death, from the accused release to capital punishment order is a challenging issue that can not be ignored.

The current study deals with the followings: The question: Whether Imamie jurisprudence with its nature has a vivid response about the illegitimate defense conditions? In other words, if we follow these issues in Imamie jurisprudence, we can achieve absolute order and avoid the difference of the verdicts? How was Imamie jurisprudence influential in Iran rules in this regard? What was the procedure of England law? The sub questions are hidden in three previous questions, the differences and similarities of three rules? Which one is more adaptable with the logics and reasoning? To remove the legal contradictions, what is the duty of the law maker?

To respond the questions, the investigation of the current study was selected as the study that by finding the similarities and differences of these three rules and by scientific approximation of these three systems, we attempt to reduce the differences and inspire other rules in this issue and to improve the law making system in Iran. Because as Professor Niboaye said:” Comparative law is like a projector clarifying the local rights basis and manifests its delicacies.

2. Research method

The research method was library with objective and applied approach (file). This method besides educational functions made the theoretical issues more objective and conformity of theoretical issues and the consistency of its outcome with objective examples solved the legal issues. In this method, law includes three missions as exemplification, comparative duty and extraction of exact basics and finally prescriptive duty. Because law and social sciences show that there is a clear relation between achieving the goals and methods 1.

In legitimate defense leading into death, Imamie jurisprudence, England and Iran law are similar in terms of using the source” wisdom”. Imamie jurisprudence in addition to wisdom is inspired by other Islamic sources, the Holy Book, traditional and Ejma and England law has applied Torah and Bible. Iran law benefiting from the changes history

benefited from external law and after the Revolution was inspired by Imamie jurisprudence. Thus, these three laws in legitimate defense generally and as they lead into assassination have some differences. This condition in legitimate defense leading into death is observed. Based on the above items, the first part of the study deals with the sources and basics of legitimate defense leading into death in Imamie jurisprudence, England and Iran law in two chapters. In the first chapter, the similarities of the sources and basics in these three laws and in the second chapter the differences in basics and sources are explained. The second part of this study elaborates the legitimate defense leading into death in Imamie jurisprudence, England and Iran law in these two chapters. In the first chapter, the differences and in the second chapter the similarities are expressed. Based on the proof of legitimate defense leading into death, this chapter is mentioned at the end of the study.

Legitimacy of defense leading into death sources
Holy Books, Legitimacy of defense leading into death source

Any human being is entitled to defend his or another person life or his property against the aggressors. This right is respected before the religions. Legitimizing of the religion to a reasonable right leads into its regulation and more attempts of the religious people to do it. England law in some aspects is inspired by Christianity and Jewish and Imamie jurisprudence is influence by Islam. Thus, it can be said that in some resources of England law and Imamie jurisprudence are relied on Shariat. Iran law before revolution is influenced by western law and after the revolution is inspired by Imamie jurisprudence. Thus, Iran law with some mediums relies on religion.

Based on such learning: “Self-defense” besides being based on justice or logical reasons is based on the empathy with the accused person being in prison. If at a special condition we do the same, we rarely can condemn that act and kill the mistaken killer with no other logical reason. Emanuel Kant showed his empathy to the wrecked ship sailor. In the example of wrecked ship, he believed that urgency excuse is true about the sailor. In this example, the sailor after the ship wreck and under the pressure, to save his life put away another sailor who is endangered. Although the wrecked ship sailor was wrong, by a personal immunity, he is released of punishment. “Self-defense” is the initial form of legitimate defense. In 1532, England parliament ratified that legitimate defense in some especial cases can be raised as forbidden and when a person to defend himself use the fatal force was released and there was no sign of

property confiscation to show the illegal nature of killing³.

The verse “ و لا تلقوا بأيديكم الى التهلكة “ don't kill yourself 8.

One of the reasons that Sheikh Tusi raised for proving his comments about legitimate defense is this verse. He said: When a person attempts to kill a person or destroy another person property , the defender is entitled to defend his self or his property although this defense inflicts injuries to himself or the aggressor and if the aggressor tries to kill the defender, the defense is obligatory and if the defense power exists, yielding is not good...our reason about this reasoning is the saying of Allah as “ Don't kill yourself” and the second reason is that the necessity of eliminating damage of the self is the wisdom axiomatic and a person who doesn't do such defense should be blamed.

It was narrated of Hesham Ibn Salim and Emad Ibn Osman that Imam Sadiq said:” My Hadis, is the hadis of my father and his hadis is the hadis of my grand grand father and his hadis is the hadis of Imam Hossein and his hadis is the hadis of Hassan (phuh) and his hadis is the hadis of Allah 4. The infallible Imam said: ان الله ليمقت العبيد دخل عليه بيته فلا يقاتل : Allah considers the slave an aggressor enters his house and he doesn't fight with him 5.

