



## INVESTIGATION OF METHODS OF CONFIRMING MURDER FROM THE VIEW OF AYATOLLAH KHUEI

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### Abstract:

In this paper, we have tried to express the distinction of opinion of Ayatollah Khuei in terms of ways of confirming murder. In this regard, we have both tried to both specify the most well-known ways of confirming murder in addition to sentences and effects of such counts. In this regard, Ayatollah Khuei has said: what results in retaliation is taking an equal innocent human's life intentionally. This definition not only points out the pillars of retaliation, but also points out its conditions as well. As an explanation of this expression, ayatollah Khuei says that by innocent it is meant that the life of the victim shouldn't have been taken. He further explains that in Islam, both the victim and the murderer are seen equal in terms of freedom of will. As you can see, religious, freedom and etc. are not considered as pillars of intentional murder. In this regard and with reliance on jurisprudential sources, most important ways of confirming a murder from the view of ayatollah Khuei have been investigated. These include: confession, testimony, swearing and judge's knowledge.

**Keywords:** self, retaliation, murder

### 1. Introduction

Ayatollah Khuei is one of the most well-known and boldest juridical figures of contemporary age. His school of jurisprudence is one of the most effective and influential schools in this domain. This school is mostly based upon his personal

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jurisprudence related experiences. In many of his fatwas, you can see no sign of famous jurisprudential comments. In addition, the former point is also evident in many of his jurisprudential investigations. One of the issues in which the distinction between his opinions and famous opinions is obvious is the issue of murder. In this paper, we have tried to express the distinctions of ayatollah Khuei's opinion and famous opinions regarding the issue of ways of confirming murder with respect to its critical importance as the most significant criminal institution.

Retaliation is a right that is granted upon intentional murder. However, the intentionality of the murder must be confirmed so that retaliation right is granted. If there were no enough evidence for confirming the murder, it would not be possible to execute retaliation. If intentionality of murder is confirmed, the murderer deserves retaliation. In Islamic criminal law, certain witnesses have been proposed for confirmation of intentional murders; however, it seems that all of these witnesses are methods for deciding upon the truth. In this regard, it should be stated that providing the court with only one of these witnesses would not be enough for confirmation of intentional murder. Rather, the provided cause must logically satisfy a fair judge and must also drive the judge to the point that he considers his sentence as a match for the event that occurred. On this basis, if judge's knowledge is inconsistent with one of these witnesses, that cause or witness cannot be referred to for sentencing. On the other hand, there exists another jurisprudential theory that considers subjectivity of this witness. In this regard, the judge must issue a sentence based on the witness despite of lack of consistence of his knowledge with the witness.

## **2. Confession**

Confession to murder is the best and yet the simplest way of confirming murder. With respect to heavy punishment of intentional murder, confession is the most assuring way of confirming murder. Although that confession itself is relative and there is a probability that it may not be true, existence of such a barrier is not sufficient for inhibition of application of confession for settlement of disputes. In fact it is accepted in almost every court system. In Islamic jurisprudence, confession confirms claims in every dispute, however different confession numbers are required for certain disputes. For example, in terms of adultery four times of confession are required while for robbery disputes, two confessions are required for confirmation of crime. In addition, one confession suffices in most disputes, including legal claims. Regarding a murder claim or dispute, the most famous opinion sourcing from Imam's Jurists signifies that one confession is sufficient for confirming murder. On the other hand, there are other jurists including Sheikh-Toosi and Ibn Edris who believe that one confession is not

sufficient and that murder is confirmed upon two confessions. In addition to the statement of confession, the famous opinion, refers to documented traditions which have considered one confession sufficient. However, those who believe that two confessions are sufficient have generally referred to two reasons: first is that the importance of murder is no less than stealing or robbery and since the latter requires two confessions for confirmation, then the former may as well require two confessions in order to be confirmed; and the second is for the sake of discretion that requires two confessions. However, these two reasons do not formally suffice because discretion is only required when there are not enough reasons; in addition this discretion results in wasting of the victim's blood which itself is inconsistent with discretion. Nonetheless, comparing murder with stealing is not appropriate since stealing is to be forgiven by God and it can be done so by repenting; however murder is a violation of human rights and needs to be forgiven by humans as well. On the other hand, if the criterion is importance of crime, then murder requires four confessions because its importance is no less than adultery. On this basis, one confession is sufficient for confirming murder (S.A. Khuei, Basics of Takmalah-Almenhaaj; 2: 99).

