

Punishment of Intentional Killing Felony according to the Egyptian and Algerian Penal Law, an Evaluative Study from an Islamic Viewpoint

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Abstract:

The study aimed at evaluating the penalty of intentional killing felony according to Egyptian and Algerian Criminal law in the light of Islamic Law (Shari'a). The study used the descriptive methodology to reach the targets in question. To gather the required data, a review of literature was administered. The study came to the conclusions that: first. Islamic Law (Shari'a) orders that the family of the victim has the right to retaliate or to be awarded a compensation (blood-money) as a penalty for those who proved committed of intentional killing felony; second, the Egyptian and Algerian Criminal laws impose death penalty and no blood money as an alternative penalty for this felony, and this contradicts, in part, with what Islamic Law (Shari'a) necessitates. The study recommended that the Egyptian and the Algerian Criminal laws ought to adopt a compensation (blood-money) to be given to the deceased's family as an alternative to death penalty in reply to what Islamic Law (Shari'a) requires.

Keywords: *penalty of intentional killing offence; Islamic Law (Shari'a); penal law.*

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Introduction :

Praise be to Allah and Peace and Blessings of Allah upon our Prophet Muhammad, his family, his companions and all who follow his guidance to the Day of Judgment .

(O, believers, be pious to Allah and care nothing but to die on Islam). (Surat Al-Imran (The Family of Imran) III, verse: 102.)

(O, people, be pious to Allah Who created all of you from a male and a female and who created the female from the male and created all humans from both of them. O, people, be pious to Allah Who you will stand before for Judgment and He will question you about what you have done with your relatives. Remember that Allah observes you all). (Surat An-Nisaa (The Women) IV, verse: 1)

(O, believers, fear Allah and say what is right in order that Allah mend your deeds and forgive your sins. Whosoever obeys Allah and His Messenger shall win a great victory). (Surat Al-Ahzab (The Confederates) XXXIII, verse: 70).

To proceed. (Al-Albany, , 2000, p.3).

Islam accentuates safeguarding souls. Allah, exalted be He, forbids killing except by right ⁽¹⁾. Allah, exalted be He, describes His servants saying, (Who do not call another god with Allah, nor slay the soul which Allah has forbidden except by right; who do not fornicate, for he who does this shall face punishment). (Surat Al-Furqan (The Criterion), xxv, verse: 68)... Al-Qurtobi, may Allah be merciful to him, says, "This Holy Verse reveals that no sin is worse than killing by wrong except unbelief". (Al-Qortoby, **1967**, vol.13, p.76)

The Prophet Muhammad, peace and blessings of Allah upon him, emphasizes this meaning in the Farewell Pilgrimage Sermon, saying, " O, people, Allah forbids all kinds of hurt to others. Your

blood, your wealth, your honor are sacred to one another, as sacred as this day of yours, in this month of yours, in this land of yours" ⁽²⁾..This Hadith intensifies that people's blood is as sacred as the Day of Sacrifice, the Month of Pilgrimage and the Sanctuary of Makkah.(Al-Qady Iad, 1999,vol. 5, p. 483).The Scholars unanimously agree that killing without an acceptable reason is unacceptable. (Ibn Qudamah, **1986**, vol. 8, p. 359).

Furthermore, Sharie'a, i. e. , the Islamic Law, considers killing by wrong is one of Akbar A-Kabaer ⁽³⁾ – i.e., the biggest sin excluding unbelief ". Ibn Qadi Shuhbah, **2011**, , vol. 4, p. 7). Anas Ibn Malik, may Allah please him, narrates that the Prophet, peace and blessings of Allah upon him, says, "The biggest sins are polytheism, killing by wrong, ingratitude to parents, uttering false statements and perjury" ⁽⁴⁾.

Not only does Islam forbid killing, but it also imposes particular punishment for those who commit this felony which is retaliation. Allah, exalted be He, ordains that whosoever kills a Muslim intentionally without a legal cause (Zarrouq, **2006**, p. 834) shall receive the penalty of death unless the victim's family pardons him. Allah, exalted be He, says, (O, owners of minds, for you in retaliation is life, in order that you be cautious) (Surat Al-Baqarah (The Cow), verse: 179). Al-Qurtobi, may Allah be merciful to him, "This Holy Verse shows that the family of the victim has the right to retaliate the killing or the injury whatever the position of the killer' s or the killer' s family is" (Al-Qortoby, 2006, vol.3, p. 75).

But the quick look at the penal legislations of the Muslim countries, one notices that they ignore what Islam decide concerning how to punish the intentional killer and follow suit of the secular legislations relating this question in the name of modernity and mercy which turn out to be false.

It is noted that both Egyptian and Algerian legislature



follow in the footsteps of this convention.. That is why the question has been raised about how the Egyptian and the Algerian Legislations deal with intentional killing and the extent to which they conform with the teachings of Islam. This is the core of the current study.

The Problem of the Study

The study problem is put in the following main question;

How do the Egyptian and Algerian Penal Codes punish for the intentional Killing felony and to what extent do both of them conform with Islam teachings?