Legitimacy of defense leading into death source

The common source of all laws in the countries is wisdom. According to wisdom, eliminating the damaging of life, property and honor is necessary. But about the property, how the wisdom allows for defense. To defend against the aggressor of our property that except assassination we can not defend, can we kill him? This should be reflected based on our wisdom.

Rationality was not only considered gradually by the philosophers, scientists and law experts and it had special position, but also with stability of its position had important role in marginality of some issues as metaphysics and religion in common law. Some philosophers that by relying on wisdom presented their theories; the owners of social contract, Hobbs, Locke and Russo. The followers of “benefit centered” as Jeremy Bentam, James Mill, John Stewart Mill and David Hume by relying on rationality defended their theory and encyclopedia theorists called “intellectuals” of France in 18th century were following rationality.

But the Islamic law experts as a rule and law considered wisdom and Sharia with each other. Based on the famous rule “ كلما حكم به العقل حكم به الشرع “ و كلما حكم به الشرع حكم به العقل what wisdom orders, Sharia orders it also and vice versa.

Law: Legitimacy of defense leading into death source
The manifestation of sharia and wisdom and its obligation in the society is in the form of law. In Imamie jurisprudence, the result of sharia and wisdom is manifested as Fatwa. In common law, sometimes wisdom is an independency leading into the ratification of rules but in Islamic law, the wisdom plays role in the form of dependent items of sharia and with it in law making. The rules of legitimate defense leading into death in Iran and England are mentioned.

Iran law about legitimate defense leading into death

The validity of normal law including Islamic punishment law in legitimate defense depends upon constitution. Islamic Republic of Iran constitution in 22th, 32th, 36th, 47th principles made some rules and by referring to them, we can recognize legitimate defense. In the 22th principle it is said:

“ Honor, life, property, housing and job of some people are immune of aggression otherwise in some cases the law prescribes.

40th principle states: Nobody can obtain the public benefits by aggression” and in 47th principle, “ If the personal property is legitimate it is respectful and its regulations are determined by the law. The grantee of these principles that is respecting the natural law and forbidding aggression to that law is sometimes as punishment and sometimes as allowable defense against these aggressions and the later one is considered as legitimate defense.

Article 41 of Iran punishment law approved on Jan 13, 1926 about legitimate defense is said: Any person who commits crime for necessity to defend himself or his honor, is not punished and a person who commits crime by force and it was not possible to avoid it otherwise in assassination that the doer is punished three times less.

The rule of Islamic punishment, approved in 1982

Article 33 of this law is about the general rules of legitimate defense. A person who defends his or another life, dignity, family, freedom and property against any kind of materialized and imminent attack will not be prosecuted if a. The defense is proportionate to the attack. b. The defense measures are not more than necessary. C. It is impossible to get assistance from the police or their intervention is not enough to avert the attack.

Islamic punishment law 2012. Article 155 of Islamic punishment law 2012 (old version of the government) is dedicated to the legitimate defense. By enforcement of the bill, this article is replaced by articles 61, 62 of Islamic punishment la 1996. It should be considered that by article 972 of the bill, articles 625 to 629 of fifth book of Islamic punishment law (inhibitive punishments” approved

on 1375/3/2 is void from the enforcement data and the only article about legitimate defense is article 155. This article is under the chapter "barriers of penal responsibility". It seems that law making by selecting "barriers of penal responsibility" finished the difference of two times "legitimated factors of crime and reasons of eliminating penal responsibility" and the comments. Article 155 states that "when A person who defends his or another life, dignity, family, freedom and property against any kind of materialized and imminent attack will not be prosecuted if a. the crime is necessary to avert the attack, b. defense is referred to reasonable evidences. C. attack and aggression is not done due to the aggression of the person and another person defense, d. It is impossible to get assistance from the police or their intervention is not enough to avert the attack.

Note 1- The defense of life, family, dignity, property and freedom of another is only permitted when he or she is unable to defend and needs assistance or assistance is not possible.

Note 2- if the defense principle is proved but observing its conditions is not proved, the proof of the lack of observing the defense conditions is the responsibility of the aggressor.

Article b. England law about legitimate defense. The law about legitimate defense of England law, part 3 of criminal law 1967. The text of the law is as following.

A person may use such force as is reasonable in the circumstances in the prevention of crime, on in offering assisting in the lawful arrest of offenders or suspected offenders or of a person unlawfully at large.

c. the comparison of Iran law with referring article in England law

1- Regarding legitimate defense leading into death, Iran current rules (namely articles 625,629), the law maker in case of fulfilling its conditions make the offender released of the punishment. While the law in England law permitted reasonable violence to prevent crime, etc. indeed, England law permitted explicitly using reasonable violence to prevent crime but in Iran law "released of punishment" doesn't mean the lack of crime of the act. In Islamic law bill (2012), the law maker integrated penal responsibility eliminating factors and justification reasons and applied the title "penal responsibility barriers". Thus, the characteristics of each of the penal responsibilities were studied separately and under the specific title.

