

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

By

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Abstract

The study aimed at evaluating the penalty of injuring by mistake offence 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 victim as a penalty for those who proved committed of injuring by mistake offence; second, the Egyptian and Algerian Criminal laws impose imprisonment a fine as 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 a

compensation (blood-money) to be given to the victim as a penalty for this crime in reply to what Islamic Law (Shari'a) requires.

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

ملخص

عقوبة الجناية خطأ على ما دون النفس في قانون العقوبات المصري والجزائري:

دراسة تقويمية في ضوء الشريعة الإسلامية

استهدفت الدراسة الحالية تقييم عقوبة الجناية خطأ على ما دون النفس 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 التقويبي. وتمثلت أداة الدراسة في مسح الأدبيات المتعلقة بموضوع الدراسة. وأسفرت الدراسة عن العديد من النتائج أهمها: أنَّ الشريعة الإسلامية أوجبت الدية كاملة أو بعضها وفقاً لجسامة الخطأ- أنَّ قانون العقوبات المصري والجزائري الحبس والغرامة كعقوبة لهذه الجريمة، وهذا يخالف ما قرره الشريعة الإسلامية في هذا الشأن. وأوصت الدراسة المُقيِّن الجنائي المصري والجزائري إلى ضرورة التدخل بالنص على إيجاب الدية كاملة أو بعضها وفقاً لحجم الخطأ كعقوبة لهذه الجريمة بما يتفق مع ما أوجبه الشريعة الإسلامية في هذا الخصوص. الكلمات المفتاحية: عقوبة الجناية خطأ على ما دون النفس، 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 proceed ⁽⁴⁾:

Islam accentuates safeguarding souls. That is why, it forbids all forms of hurt to the innocent ⁽⁵⁾. 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" ⁽⁶⁾. This Hadith intensifies that people's blood is as sacred as the Day of Sacrifice, the Month of Pilgrimage and the Sanctuary of Makkah ⁽⁷⁾.

Islam not only forbids by-mistake injuring, but it also imposes particular punishment for those who commit this offence which is called the prescribed penalty of by-mistake injuring.

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 injurer 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 injuring 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 by-mistake injuring offence 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 by-mistake injuring offence?
- 2- How does the Egyptian Penal Code punishes for by-mistake injuring offence and to what extent does it conform with Islam teachings?
- 3- How does the Algerian Penal Code punishes for by-mistake injuring offence 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 by-mistake injuring offence.
- 2- Investigating how the Egyptian Penal Code punishes for by-mistake injuring offence and the extent to which it conforms with Islam teachings.
- 3- Investigating how the Algerian Penal Code punishes for by-mistake injuring offence 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 injuring offence . .

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 Injuring:

Injuring means physical hurting that inflicts the human body ⁽⁸⁾. The phrase "by mistake" means that this hurt has not been done on purpose⁽⁹⁾.

The by – mistake injuring offence is scholarly named as Al-Jinaya by mistake on the parts of the human body ⁽¹⁰⁾. This offence comprises four sub-categories as follows;

A- Ibanah Al-Atraf ⁽¹¹⁾: such as maiming the hand, the leg, the finger, the nail, the nose, the tongue, the penis, Al-Onthaiyan ⁽¹²⁾, the ear, the lip, Al-Ashfar ⁽¹³⁾, the eyelids, gouging out the eyes, extracting or breaking teeth or unwilling shaving off the hair, the beard, the eyebrows or the moustasche.

B- Impairing the function of the body limbs: such as impairing the function of the hearing, the sight, the smell, the taste, the speech, the ability of copulation, the ability of giving birth, the ability of retaliating, moving or reasoning or deforming the color of the teeth.

C- A-Shejaj ⁽¹⁴⁾: such as Al-Kharesa – i. e., an injury that cuts the skin but it does not make it bleed, A-Dami'a – i.e., an injury that cuts the skin but it does not make it bleed, A-Damia – i.e., an injury that cuts the skin and makes it bleed, Al-Badi'a – an injury that cuts the flesh, Al-Motalahema – an injury that cuts the flesh more than Al-Badi'a, A-Simhaq ⁽¹⁵⁾ – an injury that that cuts the flesh more than Al-

Motalahema but does not cut the thin tissue that is around the bone, Al-Modeha – i.e., an injury that reaches the bones of the body, Al-Hashema – that is, an injury in which the bones are broken, Al-Monnaqela – that is, an injury that breaks displaces the bones of the body or Al-Damegha (Al-Ma'mouma) - that is, the injury is so severe that it cuts the cortex.