This main question can be divided into the following subcategories;

- 1- What is Islam's viewpoint of the penalty of the intentional killing felony?
- 2- How does the Egyptian Penal Code punishes for the intentional killing felony and to what extent does it conform with Islam teachings?
- 3- How does the Algerian Penal Code punishes for the intentional killing felony and to what extent does it conform with Islam teachings?

The Objectives of the Study

Based on the pre-raised questions, the study objectives are as follows;

- 1- Investigating Islam viewpoint of penalty of the intentional killing felony.
- 2- Investigating how the Egyptian Penal Code punishes for the intentional killing felony and the extent to which it conforms with Islam teachings.
- 3- Investigating how the Algerian Penal Code punishes for the intentional killing felony and the extent to which it conforms with Islam teachings.

The importance of the Study

The study importance is shown in two aspects;

First: Theoretically;

The study seeks to bridge the gap in this area to develop what previous studies have come to.

Second: Practically;

The study draws the attention of legislators to adopt

the Islamic viewpoint concerning the penalty of the intentional killing felony.

The Methodology of the Study

The study has used the descriptive methodology to reach the targets in question. To gather the required data, a review of literature has been administered.

The Main Term of the Study

The Intentional Killing:

Killing linguistically means causing the death of a person or other living thing. That is, putting an end to the life of someone or some other living being (Al-Faiuomi, 1977, p.490).

The 'Intentional killing' phrase means that killing is done on purpose (Al-Faiuomi, 1977p.428). In other words, 'Intentional killing' from a linguistic point of view means that putting an end to one's life is done voluntarily.

'Intentional Killing' scholarly is a type of killing in which someone hits another with a killing means that usually causes death⁽¹⁹⁾. (Al-Qaddori, 1997, p. 185). That is, putting an end to one's life using a killing tool (Al-Kasani, 1986, vol. 7, p.333). such as a sword, a pickaxe, a dagger, a knife, a pen-knife or a spear. (Al-Qortoby, 2006, vol.5, p.329).

In the light of this, it can be said that the intentional killing is a Jinayah ⁽⁵⁾ on an innocent Muslim with a killing tool that usually causes death aiming at putting an end to his life. According to this definition, it is evident that the intentional killing can be done using an edged weapon such as a sword or any other means that can cause death such as a big stone , a big piece of wood or a poisonous substance (Ibn Qudamah, 1968, vol. 8, pp. 359-362). in order to kill someone purposefully (Ibn Qadi Shuhbah, 2011, vol. 4, p. 7-9).; unlike the semi-intentional and by-mistake killing that do not aim to end one's life ⁽⁶⁾.

From the legal point of view, the intentional killing is defined as: "taking one's life knowingly and willfully" (Algerian Penal Code, Article (254). and it may be accompanied with malice aforethought (Algerian Penal Code, Article (255). Malice aforethought means that the murder is premeditated (Algerian Penal Code, Article (256).. In other words, the murderer purposely commits the crime (Algerian Penal Code, Article (257). He knowingly and willfully lurks and awaits someone armed with a killing tool with the intention of putting an end to his life.

The Scheme of the Study

The study has been planned as follows;

- An introduction.
- Chapter I.
- Chapter II.
- Chapter III.
- A conclusion.
- A bibliography.

The coming lines will tackle these points in further detail.

2. The Penalty the Intentional Killing Felony from the Viewpoint of Islam

Islam criminalizes and penalizes the intentional killing. It prescribes Al-Qesas ⁽⁷⁾, i.e., retaliation and A-Dia ⁽⁸⁾ (blood money) on the part of the guilty if the victim is an innocent Muslim or a covenant non-Muslim. Islam entitles the family of the victim the right to retaliate, to accept the blood money or to forgive the killer for nothing. There is abundant evidence of the penalty of the intentional killing from the Holy Qura'n, Hadith and the unanimity of the Scholars as follows (Ibn Qudamah, 1969, vol. 8, pp. 367);

A. Evidence from the Holy Book:

First evidence:

Allah, exalted be He, says, (Believers, retaliation is decreed for you concerning the killed, a free man for a free man, a slave for a slave, and a female for a female. He who is pardoned by his brother, let the ensuing be with kindness, and let the payment be with generosity. This is an alleviation from your Lord and mercy. He who transgresses thereafter shall have a painful punishment) (Surat Al-Baqara (The Cow), verse 178). Al-Qurtobi, may Allah be merciful to him, says, "In this holy verse, Allah, exalted be He, ordains that if a person is killed intentionally, his family has the right to retaliate, accept blood money or forgive the killer for nothing. If the family asks for retaliation, the Imam or his representative is the only person to do the retaliation with no disagreement among the Scholars about that" (Al-Qortoby, 2006, vol.2, pp. 344-346).