2- In England law, without separating that defending against offense to self, one property or another without predicating some conditions to defend another person or defend self is predicated. Generally, the term "using reasonable violence to prevent crime" is applied.

3- despite Iran law that to assist the legal justice, no special rules are predicted, by observing the article of legitimate defense in England law, it is observed that "using reasonable violence" not only is permitted to prevent crime but also it is used to arrest and assist the arresting of the offenders and suspecting offenders.

Valid sources and jurisprudence

Referring to article 214 Criminal Code of Procedure for Public and Revolutionary Courts, because there is lack of, or deficiency, or brevity, or contradiction or ambiguity in the codified rules, the court is bound to find the sentence of any issue within the codified rules and if there is no code for a subject, the court will issue a valid sentence based on the reliable sources of jurisprudence or reliable fatwa. The court order shall be reasonable and valid based on the article of codes and principles to which the sentence is issued. Islamic punishment law 2012 by referring to "the legal crimes and punishments" referring to sources of jurisprudence is restricted to the limits not mentioned in the law. According to 167 of Islamic Republic of Iran constitution is acted. In article 221 about removing the ambiguity that in case of the necessity to jurisprudence sources, if Fatwa are different, which Fatwa is used by the judge? It is assigned that if it is necessary to refer to 167 of constitution of Iran, it is required that the legal position asks the leader and he can delegate it to a person or some people".

Second discussion. The similarities of legitimate defense leading into death in law doctrine and Iran law, Imamie jurisprudence and England law.

Item a. The natural law and necessity as legitimate defense basis in law doctrine and Iran law

Most of Iran law experts by relying on general theories of legitimate defense inspired by the west law and referred to West law. According to the writing of Iranian law experts, in western la, the natural law theory was defined at first by Cistron and then it was observed in the writing of Grasius, Wolf and Kara1. According to this belief, living right and protecting life is the natural right of any human being and not body can violate it. Thus, when a person is attacked despite justice and his life is in danger and by any reason of social support reasons can not defend him, the personal right is appeared again and is replaced by it and is practically used. Thus, defense legitimacy is the right that without needing the rules, any one enjoys it, when his life is endangered, he can resort to it and according to Cistron, the rules are silent against attack and violence"2.

England law is based on common law. Thus, the bases of legitimate defense leading into death in these laws are the claims that are prosecuted in the courts

leading into verdict and some of them are mentioned as following:

In December 1984, Bernhard Hugo Goetz was attacked in the subway station of New York by four black youths. One of them said "give me five dollars". Goetz was attacked by attempted robbery three years before and it was on his mind and he pulled out a 038 caliber and shot the four men who attempted the robbery. Two of them were shot on the back; he fired another shot at one of them, who then was sitting on the end bench of the car. They were carrying screw drivers but he didn't know. Four of them were injured seriously and one of them was paralyzed waist to down and was charged with attempted murder.

The reason that one of the authors mentioned about the conviction of this person is useful in discovery of the basics of legitimate defense. He said: "The reality is that we live in a civilized society. In such a society restricting self-help right is necessary for people. But self-help is necessary in some conditions. When it is relied on arriving formal, impractical or unrealistic assistance. But justification of this self-help is dependent upon its necessity. If all that was done by Bernhard Hugo Goetz was necessary to protect himself, his acts are justified but it is done by force it was not necessary to cope with the attack, his other acts are not justified.

3. Second chapter. The differences of legitimate defense leading into death in Imamie jurisprudence, England and Iran law

First discussion. England law and profit making basis. In the west law, besides all the theories as common with Islamic law, another theory is existing for legitimate defense and as it is leading into death and it is based on benefit. This is not observed in Imamie jurisprudence.

Expediency as the basis of legitimate defense leading into death in Imamie jurisprudence

One of the basis of orders including legitimate defense leading into death in Imamie jurisprudence is the expediency hidden in this act. Defending life, property and honor and defending another life and honor according to Islamic Sharia is with expediency and the lack of it is problematic for a person and Islamic society. Generally, the basis of legitimacy and the lack of legitimacy of human being acts is expediency and corruption of the action according to Islam 1.

Ayatollah Seyed Mohammad Hassan Marashi believed that crime is not a merely validating issue, it is an action or omission that Allah made it forbidden or obligatory for its expediency or disadvantage 2.

Islamic jurists not only considered defending life, honor and property as obligatory but also blame and punish 1 a person who duck the issue and considers the highest reward for a person who is killed for defending his property and honor 2.

