



# how to prove the murder in the absence of evidence in Islam compurgation

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**Abstract:** *compurgation is one of the way to prove murder which is applicable in spite of the besmirch and it is as follows if the murder happened and anyone did not confess to murder and the heir's blood (the family of the victim) was unable to acceptable appeal to his witnesses case and vigor in case of the murder was committed by a person or group of people, as besmirch which include the suspicion of ruler to the telling truth by defendant, was available, defendant with his relatives in case of premeditated murder swear fifty oaths and in the case of quasi-intentional murder swear twenty-five oath for purely fault and to be proved his claim. Otherwise defendant runs the besmirch and exonerate. Since the requirement of principle, In the case of acquainting in realization of the besmirch subject is absent and on the other hand oath of the claimant is denial according to the rules of evidence to the contender, it is Contrary to rule. Author intends to considered the besmirch and its legitimacy to investigate the nature, Quality, installer quantity and conditions of them in this paper after presenting compurgation.*

**Key words:** *compurgation, proof compurgation, negation compurgation, besmirch, oath.*

## INTRODUCTION

Our belief of the facts in outside the mind is achieved in three ways: Doubt, suspicion and certainty. besmirch means a strong suspicion and the meaning of strong suspicion is suspicion that ruler achieved knowledge about the murder by defendant and when such suspicion was obtained to Ruler, Ruler is required to dealt with it. The validity of this argument is that judgment sentenced to death the defendant without confession, witness or knowledge in compurgation. The word of compurgation in terms of literally is meant oaths divided to parents, heir's blood or the people who swear. besmirch is circumstantial evidence which is obtained by suspecting to the truth of defendant, such as someone who is taken bloody weapon in his hand, close to victim that is dipped in the blood. besmirch is a pre-condition of compurgation And after researching the besmirch in principle will not be an obstacle to the implementation of compurgation. In other words, it is assumed the investigation of detector besmirch about the suspicion of judgment is on the truth validity of the defendant. Some lawyers believe that "to the mere fact that one of the cases is related to besmirch cases, can not perform compurgation to any person, The problem must be clear in presence of the accused at the scene when the murder happened. Since compurgation is the ways of proving murder and by filing it, accused of killing sentenced to death and there is no turning back after death, so it is necessary to be so caution and attention to its implementation. And should be used of the reason and circumstantial evidence, in addition to what is causing besmirch in the implementation of it. And these special circumstantial evidence can be known such as being an evil, corrupt and being an immoral, has a history of evil and visible enemy of defendant to the victim person. There are two important debate in compurgation. the famous Among jurists is proved compurgation in members And have said that there is no difference between compurgation of members and compurgation of breath. compurgation means oath and the existence of compurgation is one way of vindicating the murder and

any injury and hurt on the body, that was unanimously according to Shiite and Sunni scholars, there is no doubt about it. In this paper try to considered the reader's mind to the meanings of compurgation, The conditions of compurgation and how to implement it, compurgation association with evidence rule on the defendant and right on the defendant as well as different views about the compurgation through the library research. The questions that can be **raised in this regard are include:**

What is compurgation and when was legitimacy ad that the ruling of establishment is from Islam Or existed before Islam? What is the connection between compurgation and besmirsch and how is compurgation about the murder in pure fault?

**The concept of compurgation:**

compurgation (the conquest of G) was taken from oath which is the same right and an oath (Sharbini Khatib, 10: 1374) and in principle is infinitive noun that is used instead of infinitive (Ibn Manzur, 1408: 11). oaths in lexically definition is oaths which is divided to heir's blood or whose parents swear. (Fiume, 1405: 503)." As well as of compurgation means a group that is sworn or testify on issue. compurgation is swearing by 50 people in intentional killing and by 25 people in quasi-intentional killing and pure fault of local residents that found a murder case based on that crime was not committed by himself and don't have information about killer.