Second evidence:

Allah, exalted be He, says, (The recompense for he who kills a believer deliberately is Gehanna (Hell), he is eternal there. Allah will be angry with him and will curse him and prepare for him a great punishment) (Surat An-Nisaa (The Women) IV, verse: 93). Ibn Katheer, may Allah be merciful to him, says; "After Allah, exalted be He, points out to the ruling of the killing by error, He clears the

ruling of the intentional killing ... Allah, exalted be He, threatens people not to commit this horrendous act which is coupled with polytheism as it is shown in the holy verse that says; (Who do not call upon another god with Allah, nor slay the soul which Allah has forbidden except by right) (Surat Al-Furqan (The Criterion), xxv, verse: 68). ... and there are rulings for the intentional killing Here and in the Hereafter ⁽⁹⁾; As to Here, the family of the killed has the authority to retaliate as it is shown in the holy verse that says; (If he is slain unjustly, We have given his heir authority. But let him not exceed the limit in slaying, for he will be helped) (Surat Al-Isra' (The Night Journey), verse 33) and they have the right to retaliate, accept the compensatory blood money or to pardon" (Ibn Katheer, 1999, vol.2, pp. 376-381.

Third evidence:

Allah, exalted be He, says; (Do not kill the soul whom Allah has forbidden except by right. If he is slain unjustly, We have given his heir authority. But let him not exceed the limit in slaying, for he will be helped) (Surat Al-Isra' (The Night Journey), verse 33) . Al-Qurtobi, may Allah be merciful to him, says, "This Holy Verse reveals Islam forbids killing without a just cause. It ordains that if a Muslim is killed unjustly, his heir has the authority to retaliate, take blood money or forgive without a return" Al-Qortoby, 2006, vol.10, pp. 354-355).

B. Evidence from Hadith:

First Evidence:

The Messenger of Allah, peace and blessings of Allah upon him, says, (Whosoever killed, his family has two choices; either to retaliate or to take blood money) ⁽¹⁰⁾. Ibn Hajjar, may Allah have mercy upon him, says; "This Hadith means that the family of the killed person has the right to retaliate or to take compensation" (Ibn Hajjar, 1958, vol. 12, p. 307).. Al-Mohallab, may Allah be merciful to him, says; "This Hadith urges the family to consider which is better; to retaliate or to take blood money. If taking the blood money is better to eradicate the rancor and settle the problem, it is advisable to do so" (Ibn Battal, 2003, p. 508). "According to this Hadith, the family of the



killed has the right to retaliate or to accept blood money" (Ibn Hajjar. 1958, vol. 12, p. 307).

Second Evidence:

Amru Ibn Shoeib said that his father reported that his grandfather narrated that the Messenger of Allah, peace and blessings of Allah upon him, says that (No Muslim is to be retaliated for a non-Muslim and whosoever is intentionally killed, his family has the authority to retaliate or to take blood money) ⁽¹¹⁾. Al-Harawi, may Allah be merciful to him, says; "This Hadith reveals that if a Muslim or a covenant non-Muslim is killed, he has the right to be retaliated for" (Al-Harawi, 2002, vol. 6, p. 3373). .Al-Khattabi, may Allah have mercy on him, says; "In the light of this Hadith, the family of the killed has the authority to retaliate or to take blood money". (A-Siddiqi Al-Azeem Abadi, 2005, vol. 12, p. 144)..

Third Evidence:

The Messenger of Allah, peace and blessings of Allah upon him, (Whosoever has been killed by unknown person and unknown reason ⁽¹²⁾ in a fight ⁽¹³⁾ with a stone, a scourge or a stick, he is to be considered killed by mistake and his family has to be awarded blood money in damages and whosoever has been killed deliberately, he has the right to be retaliated) ⁽¹⁴⁾. This Hadith evidences that voluntary manslaughter necessitates Al-Qesas" (Al-Harawi, 2002, vol. 6, p. 3478).i. e. retaliation" (A-Siddiqi Al-Azeem Abadi, 2005, vol. 12, p. 183).

C. Evidence from the Consensus of Scholars:

There is complete unanimity that deliberate killing requires retaliation, or blood money to be awarded to the family of the victim in compensation. This unanimity is reported by many Scholars.

Al-Qaddori, may Allah have mercy on him, says, "The intentional killing is a great sin and it entails Al-Qawad ⁽¹⁵⁾ unless the

family of the killed pardon the killer and it requires no expiation ⁽¹⁶⁾" (Al-Qaddori, 1997, p. 185).

Al-Kassani, may Allah have mercy on him, says, "The deliberate killing necessitates retaliation on condition that the killer is sane, of age, conscious, willful ⁽¹⁷⁾, not deprived of liberty and the killing is done directly from the original source ⁽¹⁸⁾. If the family of the killed waive their right of retaliation, they are entitled compensatory blood money " (Al-Kasani, 1986, vol. 7, pp. 335-346)..

Al-Asfahani, may Allah be merciful to him, says; "There are three types of killing; deliberate, by-mistake and semi-deliberate killing. The deliberate killing means that a person puts an end to another's life intentionally. The penalty of this type is retaliation unless the family of the killed waive it and ask for compensatory blood money" (Al-Asfahani, no. date, vol. 1, p. 37).

