

Penalty of Semi-Intentional Killing Offence according to the Egyptian and Algerian Penal Law, an Evaluative Study from an Islamic Viewpoint

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Summary:

The study aimed at evaluating the penalty of semi-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) imposes a compensation (blood-money) to be given to the deceased's family and an act of expiation as a penalty for those who proved committed of intentional killing felony; second, the Egyptian Penal Law imposes hard labor/imprisonment as an alternative penalty for this felony; third, the Algerian Criminal law imposes imprisonment as an alternative penalty for this felony; fourth, the penalties prescribed by both Egyptian and Algerian Laws contradict 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 and an act of expiation as a penalty for this crime in reply to what Islamic Law (Shari'a) requires.

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

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عقوبة جريمة القتل شبه العمد في قانون العقوبات المصري والجزائري؛

دراسة تقييمية في ضوء الشريعة الإسلامية

الملخص:

استهدفت الدراسة الحالية تقييم عقوبة جريمة القتل شبه العمد 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 التقييمي. وتمثلت أداة الدراسة في مسح الأدبيات المتعلقة بموضوع الدراسة. وأسفرت الدراسة عن العديد من النتائج أهمها: أنّ الشريعة الإسلامية أوجبت الدية والكفارة كعقوبة مقدرة لجريمة القتل شبه العمد - أنّ قانون العقوبات المصري عقوبة الأشغال الشاقة أو السجن كعقوبة لهذه الجريمة، وأوجب قانون العقوبات الجزائري عقوبة السجن المؤقت كعقوبة لهذه الجريمة، وهذا يخالف ما قرره الشريعة الإسلامية في هذا الشأن. وأوصت الدراسة المُقنّن الجنائي المصري والجزائري إلى ضرورة التدخل بالنص على الدية والكفارة كعقوبة لهذه الجريمة بما يتفق مع ما أوجبه الشريعة الإسلامية في هذا الخصوص.

الكلمات المفتاحية:

عقوبة جريمة القتل شبه العمد، الشريعة الإسلامية، قانون العقوبات.

Sanction du meurtre semi-intentionnel en droit pénal égyptien et algérien, une étude évaluative à la lumière de la loi Islamique

Résumé :

L'étude vise à évaluer la peine du crime de meurtre semi-intentionnel en droit pénal égyptien et algérien à la lumière de la loi islamique (Charia). L'étude est arrivée aux conclusions suivantes : premièrement : La loi islamique (Shari'a) impose une compensation à verser à la famille du défunt et un acte d'expiation comme peine pour ceux qui se sont avérés coupables d'un crime de meurtre intentionnel ; deuxièmement, la loi égyptienne impose des travaux forcés/emprisonnement comme peine alternative pour ce crime ; troisièmement, la loi pénale algérienne prévoit l'emprisonnement comme peine alternative pour ce crime ; quatrièmement, les peines prévues par les lois égyptienne et algérienne sont en contradiction avec ce que la loi islamique (chari'a) exige. L'étude a recommandé que les lois pénales égyptienne et algérienne adoptent une compensation à verser à la famille du défunt et un acte d'expiation comme peine pour ce crime en réponse à ce que la loi islamique (Charia) exige.

Mots-clés : peine d'infraction de meurtre semi-intentionnel, loi islamique (chari'a), droit pénal

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 proceed⁽⁴⁾:

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 Makkah⁽⁹⁾. The Scholars unanimously agree that killing without an acceptable reason is unacceptable ⁽¹⁰⁾.

Furthermore, Sharie'a, i. e. , the Islamic Law, considers killing by wrong is one of Akbar A-Kabaer⁽¹¹⁾ – i.e., the biggest sin excluding unbelief " ⁽¹²⁾. AnasIbn 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" ⁽¹³⁾.

Not only does Islam forbid killing, but it also imposes particular punishment for those who commit this felony.

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 semi-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 semi-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 semi-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 semi-intentional killing felony?
- 2- How does the Egyptian Penal Code punish for semi-intentional killing felony and to what extent does it conform with Islam teachings?
- 3- How does the Algerian Penal Code punish for semi-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 semi-intentional killing felony.
- 2- Investigating how the Egyptian Penal Code punishes for semi-intentional killing felony and the extent to which it conforms with Islam teachings.
- 3- Investigating how the Algerian Penal Code punishes for semi-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 semi-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

Semi-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⁽¹⁴⁾. 'Semi-intentional killing' phrase means that the killing has not been done on purpose⁽¹⁵⁾. In other words, 'semi-intentional killing' from a linguistic point of view means that although there has been an intention to hurt somebody, killing has not been done involuntarily⁽¹⁶⁾.