In case of lack of consistence between two confessions, parents of the victim can act upon neither of the confessions. Whether both confessions showed intentional murder or one of them showed intentional but the other showed unintentional murder. The reason here from the view of famous opinion is obviousness and explicitness of consensus; however there are also other jurists who believe that the consensus is transferrable and weak, especially when the consensus has been quoted from a Sheikh and the narrative is associated with weak documents. Therefore the criterion here is the logic and thoughts of the judge and parents. But what should be done when both confessions at first show intentional murder but after a while the first party declines his/her earlier confession? Based on which confession actions should be taken?

The famous opinion here implies that in this case retaliation cannot be executed for any of the confessors and wergild should be paid to the parents of the victim. This sentence is based on a narrative quoted from Imam Sadeq. In this narrative, it has been said that Imam Mojtaba had announced this sentence and regarding it he himself has said: When the first one has rejected his/her previous confession, and the second one has confessed to an intentional murder, in fact the second one has saved the other person from getting killed and therefore, none of them should be subjected to retaliation. Although that in terms of documents and documentation this narrative is weak; still certain jurists have adopted it. If there weren't any jurists who adopted this narrative, then we would have had rejected it just like the previously discussed narrative. This difference rises in case the first person rejects his/her earlier confession. Otherwise, the court can act upon either of the confessions.

What is driven from these two sentences is that there are two reasons each of which is solely sufficient for confirmation. This is while we are already aware that one of the confessors is the murderer and the other is innocent and the possibility for accepting either of them means that the reason is of the required subjectivity for proving the claim. But if the reason did not have subjectivity and instead, had instrumentality and was used for reaching the truth; in this case both reasons are rejected and another reason should be sought for in order to confirm the murder. Resultantly the judge has no clear view of the truth and therefore sentences an alteration. The reason why the court cannot refer to both is that there is no absolute knowledge about truthfulness of neither of the confessions (Imam Khomeini; Tahrir-Alvasile; 2: 474).

### **3. Testimony**

Another way of confirming murder is testimony of witnesses. If two mature, logical and sane men testify to an intentional murder, then the intentional murder is confirmed and retaliation would be executable. However, in terms of unintentional murder, testimony of female witnesses is also accepted and in this regard, testimony of two women is equal to one man. Nonetheless, unintentional murder is confirmed upon testimony of one witness and oath of the claimer. On the other hand, intentional murder can be confirmed upon testimonies of one male witness and two female witnesses. Some jurists believe that in the former case, only paying the wergild can be sentenced and there cannot be any retaliation sentenced. Testimony to murder must be based on witnesses' observation with no ambiguity. Otherwise, it would not be accepted. In addition, testimonies of witnesses should have certain common grounds and points and if there are different subjects in different testimonies, then testimonies would not be considered as the criterion of sentencing. For example if one of the witnesses testifies to observation of murder but the other testifies to confession of murder, in this case the murder cannot be confirmed and the case is considered as contaminated or polluted. There are also certain disagreements regarding the cases of lack of consistence between two testimonies (Horameli; Vasael-Alshia; V.19).