Al-Merghanani, may Allah be merciful to him, says, "If a Muslim commits deliberate killing, he gets sinful. This is evidenced by the holy verse that says, (The recompense for he who kills a believer deliberately is Gehanna (Hell) (Surat An-Nisaa (The Women) IV, verse: 93). and the killed has the right to be retaliated for as it revealed by the holy verse that says, (Believers, retaliation is decreed for you concerning the killed) (Surat Al-Baqarah (The Cow), verse: 178). unless the family of the killed forgive the killer and it demands no expiation " (Al-Merghenani, 1997, vol. 4, p. 442).

Ibn Rushed, may Allah be merciful to him, says, "The Scholars unanimously agree that the family of the intentionally killed has the authority of retaliation" (Ibn Rushd, 2004, vol. 4, p. 179).

Ibn Qudamah, may Allah be merciful to him, says, "The Scholars unanimously agree that the person who kills another intentionally has to be penalized for his wrongdoing whether the victim is a male or a female, young or old, or whether he has committed the crime on his own or with the help of others and the penalty is to be handed to the family of the killed and they have the authority to kill him in revenge, take compensatory blood money or forgive him" (Ibn Qudamah, 1968,, vol. 8, pp. 368-369).and "the



Scholars unanimously agree that a hundred adult camels – i. e. , blood money - has to be awarded by the killer to the victim's family in compensation if the family of the killed accepts to take the blood money instead of retaliation" (Ibn Qudamah, 1968, vol. 8, pp. 367)..

A-Nawawi, may Allah have mercy upon him, says, "The Scholars unanimously agree that whosoever deliberately killed with no sound reason ⁽¹⁹⁾, his family has the right to retaliate or to take blood money in compensation (A-Nawawi, 1991, vol. 8, p. 327). and the killer deserves punishment in the Hereafter as well" (Al-Khateeb A-Shirbini, 2000, vol. 5, p. 295). "The Scholars also unanimously agree that the compensatory blood money for a killed adult is a hundred adult camels that is to be awarded to the family of the killed" (Zarrouq, 2006, edit. 1, p. 840). "The Scholars also unanimously agree that the killer himself not Al-Aqela ⁽²⁰⁾ who has to pay off the compensatory blood money" (Al-Qortoby, 2006, vol.5, p. 331).

A-Tori, may Allah be merciful to him, says, "The deliberate killing is a great sin and it entails retaliation" (A-Tori, 1997, vol. 8, p. 327). "and the purpose of retaliation is to uproot aggression" (A-Tori, 1997, vol. 8, p. 326).

Ibn Dowwean, may Allah be merciful to him, says, " Killing has three categories; first, intentional killing; second, semi-intentional killing; third, unintentional killing ... and in the first category the guardian of the killed has the right to retaliate, to be endowed blood money instead or to pardon the killer, and this is unanimously agreed upon among the Scholars". (Ibn Dowwean, 1989, vol. 2, pp. 316-317). "If a party is involved in killing a person intentionally, the guardian of the killed has the right to retaliate and to get them all killed and this unanimously agreed among the Companions" (Ibn Dowwean, 1989, vol. 2, p. 317). That is, every one participates in this crime, must be penalized.

As a whole, it has been evident that Shari'a – i. e., the Islamic Law, prescribes the penalty of retaliation and blood money for the intentional killing. It is also evident that not only is the killer

to be punished, but the accomplices are to be punished as well. In addition, it is obvious that the right to retaliate, to accept blood money or to pardon freely is entitled to the guardian of the killed. If the killed's family accept the blood money instead of retaliation, the killer, not his family, has to award a hundred adult camels, or what is equal, to the victim's family in compensation. Undoubtedly, this penalty is the best punishment for this crime since it is ordained by Allah, the Most Knowing, who only knows what is good for the humanity, individuals as well as groups.

3. The Penalty of the Intentional Killing Felony from the Viewpoint of the Egyptian Penal Law

The Egyptian Criminal Code criminalizes and penalizes intentional killing. Article (230) of the Penal Code for the year 2003 prescribes that: "Whosoever kills another intentionally and with a malice aforethought shall have capital punishment " ⁽²¹⁾. Article (231) of the Penal Code explains what is meant by "intentionally" as follows; "Intentional killing means that the killer has been determined to put an end to the victim in advance " ⁽²²⁾. Article (232) of the Penal Code explains what is meant by "with aforethought" as follows; "Killing with aforethought means that the killer has been premeditating for a short or long time to commit the murder". In addition, the accomplice shall have the same penalty or a lesser one. Article (235) states that: "The accomplices shall have death penalty or life imprisonment" ⁽²³⁾.

From the previous articles, it is clear that there are two penalties for the intentional killing crime as follows;

- Death penalty; for the intentional killer and the accomplice who has taken a great part in the crime.

-Life imprisonment for the accomplice who has given a hand in doing the crime .



In the light of this, it is evident that the punishment for the intentional killing according to the Egyptian Penal Law is death and life imprisoning.