In Islam killing other person is forbidden (Haram) and the killer should be punished but when these acts are done to avert the aggressor, the criterion of forbidden act is removed and the obligation criterion and its permission are fulfilled. Because at this condition, averting aggression is for the benefit of a person and the society 4.

Spiritual force as the basis of legitimate defense in Iran law doctrine

In this theory, the only reason justifying the legitimate defense is spiritual force, it means that when a person is threatened, is influenced by anxiety, as for defense and his freedom is distorted and he can not control his acts as a normal person. If he kills the protestor or any crime to him, the spiritual force can release him of the punishment 5.

The conditions of legitimate defense leading into death in Iran law, Imamie jurisprudence and England law

The comparison of attack conditions

The legitimacy of defense in most of legal systems in the world has some conditions and if the defense lacks the constraints, it loses its legitimacy or deprives the defender of benefiting all its advantages. As legitimate defense change in various legal systems is different, in most of the penal law in the world four main attributes are mentioned for legitimate defense or necessary defense. These four attributes are including necessity, imminence, proportionality and intention to repel the attack.

In England law, contradictory benefits of the initial aggressor and defender are evaluated with each other. We should view it as mutual but as in this trend, the aggressor is guilty and is responsible to start the violence and the inclination of heavy scale for the benefit of the defender"1.

Islam law experts in the fact that repelling aggressor for supporting the life, property and honor or another person is explained are agreed. Most of them permit defending life and honor and defending property 2. For the legitimacy of the defense leading into the death of the aggressor, some conditions are defined in jurisprudence. In Islamic punishment law (Iran) in articles 61, 62, 625 to 629 (legitimate defense" are justifying factors of crime.

Illegal attack

To make the defense leading into death legitimate, illegality of the attack is the necessary condition and this condition should be accepted in three laws. In Imamie jurisprudence, some terms as "

aggression”, “attack”, “cruelty”, “corruption” show this condition and in Vasael Al-Sharia it is said that : من بدأ فاعتدى فاعتدى عليه فلا قود له . A person who starts the crime and then aggression is done on him and his blood is shed, there is no retaliation money (Khunbaha)1. The term “aggression” in Arabic terms means unjustified attack.

Klarckson and Kiting, two English authors said about the illegality of attack:” in justification of using defense force, the aggressor should threaten to an unjustified damage to defense benefit and supporting law. Otherwise, ..the defense is not legal1.

When the attack is legal, legitimate defense is not possible. Thus, if the aggression is legal and justified, the other person should yield to death danger 2. Lori El Si Ji in Bron file said : When the police is legal and use the violence to prevent the crime or legal arresting of offenders and offender suspects, legitimate defense is not acceptable in this case 3”.

Second discussion. The legitimacy of defense leading into death against the attack of innocent people. The defense against the people without penal responsibility how can release the defender against the punishment?

How is the civil responsibility in such condition? There are various samples in this regard:

First chapter. Aggression from the child and crazy person. The defense leading into the death of child or crazy person with all the conditions is legitimate defense. This meaning is used to mention the items of legitimate defense. Because as is shown in article 626, the child and crazy person act is also considered crime, although the offender is without the responsibility and “in this case the psychological personality of the aggressor doesn’t have any decisive effect1.

Third discussion. The attack subject. In this case, the attack subject is considered from two views, first the investigation of the issue whether legitimate defense is dedicating to where the person himself is attacked or it is including the place others are attacked? What is the view of these three laws for the place others are attacked? Second view: The investigation of this issue that legitimate defense leading into death is dedicated to where the life of human being is the subject of aggressor attack or where the honor, property are attacked, killing aggressor is legitimate? What is the view of three laws in this case?

First discussion. Attack object

Imamie jurists by referring to traditions, defending another person is not only obligatory but also in some cases the lack of defending the Muslims when it needs help and demands help is considered as

kofr. Some of the traditions of defending another person are followed as:

- a. عن علي ع قال: قال رسول الله ص: من سمع رجلا ينادى يا للمسلمين فلم يجبه فليس بمسلم 2
- b. عن الى عبدالله ع قال قال رسول الله ص عونك الضعيف من افضل الصدقه 3
- c. قال رسول الله ص: من رد عن قوم من المسلمين عاديه مائ او ناروجبت له الجمخ 4

Second discussion. Attack object

According to jurists: in some cases murder is permitted without referring to the Sharia court. One of the cases is defending life, honor and property. Thus, murder is permitted as defending these three cases. In such conditions that murder is permitted, it doesn’t have retaliation, retaliation money (dieh) or Kafare. The meanings of these terms are shown in Menhaj Al-Salehin1.

Item a. aggression of life. There is no difference between the jurists about defending against attacking the self or another person life.

Thus, if repelling the aggressor is dependent upon his killing, the killing is permitted.

