

Penalty of By-Mistake Killing Felony according to the Egyptian and Algerian Penal Law, an Evaluative Study from an Islamic Viewpoint

PENALISATION DE L'homicide involontaire selon la loi pénale égyptienne et algérienne

(une étude évaluative d'un point de vu islamique)

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Abstract

The study aimed at evaluating the penalty of killing by mistake 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) imposes expiation and a compensation (blood-money) to be given to the deceased's family as a penalty for those who proved committed of killing by mistake felony; second, the Egyptian and Algerian Criminal laws impose imprisonment and fine as an alternative penalties for this offence and this contradicts with what Islamic Law (Shari'a) necessitates. The study recommended that the Egyptian and the Algerian Criminal laws ought to adopt expiation and a compensation (blood-money) to be given to the deceased's family as a penalty for this crime in reply to what Islamic Law (Shari'a) requires.

Keywords: penalty of by-mistake killing felony, Islamic Law (Shari'a), penal law.

ملخص

استهدفت الدراسة الحالية تقييم عقوبة جريمة القتل الخطأ في قانون العقوبات المصري والجزائري في ضوء ما قرره الشريعة الإسلامية في هذا الخصوص. واستندت الدراسة إلى المنهج الوصفي. واعتمدت في إطار ذلك على الأسلوب النقوي. وتمثلت أداة الدراسة في مسح الأدبيات المتعلقة بموضوع الدراسة. وأسفرت الدراسة عن العديد من النتائج أهمها: أن الشريعة الإسلامية أوجبت الكفارة والدية كعقوبة مقدرة لجريمة القتل الخطأ - أن قانون العقوبات المصري والجزائري أوجبا الحبس والغرامة كعقوبة لهذه الجريمة، وهذا يخالف ما قرره الشريعة الإسلامية في هذا الشأن. وأوصت الدراسة المُقنن الجنائي المصري والجزائري إلى ضرورة التدخل بالنص على الكفارة والدية كعقوبة لهذه الجريمة بما يتفق مع ما أوجبه الشريعة الإسلامية في هذا الخصوص.

الكلمات المفتاحية: عقوبة جريمة القتل الخطأ، الشريعة الإسلامية، قانون العقوبات.

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) ¹.

(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) ².

(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) ³.

To proceed⁴:

Islam accentuates safeguarding souls. Allah, exalted be He, forbids killing except by right ⁵. 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) ⁶. Al-Qurtobi, may Allah be merciful to him, says, "This Holy Verse reveals that no sin is worse than killing by wrong except unbelief" ⁷.

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" ⁸. This Hadith intensifies that people's blood is as sacred as the Day of Sacrifice, the Month of Pilgrimage and the Sanctuary of Makkah⁹.

Furthermore, Sharie'a, i. e. , the Islamic Law, considers killing by wrong is one of Akbar A-Kabaer¹⁰ – i.e., the biggest sin excluding unbelief " ¹¹. 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" ¹².

Not only does Islam forbid killing, but it also imposes particular punishment for those who commit this offence which is called the Al-Qesas, i.

e., a prescribed penalty of retaliation¹³. Allah, exalted be He, says, (O, owners of minds, for you in retaliation is life, in order that you be cautious)¹⁴. 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"¹⁵.

Moreover, the Sharie'aprohibits by-mistake killing and prescribes a certain penalty for this crime¹⁶.

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 by-mistake 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 by-mistake 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 punishfor by-mistake Killing felony and to what extent do both of them conform with Islamteachings?

This main question can be divided into the following subcategories;

- 1- What is Islam's viewpoint of the penalty of by-mistake killing felony?
- 2- How does the Egyptian Penal Code punishes for by-mistake killing felonyand to what extent does it conform with Islam teachings?
- 3- How does the Algerian Penal Code punishes for by-mistake killing felonyand 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 by-mistake killing felony.
- 2- Investigating how the Egyptian Penal Code punishes for by-mistake killing felony and the extent to which it conforms with Islam teachings.
- 3- Investigating how the Algerian Penal Code punishes for by-mistake 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 by-mistake 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

By - mistake 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 being¹⁷. 'By- mistake' phrase means that something has not been done on purpose¹⁸. In other words, 'by-mistake killing' from a linguistic pointview means involuntary manslaughter.