In spite of the importance of the penalties the Egyptian Penal Code prescribes as punishment for intentional killing, it breaks what Islam states in this concern from three aspects shown as follows;

First; the Islamic Law imposes unbreakable prescribed penalty to be passed on the intentional killer which are retaliation or a compensatory blood money, but the Egyptian Penal Code neglects the latter.

Second; the Islamic imposes the same penalty on the accomplice, but the Egyptian Penal Code neither gives due importance to the death penalty nor pays attention to the blood money. This opens the door wide for the accomplice to escape punishment.

Third; the Islamic Law entitles the guardians of the killed the right to retaliate, to take compensatory blood money or to forgive the killer for nothing. But the Egyptian Code prescribes the capital punishment on the part of the killer whether the guardians of the killed demand it or not.

And it is known that it is not permissible for a Muslim to judge or be judged by any law but the Islamic Shari'a (The Islamic Law). Allah, exalted be He, says, (But no, by your Lord, they will not believe you until they make you the judge regarding the disagreement between them, then, they will not find in themselves any discomfort concerning your verdict, and will surrender to you in full submission) (Surat An-Nisaa (The Women) IV, verse 65).. Allah, exalted be He, says, (Whosoever does not judge according to What Allah has sent down are the unbelievers) (Surat Al-Ma'idah (The Table Spread with Food) V, verse 44). Allah exalted be He, says, (Is it pagan laws that they wish to be judged by? Who is a better judge than Allah for a nation whose belief is firm?) (Surat Al-Ma'idah (The Table Spread with Food) V, verse 50). Allah exalted be He, says, (Surely, We have sent down to you the Book with the truth, so that you will rule

between the people by that Allah has shown you. So do not be an advocate for the traitors) (Surat An-Nisaa (The Women) IV, verse 105). Allah exalted be He, says, (But when the believers are called to Allah and His Messenger, in order that he judges between them, their reply is: 'We hear and obey'. Such are the prosperous) (Surat A-Noor (The Light), verse 51).

In addition, granting no attention to the penalty of blood money and the right entitled for the guardians of the killed to retaliate, accept the compensatory blood money or to forgive for free are unconstitutional as they violate the principles of punishment the Egyptian Constitution confirms. The Second Article of the 1971 and 2014 Egyptian Constitutions states that: " Islam is the established religion of the country ... and the principles of Islamic Sharia'a – i. e., the Islamic Law, are the main source of legislation". Under this article, the Egyptian Penal Law, including the previous articles, have to abide by Islam teachings. Because this Code only decides the penalty of death and giving no attention to the compensatory blood money as prescribed by Islam, they are considered to be unconstitutional.

Furthermore, the compensatory blood money is likely to be as effective, repressive and deterrent as death penalty in certain cases.

4.The Penalty of Intentional Killing Felony from the Viewpoint of the Algerian Penal Law

The Algerian Criminal Code criminalizes and intentional killing. Article (288) of this Code states that: " Whosoever kills or cause to kill another shall receive capital punishment" ⁽⁸⁷⁾. The meaning of intentional killing here means killing with premeditation and aforethought ⁽²⁴⁾.

This penalty includes the accomplice as well. Article (41) amended states that: "Any person takes part in doing this crime directly, aids and abets doing it through bribery, threatening, misusing authority, fraud is to be an accomplice". The penalty includes all those who have indirectly participated in doing the crime. Article (42) amended prescribes that: "Whosoever knowingly aids and abets the



murderer (s) by any means and at any stage is considered to be an accomplice". Article (43) prescribes that: "Whosoever knowingly harbors one criminal or more is considered to be an accomplice". Article (44) states that: "The accomplice in committing a felony or an offence shall receive the prescribed penalty for each".

From the above-mentioned articles, it is clear that the capital punishment is the prescribed penalty for murdering according to the Algerian Penal Code. And this penalty is not to be passed on the murderer only, but it is imposed on the accomplice as well.

It is noted that the Algerian Penal Code follows suits of the Egyptian equivalent. Each imposes capital punishment as a penalty for murder. However, the Algerian Penal Code is distinguished since it obligates that the accomplice shall receive the same punishment. But the Egyptian counterpart does not require death for the accomplice in most cases. This leniency of punishment makes it less deterrent for the accomplice.

Although the Algerian Penal Code toughens the penalty of this crime compared to its Egyptian equivalent, it breaks Islam teachings because Islam does not penalize the guilty of this crime by death only, but it prescribes blood money on his part to be awarded to the victim's family as an alternative. It also empowers the victim's family the right to retaliate, accept the blood money or to pardon the killer freely.

It is also noticed that the previous Articles are unconstitutional as they breach the codes of punishment the Algerian constitution adopts. The Preamble of the 1989 Algerian constitution and the 1996 Algerian constitution and its 2016 amendments states that: "Algeria is the homeland of Islam". Rule (10) in the 1996 Algerian Constitution and its 2016 amendments says: "It is not permissible for the authorities ... to break the codes of Islam". According to these rules, Islam is the main source of the codes of punishment the Algerian Constitution embraces. In the light of this, the Algerian Penal Law, including the before-mentioned articles,

must abide by what Islam states. Since these articles impose the penalty of death only, paying no attention to awarding blood money to the victim's family as it is decided by Islam as an alternative penalty and depriving the victim's family from their right to decide to retaliate, take blood money or to forgive the killing, they break the constitution and thus it is unconstitutional.