Fourth discussion. Imminence of danger.

First chapter. Imminence of danger. The jurists mentioned it with the title “not ending the aggression”. Saheb Javaher said:” If the aggressor escapes the defender, defending is void and it should be prevented to avoid cruelty. Because inflicting injury is not accepted unless in defense and when the aggressor escapes, defense is void and if by binding him or injury, he is prevented, inflicting injury is not accepted because the injury is averted. Thus, if aggression is done to the aggressor, he is responsible and if the defender after overcoming the aggressor inflict anther injury, he is responsible. Because in this case it is an aggression and it should be punished 1.

Similar items are mentioned in Qavaed Al-Hokam Fi Marefe Al-Halal va Al-Haram 2.

One of the jurists said: If in the attack, the hand of the aggressor is cut and when he is escaping, his leg is cut, he is punished for the leg 3.

Similar words are mentioned by Shahid Sani 4.

Second chapter: imminence of attack

This issue in the saying of jurists is investigated as “Knowledge or suspecting the attempt of the aggressor.

Saheb Javaher said: there is no difference in this regard until the attempt of aggressor to the life, property of the offender is not fulfilled. He shouldn’t be the beginner otherwise the attempt of the aggressor is obtained via suspect for the defender. In the cases that such attempt is not fulfilled commonly. In the latter, if it is clear that the defender is wrong,

he will be responsible...if the attempt of the aggressor is fulfilled until he is attacking, the defender can repel him and he should observe the priority 3.

In the book *Al-Lama Al-Damsheqie* is observed: The defender shouldn't be the beginner unless he knows the attempt of the aggressor 4.

The comparison of the conditions of defending act

Defense necessity

In urgency theory as one of the forbidding factors that is the basis of necessary defense in England law, normative violation is the cheapest available method to prevent the probable damage. The England law experts believed that any person apply violence against another person, even for legitimate defense at first should be prepared to justify the necessity of this violence. Giving the permission to a person to use violence for self-defense in a legitimate defense situation as offered by English law experts is an advantage allowing a person to do something otherwise it is illegal 1.

In Iran law: Committing crime to repel aggression is legitimate when it is the only way to be saved. Thus, when the defender can repel the danger by some ways except crime and do the crime against the aggressor, his defense is not legitimate. To prevent these conditions, in each case we should consider all the circumstances and we should observe that whether aggression and imminence of danger is repelled by some ways except committing crime or not?

The duty of retreat and escaping

Sabzevari said: لو اندفع المهاجم بالهرب منه او تهريب حريمه منه لا تصل النوبه الى المقاتله حينئذ If the aggressor by escaping from him is repelled, fighting is not necessary.

Then, in reasoning it is said: considering "defense reason" is not including such condition thus "not killing" is used in this condition and at least as doubt is observed in such conditions, resorting to these traditions in doubtful cases is not correct 2.

Mirzaye Qomi said: If a person can escape of the aggressor or defend, it is a delayed acceptance because each of them is used to protect self 3.

In England law, one of the issues in subsection "defense necessity" is that whether human being in case of facing with offensive force "is obliged" to escape or not? Whether not escaping means that defending was not necessary. This issue is of great importance in England law that some of the English authors considered it as an independent factor and the main conditions of fulfilling legitimate defense. Clarkson and Kiting said: "It is possible that

it is reasoned that if repelling the attack is possible by the retreat, using violence is not necessary and reasonable 4.

Of the sum of the writing of English law experts, we can say that are there any rules of retreat, it is not clear that the mentioned rule is enforced or not or article (1)3 of penal code 1967 underlying these rules? This issue (retreat condition) is under the question that most of the English law experts referred to it 3.

In Iran law in response to the question that: If the aggressed person can be saved by escaping, is he entitled to repel the aggression with any act against the aggressor? It is said that by the wisdom, if escaping is an easy way to be saved, its selected is preferred 4. Based on the basics of legitimate defense, defending is the right and if the defender resists instead of escaping and injured the aggressor, his action is justified because the law maker never obliged for escaping, some authors believed that against a child or crazy person, if escaping is possible, resorting to defense is not good 5. The views of law experts are different. Some people despite escaping considered defense illegitimate 6 and some other people considered it legitimate 7.

Third discussion. Defense as necessary. If repelling the danger is possible by easier tools, the defender is not entitled to use sever tools. If the aggressor is repelled by a hit, it is enough. Second section of article 61 regarding this condition is assigned that "if the action is not exceeding the required limit" and according to article 629 if the law: in the following items, purposeful murder is not punished if defense is dependent upon murder.