'By-mistake Killing' scholarly means trying to cause the death of someone or something but put an end to another¹⁹. This means that the perpetrator does not mean the death of the latter²⁰. That is, he meant the death of the former but missed him or it²¹, as it is the case with someone trying to shoot a bird but kills a human by error²² or as it is the case with someone who has been killed by falling into a deep hole haphazardly made in the walkway²³. Although the killer did not intend to cause death to the victim, he involuntarily ended his life²⁴.

In view of this definition, by-mistake killing comprise two categories;

A. Explicit By-mistake Killing:

In this category, the guilty intends to kill something but misses it for someone or to kill someone but misses him for someone else. In other words, he means neither the act of killing for the former nor the person killed for the latter as it the case with trying to shoot a bird but he misses it and kills a human by error or as it is the case with trying to kill a fighting non-Muslim but misses him and kills a Muslim by mistake²⁵.

B. Inexplicit By-mistake Killing:

In this category, the guilty neither intends the act nor the effect of killing as it is the case with a person falling from a building and kills s a passer-by as a result of the bang of his falling body or as it is the case with a sleeping person who turns over another and kills him due to the impact of his heavy weight²⁶.

In the light of this, 'by-mistake killing' can be defined in this essay as involuntary manslaughter of somebody – i. e., unintentionally putting an end

to the life of someone.

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.

Chapter I / The Penalty of By-mistake killing felony from the Viewpoint of Islam

Islam criminalizes and penalizes injuring by mistake. It prescribes Al-Kaffara – i. e., expiation,²⁷ and A-Dia²⁸ (blood money) on the part of the guilty to be awarded to the family of the victim in compensation. There is abundant evidence of the penalty of expiation and blood money from the Qur'an, Hadith and the unanimity of the Scholars as follows²⁹;

A. Evidence from the Holy Book:

Allah, exalted be He, says, (It is not for a believer to kill another believer, except that it is by error. Whosoever kills a believer in error, let him free a believing slave, and ransom is to be handed to his family, unless they forgo being charitable. If he belonged to a people who are your enemies and is a believer then, the setting free of a believing slave. If he belongs to a people in which there is between you and them a treaty, then a ransom is to be handed to his family and the setting free of a believing slave.

But, if he does not find the means, let him fast two consecutive months in repentance to Allah. And Allah is the Knower, the Wise)³⁰. Ibn Katheer, may Allah be merciful to him, says, " His speech, exalted be He, (Whosoever kills a believer in error, let him free a believing slave, and ransom is to be handed to his family) reveals that there are two penalties for the by-mistake killing; the first of which is setting free of a Muslim slave and the second is the blood money on the part of the guilty to be awarded to the family of the victim in compensation and this blood money has to be paid from the capital of Al-Aqela³¹ – i. e., the guilty's family, not the guilty's unless the victim's family forgo the ransom. His speech, exalted be He, (If he belonged to a people who

are your enemies and is a believer then, the setting free of a believing slave) means that if the victim is a believer and his family are fighting non-Muslims, no blood money is to be handed and the guilty has to set free a Muslim slave only. His speech, exalted be He, (If he belongs to a people in which there is between you and them a treaty, then a ransom is to be handed to his family and the setting free of a believing slave) indicates that if the victim's family are covenanted non-Muslims, they are to be handed blood money in damages and the guilty has to set free a Muslim slave. His speech, exalted be He, (But, if he does not find the means, let him fast two consecutive months in repentance to Allah) shows that if the guilty can not afford to set free a Muslim slave, he has to fast two successive months in return" ³².