'Semi- intentional Killing' scholarly is a type of killing ⁽¹⁷⁾ in which someone hits another with a simple tool that does not usually cause death such as a whip, a stick, a small stone or his hand (wakz) ⁽¹⁸⁾ for the purpose of imposing discipline. In this type of aggression, killing is not done on purpose, but mistakenly committed ⁽¹⁹⁾. This type is like the intentional killing since the aggression done purposefully and is like the by-error killing as killing has been done by mistake ⁽²⁰⁾. That is, the perpetrator has the intention to beat the victim not to kill him/her ⁽²¹⁾. In this type, the tool used is very simple such as a lash or a stick and simply used away from sensitive parts of the body and in a way that does not usually cause death ⁽²²⁾.

In the light of this, it can be said that the semi- intentional killing is a Jinayah⁽²³⁾ on an innocent Muslim with a tool that does not usually cause death. According to this definition, it is clear that the semi-intentional killing differs from the intentional one in that the former does not mean killing whereas the latter means it. It also differs from the by-error killing in that the latter does not mean aggression but the former means it ⁽²⁴⁾.

Although the 'Semi- intentional Killing' has been explicitly defined in the Islamic Literature, neither the Egyptian nor the Algerian Criminal literatures put a precise definition to this term. It has been indirectly tackled in the text of Law. Article (236) of the Egyptian Penal Law for the year (2003) prescribes that: "Any person wounds, hits or gives another harmful substances and does not mean killing but his action results in the victim's death shall be punished by hard labor or imprisonment from three to seven years"⁽²⁵⁾. Article (264) –Amended- of the Algerian Penal Law for the year (2006) states that: "If purposeful beating or wounding leads to unintentional killing of the victim, the perpetrator shall be punished by interim imprisonment from ten to twenty years".

From these texts, it is obvious that the semi-intentional killing means that an action of aggression that is done purposefully not to kill someone but it results in his death. It differs from the intentional killing in that it does not mean killing whereas the latter is done to put an end to someone's life purposefully ⁽²⁶⁾ and may be perpetrated with premeditation ⁽²⁷⁾ and with malice aforethought ⁽²⁸⁾. It also differs from by-error killing in that the aggressive act is done intentionally although it does not mean killing but the in the case of by-error killing, the aggressive act is not done on purpose but by mistake.

From the comparison between the Islamic and secular definitions of semi-intentional killing, it is evident that the Islamic viewpoint is distinctive in that it does not concentrate only on the criminal purpose as it is the case with the secular laws, but it also sheds light on the tool used in the crime and how it is used. This closes the door in front of those who commit the intentional killing and make allegations that they do not mean killing to evade being convicted of intentional killing and go unpunished from the penalty of this crime.

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 Semi-intentional killing felony from the Viewpoint of Islam

Islam criminalizes and penalizes semi-intentional killing. It prescribes A-Dia⁽²⁹⁾ (blood money) and 'A-Kaffara'⁽³⁰⁾ (atonement) 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 accept the blood money or to forgive the killer. There is abundant evidence of the penalty of semi-intentional killing from Hadith and the unanimity of the Scholars as follows⁽³¹⁾;

A. Evidence from Hadith:

First Evidence:

Abu-Hureira, may Allah please him, narrated that "Two women from Hutheil⁽³²⁾ fought and one of them threw the other, who was pregnant, with a stone and killed her and her fetus (Al-Janeen)⁽³³⁾. 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 Aql⁽³⁴⁾ – 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 ('Al-Ghorra)⁽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⁾.

Second Evidence:

Ibn Abbas, may Allah please him and his father, reports that the Messenger of Allah, peace and blessings of Allah upon him, says, "Whoever is killed on purpose, shall have the right of retaliation (Kawad)⁽³⁸⁾. And whoever is killed mistakenly, shall have the right of blood money not retaliation⁽³⁹⁾. And whoever is 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⁽⁴⁰⁾ and his family has to be awarded blood money in damages ('Dia Moghalazza)⁽⁴¹⁾"⁽⁴²⁾. This Hadith evidences that semi-intentional killing necessitates blood money to be awarded to the victim's family in compensation⁽⁴³⁾.