Saheb of *Al-Lasam va Al- Ebham An Qavaed Al-Ahkam* said: "[in defense] it is obligatory that at first easy ways should be applied and if they are not adequate, more sever tools are used and if it was not effective, again more severe ones that is enough for repelling. كفا التنبيه في موضع يلحقه المنجد اقتصر. عليه ان خاف من الصباح ان يوخذ فيقتل او يجرح و لو كفاح الصباح او الاستغاثة في موضع يلحقه المنجد اقتصر عليه if it was not repelled, he can fight with hand, rod and it they were not effective, with some weapons.

Fourth discussion. The proportionality of defense with aggression. Proportionality means the similarity of the defense with the attack in the type of aggression (e.g. defense leading into death with aggression with murder attempt or the defense leading into injuries in aggression) and the tool used in the aggression (e.g. using arms when the aggressor use this weapon). In this case, the supreme court in verdict No.28.7.25.1588/12: "Defense is proportionate to attack if the weapons are similar, it means that both of them had wood or weapon or similar tools".

In England law, the second condition of defense is its proportionality with the attack. In this attribute, we refer to "proportionality" as a defensive reaction. The general rule is that the reaction should be proportionate to the attack.

The attacker can use the force that is reasonable in some special conditions to cope with the attack 1. This is ambiguous because what is good in a special condition is fully disproportionate in another circumstance.

Fifth discussion. The difference of proportionality with necessity

To understand the difference between proportionality and necessity we can get help from the proportionality of attack resistance and its severity. "The necessity" is about the fact whether the defender can not use the defense with low costs? For example it is possible that to repel the attack, just showing the weapon or air shooting is adequate 1.

By some better examples we can show the difference between necessity and proportionality. Assume that a thief steals some bottles of wine from the bar; the owner is obliged to shoot him. Most people reject the belief about permission of killing the thief to support the property and from the social or group view, it is better to ignore some bottles and don't damage a person. The effect of proportionality is appeared here. This principle show that the aggressor is a human being despite his crime and his benefits are important in defensive forces scope 2.

Common law compared to Germany law had easier task to encounter proportionality. English law experts should answer this question that "in defense what fatal tools are used? They found that small benefits of property can not be considered a good background to justify aggressor murder 2.

Balkeston, the English judge and law expert said: "We can not prevent any behavior, otherwise the behavior is such that it leads into capital punishment". As for small stealing, capital punishment is not considered; the defender can not use fatal force to defend unimportant financial benefits.

Sixth discussion. Formal legitimate defense

Sometimes in defense, the defender more than necessity and proportionality use violence. Islamic punishment law about such defense is silent. In Iran legal procedure, based on some orders of supreme court and comments of jurists, we should say that in such condition if the court defines that the action of the accused person is defensive but he went to extreme, retaliation money should be paid. Here, the verdict NO. 4 on May 6, 1997 in the form of "suggesting the initial court" we can say that as the

defense is obvious and based on the circumstances, the exceeding the defense limits is proved, the accused person is obliged to pay the money. Here, Supreme court branch 30 in verdict No. 71/11/10-944 said: "...The accused person in defending himself exceeded the limits and according to item 8 of Tahriralvasileh should pay the money". It seems that the verdicts refer to the items that the accused believed that the violence is necessary, otherwise if purposefully kill that person despite the fact that he could repel the aggression, the murder is intentional. In a simialr condition, supreme court branch 31 on 73/11/9 by referring to Ayatollah Fazel Lankarani said: "... Due to some problems, some people attacked a person. He tried to defend himself but didn't observe the rules or he didn't have the opportunity and killed one of them. Should he pay the money or he is charged with retaliation? The response is as following:" If he was sure that defending is done only via killing that person as it is clear, he is not entitled to retaliation and he should pay the money. Mohammad Fazel Lankarani Feb 2, 1995.

In England law, this condition is called "formal legitimate defense" as the basis of mistake in the beliefs of the accused person. In such a condition, "mistake shows inconsistency. The offender thinks in a way and the society thinks another way. The society insists that its view is correct. The criminal result is occurred and the victim is injured. The accused person claims that he viewed the issue in another way and as other people didn't know anything about the reality. He believed that he was not wrong. Maybe to others, he shot a policeman and injured him but from the view of the offender, it is seen in another way. He imagined that the policeman is a normal citizen who attacked him and he should defend himself 1.