No doubt that the punishment Islam imposes for this crime is the best way to guard the society from the dangers of crime because of the following (Mohamed Saleem Al-Awwa, 1979., p. 253);

First: it has the ability to restrain the wrongdoer from returning to the world of crime whereas the punishment imposed by the secular law proved to be ineffective to realize this target.

Second: it rehabilitates the wrongdoer and strengthens his weaknesses to be a good citizen whereas the punishment imposed by the secular law is likely to increase the tendency to delinquency especially when the offender is mixed with other criminals in prison⁽²⁵⁾.

Third: it deters others from entering the world of crime whereas the secular penal legislations fail to accomplish this purpose.

Moreover, the penalty prescribed by the Penal Code proved not to be deterrent. This is evidenced by the increasing the rate of murder in the world of today. Despite putting the penalty laid by the Penal Law into effect, the level of this crime is still growing nowadays.

Conclusion

The study came to two the following findings:

First: Islam imposes death or a compensation – i. e., blood-money, to be awarded to the family of the victim as punishment for those who proved committed of murdering.

Second: the Islamic Law entitles the victim's family the right to retaliate, accept the compensatory blood money or to pardon the killer for nothing.



Third; the Egyptian Penal Law imposes death penalty only and pay no attention to blood money as an alternative penalty. It also ignores the family right to retaliate, take blood money or to forgive the killer. This breaks the punishment codes of Islam.

Fourth; the Algerian Penal Law also imposes death penalty only and pay no attention to blood money as an alternative penalty. It also ignores the family right to retaliate, take blood money or to forgive the killer. This breaks the punishment codes of Islam. This breaks the punishment codes of Islam as well.

In the light of these findings. The study recommends that the Egyptian and Algerian legislators should make a law that entitles the family of the killed the right to retaliate, accept a compensation, i. e. , blood-money, to be awarded to the victim' s family as a punishment for those who proved committed of murdering or to forgive the murderer. This comes in agreement with what Islam dictates in this question and goes line in line with what the 2014 Egyptian Constitution Second Article states saying:" Islam is the established religion of the state ... and Islam teachings are the main source of legislation" and with what Rule (10) of the 1996 Algerian Constitution and its 2016 amendments states saying: " It is not permissible for the authorities ... to break the codes of Islam".

In the light of these principles, the study suggests that Articles (230) and (235) of the 2003 Egyptian Penal Law and Articles (261) of the 2006 Algerian Penal Law should be amended as follows:

- Whosoever proved guilty of murder directly or in directly, he is to be extradited to the family of the killed and they have the right to retaliate, take compensatory blood money or to have mercy on him.

Notes

1) Killing without a serious reason is not permissible according to Shari'a – i. e., the Islamic Law. According to this Law, the serious reasons for which a person has to be killed are three; intentional killing of an innocent person, adultery and apostasy. If a person is convicted of one or more of these three, he has to be killed by law.

This is evidenced by the Hadith that is narrated by Al-Bukhari and reported by Abdullah Ibn Mas'oud, may Allah please him, that the Prophet, peace and blessings of Allah upon him, says, "The blood of a Muslim, who testifies that none has the right to be worshipped but Allah and I am the Messenger of Allah, is not lawful except for one of three cases: a life for a life, the (previously married) married adulterer and the one who leaves the religion and parts from the Jama'ah (the community of Muslims)". Ibn Hajar, may Allah have mercy on him, says, "His speech: 'a life for a life' means that a person who is intentionally killed has the right to be retaliated for". Refer to: Al-Bukhari. Sahih Al-Bukhari, edit.1, , Book of Blood Money, Chapter of His Speech, exalted be He, (A life for a life ...), Hadith no. (6878), p. 1701, Muslim, Sahih Muslim, edit. 2, Book of Compurgation, Chapter of What makes the Blood of a Muslim is unlawful, Hadith no. (1676), p. 742 and Ibn Hajar. **Fath Al-Bari**, edit. 1, vol. 22, p. 36.

2) Narrated by Ibn Umar, may Allah please him and his father. Refer to: Al-Bukhari, **Sahih Al-Bukhari**, edit. 1, Book of Courtesy, Chapter of Love for the Cause of Allah, Hadith no. (5825), p. 429 and Book of Pilgrimage, Chapter of the Days of Mina, Hadiths no. (1700), (1701), (1702) and (1703), p. 480-481.

3) 'Al-Kabaer' means the biggest sins. The biggest sins are those wrongdoings that have Hadd- i. e., a prescribed penalty, such as killing innocent persons, adultery, fornication, theft, bullying, alcohol drinking and apostasy, those mentioned with a threat, a warning, a menace of punishment in the Hereafter as well as those cursed in the Holy Book and the Hadiths. Refer to: A- A-Thahabi, **Al-Kaba'er**, edit. 2, p. 1.

