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## **CRIMINAL RESPONSIBILITY FOR INTENTIONAL HOMICIDE IN THE PRE-ISLAMIC PERIOD**

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### **Abstract**

The emergence and formation of criminal law in the territory of Uzbekistan has a fairly ancient history, with one of the most significant and historical early stages being the Zoroastrian period<sup>1</sup>. This period in history is characterized by the development of a powerful civilization and the emergence of the first states, legal norms, and institutions. Nevertheless, at the stage of formation of legal norms and institutions, they objectively could not develop to the level of abstraction and formulation of legal definitions<sup>2</sup>. Therefore, specific definitions of types and institutions of crime and punishment did not yet exist. However, this did not prevent certain types of behavior from being recognized as crimes<sup>3</sup>.

Initially in religious literature, and later in historical literature, various types of crimes that existed in the lands of Uzbekistan during that period were recorded. Since there was no single term for "crime," each offense had a specific name and, naturally, had a rather casuistic definition. In scientific literature, the following types of crimes in Zoroastrian civilization are identified:

- 1) crimes against religion (for example, disrespectful treatment of cult objects and sacred places).
- 2) crimes against authority (crimes against the sovereign (shahanshah - king))<sup>4</sup>. These included insulting the Shah's person, attempting to assassinate the Shah, and encroaching on his property. Crimes against authority were viewed through

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<sup>1</sup> Zoroastrian texts. Written Monuments of the East.- P.312. See also: Khalikov A.G. The Legal System of Zoroastrianism (Ancient Law). - Dushanbe, 2005. P. 371.

<sup>2</sup> www.tnu.tj

<sup>3</sup> Zoroastrian texts. Written Monuments of the East.- P.312. See also: Khalikov A.G. The Legal System of Zoroastrianism (Ancient Law). - Dushanbe, 2005. P. 371.

<sup>4</sup> www.tnu.tj



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the person of the king (the embodiment of the state). All these acts were considered equally grave<sup>5</sup>.

3) crimes against the royal family (insulting and attempting to kill any of the shahanshah's family members)<sup>6</sup>.

4) crimes against individuals (adultery, theft, cattle rustling, infliction of bodily harm, damage to health)<sup>7</sup>.

The prominent Tajik researcher of Zoroastrianism, A.G. Khalikov, in turn, classifies crimes in Zoroastrianism into the following main groups:

1) crimes against a person: infliction of bodily harm, damage to health, murder;

2) crimes against personal freedom, honor, and dignity: enslavement, deception, lying, and slander;

3) crimes against sexual inviolability: rape, sodomy;

4) crimes against property;

5) crimes against wildlife and the environment;

6) crimes against religion<sup>8</sup>.

Other types of crime classification have also been proposed, which divide crimes into two large groups - common law and private law. Common law crimes include: attempts on the life and property of the tsar and his close associates, conspiracy to overthrow the government, disobedience and failure to carry out rulers' orders, espionage and treason.

Private crimes such as murder, infliction of bodily harm, and others were distinguished by the fact that the victim or their relatives could reconcile and forgive the person's guilt. However, the punishments for persons who committed crimes against the person were distinguished by their severity<sup>9</sup>.

Moving directly to the object of study - premeditated murder, we can note that the single legal source of Zoroastrianism - the Avesta (since it contained the norms of all branches of law) often mentions the types of premeditated murder<sup>10</sup>.

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<sup>5</sup> www.tnu.tj

<sup>6</sup> Zoroastrian texts. Written Monuments of the East.- P.312. See also: Khalikov A.G. The Legal System of Zoroastrianism (Ancient Law). - Dushanbe, 2005. P. 371.

<sup>7</sup> Selected Teachings of the First Teachers//To Explore the Roads and Paths of the Righteous: Pahlavi Edifying Texts (Monuments of the Writing of the East).- M., 1991.-P.69-74.

<sup>8</sup> Khalikov Abdurahim Gafarovich. Legal System of Zoroastrianism: Diss.... Doctor of Law: 12.00.01: Dushanbe, 2004 421 p. RGB OD, 71:04-12/132

<sup>9</sup> Talezari Ali Abbas. The Formation and Development of Crime and Punishment Institutions in the History of Iranian Law: abstract of diss.... cand. jurid. sciences. - Dushanbe, 2014. - P. 11.