Third Evidence:

The Messenger of Allah, peace and blessings of Allah upon him," Whosoever is killed semi-intentionally with a whip, a stick, his family has to be awarded one hundred camels in compensation⁽⁴⁴⁾"⁽⁴⁵⁾. His saying; "with a whip or a stick" means that the tool that is used for this semi-intentionally killing is not arranged for killing⁽⁴⁶⁾ and is not deliberately used in a way that causes killing, and this does not refer only to the whip or the stick but it includes any tool that is not arranged for killing⁽⁴⁷⁾. This Hadith also shows that the semi-intentional killing's prescribed penalty is compensatory blood money not retaliation⁽⁴⁸⁾.

Fourth 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," Whosoever is killed semi-intentionally, his family has to be awarded one hundred camels in compensation (Diamoghalazza) the same as the intentional killing's blood money but no right of retaliation"⁽⁴⁹⁾. This Hadith indicates that if a person has been killed semi-intentionally, he is to be awarded Aql – i. e., blood money, in compensation⁽⁵⁰⁾ and there is scholarly agreement that semi-intentional killing does not entail retaliation but it stipulates Diamoghalazza in compensation"⁽⁵¹⁾.

C. Evidence from the Consensus of Scholars:

There is complete unanimity that semi-intentional 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, "Semi-intentional killing requires expiation and harsh blood money"⁽⁵²⁾.

Al-Mawardi, may Allah have mercy on him, says, "The semi-intentional killing is like the intentional killing in that the aggression is done on purpose and it is like the by-error killing in that the killing is not intended. And the penalty of the semi-intentional killing is harsh blood money given to the family of the victim in compensation"⁽⁵³⁾.

Al-Kassani, may Allah have mercy on him, says, "The semi-intentional killing necessitates expiation and blood money in compensation ... and the blood money in the semi-intentional killing 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 ... 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"⁽⁵⁴⁾.

Al-Asfahani, may Allah have mercy on him, says, "In the semi-intentional killing, what is intended is the aggression itself not the killing and this aggression is done with a tool that does not cause killing in common. Thus,

retaliation is not considered as a penalty for this crime. Instead, blood money – on the part of the killer's family - is to be awarded in installments in a three-year –time" ⁽⁵⁵⁾.

Al-Merghanani, may Allah be merciful to him, says, " In the semi-intentional killing, the expiation on the part of the killer and the blood money on the part of his family are a must. The blood money – on the part of the killer's family - is to be awarded in installments in a three-year –time " ⁽⁵⁶⁾.

Ibn Qudamah, may Allah be merciful to him, says, "In the semi-intentional killing, what is used is small piece of wood, stone, ;Lakazahu⁽⁵⁷⁾ or any physical attack that does not cause death in common. The Scholars unanimously agree that the person who kills another in that way 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 ... the Scholars unanimously agree that a hundred adult camels – i. e. , blood money - has to be awarded by the semi-intentional killer's family to the victim's family in compensation" ⁽⁵⁸⁾. "And the killer's family has the right to award the blood money by installment in a period of three years" ⁽⁵⁹⁾. "And the expiation for this crime is to set free a Muslim slave whether the killer or the victim is a Muslim or a non-Muslim⁽⁶⁰⁾. 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" ⁽⁶¹⁾.

A-Tori, may Allah have mercy on him, says, " The expiation on the part of the killer and the blood money on the part of the killer's family are obligatory when a person is killed semi-intentionally. The blood money is prescribed to compensate for the lost life " ⁽⁶²⁾ "No retaliation is stipulated in this case" ⁽⁶³⁾. "There is unanimous agreement among the Scholars that blood money is obligatory in the case of semi-intentional killing" ⁽⁶⁴⁾. "It is also unanimously agreed that a hundred adult camels or what is equal is needed as blood money" ⁽⁶⁵⁾ "and this blood money is to be paid by 'Al-Aqela' ⁽⁶⁶⁾; the family of the killer's family" ⁽⁶⁷⁾.

Al-Harawi, may Allah be merciful to him, says, "The Scholars unanimously agree that the blood money that has to be awarded in the case of the semi-intentional killing is a hundred adult camels on the part of the killer's family ... and it is due in a three-year-time" ⁽⁶⁸⁾.