**The definition of besmirsch:**

Besmirsch is used in different meanings in terms of word, including " pollution" meaning the pollution and contaminated to blood. Quasi- reason means the reason that is not full. And the strength and robustness (Firoozabadi, 1277: 15 That latter sense is more appropriate to the meaning of idiomatic meaning according to jurists). In terms of jurists, besmirsch are circumstantial evidence and contexts which causes suspicion, and doubt about the truth of defendant. So do not consider any suspicion as a besmirsch but suspicion is associated to evidence, strong evidence and closer to science, such as contaminated blood weapon, near the dead or dead person find in ethnic home or in the rural house or there was animosity between the killer and the victim or claiming have only one witness and his testimony created suspicion of besmirsch in ruling. According to Islamic tradition, implementation of compurgation law causes greater caution in blood' and souls and the survival of the human species and causes the safety and security of community. One of the valid conditions is besmirsch in compurgation and more exactly to it, besmirsch is the issue of compurgation that there is no doubt about the authenticity and reliability. According to what stated in legal texts as case of besmirsch research is a righteous witness witnesses That person has been convicted of murder. Or see that someone just killed and someone else is standing next to him with a bloody weapon or dead is found at congregation home or in a village, Or death be discovered between the two villages that the distance between both is the same size Or a group of women or lascivious testify to killing someone. So that achieved strong Suspicion of their witness that he killed. In the Penal Code also mentioned to other examples of besmirsch cases. Such as presence of one with traces of the crime in place of murder Or existence of victim in traffic or residence of certain persons Or the testimony of the trusted auditor child, Or the testimony of two witnesses to premeditated murder and the other to the principle of murder if convicted of murder deny deliberately murder and so on.

**The requirements conditions to implement compurgation**

For the implementation of compurgation is essential to realize the besmirsch. Under Article 239 of the Penal Code If, as a result of evidence and circumstantial evidence or to any other method such as the testimony of a witness or presenting of a person at the site of murder with the effects of crime or existence of victim in traffic or residence of certain persons, Or the testimony of the trusted auditor child Or the like ruler found suspicion From accused to commit the murder, the case is one of the besmirsch cases.

So you can view compurgation which drawn up as follows:

The existence Witness or circumstantial evidence and others like them: The realization of suspicion on the voting of judge = besmirsch: the implementation of compurgation, so besmirsch is the sum of two phenomena which consist of Witness or circumstantial evidence and others like them and suspicion of the judge that is based on them.

The existence of witness or circumstantial evidence

In previous topic mentioned that proving a crime with compurgation has postponed to the absence of other reasons (confession, testimony, or knowledge of the judge). And the other hand, legislator used the words of the Qur'an, , circumstantial evidence, another method such as or the like, it means the absence of restrictions judge in reference to these symptoms that they were allegorical.

Special circumstantial evidence in the implementation of compurgation

Since compurgation is the ways of proving murder and the accused of killing sentenced to death by filing it and there is no turning back after death, It is necessary pay so caution and attention to its implementation for him, thus the reason and special circumstantial evidence, in addition to what is causing the besmirsch in its implementation. These Special circumstantial evidence can be known as being evil, being debauchee and immoral, has a history of evil and visible enemy of the defendant to victim's person. There are two important discussion in compurgation that Both of them confirmed to the validity of Special circumstantial evidence and witness in the implementation of compurgation: One is being a signature of compurgation rule and the other Being contrary to the principle of it and limited to be the value of pious. In previous discussions it was mentioned that the problem of compurgation and besmirsch existed before Islam and performed it. in Kitab Nihayat book of Ibn Athir has come that compurgation existed in the ignorance age before Islam and Islam has signed it. And hence compurgation can be a signing ordinances of Islam and in the signature sentences of Wise approach is presented as a documentary basis. Since the issue of compurgation is a very important issue and has closely related to souls and accidents and the holy legislator pay great attention to souls and blood. Rational practice dictates that in addition to the circumstantial evidence of suspicion, Special circumstantial and hearsay evidence that would be more confident of Governors, should be serious attention to Courts and the trial judges in the implementation of compurgation. Because the wise man have considered reliable criterion in their practical manner. On the other hand, as mentioned, is contrary to the principle of compurgation. And opposed to the rule of «the evidence of defendant and the right of the defendant»; Hence, it can not prove it to be a broad interpretation and should be Relied on pious narratives as much as the cautious. Moreover, the legitimacy of compurgation is also famous theorem of Abdullah Ebn Sahl in which between person or persons accused of murder and a dead person with a history of animosity and has visible enemy. In the default version of the Messenger of God "peace be upon him and his progeny" in compurgation, being lubricious and licentious person accused of murder So this is the cautious in implementation of compurgation. That in addition to circumstantial evidence of suspicion, the defendant should be known as evil, lubricious and licentious and a dead person with a history of animosity and has visible enemy. Otherwise will not be implemented the compurgation.