### **4. Oaths**

Another way of confirming murder which is exclusive to murder cases and has no other applications in any other type of dispute is oaths. If the murder was in a way that the judge was made suspicious about a certain person or group for commitment of murder and the claimer is also aware of the commitment of murder by that person or group; the

court would ask the person or group for evidence and if the proposed evidence confirms innocence, the evidence would be accepted and the person or group gets acquitted. Otherwise, the claimer would be asked for an oath and then, the claimer should either make 50 people present who will swear an oath that John Doe is a killer or, if it was not possible to find fifty people, then fifty oaths should be divided between the people who are willing to take an oath. Ultimately, if no one was there to take an oath, the claimer him/herself should take fifty oaths that John Doe is a killer. In this case, an intentional murder is confirmed. If the claimer wouldn't take an oath, then the claimant could be asked to bring fifty people who would take an oath to confirm his/her innocence. If the claimant refuses to take the oath, he/she would be found guilty. With respect to previously mentioned content, oaths is against the dominant over trials and hearings. This is because in every dispute, the principle is: Evidence on the defendant and the right on the one who denied. However, in terms of oaths evidence is on the one who denied and right is on the claimer and the dispute is confirmed and settled upon oath of claimer (M. H. Najafi, *Javaher Al-kalam*; 42: 233).

There are several narratives stating the reason why this pattern is disrupted in murder disputes and other ways are proposed for confirmation of claims. All these narratives point to the one common issue that this method is established for prevention of spilling the blood of people by try to cover their murder by planning and hiding and try to escape the law. In a narrative, it has been said that oaths is established with the aim of protecting people so that whenever a dissolute person sees his/her enemy, he/she wouldn't go near him/her in fear of toleration. In another narrative, it has been quoted that the oaths method keeps the blood of Muslims from being spilled. In fact, when a dissolute person is reluctant of killing his/her enemy because of fear of retaliation, then this method is considered as a preventive solution that prohibits secret killing and terror. In addition, it should be taken into consideration that oaths method is only applicable when the judge has a sense of belief in claimer's claim. If the judge is doubtful, then he can never consider oaths method as a confirmation to murder. In this case the process of trial is normal meaning that the claimer should provide evidence and otherwise, the defendant would be acquitted by swearing. In addition it is worth mentioning that the one who takes an oath or swears should be solid and certain and the oath should be taken based on this solidity just like any other case in which swearing can confirm or reject a claim. In case of lack of consistence between oaths and evidences and confessions it has been said that if a claimer takes the oath and receives the wergild (Blood Money) and then two people testify that the defendant was absent or in jail, there would be two theories: one theory says that after settlement of dispute, providing evidences has no effect and the other theory however claims that oaths is invalidated upon providing evidence.

Ayatollah Khuei believes that evidence signifies that the oaths were false and inconsistent with the truth. Therefore, when evidence is proposed, there would be no sign of oaths left. If the judge becomes aware of this, the oaths will be falsified and the claimer should pay the wergild back. In case, the claimer has retaliated based on the oaths, and it is made clear that the claimer had intentionally provided false actions, retaliation would be executed for him/her as well. In this case, it makes no difference whether the evidence shows that the defendant was not the murderer or it shows that the murderer was someone else. Nonetheless, in case of conflict between oaths and confessions, it has been said that the court is free to act upon the content of the oaths or the content of confessions. If it was tuned out that the claimer had no intention to falsify, then in case of retaliation, the claimer should pay wergild to the family of defendant. With respect to this content, it seems that oath is a reason that should show the fact and by it, the judge obtains insight about the truth. On this basis, when the judge has a knowledge in consistent with the claim of oaths, then the judge can not issue any sentence based on the oaths. Even in cases of conflict between oaths and evidence, it would not be possible to rely on oaths (S. A. Khuei, Principles of Takmalah-Almenhaaj; 2: 102).