Al-Buhoti, may Allah be merciful to him, says, "The Companions – may Allah please them - unanimously agree that what is prescribed if a person is semi-intentionally killed not retaliation but blood money - that has to be awarded to the victim's family" ⁽⁶⁹⁾ and "this blood money is obligatory when a person is killed semi-intentionally to compensate for a lost life and to extinguish the indignation incurred in the victim's family's hearts because of taking his life" ⁽⁷⁰⁾

"and the expiation for this wrongdoing is to set free a Muslim slave and if unable, two consecutive months are to be fasted instead" ⁽⁷¹⁾.

IbnDowwean, may Allah be merciful to him, says, " Killing has three categories; first, intentional killing; second, semi-intentional killing; third, unintentional killing ... 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. This is supported by the Holy verse that says, (It is not for a believer to kill 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) ⁽⁷²⁾ " ⁽⁷³⁾"and the Scholars unanimously agree that it is 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" ⁽⁷⁴⁾.

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 semi-intentional killing whether the killer or the victim is a Muslim or a covenant 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. The victim's family has the right to accept the blood money and the right to forgive the killer for nothing as it is evidenced by the Holy Verse that says; (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) ⁽⁷⁵⁾. 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 Semi-intentional Killing Felony from the Viewpoint of the Egyptian Penal Law

The Egyptian Criminal Code criminalizes and penalizes semi-intentional killing. Article (236) of the Penal Code for the year 2003 prescribes that: "Whosoever wounds, beats or serves harmful substances and does not mean killing but his action causes it shall receive hard labor or imprisonment for a period from three to seven years" ⁽⁷⁶⁾.

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

- Hard Labor⁽⁷⁷⁾: for a period from three to seven years.
- Imprisonment⁽⁷⁸⁾: for a period from three to seven years.

In the light of this, it is evident that the punishment for the semi-intentional killing according to the Egyptian Penal Law is hard labor and imprisonment.

In spite of the importance of these two penalties for the crime of semi-intentional 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. It also breaks the Islamic Law because it does neither entitles the family of the victim the right to accept the compensatory blood money nor to pardon for nothing. 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"⁽⁷⁹⁾.Allah, exalted be He, says, "Whosoever does not judge according to What Allah has sent down are the unbelievers"⁽⁸⁰⁾.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?"⁽⁸¹⁾.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"⁽⁸²⁾.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"⁽⁸³⁾.

In addition, the hard labor and imprisonment penalties 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 hard labor and imprisonment neither expiation nor blood money as prescribed by Islam, they are considered to be unconstitutional.

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

Chapter III

The Penalty of Semi-intentional Killing Felony from the Viewpoint of the Algerian Penal Law

The Algerian Criminal Code criminalizes and penalizes semi-intentional killing. Article (264) of the 2006 Penal Code states that: " If the deliberate beating and wounding result in unintentional killing, the perpetrator shall receive provisional imprisonment for a period from ten to twenty years "

From the previous article, it is obvious that the Algerian Penal Code prescribes one penalty for the semi-intentional killing shown as follows;
- Provisional Imprisonment⁽⁸⁴⁾: for a period from ten to twenty years .

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

However, it is noticeable that the penalty of imprisonment gets hardened in comparison with the Egyptian Penal Law. The minimum of the penalty of imprisonment becomes ten years whereas it is only three with the case of the Egyptian equivalent. The maximum of the penalty of imprisonment becomes twenty years whereas it is only seven with the case of the Egyptian equivalent. Although the Algerian Penal Code toughens the penalty of this crime by doubling its minimum and maximum compared to its Egyptian equivalent, it breaks Islam teachings because Islam does not penalize the guilty of this crime by imprisoning, but it prescribes expiation on his part and blood money on his family part to be awarded to the victim's family. It also empowers the victim's family the right to accept the blood money or to pardon the killer freely.

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 article, must abide by what Islam states. Since these article imposes the penalty of imprisonment on the guilty's part, neither expiating nor 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 following⁽⁸⁵⁾;

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 ⁽⁸⁶⁾.

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 rate of killing crimes 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 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 semi-intentional killing.

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

Third; the Egyptian Penal Law imposes an alternative penalty. It prescribes the penalty of hard labor and imprisonment on the part of the perpetrator. This breaks the punishment codes of Islam.