B. Evidence from Hadith:

First Evidence:

Abu-Hureira, may Allah please him, narrated that "Two women from Huthail³³ fought and one of them threw the other, who was pregnant, with a stone and killed her and her fetus. The family of the victim made a complaint to the Messenger of Allah, peace and blessing of Allah upon him, who judged that the family of the guilty has to award the victim's family full Aql³⁴— i. e., blood money for the woman and a sum of money that equals the cost of a man or a woman slave for her fetus ³⁵ in compensation" ³⁶. A-Nawawi, may Allah be merciful to him, says, "This Hadith reveals that involuntary manslaughter requires no retaliation but blood money that has to be awarded by the family of the guilty to the family of the victim" ³⁷. IbnHajjar, may Allah have mercy on him, says, "IbnDaqieq Al-Eid says, "This Hadith is evidence that blood money is obligatory on the part of the guilty who kills another in error and it is to be afforded by his family and be handed to the victim's family" ³⁸.

Second Evidence:

Ibn Obeid, may Allah please him, reports that the Messenger of Allah, peace and blessings of Allah upon him, says, "Whosoever has been killed by unknown person and unknown reason in a fight with a stone, a scourge or a stick, he is to be considered killed by mistake ³⁹ and his family has to be awarded blood money in damages and whosoever has been killed deliberately, he has the right to be retaliated" ⁴⁰. This Hadith evidences that involuntary manslaughter necessitates blood money to be awarded to the victim's family in compensation ⁴¹.

ThirdEvidene:

AmruIbnShoeibsaid that his father reported that his grandfather narrated that the Messenger of Allah, peace and blessings of Allah upon him," judged that whosoever has been killed by mistake, his family has to be awarded one hundred camels in compensation; thirty of which is BintMakhad⁴², thirty of which is BintLaboun⁴³, thirty of which is Heqqa⁽⁴⁴⁾ and ten of which is male BaniLaboun^{45"} 46. This Hadith indicates that if a person has been killed in error, he is to be awarded Aql – i. e., blood money, in compensation and this Aql is one hundred healthy adult camels" 47.

C. Evidence from the Consensus of Scholars:

There is complete unanimity that by-mistake killing requires expiation and 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, "There are two types of by-mistake killing; first, the mistake in the aim as when someone shoots a bird but he mistakes it for a person; second, the mistake in the action as when a sleeping person turns over another and kills him. Both require expiation and blood money" 48.

Al-Kassani, may Allah have mercy on him, says, "By-mistake killing necessitates expiation and blood money in compensation ... and the blood money in the case of by-mistake killing and the semi-intentional killing⁴⁹ has to be awarded by the family of the killer ... and there is no disagreement that the blood money is to be awarded in installments in a three-year -time as evidenced by the consensus of the Companions may Allah please them" 50. He, may Allah be merciful to him, adds, " Allah, exalted be He, prescribes the penalty of expiation on the part of the killer in error in order to be more cautious in the future and prescribes the penalty of blood money to extinguish the victim's family wrath and desire for retaliation as well as compensating them for the life lost" 51.

Al-Merghanani, may Allah be merciful to him, says, " The expiation on the part of the killer by mistake and the blood money on the part of his family are a must" 52.

IbnQudamah, may Allah be merciful to him, says, "The Scholars unanimously agree that the person who kills another in error has to expiate for the 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" 53 and

"the Scholars unanimously agree that a hundred adult camels – i. e. , blood money - has to be awarded by the by-mistake killer's family to the victim's family in compensation" ⁵⁴. "And the killer's family has the right to award the blood money by installment in a period of three years" ⁵⁵. "And the expiation for the by-mistake killing is to set free a Muslim slave whether the killer or the victim is a Muslim or a non-Muslim. If there are no Muslim slaves or he is unable to pay for the slave, he has to fast two consecutive months. If he is unable to fast at the due time, he has to fast whenever he can" ⁵⁶.

IbnHajjar, may Allah have mercy upon him, says, "Ibn Al-Munther says, ' Allah ordains that if a Muslim kills another, he has to award blood money to the victim's family in damages " ⁵⁷ "and the Scholars unanimously agree that it the killer's family's duty not the killer to award this blood money to consolidate the feeling of the mutual responsibility towards each other" ⁵⁸ "and the killer has to expiate for his sin by setting free a Muslim slave and if he is not able to afford it, he has to fast two successive months instead" ⁵⁹.

