

(١٧٨) يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى ۚ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ
بِالْعَبْدِ وَالْأُنثَىٰ بِالْأُنثَىٰ ۚ فَمَنْ عَفَىٰ لَهُ ۚ مِنْ أَخِيهِ شَيْءٌ ۚ فَاتَّبِعْهُ ۚ بِالْمَعْرُوفِ
وَأَدِّءْ إِلَيْهِ بِإِحْسَنٍ ۚ ذَٰلِكَ تَخْفِيفٌ ۚ مِنْ رَبِّكُمْ ۚ وَرَحْمَةٌ ۚ فَمَنْ أَعْتَدَىٰ بَعْدَ
ذَٰلِكَ فَلَهُ ۚ عَذَابٌ أَلِيمٌ ۚ

(١٧٩) وَلَكُمْ ۚ فِي الْقِصَاصِ حَيٰوةٌ ۚ يَا أُولِيَ الْأَلْبَابِ لَعَلَّكُمْ ۚ تَتَّقُونَ

O you who believe! retaliation is prescribed for you in the matter of the slain; the free for the free, and the slave for the slave, and the female for the female; but if any remission is made to any one by his (aggrieved) brother, then (the demand for the bloodwit) should be made according to usage, and payment should be made to him in a good manner; this is an alleviation from your Lord and a mercy; so whoever exceeds the limit after this, he shall have a painful chastisement (178).

And there is life for you in the retaliation, O men of understanding, that you may guard yourselves (against evil) (179).

Commentary

Qur'an: O you who believe! retaliation is prescribed for you in the matter of the slain; the free for the free...: The verse is addressed to the believers. It means that the law promulgated herein applies to the Muslims only. As regards the non-Muslims – whether under protection of an Islamic State or not – the verse is silent about them.

Some people think that this verse has abrogated the verse 5:45 (***life is for life***); because it does not allow killing of a free person for a slave, or of a man for a woman. But actually there is no room for this supposition. The position of this verse *vis-à-vis* the verse 5:45 is like that of an explanation *vis-à-vis* its text.

Al-Qisas (الْقِصَاصُ) = retaliation) is the *masdar* of *qassa yuqassu* (قَاصٌّ يُقَاصُّ) = he followed, he follows); an Arab says: *qassa atharahu* (قَصَّ أَثَرَهُ) = he followed someone's tracks).

Another derivative is *al-qssas* (الْقِصَّاصُ) = story-teller) – it is as though he follows the tracks of the past generations. Retaliation is called *al-qisas* because it follows the footsteps of the offender, giving him a punishment similar to that which he had inflicted upon his victim.

Qur'an: *but if any remission is made to any one by his (aggrieved) brother:* Its literal translation is: then whoever is remitted any thing by his brother. “whoever” refers to the murderer; the heir/s of the murdered person may waive his/their right of retaliation.

Therefore, “any thing” refers to that right; it is used here as a common noun, in order that the rule may cover all possibilities, whether there was a full remission or partial.

Let us say, for example, that there are many heirs and only some of them waive their right; then there shall be no retaliation; instead the blood–money will be imposed.

The heir of the murdered person who has the right of retaliation) has extraordinarily been described here as the “brother” of the murderer; this expression has been used to awaken the feeling of love and kindness in the heart of the aggrieved party, and gives a hint to him that remission and forgiveness is highly preferable in the eyes of Allah.

Qur'an: *then* (the demand for the bloodwit) ***should be made according to the usage, and payment should be made to him in a good manner:*** Its literal translation is: then following according to usage, and payment to him in a good manner. Both phrase are subjects with their predicates implied.

Thus literally it would mean: then it is obligatory on the aggrieved “brother” to follow that remission with demand for the blood–money according to usage; and it is obligatory on the murderer to pay it to the aggrieved brother, that is, heir of the slain, in a good manner without any annoying delay.

Qur'an: *this is an alleviation from your Lord and a mercy:* The permission to commute the retaliation into blood–money is an alleviation from your Lord, and therefore, once effected, it cannot be changed. The heir of the slain person cannot revert to retaliation after granting remission. If he transgresses the limit and retaliates after remission, then he shall have a painful chastisement.

Qur'an: *And there is life for you in the retaliation, O men of understanding, that you guard yourselves (against evil):* This verse points to the philosophy of this legislation. It aims at removing a possible misunderstanding that – because Allah has allowed remission and blood–money, and also because remission expands the circle of mercy and affection – remission is more in conformity with public weal and social good.