B) the realization of suspicion for judge and the occurrence of besmirsch

Obtainable suspicion of judge to the validity of pretender is based on the evidence or contexts and is an inevitable necessity. In other words, the mere existence of evidence even the presence of the defendant is not considered the examples of besmirsch (Article 225 of the Penal Code) when murder was occurred at the wreckage site. It can be said that no indication of the Penal Code can not be inevitably leads to suspicion, but this is the judge that be suspected after examining the validity of the claim. However, should not be ignored that the mere claim of the judge to fulfill the suspect will not be enough to besmirsch, but evidence must be mystics and rationally have the ability to create suspicion; Otherwise besmirsch will not be realized if the situation of evidence is not fair to the attainment of suspicion. Whether that evidence can cause to the knowledge of the judge or due to the weakness was be considered as an examples of doubt. Our belief of facts in out of our minds accomplished in three ways: Doubt, suspicion and certainty. If we look at it with a little indulgence, we can say that skepticism is a fifty percent belief and certain or dogmatic belief, ne hundred percent and suspicion, between both are oscillates: the distance between doubt and certainty is much and is not achieved to the mere suspicion of leaving the doubt as mentioned in the definition of besmirsch, besmirsch means a strong suspicion and the meaning of strong suspicion is suspicion which can be achieved relative to knowledge for the ruler to occurrence of murder by defendant and when such suspicion Was obtained for the ruler, the ruler is required to be addressed. The validity of this argument is that asking about compurgation Without confession, witness or knowledge of the judge sentence the retribution of defendant. So it is out of fairness and justice that the to the mere of leaving doubt, Achieving suspicion to any degree considered valid according to the realization of besmirsch, to hosted compurgation. In other words, now that the rule of law are bound to accept compurgation Should be focused on the necessary efforts to avoid wasting the blood of the victim and the defendant.

### **The quality of compurgation**

One of the major requirements of compurgation is the existence of besmirches and charges so if a murder happens and heir's blood claim on the person or persons and besmirsch which is the suspicion of the ruler to truthfulness of the defendant was not achieved, According to the rule, "«the evidence of defendant and the right of the defendant»; Like any other litigations of claimant (heir's blood) will have to prove his claim (two witnesses) will bring evidence. If unable to bring evidence, The will be asked claims to oath and with an oath fights will be over (Najafi, 1981: 55).

Who does the first oath?

If compurgation to be achieved by *besmirsch*, does the first oath begin by claimant and specific to him or claims also be included to defendant. Narratives which are stipulated in compurgation and the technologies of jurists and their words are that if compurgation was proved, The first oath will swear by claimant and the fifty persons of his relatives and proved murder; Otherwise, the defendant should be swears the fifty oaths that did not kill the victim and does not know his\her killer. In case of oath, the issue entire and claims acquittals. Another quotation that first Must be asked to claims before the implementation of compurgation, that appeals the evidence about his innocence. If he can appeal to his innocence the issue entire and claims acquittals. Here, in addition to compromise companions, There are some narrations, such as *Sahiheye ebn Muawiyah Says*: asked of Imam Sadeq "s" about the information of compurgation, Said that in all rights of *besmirsch* is on defendant. And oath is on the defendant but In regarding toe blood (*Har ameliy*, 1391: 77). Another narration, is in Abu Basir,s book: God has told, the evidence of defendant and oath on claims are in your blood. Thus it is the issue of rights with regard to heir's blood, and if the defendant failed to provide evidence. Then ceremony of compurgation is conducted by the claims and his relatives (*Mousavi Boroujerdi*, 1368: 17). There is no Wrong in the possibility of proving murder with the evidence and the famous rule «Evidence of the defendant and the right on denied» don't dedicated to legal claims, but also include criminal proceedings and as well as related to the soul and blood. In exception that is different about *besmirsch*; Because in this case the defendant does not has *besmirsch*, it is required to that the accused and defendant appeal the evidence to acquittal of murder so if appeal to evidence that is right, in Otherwise it is necessary to defendant Performs compurgation to prove his claim So if he did compurgation, it Proved to be killed and in otherwise defendant would performed it , which is fifty oaths and if it does not performed, should be pay blood money (*Khansari*, 1364: 36).