<sup>10</sup> www.tnu.tj



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Not only in the Avesta, but also in other sources of Zoroastrian law, the unlawful taking of the life of another righteous person was considered the gravest sin. For example, in "Judgments of the Spirit of Mind," along with other types of especially dangerous crimes, murder is also referred to:

"A wise man is asked: 'Which sin is heavier?' and he answers: 'Among those sins that people commit, the most terrible is the Sodom sin, the second is committing the Sodom sin, the third is the one that kills a righteous person...'"<sup>11</sup>.

It should be noted that the mention of intentional homicide indicates that even at that time, Zoroastrians paid attention to guilt, that is, to determining the subjective side of the crime. Thus, premeditated murder was considered more severe and, naturally, provided for a more severe punishment for its commission than the unintentional killing of another person<sup>12</sup>.

Analysis of the text of the Avesta, as well as other literary and scientific sources of Zoroastrian criminal law, indicates that premeditated murders can be divided into several types:

qualified killings (including the king, his close associates, rulers of certain provinces);

simple murders;

acts equated to murder (for example, abortion, cases where a dog, due to walking without a collar, can gnaw at a child);

inflicting fatal injuries.

Thus, regarding simple and qualified types of murders, questions that today's researcher has, as a rule, no interest arises. Because, in general, they reflect the class-based nature of criminal responsibility, which is characteristic of almost all civilizations of the world in a similar historical segment.

In this group of murders, there is a certain interest in actions that are equated in the Avesta with intentional or accidental murder. For example, the Avesta considers abortion a sin, calling a woman a sinner. At the same time, the actions of the husband and/or the healer (as persons who prompted or assisted in the abortion) were equated to premeditated murder.

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<sup>11</sup> Avesto: Kuxantarin surudaxoi Eroni boston = [Avesto: Ancient Hymns of Ancient Iran] / guzorish va pajunjishi Chalili Dustxoh. - Dushanbe, 2001. - P. 179-180.

<sup>12</sup> www.tnu.tj



In the 12th, 14th, and 16th lines of the Vendidad, the commission of an abortion is recognized as a particularly dangerous crime and is equated to premeditated murder. This provision is due to the fact that in the 9-14th lines of the second part, the 15-17th lines of the third part of the 15th Fargard of the Vendidad, the obligation to protect the life of the human fetus from the four-month period until its birth, regardless of whether the woman is married or unmarried, was stipulated. Abortion, committed by a group of individuals by prior agreement, had a higher level of responsibility and punishment<sup>13</sup>. Thus, in the 14th paragraph of this Fargard, it is indicated that the commission of an abortion on the basis of an agreement between a pregnant woman, a man, and a doctor is punishable by death<sup>14</sup>.

Also, some cases of rape and adultery were equated to premeditated murder<sup>15</sup>. Thus, in the case of infidelity, a physician or doctor assisting in the termination of pregnancy becomes complicit in the infidelity of the wife and the murder of the unborn child<sup>16</sup>. Furthermore, criminal punishment was imposed for intimacy with a pregnant woman, if the man harmed the pregnant woman and the fetus died, the act was qualified as murder (the Avesta prohibits intimacy with a pregnant woman for a period exceeding 4 months and 10 days).

Researchers also highlight the murder of a righteous person, which should, in principle, mean differences in punishment for the murder of a person who is not a fire-worshipper, that is, a follower of the Zoroastrian religion. Nevertheless, we have not found specific norms confirming such differences, therefore we cannot confirm or refute such opinions.

As is known, Zoroastrianism as a religion was distinguished by a special attitude towards nature, demanding care and attention to the animal world. For example, the text of the demand for punishment for unlawful actions against a shepherd dog can be cited: "If someone beats a shepherd dog so hard that it cannot perform its functions (protect the flock), or cuts off its ears or nails, after which a thief or wolf finds a way to the flock and steals a sheep, and the dog cannot signal, then

<sup>13</sup> Zoroastrian texts. Judgments of the Spirit of Reason (Dadestan-i menog-i khrad) / Edition prepared by O.M. Chunakova. - M., 1997.- P. 104-105.