Zarrouq, may Allah be merciful to him, alludes that "the Scholars unanimously agree that blood money is obligatory in the case of by-mistake killing ⁶⁰ and this blood money equals one hundred adult camels" ⁶¹.

Al-Khateeb A-Sherbini, may Allah be merciful to him, says, "The Scholars unanimously agree that blood money is mandatory if a person kills another by mistake" ⁶².

Al-Qaderi Al-Hanafi, may Allah have mercy on him, says, " The blood money is obligatory when a person is killed by mistake to compensate for a lost life and to extinguish the indignation incurred in the victim's family's hearts because of taking his life" ⁶³ "and the expiation for this wrongdoing is to set free a Muslim slave and if unable, two consecutive months are to be fasted instead" ⁶⁴.

IbnDowwean, may Allah be merciful to him, says, " Killing has three categories; first, intentional killing; second, semi-intentional killing; third, unintentional killing ⁶⁵ ... and in the last two categories expiation is indispensable on the part of the killer and blood money is to be awarded by the killer's family to the victim's family" ⁶⁶.

As a whole, it has been evident that Shari'a – i. e., the Islamic Law, prescribes the penalty of expiation and blood money in compensation for the unintentional killing whether the killer or the victim is a Muslim or a non-

Muslim. That is, the killer has to atone for the sin he has done by setting free of a Muslim slave or by fasting two successive months if he cannot afford setting free a slave. In addition, the killer's family has to award a hundred adult camels 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.

Chapter II / The Penalty of By-mistake Killing Felony from the Viewpoint of the Egyptian Penal Law

The Egyptian Criminal Code criminalizes and penalizes unintentional killing. Article (238) of this Code prescribes that: "Whosoever kills or causes to kill another due to being careless, unwise, incautious or being indifferent to the law and the regulations shall receive imprisonment⁶⁷ for a period of less than six months, a fine⁶⁸ of no more than two hundred Egyptian pounds or by only one of the two penalties.

The guilty shall receive imprisonment of a period of less than a year and no more than five years, a fine of no less than two hundred Egyptian pounds and no more than five hundred pounds or by one of the two penalties if the crime occurred as a result of the guilty's negligence to the duties of his job, the guilty was drunk at the time of doing the crime or if the guilty abstained from giving help or asking others for though he could.

The guilty shall receive imprisonment for a period of no less than a year and no more than seven years if the crime resulted in the death of more than three persons.

If there is another aggravating factor beside those before-mentioned, the guilty shall receive imprisonment for a period of not less than a year and no more than ten years"

From the previous article, it is clear that there are eight penalties for the by-mistake killing crime as follows;

- Imprisonment for a period of no less than six months and a fine of no more than two hundred Egyptian pounds.
- Imprisonment for a period of no less than six months.
- A fine of no more than two hundred Egyptian pounds.
- Imprisonment for a period of no less than a year and no more than five years and a fine of no less than two hundred Egyptian pounds and no more than five hundred Egyptian pounds.

-Imprisonment for a period of no less than a year and no more than five years.

- A fine of no less than two hundred Egyptian pounds and no more than five hundred Egyptian pounds.

-Imprisonment for a period of no less than a year and no more than seven years.

-Imprisonment for a period of no less than a year and no more than ten years.

In the light of this, it is evident that the punishment for the by-mistake killing according to the Egyptian Penal Law is imprisoning and fining.

It is noticed that the punishment of this crime gets hardened in the case of the two following aggravating factors;

First, the gravity of the mistake:

The penalty gets tougher by making the imprisonment of a period of less than a year and no more than five years and the fine of no less than two hundred Egyptian pounds and no more than five hundred pounds. This aggravating factor arises under the following circumstances;

- If the crime occurred as a result of the guilty's negligence to the duties of his job;

- If the guilty was drunk at the time of doing the crime;

- Or if the guilty abstained from giving help or asking others for though he could.