D- Al- Jirah ⁽¹⁶⁾: this category includes two subcategories;

I. Jaefa – i.e., an injury that is so serious that it penetrates the chest, the backbone, the abdomen, the flanks, what is between the testicles or the anus.

II. Non-Jaefa – i. e., an injury that is so serious that it penetrates the hands, the legs, the neck or the throat ⁽¹⁷⁾.

In the light of this, it is clear that the by-mistake injuring is unintentional hurt that is inflicted on the human's body parts.

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 Injuring Offence from the Viewpoint of Islam

Islam criminalizes and penalizes injuring by mistake. It prescribes A-Dia ⁽¹⁸⁾ (blood money) on the part of the guilty to be awarded to the victim in compensation. There is abundant evidence of the penalty of blood money from the Qur'an, Hadith and the unanimity of the Scholars as follows ⁽¹⁹⁾;

I. Evidence from the Holy Book:

Allah, exalted be He, says, (We have written for them a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds equal retaliation, but whosoever forgives it as a freewill offering, it will be an expiation for him. Whosoever does not judge according to what Allah sent down are the harm doers) ⁽²⁰⁾. Al-Qurtobi, may Allah be merciful to him, says, " His saying, exalted be He, (An eye for an eye) means that it is permissible for the victim to retaliate if the crime has been done purposefully. But if the crime has been done by mistake, he is to be awarded blood money for each organ he loses. For example; if a person loses his nose by mistake, he is to be awarded blood money. This is evidenced by the Hadith that says, (Blood money is due if someone's nose is lost ⁽²¹⁾ by mistake) ⁽²²⁾. One more example is the tongue. If somebody loses his tongue mistakenly, he is to be awarded blood money in compensation. Our Prophet, peace and blessings of Allah upon him says, (If a tongue is mistakenly lost, blood money is to be awarded to the victim in damages) ⁽²³⁾. Similarly, if a tooth is mistakenly lost, five adult camels are due in compensation. Our Prophet, peace and blessings of Allah upon him says, (Five camels are the blood money that has to be awarded to the person who loses a tooth by mistake) ⁽²⁴⁾. Ibn Al-Munther says, 'All Scholars unanimously agree that blood money is obligatory as a compensation for by-mistake injuries as it is for by-mistake killing' ⁽²⁵⁾.

II. Evidence from Hadith:

First 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, judged that "If a nose is wholly lost, the victim is to be awarded full blood money, but if a part of it is lost, the victim is to be awarded only half of the Aql ⁽²⁶⁾ – i.e, fifty adult camels, its equal in gold or wariq ⁽²⁷⁾, a hundred adult cows or a thousand adult sheep. If a hand is lost, only half of the Aql is due. If a leg is lost, only half of the Aql is due too.

If the injury is Ma'mouma - that is, the injury is so severe that it cuts the cortex, one third of the Aql is due – that is, thirty three adult camels, its equal in gold, silver, cows or sheep. If it is Jaefa – i.e., the injury that is so serious that it cuts the abdomen, the victim is to be awarded the same as Ma'mouma. If it is one finger or more that are lost, the victim is to be awarded ten adult camels for each. If it is a tooth or more, the victim is to be awarded five adult camels for each in compensation" ⁽²⁸⁾. A-Siddeqi Abadi, may Allah be merciful to him, says, " This Hadith shows that a compensation is to be awarded to the victim who has been injured by mistake and this compensation varies according to the severity of the injury" ⁽²⁹⁾. In other words, blood money is mandatory if a person is mistakenly injured ⁽³⁰⁾.