The verse shows that, although remission is an alleviation based on mercy, common good and society's peace depend on the retaliation. The only guarantee of life is the law of retaliation, and not remission,

blood–money, or any other thing. Man has to accept this fact, if he has understanding. “that you may guard yourselves” that is, from murder. It gives the basic of the law of retaliation.

The scholars have said that the verse, “and there is life for you in the retaliation,” is one of the most eloquent in its clarity, and the most refined in rhetorics, in addition to its having many other fine literary points, like brevity – it has so few words and such a small number of total letters – fluency of style and clarity of composition. It combines the force of argument with beauty of meaning, the fineness of proof with clarity of result.

Before this verse was revealed, the Arabs were fond of some adages and maxims (on the subject of murder and retaliation), of whose rhetorics and fluency they were very proud. For example:

'To kill some is to keep alive all', and 'To increase killing is to decrease killing'. And the most remarkable in their eyes was the sentence: 'Killing stamps out killing.' But when this verse was revealed all were forgotten.

Some of its distinguishing points are as follows: The verse has fewer letters, and is easy to pronounce. “the retaliation” with definite article is a proper noun, while “life” is common noun – it shows that the resulting good is greater and more widespread than the retaliation.

It explains the result in clear words and describes the real philosophy of the law, that is, the life. It unambiguously shows by what means the desired result can be obtained: Obviously, it is the retaliation that leads to life, and not the killing.

(After all, many killings are done unjustly, and they do not lead to life, they are negation of life.) The word, “retaliation,” covers also other punishments besides killing, that is, the reprisal in the matter of injury, etc. – and such retributions too lead to the society's life.

The word conveys another extra meaning, as it shows that the retribution has resulted from unjust killing. (Compare it with their maxim, “Killing stamps out killing”, which does not give any idea that “killing” refers to any punishment.)

Then there is an exhortation in this sentence, as it points to a life reserved for the people, which they are oblivious of; it behoove them to take hold of it as it really belongs to them; it is as if someone tells you:

There is a property belonging to you with so–and–so, or in such and such a place. Lastly, the opening word of the verse, that is, “for you” makes it clear to the men of understanding that the law–giver only desires to protect their interest, and no benefit is ever to accrue to him.

These are a few of the fine points found in this verse. The scholars have mentioned some more points, which may be seen in the books of rhetorics. The fact is, the more deeply you look at this verse, the more dazzled you shall be by its brilliance and radiance; and the word of Allah is the highest.

Traditions

Imam as-Sadiq (a.s.) said about the word of Allah, ***the free for the free***: “A free man shall not be killed for the slave; but he shall be beaten a severe beating and be fined the blood–money of the slave. And if a man kills a woman, and the heirs of the slain (woman) want to kill him, they shall pay half of his blood–money to the man's heirs.” (al-‘Ayyashi)

al-Halabi narrates from as-Sadiq (a.s.). He says: “I asked him about the word of Allah, the Mighty, the Great:

but he who for–goes it, it shall be an expiation for him (5:45);

he (the Imam) said: 'His sins shall be expiated, as much as he forgives.' And I asked him about the word of Allah, the Mighty, the Great:

but if any remission is made to anyone by his (aggrieved) ***brother, then*** (the demand for the bloodwit) ***should be made according to usage, and payment should be made to him in a good manner.***

He said: 'He who has got the right (i.e. the aggrieved party) should not put his brother (i.e. the murderer) in difficulty, when he has made settlement with him concerning the blood–money; and he who has got the duty (of paying the blood–money) should not delay in its payment when he has ability to do so; and he should pay it to him in a good manner.'

And I asked him about the word of Allah, the Mighty, the Great:

so whoever exceeds the limit, he shall have a painful chastisement.

He said: 'It refers to a man who accepts blood–money or forgives, or makes compromise, then exceeds the limit (and kills the murderer); so he shall be killed as Allah, the Mighty, the Great, has said.' ” (al-Kafi)

The author says: There are many traditions of the same meanings.

An Academic Essay on Retaliation

Before the advent of Islam, and until this verse was revealed, the Arabs believed in requiting a murder with killing. But the retaliation had no defined limit. It all depended on the strength or weakness of the aggrieved party.

Sometimes they killed a man for a man, and a woman for a woman – thus keeping a balance between the crime and its punishment. At other times they killed ten persons for one, a free man for a slave, a chief for and ordinary man. Many times a tribe destroyed another just in retaliation of one man.