Fourth; the Algerian Penal Law also imposes an alternative penalty as well. It prescribes the penalty of imprisonment on the person who is proved guilty of semi-intentional 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 semi-intentional killing 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 (236) of the 2003 Egyptian Penal Law and Articles (264) of the 2006 Algerian Penal Law should be amended as follows:

- Whosoever proved guilty of semi-intentional 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 his family has to award one hundred adult camels or what is equal as compensatory blood-money to the victim's family.

Notes

- 1) Surat Al-Imran (The Family of Imran) III, verse: 102.
- 2) Surat An-Nisaa (The Women) IV, verse: 1.
- 3) Surat Al-Ahzab (The Confederates) XXXIII, verse: 70.
- 4) Al-Albany, Sahih Al-TargheebwaTarheeb, edit. 1, p.3.
- 5) The rule in Islam is that a Muslim is not to be killed unless he/Or/she is convicted of intentional killing, adultery or apostasy. This is proved by the Hadith that says: " A Muslim who professes that there is no God but Allah and Muhammad is the Messenger of Allah is not to be killed unless being convicted of intentional killing, adultery or apostasy. IbnHajjar says: "This Hadith shows that the killer of an innocent Muslim must be killed unless the family pardons him". Refer to: Al-Bukhari, Sahih Al-Bukhari, edit. 1, Book of Blood Money, a killer is permissible to be killed, Hadith no. (6878), Muslim, Sahih Muslim, edit. 2, Book of Qasama, Chapter of what makes a Muslim permissible to be killed, Hadth 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) IbnQudamah, Al-Moghni, no edition, vol. 8, p. 359.
- 11) '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.
- 12) IbnQadiShuhbah, Bediaat Al-MohtajfeSharh Al-Minhaj, edit. 1, vol. 4, p. 7.
- 13) 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.
- 14) Al-Faiuomi, Al-Mesbah Al-Munir, edit. 2, p.490.
- 15) IbnManzur, Lisan Al-Arab, edit. 3, vol. 3, p. 503.
- 16) Al-Faiuomi, Al-Mesbah Al-Munir, edit. 2, p.428.
- 17) 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-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.

18) 'Al-Waqq' means to hit someone with one's fist. Refer to: Ibn Manzur, Lisan Al-Arab, edit. 3, vol. 5, p. 430.

19) Ibn Qudamah, Al-Moghni, no edition, vol. 8, p. 371.

20) Al-Mawardi, Al-Hawi, edit. 1, vol. 12, pp. 210-211.

21) Zarrouq, Sharh Zarrouq Ala Matn A-Rishalah, edit. 1, p. 834.

22) Ibn Qadi Shuhbah, Bediat Al-Mohtajfe Sharh Al-Minhaj, edit. 1, vol. 4, pp. 7-9.

23) '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.

24) Ibn Qadi Shuhbah, Bediat Al-Mohtajfe Sharh Al-Minhaj, edit. 1, vol. 4, pp. 7-9.

25) Algerian Penal Law, Article (254).

26) Algerian Penal Law, Article (255).

27) 'Premeditation' means that the guilty has the determination to cause hurt to someone he knows well or someone he comes up with, in particular, in the scene of the crime. Refer to: The Algerian Penal Law, Article (256).

28) 'With malice aforethought' means that the guilty has been waiting his victim for a short or a long time somewhere in order to kill or injure him. Refer to: The Algerian Penal Law, Article (257).

29) '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.

30) 'A-Kaffara' is atonement 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 and Ibn Katheer, Tafseer Al-Qura'an Al-Azeem, edit. 1, vol. 13, p. 179-181.

31) Ibn Qudamah, Al-Moghni, no edition, vol. 8, p. 367.

32) Huthail is an Arab Tribe. Refer to: Ibn Hajjar. Fath Al-Bari, edit. 1, vol. 22, p. 134.

33) 'Al-Janeen' means 'the embryo'. Refer to: Ibn Hajjar. Fath Al-Bari, edit. 1, vol. 22, p. 131.

34) 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-Mohtajfe Sharh Al-Minhaj*, edit. 1, vol. 4, p. 119 and Ibn Hajjar. *Fath Al-Bari*, edit. 1, vol. 22, p. 132.