Second, the severity of the effect:

The penalty gets harder by making the imprisonment for a period of no less than a year and no more than seven years if the crime resulted in the death of more than three persons.

It is also noted that the punishment gets harsher by making the imprisonment for a period of not less than a year and no more than ten years if the crime is accompanied by the two previous aggravating factors simultaneously.

In spite of this, by prescribing the penalty of imprisonment and fine for the crime of by-mistake killing, the Egyptian Penal Law breaks Islam teachings because Islam prescribes expiation on the part of the killer and blood money on the part of his family to be awarded to the victim's family in compensation. 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" ⁶⁹.Allah, exalted be He, says, "Whosoever does not judge according to What Allah has sent down are the unbelievers"⁷⁰.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?" ⁷¹.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" ⁷².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"⁷³.

In addition, the imprisonment and fine penalty decided for this crime 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 article, have to abide by Islam teachings. Because this Law decides the penalty of imprisonment and fining not expiation and blood money as prescribed by Islam, they are considered to be unconstitutional.

Furthermore, the two penalties of imprisonment and fining are not as effective, repressive and deterrent as the penalty of blood money that is stated by Islam.

Chapter III/ The Penalty of By-mistake Killing Felony from theViewpoint of the Algerian Penal Law

The Algerian Criminal Code criminalizes and penalizes by-mistake injury.Article (288) of this Code states that: " Whosoever kills or cause to kill another by mistake because of being careless, unwise, incautious or being indifferent to the law and the regulations shall receive imprisonment for a period from six months to three years and a fine from 1000 Algerian dinars to 20,000 Algerian dinars ". Article (290) of the same Code states that " The penalties prescribed in Articles (288) and (289) ⁷⁴ are to be doubled if the guilty

has been drunk at the time the accident or has tried to escape responsibility".

From the two previous articles, it is obvious that the Algerian Penal Code prescribes two penalties for the by-mistake killing shown as follows;

-Imprisonment from a period of six months to three years and a fine from 1000 Algerian dinars to 20,000 Algerian dinars.

-Imprisonment from a period of one year to six years and a fine from 2,000 Algerian dinars to 40,000 Algerian dinars.

It is noticeable that the penalty is made tougher in case of the gravity of the mistake. This aggravating factor hardens the penalty of imprisonment to become from one year to six years and the fine to become from 2,000 Algerian dinars to 40,000 Algerian dinars. These harsh penalties apply if the guilty has been drunk at the time of committing the crime or if he has tried to escape responsibility.

It is also noted that the Algerian Penal Code follows in the footsteps of its Egyptian counterpart. Similarly, the Algerian Penal Code prescribes imprisonment and fining as punishment for this crime.

Furthermore, it is evident that although the Algerian Penal Code toughens the penalty of this crime by doubling its maximum in case of gravity of mistake compared to its Egyptian equivalent, it neglects hardening the penalty in case of the severe effect of the mistake that is taken into consideration in the Egyptian Penal Code.

In addition, by prescribing the penalty of imprisonment and fining for the by-mistake killing crime, the Algerian Penal Law also breaks Islam teachings because Islam does not penalize the guilty of this crime by imprisoning or fining him, but it prescribes expiation and blood money on his part to be awarded to the victim's family.

It is also noticed that the previous Article is unconstitutional as it breaches 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 penalties of imprisonment and fining on the guilty's

part, not expiating as well as awarding blood money to the victim's family as it is decided by Islam, it breaks 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 following⁷⁵;

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 prison⁷⁶.

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

Moreover, the penalties prescribed by the Penal Code proved not to be deterrent. This is evidenced by the increasing rate of the by-mistake killing crimes in the world of today, as it is the case with the casualties of road accidents in particular. Despite putting the penalties 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 expiation and a compensation – i. e., blood-money, to be awarded to the family of the victim as punishment for those who proved committed of unintentional killing.

Second; the Egyptian Penal Law imposes an alternative penalty.

It prescribes the penalty of imprisonment and fining on the part of the perpetrator. This breaks the punishment codes of Islam.