Second Evidence:

Mohamed Ibn Hazm said that his father reported that his grandfather narrated that the Messenger of Allah, peace and blessings of Allah upon him, wrote a book to the people in Yemen telling them the obligatory and voluntary observances, and the amounts of blood money, and he sent this book with Amru Ibn Hazm. This book told the people in Yemen that " If a person is mistakenly killed, a hundred adult camels are to be awarded to his family. If a nose, a tongue, the two lips, the two testicles, the penis, the Sulp ⁽³¹⁾, the victim is to be awarded full Aql (blood money) for each. If it is the two eyes, the victim is to be awarded full Aql (blood money). If it is only one leg, a half of the Aql (blood money) is to be awarded. If it is Ma'mouma or Jaefa, a third of the Aql (blood money) is to be awarded for each. If it is Monnaqela – that is, an injury that breaks displaces the bones of the body, fifteen adult camels are to be awarded. If it is a finger, a toe or more, ten adult camels are to be awarded for each. If it is a tooth or more, five adult camels are to be awarded for each. If it is Modeha – i.e., an injury that reaches the bones of the body, five adult camels are to be awarded" ⁽³²⁾. A-Sindi, may Allah be merciful to him, says, " This Hadith shows that

the Aql – i.e., blood money, is to be awarded to the victim who has been mistakenly injured and this blood money differs according to the gravity of the injury" ⁽³³⁾. Ibn Qudamah, may Allah have mercy upon him, says, " Ibn Abd Al-Barr narrated this Hadith and said, ' The Scholars are knowledgeable about this book which was sent by Amru Ibn Hazm to the people of Yemen and most of them agree with what is in it" ⁽³⁴⁾. This Hadith is evidence that blood money is compulsory in case of by-mistake injury ⁽³⁵⁾.

III. Evidence from the Consensus of Scholars:

There is complete unanimity that the by-mistake injury requires blood money to be awarded to the victim in compensation. This unanimity is reported by many Scholars.

Al-Qaddori, may Allah have mercy on him, says, " If any whole organ of the human body such as Al-Marin ⁽³⁶⁾, the tongue, the reason, the beard, the hair, the ears, the eyebrows, the eyes, the hands, the legs, the lips and the woman's breasts have been lost by mistake, full Aql (blood money) is to be awarded to the victim for each. If it is only a half of the previous organs, a half of the Aql (blood money) is required. If it is the eyelids, a half of the Aql (blood money) is obligatory. If it is a finger, a toe or more, one tenth of the Aql (blood money) is mandatory. If it is a joint of a three – joint -finger, a three-joint- toe , one third of the Aql (blood money) of the finger or the toe is required. If it is a joint of a two-joint- finger, a two-joint-toe , a half of the Aql (blood money) of the finger or the toe is required. If it is a tooth or more, five adult camels are to be awarded in compensation for each. If an organ is injured by mistake and grows non-functioning – e.g. the two hands go paralyzed or the two eyes go blind, a full Aql (blood money) is required. If it is only a half of the organ that grows non-functioning – e.g. only one hand is paralyzed or one eye goes blind, a half of the Aql (blood money) is required. If it is a Modeha, one fifth of the Aql is required. If it is Hashema – that is, an injury in which the bones are broken, one tenth of the Aql is needed. If it is Monnaqela, one tenth and one fifth of the Aql are essential. If it is a Ma'mouma, one third of the Aql is required. If it is Jaefa, one third of the Aql is

required. If it is all the fingers of the one hand, a half of the Aql is required. If it is all the fingers of the one hand as well as the palm, a half of the Aql is required. If it is all the fingers of the one hand, the palm as well as half of A-Sa'ed⁽³⁷⁾, the palm is required a half of the Aql and the other parts require Hokomah Adl⁽³⁸⁾. If it is an extra finger, Hokomah Adl is required. If it is a child's eye, tongue or penis, Hokomah Adl is needed. If a person is mistakenly injured and lost the ability to reason or his hair, the Arsh⁽³⁹⁾ of Modeha is essential. And if he lost the ability of hearing, sight or speech, the Arsh of Modeha and the Aql are to be awarded"⁽⁴⁰⁾. As a whole, if a person mistakenly loses a whole body organ or its functioning, he is to be awarded full blood money in compensation"⁽⁴¹⁾.