The Jews believed in retribution, as we see in chapters 21 and 22 of Genesis, and chapter 35 of Numbers. The Qur'an quotes it in these words:

And We prescribed to them in it that life is for life, and eye for eye, and nose for nose, and ear for ear and tooth for tooth, and (that there is) ***reprisal in wounds*** (5:45).

The Christians reportedly recognize only remission and payment of blood–money in the matter of murder.

All societies and nations, with all their differences, believed in, and practised, retaliation by killing, in one way or the other; although they did not have any fixed code for it even upto the recent centuries.

Islam opted for a middle course between confirmation of retaliation and its negation. It prescribed retaliation but did not make it obligatory – it allowed remission and payment of blood–money. Then it laid the foundation of justice by prescribing equality between the murderer and the murdered, telling us that: ***the free for the free, and the slave for the slave, and the female for the female.***

Objections have been laid against the law of retaliation in general, and the capital punishment, that is, retaliation by killing, in particular. The brunt of the argument is that nowadays the advanced nations do not recognize – or do not enforce – the law of capital punishment. Their objections may be summarized as follows:

Human nature disapproves the idea of a life for a life, when a man looks at this matter from the point of view of mercy and service to humanity.

The killing (i.e. the crime) had caused loss of one person; now the second killing (i.e. its punishment) would be a further loss, a loss upon loss.

Capital punishment is based on hard–heartedness and desire of revenge. These are not good traits; they should be eradicated from society through general training. Even a murderer should be punished through corrective measures; and it can easily be done through prison and hard labour, not capital punishment.

A criminal becomes criminal only because of psychology–cal sickness. He should be put into mental hospital for treatment.

Civil laws and penal codes follow the trends of society. As the society changes, so do the laws and codes. There is no reason why the law of capital punishment should continue to plague the civilization – even the advanced nations – for ever and ever.

Society should make use of its manpower to the maximum possible extent. A criminal may be given a punishment, which would be as effective as killing – without putting him to death. He may be imprisoned for life, or for a long period. It would satisfy both demands – that of the society and that of the heirs of

the slain.

These are the main objections against the law of retaliation with killing. The Qur'an has replied to all this criticism with one sentence:

... whoever slays a soul, unless it be for man-slaughter or for mischief in the land, it is as though he slew all men (5:32),

as the following explanation shows:

The laws, observed by members of a society, are laid down by men and based on a subjective approach – with a view to serve the interest of the society. But the general and basic cause (which brings them into being) is the human nature which has real existence, and which demands that its deficiencies be made up and its needs fulfilled.

This nature, this real being, has nothing to do with the number of the men, nor is it related to the composite unit, that is, the society. Because society is a handiwork of human nature, while we are talking about the man himself, about his nature itself.

This nature, this real being, makes no distinction between a single man and a thousand; all are human beings; and as far as the existence is concerned, one man and the whole humanity have got equal weight, equal value.

This really existing nature has equipped itself with powers and instruments to ward off harmful and destructive influences from itself, because it loves existence, and repels all things which could deprive it of life. It defends its existence, by all possible means.

It does not stop at any thing, and is ready and willing to kill and destroy the attacker who endangers its existence. Nature tells man to kill whosoever wants to kill him (if he cannot be repelled by any other means). And no one denies justifiability of such killing.

Look at these advanced and “civilized” nations. They have no hesitation in waging war in defense of their freedom, independence and national interest. What will they do if someone wanted to kill all their nationals?

They think that supremacy of law is sacrosanct. They defend the rule of law, they try to preserve order in the society, by all possible means – even if it entailed killing some offenders. They protect their national interest – even by war, if nothing else works.

They justify war for this reason in high-sounding phrases – the war which shakes the world to pieces and destroys the tilth and the generations. There is a never-ending race for armaments:

A country sacrifices its progress to arm itself with some sophisticated military hardware; and then its

adversaries try to acquire even more advanced arms. Ask them, “Why this mad race?” They will say, it is essential for their defense, for the safety of their society and civilization.

Now, society and civilization is only a handiwork of the nature. How is it that the nature allows massacres, mass destructions and wholesale killings just to save a handiwork of its, and does not allow it for its own protection and safety? How is it that it allows to kill someone who intends to kill but has not killed yet, but forbids killing the man who intended to kill and killed?

The nature has decreed that every action should have a reaction; ***so he who has done an atom's weight of good shall see it; and he who has done an atom's weight of evil shall see it.*** Now what type of nature is this which breaks its own law, violates its own decree, when it comes to giving death penalty to someone who has killed an innocent person?