The lack of association of the defense to intentional stimulation of the defender

Another issue that is raised in "defense necessity" is such that when the defender stimulated another person to attack and defended himself, is his defense legitimate or not? Hegan and Smith believed that when action and behavior (D) are probably the origin of defense and it is not predicted that his acts lead into the attack, shouldn't be deprived of defense right. Even he predicted the attack; it is possible that he is entitled to legitimate defense right. But if he attempts murder and another person defends, defense of D against the defender (legitimate) is not legitimate defense. D meddles to prevent a person to hurt his wife, although he knows that the husband reacts violently, the person attacks D fatally and D has the legitimate defense right 3. Thus, a person

goes to a place of danger and his defense right is not void...1 Most of the English law experts believe that when a person put himself in a condition with quarreling, he is not deprived of defense right and he is not entitled to leave the location and even his defense right as he stimulated the quarrel in which legitimate defense is necessary. When a person kills another in a quarrel despite the fact that by intentional intervention (e.g. another party started the attack), it is possible that his defense is considered legitimate defense. For example, in Rashferd file in England the same was selected. In the mentioned file, the accused person chased another one and tried to kill him but the mentioned person and his friends attacked him and it was inconsistent with the aggression. Because of this the accused person was obliged to defend himself. The court of appeal assigned that: The act of accused person is not legitimate defense when he was the aggressor from the beginning to the end and if his defense in such a condition was for saving his life, he can resort to legitimate defense 2.

In Iran law, article 43 of public punishment law about legitimate defense conditions, it was assigned that “aggression and danger is not due to the stimulation of the person”. After ratification of the law, some of them by referring to some examples said:” if any person by swearing or cursing stimulates another person and he is stimulated and tries to attack him to prevent the insult that is considered a kind of aggression, the person who stimulated another one is not entitled to resort to mutual defense to save his life” 3. Then, this was blamed as:” ...the new innovated idea of the law maker that is not seen in any of the rules of the countries in the world, is a kind of bias and invalidating the orders being made to guarantee the law and freedom via establishment of the legal institution (legitimate defense) 4. It is impossible that the law maker talked about the item, any simulation as cursing and it is said that for example he attacked another one to kill and he attacked also to defend himself, if the initial aggressor resorts to death, he can not resort to the defense of “legitimate defense”. Because such condition the initial aggressor created a condition that defender was obliged to defend and legitimate defense against the legitimate defense is meaningless.

4. Conclusion

Killing in defense position is raised when the defender is in danger. Because of this since 13th to 16th century, the only legitimate defense in common law system was “self-defense”. Indeed, the basis of legitimacy leading into death is “urgency excuse”, an excuse by which the murderer to save his life is obliged to kill another person and anybody in

his shoes should do the same. The basis of such legitimacy is the instinct of saving the life. In this concept, “aggression” is not important and saving the life is very important. Using this theory prevents the defense legitimacy of honor and others. Because the urgency example based on life saving instinct is meaningless in the items other than “self defense”. In 16th century, England parliament in some cases identified legitimate defense as “forbidding factors” but English judges to the early 19th century referred to “self-defense” theory but gradually the law of 1967 of England criminal law in which legitimate law was referred against any crime, had its full position. In “forbidding factors” the important thing is the aggression attempt and it's repelling. When “aggression” is important, the defense against aggression is including defense against injuries, materials, freedom and one's property or another property.

The western concept of legitimate defense leading into death is rooted in Holy books and jurisprudence comments rely on the Holy Book of Muslims (The Holy Quran) and traditions (revelation interpretation). The old and new testament, the holy Quran and traditions were compared. The result showed that the New Testament accepted self-defense in an accepted excuse but the Old Testament went to extreme even of forbidden nature of legitimate defense as an obligation. The Holy Quran and traditions as the interpretation of the Holy book has special condition about legitimate defense. The New Testament by using some words as “the god of peace, the god of health and kindness” applied leaving any dispute. This book emphasized on “the lack of resistance against the evil” and assigned that it is necessary that the defender escape. When there is no choice for the defender, if he kills another person to save another person, his excuse is justified and he is not punished. In the “new testament” aggression is not important because it is emphasized that even no reaction is considered against the evil and the recognized excuse in this book is restricted to the “existence of necessity”. Based on these terms and basis of “necessity” for legitimacy of the defense, it is defined that in the book, only self-defense is legitimate and to defend the property it is not true. No term legitimizing defending another one is not observed in this book unless another person so close that he is considered the same as the term “forceful murder” is considered. Indeed, “the new testament considers the legitimate defense leading into death with the terms “the reason of removing the punishment and not the justifying factors of crime. The “old testament” for legitimate defense considered a good advantage. This book by giving importance to aggression said: “aggression to human

being is the aggression to the holiest things, insulting Allah and it has many punishments. In this book “defense against other is permitted. Whether they are the “relatives” of defender as Ebrahim fought with the enemies to save his niece Lut. Or the aggressed person is not related to the defender. Like “Musa and Egyptian man” that when Musa saw that a person killed one of Banu Israel people, killed him. In this religion, defense the property is accepted. Torah said that if a thief is injured during the stealing and is killed, he is responsible. This religion permitted preemptive defense, not only killing the people with aggression attempt but also killing innocent children (infants) and animals to save their life.