Ibn Battal, may Allah be merciful to him, says, " Most Scholars agree that if a person loses a tooth or more by mistake, he is to be awarded five adult camels for each in compensation "⁽⁴²⁾ and " the Scholars unanimously agree that if a person loses a hand, he is to be awarded a half of the Aql – i.e., blood money, and the blood money of the fingers and the toes is the same"⁽⁴³⁾.

Al-Kasani, may Allah be merciful to him, says, " If someone is injured by mistake, he is to be awarded blood money in compensation"⁽⁴⁴⁾.

Al-Merghanani, may Allah have mercy on him, says, " The rule is that if somebody loses a whole body organ or its function⁽⁴⁵⁾, he has to be awarded a full Aql (blood money) in damages ... and this evidenced by the ruling of the Messenger of Allah, peace and blessings of Allah upon him, that a full Aql is to be awarded if someone loses his tongue or nose by mistake"⁽⁴⁶⁾.

Ibn Qudamah, may Allah be merciful to him, says, " All Scholars unanimously agree that the Aql (blood money) is obligatory in compensation for by- mistake injuries"⁽⁴⁷⁾ and "whosoever loses a one – part body organ – e.g. the nose, the tongue, the penis or the backbone, or its function by mistake, he has to be awarded full Aql in compensation. And whosoever loses a two-part body organ – e.g. the hands, the legs, the eyes, the ears, the nostrils, the lips, the breasts, the testicles, the buttocks , or its function, he / she has to be awarded full

Aql for the two parts of this organ and a half of the Aql for each part. In addition, whosoever loses a part of a four-part body organ - e.g. the eyelids and the eyelashes, by mistake, he is to be awarded a quarter of the Aql for each. And whosoever loses a part of a ten-part body organ - e.g. the fingers and the toes, by mistake, he is to be awarded one tenth of the Aql for each. And whosoever loses a part of a three-part body organ - e. g., the nostrils and the nasal septum, by mistake, he is to be awarded one third of the Aql for each. Too, if a person loses a tooth or more by mistake, he is to be awarded five adult camels for each in compensation " (48).

Al-Qurtobi, may Allah be merciful to him, says, "The Scholars unanimously agree that if the two eyes, the nose or the hearing has been lost by mistake, the victim is to be awarded a full Aql (blood money) in compensation for each ... and most Scholars agree that all the fingers and toes are equal in blood money and the teeth are equal too ... and the Scholars unanimously agree that A-Damia - i.e., an injury that cuts the skin and makes it bleed, A-Dami'a - i.e., an injury that cuts the skin but it does not make it bleed, Al-Badi'a - an injury that cuts the flesh, Al-Motalahema - an injury that cuts the flesh more than Al-Badi'a, and A-Simhaq - an injury that that cuts the flesh more than Al-Motalahema but does not cut the thin tissue that is around the bone, require an Arsh for each if the crime is done by mistake ... and the Scholars do not disagree that Al-Modeha requires five adult camels in compensation ... and the Scholars unanimously agree that Al-Ma'mouma requires one third of the Aql (blood money) ... and there is no disagreement that Al-Jaefa requires one of the Aql as well" (49).

Zarrouq, may Allah be merciful to him, reported that "The two hands, the two legs and the two eyes, the nose, the hearing, the ability to reason, the backbone, the two testicles, the penis, the tongue, the woman's two breasts and the one-eyed's sight require a full Aql (blood money) each if they are lost by mistake. If one hand, one leg or one eye is lost by mistake, the victim has to be awarded half of the Aql - i. e., blood money, in compensation. If the injury is a Modeha, five adult camels are to be awarded. If one loses a tooth or more, five adult

camels are to be awarded for each. A finger, a toe or more require ten adult camels in compensation for each if any of them lost by mistake. A fingertip requires three adult camels and one third in compensation if lost by mistake. A thumb's fingertip or more require five adult camels in damages for each if lost by mistake. If the injury is a Monnaqela, the victim is to be awarded ten adult camels and a half tenth in compensation. If it is a Ma'mouma or a Jaefa, a third of the Aql is required for each. If the injury is less than a Modeha, Hokoumah Adel is required. The guilty only pays less than one third the blood money and Al- Aqela⁽⁵⁰⁾ pays two thirds of the blood money"⁽⁵¹⁾.