4) Al-Bukhari, **Sahih Al-Bukhari**, edit. 1, Book of Blood money, Chapter of Allah's speech, (And Whoever revives it ...), Hadith no. (6870), p. 1699.

5) 'Al-Jinaya' according to Islam Literature refers to any forbidden physical act done to wound or kill someone. Refer to: A-Tory, **Takmelat Al-Bahr A-Raeq Sharh Kanz A-Daqaeq**, edit. 1, vol. 9, p.2.

6)) Some Scholars divide killing into three categories as follows;

First: Intentional Killing;



This means that the killer has the intention and does the action to end another person's life. In this case, the victim's family has the right to retaliate for killed relative, to accept blood money in compensation or to grant pardon to the convicted person.

Second: Semi-Intentional Killing:

This means that the killer has the intention not to kill the victim but to punish him as when a person beats another on the hand or on the leg with nonfatal thing such as a scourge or a stone. However, the victim died from the impact of his injury. In this case, the victim's family has the right not to retaliate but to accept blood money in compensation or to grant pardon to the convicted person.

Third: Unintentional killing:

This means that the killer neither has the intention nor does the action to kill the victim as when a person shoots a bird and mistakes it for a person. In this case, the killer has to make expiation by setting free of a Muslim slave if he can afford it and if he cannot, he has to fast two successive months. The victim's family has no right to retaliate but to accept blood money in compensation or to grant pardon to the convicted person.

For further detail, refer to: Al-Mawardi, **Al-Hawi**, edit. 1, vol. 12, pp. 210-211, Ibn Qadi Shuhbah, **Bediat Al-Mohtaj fe Sharh Al-Minhaj**, edit. 1, vol. 4, pp. 7-9, Zarrouq, **Sharh Zarrouq Ala Matn A-Rishalah**, edit. 1, p. 834 and Al-Buhoti, **Kashaaf Al-Qina'a**, no edition, vol. 5, pp. 504-505.

7) 'Al-Qesas' means 'Al-Qawad', i. e., retaliation. Refer to: A-Razi, Mokhtar A-Sahah, edit. 5, vol. 1, p. 254.

8) 'A-Dia' is the blood money awarded to the victim's family in compensation because of being unintentionally killed. The family of the victim has to be awarded full blood money – i. e., one hundred adult camels or what is equal, and the family of the killer has the right to pay it off by installment in a period of three years. Refer to: Al-Qaddori, **Mokhtasar Al-Qaddori**, edit. 1, p. 187 and Zarrouq, **Sharh Zarrouq Ala Matn A-Rishalah**, edit. 1, pp. 839 – 840.

9) The Scholars have debated whether the murderer's repentance is accepted or not. The most supported opinion is that it is accepted. Ibn Katheer, may Allah have mercy upon him, reported that: "Most

predecessor and successor Scholars argue for the acceptance of the murderer's repentance. Allah, be exalted He, says; (Say: 'O, my worshippers, who have sinned excessively against themselves, do not despair of the Mercy of Allah, surely Allah forgives all sins: He is the Forgiver, the Most Merciful) (Surat Az-Zumar (The Groups), verse 53). Allah's forgiveness covers all sins including murder". Refer to: Ibn Katheer, **Tafseer Al-Qura'n Al-Azeem**, edit. 2, vol.2, p. 38.

10) This is part of a long Hadith narrated by Abu-Hureira, may Allah have mercy upon him. Refer to: Al-Bukhari, **Sahih Al-Bukhari**, edit. 1, Book of A-Diyyat (Blood Money), Chapter of Whosoever has a Killed has Two Options, Hadith no. (6880), p. 5.

11)) Narrated by Abu-Dawoud and Al-Albany said that this Hadith is authentic. Refer to: Abu-Dawoud, **Sunan Abi-Dawoud**, edit.2, Book of Blood Money, Chapter of 'the Guardian Accepts the Blood Money', Hadiths no. (4506), p. 173 and Al-Albany, **Sahih Sunan Abi-Dawoud**, edit. 1, vol. 3, p.89.

12) This means that if a person is killed and why and who killed him is unknown, he is to be considered killed by mistake and his family has the right to get blood money. Refer to: A-Siddiqi Al-Azeem Abadi, **Oun Al-Ma'boud**, edit. 1, vol. 1, p. 2108.

50) This means that the killed has been a victim of the fight. Refer to: A-Siddiqi Al-Azeem Abadi, **Oun Al-Ma'boud**, edit. 1, vol. 1, p. 2108.

13) That is, he is to be considered unintentionally killed and his family has the right to have blood money but not retaliation. Refer to: A-Siddiqi Al-Azeem Abadi, **Oun Al-Ma'boud**, edit. 1, vol. 1, p. 2108.

52) This means that the family of the mistakenly killed is to be entitled compensatory blood money. Refer to: A-Siddiqi Al-Azeem Abadi, **Oun Al-Ma'boud**, edit. 1, vol. 1, p. 2108.