## **5. Knowledge of the judge**

In terms of jurisprudence, one of the reasons that can be referred to for confirmation of various crimes and claims is knowledge of the judge. However, there are certain jurists who believe that knowledge of the judge is not solely sufficient for issuance of a sentence. Still famous opinion considers knowledge of the judge as a solid document. There is also a disagreement among jurists in terms of scope of authority of knowledge in disputes. Some jurists believe that referring to knowledge is both applicable for god's rights and people's rights. However, there are some jurists who believe that reference to judges' knowledge is only applicable in disputes regarding God's right, while there are also some who believe that it is only applicable in disputes regarding people's rights. There also another disagreement regarding authority of knowledge of the judge and it implies that is this knowledge authentic no matter the way it was obtained through? Or that it is authentic only if it is obtained through specific ways? If the knowledge was instrumental, it would be considered as a reason for providing evidence as well. But if it was a subjective knowledge, it would be considered as a reason along with evidence. It means that entire evidences should reach the knowledge at the end and if there was a conflict between evidence and subjective knowledge, the evidence would not be acceptable. On this basis, the main difference between these theories is that if instrumental knowledge was authentic, there are no specific predetermined ways for

reaching the truth and no matter the way that knowledge was obtained, the judge can issue a sentence based on that knowledge. But in contrast, if a subjective knowledge was authentic, there could be limits and characteristics considered for it including the way of obtaining the knowledge (S. A. Khuei, Principles of Takmalah-Almenhaaj; 2: 112).

## 6. Conclusions

Ayatollah Khuei has a book named as Takmalah-Almenhaaj. In this book he has stated that evidence has implied implication and a matching implication. The reason for matching implication is that there is no unity. The phrase: The evidence shows that the correlation is more lethal and the sign of commitment implies that there was no unity. Evidence shows that the killer was the lover and no one else. Then evidence of matching implication shows that the lover has killed. We are intended to cut out the implied implication through using the confessions. The reason for doing so is that the implication of the confessor is of matching type. There is also evidence that there was no unity and there were no partners. Since the confessor says that he has killed the victim. He also says that he didn't have any partners. In these cases, the only thing that is accepted from the confessor is his confession regarding himself. But that he says he has no partner, he is testifying for another one. In this case, the confession of the confessor is not authentic. The confession that he had killed the victim is accepted but that he is testifying for another one and says that he was not associated in the process, is not in his authority. As a result when we consider for the matching implication of the evidence and matching implication of confession it would be seen that both people were associates and therefore both of them could be killed. Therefore, evidence has a matching implication in addition to an implied implication. The matching implication says that the lover has killed the victim and the implied implication says that the other party had no part in the action.

Ayatollah Khuei cut out both the implied implication of the evidence and implied implication of the confessor and proved that both persons were associated in the action. But we had said that in terms of evidence, the right is with you. In other words, in terms of evidence, we take matching implication and cut out the implied implication. However, in terms of the confessor we are not able to do so. This is because it is been said that the confessor needs to pay half of the wergild. The reason is that the confessor confesses that he hasn't killed the victim. This confession is based on implied implication. On this basis, the subject of the narrative that had four-fold sentences and said that either kill the defendant, or the one whom was testified against, or kill them both or release them both holds for cases in which the court has no clear understanding

of who had committed the murder. But if the parents of the victim say that someone specific has killed the victim, they have no right to object the confessions of the confessor.

In case the court and parents of the victim are faced with ambiguity, the same four sentences hold. But if the parents believe that one party has committed the crime, the other party would be relieved of retaliation. This is because retaliation is only for the one who has committed the murder and when we believe that a specific person or confessor is the killer, there is no point in retaliating for the other person who had been testified against. When there is no knowledge about who has committed the murder but the parents of the victim believe that a specific party has committed the crime, the only thing that would be considered for taking action is the view or opinion of the parents of victim. If they believed that the one who had been testified against was the killer, they would have to say goodbye to the confessor and vice versa. As a result, the narrative has not included this issue and it has aimed for situations in which the parents of the victim are faced with ambiguity and have no knowledge whether which party is the killer. If the parents of the victim are totally aware and believe what they are aware of, they can no longer refer to this narrative and kill both parties. As it was previously mentioned, there are three ways for confirmation of murder that include confession, evidence and oaths. The issue of oaths is one of the innovations of Islam.

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