did Oath perform with defendant or his relatives in compurgation? if the defendant cannot achieve evidence and was obtained the context of *besmirsch*, compurgation implemented and his claim proved with fifty Oath. Is it necessary that defendant to be one of the swearing Or Oath his relatives will suffice? Of some narrative used to that claimant or claimants must swear, Such as narrative of Masada ibn Ziyad from Imam Sadiq" that said, My father who did murder their victim? And did not appoint the evidence and did oath that defendants killed their victim. Defendants charged with murder swear fifty oaths to God that did not kill him and do not know her killer then were paid blood money to victim's parents, (*Har ameli*, 1391: 18). In some other narrations states that is required to the oath of claimant's relatives. Such as Abu Basir narrated that from Imam Sadiq says: So claimant must bring fifty persons to swear that someone killed someone. In this case, who have sworn on him, will be delivered to them. It appears that oath realized persons who summoned by his assertions, not with himself. the requirements of tucked between narrations is that both are unacceptable. This means that also pretender and his relatives can be sworn. and cannot be sworn if rely on the swearing of folk and their relatives. Although oath of the claimant with his relatives seems to be preferred and precaution (*Meri Shoshtari*, 1379: 185). The opinion of jurists is different on this issue. According to Allame Helli that says in the rules when compurgation proved, first Pretender and their relatives swear fifty oaths(*martyr Thani*, 1311: 74) that is necessary Pretender to be sworn and can not be relayed to oath of some ones with out the oath of Pretender. that legislators in the note of one Article, 248 of the penal code end to these disputes and lack the absents of necessary claimant and the defendant is expressed as oath's testifiers.

can woman be component of the oath's testifiers?

All narratives which entered to compurgation, all have emerged in this issue That compurgation must be consisted of male, such as *ebn Muawiyah*, *Zurarah*, *Abu Basir*, *Abdullah ebn Sanan* and .... That is made clear in all of them to «fifty right» and « the oaths of fifty men in compurgation» according to the pardon of the Foundations Complement curriculum book, There are two opinions, the prevailing vote is that a women are Plaintiffs or defendants, their swearing is without any problem (*Khoei, Bitā*).

*Khomeini* said: It appears that being a man in is valid in compurgation, but the Pretender is not essential to be a man. And can be a woman, Though is one of the pretenders. But if the required number of man is not in compurgation, the sufficiency Swear of women is contemplation and thoughtfully case, in this matter. So, Men should be repeated the oaths and there is no man, the Pretender repeat the oath, although is a woman "(*Khomeini*, 1403, 659).

The quantity of soul in compurgation. in the quality of compurgation was expressed to implement compurgation that Pretender must be allege compurgation and in terms of Shiite jurists about the number of compurgation which are different according to the kinds of crimes.

The number of oaths on the soul

the quality of compurgation was expressed that defendant must be allege compurgation to implement compurgation and in terms of Shiite jurists the about the number of compurgation With regard to the number of crimes which is different.

**The number of oaths in soul:**

Before examining The quantity of compurgation, means the number of oaths which noticed to his relatives and defendant. It should be noted That compurgation consist of two types: If the defendant to murder is (intentional, quasi-intentional and pure fault) this compurgation is called soul or murder compurgation. compurgation in premeditated murder:

In the case of premeditated murder, the numbers of oaths is fifty oath which should be taken, That the credibility of this number is consensus (Najafi, 1981: 158). Unless Ebn Hamzah Tusi says: compurgation in premeditated murder is fifty oaths in the existence of besmirsch And despite of a witness that is twenty-five oath. " "Perhaps he is justified fifty oaths constitutes to two witnesses. But his telling is rejected according to incurred evidence and generalities. In addition to this specific provisions entered to the subject. Such as Abdullah ebn Sinan from Imam Sadiq which says, the compurgation of intentional murder is fifty men and pure fault murder is five - twenty men. And they should be swear by God. As well as Younes and Abi scholars of Imam Reza "AS" which says, compurgation placed fifty men in premeditated murder And placed twenty-five men in pure fault murder " And in error murder placed twenty-five men to swear "