14) Narrated by Abu-Dawoud and Al-Albany said that this Hadith is authentic. Refer to: Abu-Dawoud, **Sunan Abi-Dawoud**, edit.2, Book of Blood Money, Chapter of 'Whosoever killed by unknown person and with unknown reason, Hadiths no. (4539) and (4540), p. 569 and Al-Albany, **Sahih Sunan Abi-Dawoud**, edit. 1, vol. 3, p.100.

15) Al-Qawad means retaliation. Refer to: Al-Kasani, **Badae'h A-Sanaeh**, edit. 2, vol. 7, p.345.



16) The Scholars argue about the expiation of the murderer. That is, has he got to emancipate a slave, fast a two successive months or give food? The Shafie' School argue for this expiation similarly as obligatory as the by mistake killing but the Hanbali School argue against since murdering is too horrendous to be expiated for. The most supported is the viewpoint of the Hanbali School as there is no evidence from the Holy Qur'an, the Sunna nor the consensus of the Scholars to support The Shafie' School's opinion. Ibn Al-Munzer, may Allah have mercy on him, said, "Expiation are observances that are based on evidence from the Holy Qur'an, the Sunna or the consensus of the Scholars not reason". Refer to: Ibn Katheer, **Tafseer Al-Qura'n Al-Azeem**, edit. 2, vol.2, pp. 376-381.

17) The semi-intentional killing is a type of ending one's life in which the killer has the intention not to kill the victim but to punish him as when a person beats another on the hand or on the leg with nonfatal thing such as a scourge or a stone. However, the victim died from the impact of his injury. In this case, the victim's family has the right not to retaliate but to accept blood money in compensation or to grant pardon to the convicted person. The blood money is a hundred camels or what is equal. The hundred camels must be in groups of three; the first group must be Heqqa; i. e. four year olds, the second group must be Jazaha, i. e., five year olds and the last group must be Khalifa; i. e., pregnant. Refer to: Al-Mawardi, **Al-Hawi**, edit. 1, vol. 12, pp. 210-211.

18) The Maliki, the Shafie' and the Hanbali Schools support the idea that if a person is coerced to murder somebody else, he and the person who coerced him to do so, are to be killed in retaliation. Refer to: Ibn Qudamah, **Al-Moghni**, no edition, vol. 8, pp. 367-368.

19) The impermissible killing is putting an end to one's life illegally. Refer to: Zakaria Al-Ansari, **Asna Al-Matalib**, no edition, vol. 4, p.2.

20) Al-Aqela are the killer's wealthy male relatives to his father such as his father, his brothers, his grandfather, his uncle and his cousins. Al-Aqela affords the blood money on behalf of the by-mistake killer and is responsible for awarding it to the victim's family. Refer to: Ibn Qadi Shuhbah, **Bediat Al-Mohtaj fe Sharh Al-Minhaj**, edit. 1, vol. 4, p. 119 and Ibn Hajjar. **Fath Al-Bari**, edit. 1, vol. 22, p. 131.

21) It is noteworthy that those who have to kill someone in defense of themselves are exempted from punishment. Article (245) of the Egyptian Penal Code prescribes that: "No penalty to be passed on those who have to kill or injure someone else in defense of themselves"

22) This means killing with 'Premeditation'. 'Premeditation' means that the guilty has the determination to kill someone he knows well or someone he comes up with, in particular, in the scene of the crime. This act is called Jinaya, i. e. felony. The felonies according to the Egyptian Penal Code are those crimes that are penalized by death, rigorous hard labor, interim hard labor and imprisonment. Refer to: Moa'wad Abd Al-Tawwab, **Qanon Al-Ocobat Mo'allaqa Aliahi BeAhkam Mahkamat A-Naqd**, no edition, vol. 1, p. 43.

23) The penalty of imprisonment has two types;

a- life imprisonment: in which the sentenced spends all his life in prison, but if he or she is on good behavior, they are set free as long as they spend twenty years at least.

b- Rigorous Imprisonment: in which the sentenced spends a period not less than three years and no more than fifteen years in prison. For further detail, refer to: Mamoun Salamah, **Qanon Al-Okobat; Al-Qesm Al-Aam**, edition 3, p. 648 and Mohamed Zakki Abu-Amer, **Qanon Al-Okobat; Al-Qesm Al-Aam**, no edition, pp. 505-508.

24) It is noteworthy that the penalty of capital punishment is to be replaced with imprisonment if it is proved that the murder is done coercively to defend one's or other's soul or possessions. Article (283) of the Algerian Criminal Code prescribes that: "If it is proven that the murder is done in self defense, the death or life imprisonment shall be replaced with imprisonment from a year to five years".

88) See The Algerian Penal Code, Articles (254), (255), (256) and (257).89)

25) For further detail concerning the purposes of legal penalty, refer to: Mamoun Salamah, **Qanon Al-Okobat; Al-Qesm Al-Khas**, edition 3, pp. 622-630, Mahmoud Najjuib Hosni, **Elm Al-Eqab**, edit. 3, pp. 94-97. and Hani Al-Manaeli, **Al-Okoba fe A-Tashrieh Al-Islami**, no edit., p. 53.



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