35) 'Al-Ghorra' means the dia (blood money) that has to be paid in compensation for killing an embryo. Refer to: Al-Qady Iad, *Ikmal Al-Mo'llem be Fawaed Muslim*, edit. 1, vol. 5, p. 489, A-Nawawi, *Sahih Muslim Besharh Al-Nawawy*, no edition, p. 1078 and Ibn Hajjar. *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) 'Kawad' means that intentional killing without a serious case entails 'retaliation'. Refer: Al-Kasani, *Badae'h A-Sanaeh*, edit. 2, vol. 7, p. 345, Al-Harawi, *Merqat Al-Mafateeh*, edit. 1, vol. 6, p. 3383 and A-Siddiqi Al-Azeem Abadi, *Oun Al-Ma'boud*, edit. 1, vol. 12, p. 183.

39) This means that unintentional killing entails blood money u compensation not retaliation. Refer to: A-Siddiqi Al-Azeem Abadi, *Oun Al-Ma'boud*, edit. 1, vol. 1, p. 2108.

40) This means that a person is killed in enigmatic circumstances. That is, why and how he is killed and who killed him is unknown. Refer to: A-Siddiqi Al-Azeem Abadi, *Oun Al-Ma'boud*, edit. 1, vol. 1, p. 2108.

41) 'Dia Moghalazza' means a harsh blood money. This harsh blood money is one hundred adult camels divided into three parts; a part of thirty Heqqa (a female camel aged four), a part of thirty Bint Laboun (a female camel aged three) and a part of forty Khalefa (pregnant female camels). This is proved by the Hadith reported by Othman Ib Affan and Zaid Ibn Thabit, may Allah bless them, saying; "'Dia Moghalazza' (a harsh blood money). Is one hundred adult camels divided into three parts; a part of forty Khalefa, a part of thirty and a part of thirty Bint Laboun. Narrated by Abu-Dawoud and Al-Albany said that this Hadith is authentic. Refer to: Abu-Dawoud, *Sunan Abi-Dawoud*, edit. 2, vol. 4, Book of Blood Money, Chapter of the Blood Money of the semi-intentional killing, Hadith no. (4554), p. 187 and Al-Albany, *Sahih Sunan Abi-Dawoud*, edit. 1, vol. 3, p. 100.

42) Narrated by A-Darqutni. Refer to: A-Darqutni, *Sunan A-Darqutni*, edit. 1, vol. 4, Book of Hudod (Prescribed Penalties), Diaat (Blood money) and so on, Hadith no (3138), p. 83.

43) A-Sana'ani, *Subul A-Salam*, no edition, vol. 3, p. 366.

44) This means that semi-intentional killing entails one hundred adult camels as compensatory blood money. Refer to: A-Sindi, *Hashiat A-Sindi Alalbn Maja*, edit. 2, vol. 2, p. 138.

45) Narrated by Abu-Dawoud and Al-Albany said that this Hadith is authentic Refer to: Abu-Dawoud, *Sunan Abi-Dawoud*, edit. 2, vol. 4, Book of Blood Money, Chapter of the Blood Money of the semi-intentional killing, Hadith no. (4554), p. 187 and Al-Albany, *Sahih Sunan Abi-Dawoud*, edit. 1, vol. 3, p. 100.

46) A-Sindi, *Hashiat A-Sindi Ala Sunan A-Nasaei*, edit. 2, vol. 8, p. 41.

47) Al-Merghanani, *Al-Hidiah*, no edition, vol. 4, p. 442.

48) A-Sindi, *Hashiat A-Sindi Ala Sunan A-Nasaei*, edit. 2, vol. 8, p. 41.

49) Narrated by A-Darqutni. Refer to: A-Darqutni, *Sunan A-Darqutni*, edit. 1, Book of Hudud and Diaat, Hadith no. 3144, p. 85..

50) Al-Mubarakfori, (no date). *Tohfat Al-Ahwezi Be-Sharh Gamie A-Termezi*, no edition, vol. 4, p. 535.