Third; the Algerian Penal Law also imposes an alternative penalty as well. It prescribes the penalty of imprisonment and fining on the person who is proved guilty of by-mistake killing. 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 prescribes expiation and a compensation, i. e., blood-money, to be awarded to the victim's family as a

punishment for those who proved committed of killing by mistake felony .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 Article (238) of the Egyptian Penal Law and Articles (288) and (290) of the Algerian Penal Law should be amended as follows:

- Whosoever proved guilty of by – mistake killing felony shall make expiation for his wrongdoing by setting free of a Muslim slave or fasting two consecutive months instead if he cannot afford it, and awardone hundred adult camels or what is equal as blood-money to the victim' s family in compensation.

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- 3- Surat Al-Ahzab (The Confederates) XXXIII, verse: 70.
- 4- Al-Albany, **Sahih Al-TargheebwaTarheeb**, edit. 1, p.3.
- 5- 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 IbnMas'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)". IbnHajjar, 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 IbnHajjar. **Fath Al-Bari**, edit. 1, vol. 22, p. 36.
- 6- Surat Al-Furqan (The Criterion), xxv, verse: 68.
- 7- Al-Qortoby, **Al-Gamie' Le-Ahkam Al-Qura'n**, no edition, vol.13, p.76.
- 8- 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.
- 9- Al-QadyIad, **Ikmal Al-Mo'llem be Fawaed Muslim**, edit. 1, vol. 5, p. 483.
- 10- '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.
- 11- IbnQadiShuhbah, **Bediat Al-MohtajfeSharh Al-Minhaj**, edit. 1, vol. 4, p. 7.
- 12- 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.
- 13- Zarrouq, **SharhZarrouqAlaMatn A-Rishalah**, edit. 1, p. 834.
- 14- Surat Al-Baqarah (The Cow), verse: 179.
- 15- Al-Qortoby, **Al-Gamie' Le-Ahkam Al-Qura'n**, no edition, vol.3, p. 75.
- 16- Al-Kasani, **Badae'h A-Sanaeh**, edit. 2, vol. 7, p. 252.
- 17- Al-Faiuomi, **Al-Mesbah Al-Munir**, edit. 2, p.490.
- 18- Al-Faiuomi, **Al-Mesbah Al-Munir**, edit. 2, p.174.
- 19- IbnDowwean, **Manar A-Sabeel**, edit1, vol. 2, p. 319.
- 20- IbnDowwean, **Manar A-Sabeel**, edit1, vol. 2, p. 319.
- 21- IbnQadiShuhbah, **Bediat Al-MohtajfeSharh Al-Minhaj**, edit. 1, vol. 4, pp. 7-9.