Moreover, Islam does not accord any value, any weight to man, unless he is on the religion of monotheism. One man believing in the one and the only God is equal in the eyes of Islam to the whole human race.

Therefore, whoever slays a believer, it is as though he slew all men – because he committed a sacrilege against the dignity of that believer. Likewise, whoever slays any person, it is as though he slew all men – looking at the reality of his existence.

But so far as the civilized nations are concerned, religion has no value in their eyes. If they had accorded as much value (if not more) to religion as they give to civilization, they would have defended the religion to the same extent at least.

Furthermore, Islam has brought the *shari'ah* which is meant for the whole world – not for a particular country or a selected group only. Let us say that what the advanced nations have legislated is good for their society.

But they have opted for this course after they have made sure that the general training of their people has been effective; that their governments are faithfully discharging their duties; that according to crime statistics, these well-trained nations are now totally averse to murder and violence; that as a result of this aversion, no one indulges in crimes of violence – except in extremely rare cases.

And because it happens so rarely, these nations have decided to punish murder in some ways other than death. Islam does not say that such training should not be given, or that if given it would not be effective.

When that stage is reached, capital punishment may give way to remission – with the law of retaliation keeping its basic position unaltered. The relevant sentence in this verse points to this fact:

but if any remission is made to any one by his (aggrieved) ***brother, then*** (the demand for the bloodwit) ***should be made according to usage, and payment should be made to him in a good***

manner.

Clearly, the language used is that of moral training; and when a nation advances to a level where all take pride in forgiveness and remission, then they would not deviate from the path of remission to that of revenge.

But what about other nations? We know their moral status is not so high. We see the condition of these societies, and the extent of the moral decay of their people. In these places, the criminals are not afraid of prison or hard labour; they are immune to sermons and exhortations; they do not understand such abstract ideas as human rights, nor do they give any importance to them.

And the facilities which they are provided with in prisons are far much better and much more comfortable than the wretched life they are accustomed to at home.

The result? They do not care about social disgrace or penal sentence; they are afraid of neither prison nor hard labour; beatings and floggings are just occupational hazards to them. That is why crime rates are going higher and higher in almost every country.

Suppose there is there an ideal society we have mentioned earlier; still the overwhelming majority of nations come into this second less ideal category. Therefore, the general and basic law could only be the retaliation with possibility of remission.

After that, if the ethical standard of a nation improved and if it advanced gracefully on the path of moral perfection (and Islam spares no effort for moral upliftment of its people), it would automatically opt for remission. If on the other hand, it continued its downward slide, and remained ungrateful to Allah's favours, then the law of retaliation would prevail – with possibility of remission even then.

Now, let us have a look at their objections:

The talk about mercy and kindness to human beings is all very good. But not every kindness is good, nor is every mercy a virtue. Showing mercy to a hardened criminal who has no regard for others' life and honour, is a loathsome offence against good law-abiding people. Indiscriminate application of mercy would disrupt the social system, destroy the humanity and nullify the virtues.

The same applies to their criticism concerning hard-heartedness and revenge. Avenging an oppressed from the oppressor – in pursuit of justice and truth – is not objectionable in any way; nor is the love of justice a thing to disparage. Moreover, death penalty has not been legislated for revenge only; it serves also to train general public in good character and to shut the door of mischief in the society.

The assertion that the crime of murder is a psychological disease which should be treated in mental hospitals, has provided an excuse – and what a good excuse it is! – to the criminals. It has contributed a lot in the growth of murder, indecency and other crimes of violence in the society.

Why should a criminal refrain from making murder his hobby, when he knows that his urge of violence is but a psychological disease, and that it is an acceptable plea which would oblige the government to treat him with kindness and benevolence, arranging for his medication in hospitals?

Now, we come to the view that society should utilize all available manpower, and as such should use the criminals in compulsory labour and other such work, by imprisoning them and cutting their access to the society. If these people really believe in what they say, if there is any truth in this sermon, then why do they forget it in those cases in which their legal system provides for capital punishment?

We should not forget that there is in every civilized country provision for capital punishment for specified crimes. They give death penalty in those cases because they think those crimes to be extremely heinous and atrocious. But we have already explained that, in the eyes of nature, life of one man is as precious as that of the whole human race put together.

Source URL:

<https://www.al-islam.org/al-mizan-exegesis-quran-vol-2-allamah-sayyid-muhammad-husayn-tabatabai/suratul-baqarah-verses-178>