<sup>14</sup> www.tnu.tj

<sup>15</sup> www.tnu.tj

<sup>16</sup> Avesto. Book I. Dushanbe, 2014. - P. 576-577.



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the person who committed this act must pay the value of the sheep, and for the wounds inflicted on the dog, they must be held liable for intentionally causing harm"<sup>17</sup>.

By the way, in the Avesta, a person's guilt in committing a crime is determined by the criminal result, that is, the degree and nature of the harm caused. For example, when killing a dog, attention is paid to the degree to which the dog and its organs have lost their ability to work. In turn, dog killing was also considered a crime against property. Similar rules were prescribed for the killing of hedgehogs, wild boar, foxes, except for water urchins.

Regarding the infliction of fatal injuries, the Avesta defines that if the guilty party evades or refuses to compensate for the infliction of a fatal wound, it is recognized not only as an attempted murder but also as a robbery. In other words, the Avesta equated the refusal to compensate for the harm to theft<sup>18</sup>, since it was believed that property compensation is the main obligation, and the property that should be transferred to the relatives of the victim is essentially their property.

In the Avesta, the issues of punishment for types of intentional and negligent murder are of particular interest:

- for all types of simple and qualified murder, the death penalty was provided. It is noteworthy that the death penalty was also imposed for religious crimes (worship of other gods, violation of burial rules, treatment by a prohibited surgical method), which were equated by the legislator to murder and deserved the highest punishment;
- a guilty person who entered into a relationship with a woman with bleeding (since this was dangerous to the woman's life, the act was not recognized as adultery) was sentenced to death<sup>19</sup>.

In the Avesta, there was also a sufficiently detailed institution of exemption from responsibility or punishment for murder ("the religion of Mazda (Zoroastrianism) exempts... the sin of murder"), in other words, the adoption of Zoroastrianism

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<sup>17</sup> Vendidad, Avesta (<https://www.rulit.me/books/avesta-read-63923-8.html>).

<sup>18</sup> Rtveladze E.V., Saidov A.Kh., Abdullaev E.V. Avesto "Law against the Dives" (Videvdat). St. Petersburg: Politech Publishing House, 2008. - P. 105.

<sup>19</sup> Khalikov Abdurahim Gafforovich Zoroastrian law and the problem of classification of crimes // Problems in Russian legislation. 2013. No6. Source: <https://cyberleninka.ru/article/n/zoroastriykoie-pravo-i-problema-klassifikatsii-prestupleniy>.



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exempted from punishment (true, not in cases of murder of persons of the upper classes).

Also, the norms of the Avesta, which were in effect in the territory of Central Asia, provided for (in order to preserve human life and health, public peace and tranquility) deprivation of the right to engage in certain activities or hold certain positions as punishment<sup>20</sup>. In particular, such punishment could befall a physician whose treatment resulted in the death or other illness of a person.

According to verses 36-40 of the Vendidad, a person who wishes to engage in healing should test their skills on three non-believers in Ahura Mazda, and only if all treatment methods are successful, that person can begin treating a believing Zoroastrian.

If a physician, without passing this test, engages in the treatment of a devout Zoroastrian or operates on him with a knife, then they persecuted him as a person who had committed or attempted to commit murder<sup>21</sup>.

Thus, the following characteristic features of criminal liability for premeditated murder according to the norms of the Avesta can be distinguished:

- firstly, the norms were casuistic in nature and, without giving any abstract definitions, listed all possible cases of murder;
- Secondly, in addition to murder in the generally accepted and normative sense of the word, a wide range of acts, the consequences of which ended in death, were equated to murder;
- Thirdly, the characterization of the subjects, as well as the victims of the acts, was class-religious (i.e., it differed depending on which class or religion the subject of the crime or the victim belonged to);
- Fourthly, punishments were differentiated based on the subjective side;
- fifthly, the highest punishment for premeditated murder was the death penalty, however, there was one exception - the adoption of the zoroastrian faith;
- sixthly, it is already envisaged to introduce additional measures of punishment in the form of deprivation of the right to engage in certain activities or hold certain positions.

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<sup>20</sup> www.tnu.tj

<sup>21</sup> Avesto. Book 1. Dushanbe, 2014. - P. 518-519.