- 51) A-Tory, Takmelat Al-Bahr A-RaeqSharhKanz A-Daqaq, edit. 2, vol. 8, p. 373.
- 52) Al-Qaddori, Mokhtasar Al-Qaddori, edit. 1, p. 187.
- 53) Al-Mawardi, Al-Hawy Al-KabberfeMazahab Al-Imam Shafie, edit 1, vol. 12, pp. 210-211.
- 54) Al-Kasani, Badae'h A-Sanaeh, edit. 2, vol. 7, p. 355.
- 55) Al-Asfahani, MatnAbiShuga'a, no edition, vol. 1, p. 37..
- 56) Al-Merghanani, Al-Hidiah, no edition, vol.4, p.442.
- 57) 'Lakazahu' means to hit someone with his fist. Refer to, IbnManzur, Lisan Al-Arab, edit. 3, vol. 5, p. 406.
- 58) IbnQudamah, Al-Moghni, no edition, vol. 8, p.371.
- 59) IbnQudamah, Al-Moghni, no edition, vol. 8, p. 367.
- 60) IbnQudamah, Al-Moghni, no edition, vol. 8, p.516.
- 61) IbnQudamah, Al-Moghni, no edition, vol. 8, p.517.
- 62) Al-Qaddori, Mokhtasar Al-Qaddori, edit. 1, p.187.
- 63) A-Nawawi, Rawdat A-TalebeenwaOmdat Al-Mufteen,, edit.3, vol. 9, p. 124..
- 64) Al-Khateeb A-Sherbini, Moghni Al-Mohtaj, edit. 1, vol. 5, p. 295.
- 65) Zarrouq, SharhZarrouqAlaMatn A-Rishalah, edit. 1, p.840.
- 66) 'Al-Aqela' are the by-mistake injurer's adult rich and sane male relatives to his father who are to pay the blood money to victim in compensation. Refer to: Al-Kheraqi, Matn Al-Kheraqi, edit. 1, p. 127, IbnQadiShuhbah, Bediat Al-MohtajfeSharh Al-Minhaj, edit. 1, vol. 4, p. 119 and IbnHajjar. Fath Al-Bari, edit. 1, vol. 22, p. 137.
- 67) Al-Qortoby, Al-Gamie' Le-Ahkam Al-Qura'n, edit.2, vol.5,p. 331.
- 68) Al-Harawi, Merqat Al-Mafateeh, edit. 1, vol. 6, p. 3383..
- 69) Al-Buhoti, KashaafAl-Qina;a, no edition, vol. 5,pp. 504-5-5..
- 70) Al-Qaddori, Mokhtasar Al-Qaddori, edit. 1, p.75.
- 71) Al-Qaddori, Mokhtasar Al-Qaddori, edit. 1, p. 75.
- 72) Surat An-Nisaa (The Women) IV, verse 65.
- 73) IbnDowwean, Manar A-Sabeel, edit1, vol. 2, p. 345.
- 74) IbnHajjar. Fath Al-Bari, edit. 1, vol. 22, p.131-132.
- 75) Surat An-Nisaa (The Women) IV, verse 65.
- 76) It is noteworthy that those who are proved to have committed killing for the cause of defense for one's or others' soul, family, property are to be exempted from punishment. Article (245) prescribes that: "No penalty is passed on any person is proved to kill or injure someone else to defend himself, his property, others or others' property".
- 77) Hard Labor is a harsh penalty by which the convicted has to do arduous jobs such as gardening, land reclaiming, building, cleaning, laundry, quarrying and stevedoring all the time he has to spend in prison (Refer to Articles 14, 15 and 43 of the Egyptian Penal Law). However, convicted old people of sixty or more and women are exempt from doing these harsh jobs.
- Hard Labor penalty has two categories;
- First; Life Hard Labor; According to this penalty, the convicted is do harsh all through his life in prison and this penalty is stated only for felonies.
- Second; Provisional Hard Labor; This penalty has a minimum of three years and a maximum of fifteen years. Refer to: MamounSalamah, Qanon Al-Okobat; Al-Qesm Al-Aam, edition 3, pp. 642-644 and Ali Rashed, Al-Qanun Al-Jia'ee, Al-MadkhalwaUsul A-Nazeria Al-A'ma, edit. 2, pp. 569-571.
- 78) 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.
- 79) Surat An-Nisaa (The Women) IV, verse 65.
- 80) Surat Al-Ma'idah (The Table Spread with Food) V, verse 44.
- 81) Surat Al-Ma'idah (The Table Spread with Food) V, verse 50.
- 82) Surat An-Nisaa (The Women) IV, verse 105.
- 83) Surat A-Noor (The Light), verse 51.
- 84) 'Provisional Imprisonment is one of the main penalties of felonies. This penalty ranges from three to no more than fifteen years except for certain cases stated by law. Refer to: Mohamed Zakki Abu-Amer, Qanon Al-Okobat; Al-Qesm Al-Aam, no edition, pp. 505-508.
- 85) Mohamed Saleem Al-Awwa, Fe Usul A-Nezam Al-Jinaei Al-Islami, A Comparative Study, no edit., p. 253.
- 86) 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.