In Iran rules, before and after Islamic revolution about the legitimate defense with some changes, with similarity and similar basics in Islam law and European rights about legitimate defense leading into death such defense even against others and property is accepted with some conditions.

Although in these rules, some terms as “the lack of punishment” is used but accepting the defense against aggression to property and others is defined that to legitimize the “forbidden reasons” of the legitimate defense leading into death what is recognized as responsibility release, self-defense is accepted.

The findings of legitimate defense basics leading death show that in law doctrine and Iran rules, thought independence is not observed. The mentioned basics in Iranian writing are based on the existing basics in European law. But there are many similarities about legitimate defense leading death in European law and Imamic jurisprudence. The natural nature of defense against the aggressor and its natural right is the basis emphasized by European law and Imamic jurisprudence. The natural basics and natural right of defense, improves self-defense theory as the “personal excuse”. But besides the natural basis of defense against aggressor both European law experts and Iran law writers and Imamic jurisprudence for legitimate defense leading into death accepted other basics. The rights and obligation are two basics that three laws have some common basics. When we talk about two latter basics, excuse nature of self-defense gives its place to “forbidden nature” and “obligation” and in this case not only self-defense is permitted but also defending honor, freedom, property and others is permitted. Whether accepting these two basics considers defense as an excuse and another one considers it as forbidding and they are not contradictory? The conclusion and finding of some of the researchers that:” ... We should select just one of the theories as the correct basic and planned their judgment on this basis and don’t change our basis.

The result of the current study is different from the previous finding. The excuse theories (forbidding terms) are based on their basics. It means that “excuse theory” is based on nature or felling and wisdom and “justification theory” is based on rights or social benefit theory and these theories don’t contradict each other. Legitimate defense is a natural issue and in some complex conditions is reasonable but its natural aspect doesn’t negate obligations and it is considered a justifying factor. Imamic jurisprudence based on revelation and wisdom and European rights based on wisdom as a natural issue that is called “self-defense” legitimized self-defense, honor and property and even jurists, Imamic considered it as benefit for defense and in all crimes and in England to arrest and assisting to arrest the crimes and suspects is permitted.

Some formal differences about the legitimate defense in Imamic jurisprudence with European rights are observed. One of the basics including legitimate defense leading into death in Imamic jurisprudence is the benefit of this act. Defending life, property and honor and defending other person life and honor according to Islamic sharia is with benefit and the lack of its defense is not good for Islamic society. Generally, the legitimacy and the lack of legitimacy of human being acts is the benefit and disadvantage of the action. Ayatollah Seyed Mohammad Hasasn Marashi believed that crime is not a merely validating issue and it is action or omission that Allah for the benefit or real corruption made it forbidden or accepted. Islamic jurists know obligatory defending life, dignity and property and but also blame and punish 1 a person who duck the issue and considers the highest reward for a person who is killed for defending his property and honor. Islam view in this theory with the newest justification about legitimate defense is consistent. The benefit and disadvantage that is said in Lesan Sharia has simialr meaning with social benefit and contemporary experts applied custom legal systems. It seems that in this theory, although jurists considered as the basis of legitimate defense (leading into death) but it is consistent with general theory “social benefit theory” and there is no difference in this regard.

It is concluded that legitimate defense leading into death in England law, Imamic jurisprudence and Iran as for excuse or forbidding and using right release the defender from the punishment and damages of defensive act and there is no difference in the current law in this regard.

The important point in this paper is the identification of the legitimate defense leading into death that this right is not misused. To do this, the condition of legitimate defense leading the death has

important position. The results of this comparative study showed that Imamic jurisprudence, England law and Iran law to legitimize the defense leading into death had some limitations. The challenges of these limitations are appeared when the defender violates the limitations consciously or unconsciously.

The common limitations of these three laws are:

- 1- Illegal attack
- 2- Practicality of the attack
- 3- Imminence of the attack

Comparing three selected laws defined that three laws are consistent in most of the defense conditions with each other.

- 1- Defense necessity
- 2- Reasonable defense
- 3- The proportionality of defense with aggression

The general result of discussion and recommendation

In the current law, legitimate defense principle as “applying a right” whether relying on nature (Fitrat) or with religious origin is accepted and it is exceeding an excuse releasing of punishment for self-defense include the defense of all rights and others. The important issue in this paper is the way to apply this right in order not to be abused. There are some limitations to avoid applying such right and are predicted as attack condition in Imamic jurisprudence, England and Iran law. Most of the conditions are simialr. The important point here is the difference issues and responding the doubts in this regard.

We should say that based on the emphasis on “legitimacy of crimes and punishments” the law maker should consider the rules of legitimate defense based on all aspects that to determine the verdict, there is no need to refer to jurisprudence texts. As if it is not clear, different perceptions make the difference of orders and their low validity.

The legal text should include the answer to all the mentioned questions.

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