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- 22- IbnDowwean, **Manar A-Sabeel**, edit1, vol. 2, p. 319.
- 23- Al-Qaderi Al-Hanafi, **Takmelat Al-Bahr A-RaeqSharhKanz A-Daqaeq**, edit. 1, vol. 9, p.4.
- 24- Al-Qaddori, **Mokhtasar Al-Qaddori**, edit. 1, p. 184.
- 25- Al-Mawardi, **Al-Hawi Al-Kabeer**, edit. 1, vol. 12, pp. 210-211.
- 26- Al-Kasani, **Badae'h A-Sanaeh**, edit. 2, vol. 7, pp. 271-272.
- 27- 'Al-Kaffara' isatonement for the sin. The by-mistake killer has to expiate for his wrongdoing by setting free of a Muslim slave or what is equal the slave's ransom. If he cannot afford it, he has to fast two consecutive months. Refer to: Al-Qaddori, **Mokhtasar Al-Qaddori**, edit. 1, p. 184.
- 28- '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, **SharhZarrouqAlaMatn A-Rishalah**, edit. 1, pp. 839 – 840.
- 29- IbnQudamah, **Al-Moghni**, no edition, vol. 8, p. 367.
- 30- Surat An-Nisaa (The Women) IV, verse: 92.
- 31- 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: IbnQadiShuhbah, **Bediat Al-MohtajfeSharh Al-Minhaj**, edit. 1, vol. 4, p. 119 and IbnHajjar. **Fath Al-Bari**, edit. 1, vol. 22, p. 131.
- 32- IbnKatheer, **Tafseer Al-Qura'an Al-Azeem**, edit. 1, vol. 3, pp. 179-181.
- 33- Huthail is an Arab Tribe. Refer to: IbnHajjar. **Fath Al-Bari**, edit. 1, vol. 22, p. 134.
- 34- The full 'Aql' means fullDia or full blood money – i. e., a hundred adult camels or what is equal. Refer to: Al-Qaddori, **Mokhtasar Al-Qaddori**, edit. 1, p. 187.
- 35- If a pregnant mother is killed unintentionally, her family has to be awarded full 'Aql' for the woman – i. e., a hundred adult camels or what is equal as blood money in compensation, as well as one tenth of the woman's Aql in compensation for the stillborn baby. But, if the baby was born alive then died as a result of the injury that has led to the killing of his mother, his mother's family has to be awarded full Aql as well as that of his mother's. Refer to: Al-QadyIad, **Ikmal Al-Mo'lem be Fawaed Muslim**, edit. 1, vol. 5, p. 489, A-Nawawi, **Sahih Muslim Besharh Al-Nawawy**, no edition, p. 1078 and IbnHajjar. **Fath Al-Bari**, edit. 1, vol. 22, p. 139.
- 36- Narrated by Al-Bukhari and Muslim with the version of Muslim. Refer to: Al-Bukhari, **Sahih Al-Bukhari**, edit. 1, Book of Medicine, Chapter of fortunetelling, Hadith no. (5758), p. 1457 and Muslim, **Sahih Muslim**, edit. 2, Book of Compurgation, Chapter of the Dia – i. e., blood money, of the Fetus and the obligation of the Blood Money in Compensation for the Unintentional and Semi-intentional Killing, Hadith no. (1681), p. 745.
- 37- A-Nawawi, **Sahih Muslim Besharh Al-Nawawy**, no edition, p. 1078.
- 38- IbnHajjar. **Fath Al-Bari**, edit. 1, vol. 22, p. 144.
- 39- A-Siddiqi Al-AzeemAbadi, **Oun Al-Ma'boud**, edit. 1, vol. 1, p. 2108.
- 40- Narrated by Abu-Dawoud and Al-Albany said that this Hadith is authentic. Refer to: Abu-Dawoud, **SunanAbi-Dawoud**, edit.2, Book of Blood Money, Chapter of Whosoever has been Killed by Unknown Person and Unknown Reason in a Fight, Hadiths no. (4539) and (4540), p. 569 and Al-Albany, **SahihSunanAbi-Dawoud**, edit. 1, vol. 3, p. 100.
- 41- A-Siddiqi Al-AzeemAbadi, **Oun Al-Ma'boud**, edit. 1, vol. 1, p. 2108.
- 42- BintMakhad means a female camel aged two. Refer to: A-Siddiqi Al-AzeemAbadi, **Oun Al-Ma'boud**, edit. 1, vol. 1, p. 2109.