**quasi-intentional and pure fault compurgation:**

there are two utterances Among jurists in quasi-intentional and pure fault murder: The first utterance that is famous and look like premeditated murder. Great scholars like Shaykh Mufid in Magnaeh, Sellar Deylami, Ebn Idris Hilli, And all of martyr have stated, there is no deference between intentional, quasi-intentional and pure fault And everywhere is fifty oaths that Ebn Idris in throughout the claims of consensus has said (Ebn Idris, 1407: 98). The martyr Sani about the same justification of premeditated murder with quasi-intentional and pure fault murder says in fifty oath " fifty oath with caution is more agreeable and with accuracy to the soul is more appropriate".) The second quote is that The number of oath is twenty-five oath in quasi-intentional and pure fault murder.(Shaykh Tusi, 1415: 125), Ebn Bzaj, Ebn Hamzah Tusi, a researcher Helli in laws and Allame Helli are in compliance with this quotation. In this context, traditions assert that in premeditated murder of compurgation is fifty oaths and in pure fault murder of compurgation is Twenty-five that is mentioned in quotation of Masada Ebn Ziyad, Abu Basir, Abdullah ebn Sanan. Sunni scholars have the same opinion in The number of compurgation And the number of compurgation in the murder know the variety of fifty oath. And do not make a distinction between the different types of murder (Tusi, 1415: 126). In the rights of Iran under Article 253 of the Penal Code of compurgation in quasi-intentional murder and pure fault murder is Twenty-five oaths. Which intends and adopt as a second opinion in terms of famous. the number of Oath repeating that people swear Should be fifty persons in intentional murder, and must be Twenty-five persons in quasi-intentional and pure fault murder But the argument is that the heir's blood claims, does not have Kin or family by number is less than a quorum Or his relatives are not present to swear, Does he repeat the oath? Or distributed on people who are less than quorum? in traditions do not have any reason to be repeated in narratives. But all Shiite scholars believe that there is no problem. But fulfill consensus on it in misdeed. as well as in misdeed book has come If the heir's blood is a person and does not has kin If just one swear fifty oath , compurgation to be Proved, Sheikh Tusi adds in his misdeed book that the news both parties of the Shiite emphasis in repetition of oath(Najafi, 1981: 147). It has been argued to the permissibility repetition of oath on the foundations of complementing: "In the narrations that compurgation have been established for make caution as any sinner can not inadvertently kill someone. So when the reason of compurgation is this point, How can death be suspended on oath fifty? Oath fifty people happens very low. How such rare issue can cause fear and prevent lecher person of Secretly committing murder (Khoei, 1400: 169) But the Islamic penal code because it is contrary to the principle of compurgation and it is exceptional So it did not develop and only about a defendant is allowed to repeat oaths and in the third clause of Article 248 expressly referred to this issue. However, prior to the modification of the compurgation in 1380, repeating oath was authorized to both sides.

**the conclusion:**

Among the topics which covered in the Penal Code and is authorized as legal centurions, is he subject of compurgation, The meaning of authorized is the mentioned documentary is to narrated rule and is not considered among the rules. there are differences of opinion among jurists about the mentioned rule of action. Shia scholars on the validity of compurgation in manslaughter and the members and bodily Posture appear to have consensus and believe that compurgation can also lift accusation and prove the crime, this means that

compurgation allege by victim's parents prove the crime for charged and compurgation that the accused allege to raising accusation of him. there was compurgation before Islam as mentioned in historical texts. And later by the Prophet "Muhammad peace be upon him and his progeny" is executed. Ebn Khurram says: compurgation in the age of ignorance is about the victim who was found and the Prophet "Muhammad peace be upon him and his progeny," it established the same quality. Before the implementation of compurgation, must first be asked defendant (denier) allege the evidence(witness) On his innocence If can bring the evidence on his innocence, The issue is entire and the defendant free. It is essential to realize besmirsch to implement compurgation According to Article 239 of the Penal Code "Whenever evidence and circumstantial evidence or by any other method Such as the testimony of a witness or personal presence and the effects of crime in the place of murder or killed in traffic zone or residence of certain persons or the testimony of child inspectors trust or like ruler to commit murder that found suspicion by defendant, the case is consider as one of the besmirsch cases."

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