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- 43-BintLabounmeans a female camel aged three. Refer to: A-Siddiqi Al-AzeemAbadi, **Oun Al-Ma'boud**, edit. 1, vol. 1, p. 2109.
- 44-Heqqameans a female camel aged four. Refer to: A-Siddiqi Al-AzeemAbadi, **Oun Al-Ma'boud**, edit. 1, vol. 1, p. 2109.
- 45-BaniLabounmeans a male camel aged three. Refer to: A-Siddiqi Al-AzeemAbadi, **Oun Al-Ma'boud**, edit. 1, vol. 1, p. 2109.
- 46- Narrated by Abu-Dawoud and Al-Albany said that this Hadith is authentic. Refer to: Abu-Dawoud, **SunanAbi-Dawoud**, edit.2, Book of Blood Money, Chapter of How Much is the Blood Money?, Hadith no. (4541), p. 569 and Al-Albany, **SahihSunanAbi-Dawoud**, edit. 1, vol. 3, p. 100.
- 47- A-Siddiqi Al-AzeemAbadi, **Oun Al-Ma'boud**, edit. 1, vol. 1, p. 2108.
- 48- Al-Qaddori, **Mokhtasar Al-Qaddori**, edit. 1, p. 184.
- 49-The semi-intentional killing means that the killer hasintended not to kill the victim but to punish him by beating him using a nonfatal thing such as a whip or a stick, but the victim died from the after-effects of his injury. In this case, a hundred adult camels has to be awarded as blood money to the victim's family in compensation. Refer to: Al-Mawardi, **Al-Hawi**, edit. 1, vol. 12, pp. 210-211.
- 50- Al-Kasani, **Badae'h A-Sanaeh**, edit. 2, vol. 7, pp. 252-256.
- 51- Al-Kasani, **Badae'h A-Sanaeh**, edit. 2, vol. 7, pp. 252-256.
- 52- Al-Merghanani, **Al-Hidiah**, edit. 1, vol. 8, p. 9.
- 53- IbnQudamah, **Al-Moghni**, no edition, vol. 8, pp. 512-513.
- 54- IbnQudamah, **Al-Moghni**, no edition, vol. 8, p. 367.
- 55- IbnQudamah, **Al-Moghni**, no edition, vol. 8, p. 516.
- 56- IbnQudamah, **Al-Moghni**, no edition, vol. 8, p. 517.
- 57- IbnHajjar. **Fath Al-Bari**, edit. 1, vol. 22, p. 59.
- 58- IbnHajjar. **Fath Al-Bari**, edit. 1, vol. 22, p. 61.
- 59- IbnHajjar. **Fath Al-Bari**, edit. 1, vol. 22, pp. 131-132.
- 60- Zarrouq, **SharhZarrouqAlaMatn A-Rishalah**, edit. 1, p. 839.
- 61- Zarrouq, **SharhZarrouqAlaMatn A-Rishalah**, edit. 1, p. 840.
- 62-Al-Khateeb A-Sherbini, **Moghni Al-Mohtaj**, edit. 1, vol. 5, p. 295.
- 63- Al-Qaderi Al-Hanafi, **Takmelat Al-Bahr A-RaeqSharhKanz A-Daqaeq**, edit. 1, vol. 9, p. 75.
- 64- Al-Qaderi Al-Hanafi, **Takmelat Al-Bahr A-RaeqSharhKanz A-Daqaeq**, edit. 1, vol. 9, p. 78.
- 65- 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 legwith 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

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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-Mohtajfe 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.

66- Ibn Dowwean, **Manar A-Sabeel**, edit. 1, vol. 2, p. 315, p. 319.

67- 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.

68- The fine penalty means that the sentenced has to pay a particular sum of money through administrative ways. For further detail, refer to: Mamoun Salamah, **Qanon Al-Okobat; Al-Qesm Al-Aam**, edition 3, p. 663, Mohamed Zakki Abu-Amer, **Qanon Al-Okobat; Al-Qesm Al-Aam**, no edition, p. 521 and Raouf Ebeid, **Mabadei Al-Qesm Al-A'm Men A-Tashree' Al-Iqabi**, edit. 4, p. 865.

69- Surat An-Nisaa (The Women) IV, verse 65.

70- Surat Al-Ma'idah (The Table Spread with Food) V, verse 44.

71- Surat Al-Ma'idah (The Table Spread with Food) V, verse 50.

72- Surat An-Nisaa (The Women) IV, verse 105.

73- Surat A-Noor (The Light), verse 51.

74- Article (289) of the Algerian Penal Code prescribes that " Whosoever injures another by mistake and this injury causes a disability that stops from work for a period more than three months shall receive imprisonment for a period from two months to two years and a fine from 500 Algerian dinars to 15,000 dinars or by only one of these two penalties".

75- Mohamed Saleem Al-Awwa, **Fe Usul A-Nezam Al-Jinaei Al-Islami, A Comparative Study**, no edit., p. 253.

76- 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-Okobafe A-Tashrieh Al-Islami**, no edit., p. 53.