Ibn Dowwean, may Allah have mercy on him, reported that "Whosoever loses a one – part body organ such as the nose, the tongue or the penis, he has to be awarded a full Aql (blood money) in compensation for each. And whosoever loses a two – part body organ such as the two hands, the two legs, the two eyes, the two ears, the two eyebrows, the two breasts or the two testicles, he is to be awarded a full Aql (blood money) for both parts of the organ and a half of the Aql for one part"⁽⁵²⁾.

Al-Khateeb A-Shereni, may Allah be merciful to him, says, "The Aql – i. e., blood money, is obligatory in case of by-mistake injury"⁽⁵³⁾.

As a whole, it is evident that all the evidence of Shari'a – i. e., the Islamic Law, emphasizes that blood money has to be awarded to the victim of the by – mistake injury in compensation for what he suffers. And this blood money is prescribed to alleviate the victim in part and to draw the guilty' s attention to be more cautious in the future⁽⁵⁴⁾. By this penalty, which is imposed by Allah, the All-Knowing who only knows and decides what is best for humans in this world and the world to come, by-mistake offences will be less and the whole society, individuals as well as groups, will be immunized against this kind of crime.

Chapter II

The Penalty of By-mistake Injuring Offence from the Viewpoint of the Egyptian Penal Law

The Egyptian Criminal Code criminalizes and penalizes injuring by mistake. Article (244) of this Code prescribes that: "Whosoever injures or causes to injure another due to being careless, unwise, incautious or being indifferent to the law and the regulations shall receive imprisonment ⁽⁵⁵⁾ for a period of no more than a year, a fine ⁽⁵⁶⁾ 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 no more than two years, a fine of no more than three hundred Egyptian pounds or by one of the two penalties if this crime results in a permanent disability to the victim, 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 if the crime resulted in injuring 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 five years".

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

- Imprisonment for a period of no more than a year and a fine of no more than two hundred Egyptian pounds.
- Imprisonment for a period of no more than a year.
- A fine of no more than two hundred Egyptian pounds.
- Imprisonment for a period of no more than two years and a fine of no more than three hundred Egyptian pounds.
- Imprisonment for a period of no more than two years.
- A fine of no more than three hundred Egyptian pounds.

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

In the light of this, it is evident that the punishment for the by-mistake injury 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 for a period of not more than two years and the fine not to be more than three hundred Egyptian pounds. This aggravating factor arises under the following circumstances;

- If this crime results in a permanent disability to the victim;
- 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 injury:

The penalty gets harder by making the imprisonment for a period of not more than two years if the crime resulted in injuring 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 not more than five years if the crime is accompanied by the two previous aggravating factors altogether.

In spite of this, by prescribing the penalty of imprisonment and fine for the crime of by- mistake injury, the Egyptian Penal Law breaks Islam

teachings because Islam prescribes blood money to be awarded to the victim 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" ⁽⁵⁷⁾. Allah, exalted be He, says, "Whosoever does not judge according to What Allah has sent down are the unbelievers" ⁽⁵⁸⁾. 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?" ⁽⁵⁹⁾. 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" ⁽⁶⁰⁾. 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" ⁽⁶¹⁾.

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 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 a fine not blood money as prescribed by Islam, they are considered to be unconstitutional.

Furthermore, the two penalties of imprisonment and the fine 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 Injuring Offence from the Viewpoint of the Algerian Penal Law

The Algerian Criminal Code criminalizes and penalizes by-mistake injury. Article (289) of this Code states 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". Article (290) of the same Code states that " The penalties prescribed in Articles (288) ⁽⁶²⁾ and (289) are to be doubled if the injurer 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 four penalties for the by-mistake injury shown as follows;

- Imprisonment from a period of two months to two years and fine from 500 Algerian dinars to 15,000 Algerian dinars.
- Imprisonment from a period of two months to two years.
- fine from 500 Algerian dinars to 15,000 Algerian dinars.
- Imprisonment from a period of four months to four years and fine from 1,000 Algerian dinars to 30,000 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 from four months to six years and the fine from 1,000 Algerian dinars to 30,000 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 fine as a penalty 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 the gravity of the mistake compared to its Egyptian equivalent, it neglects hardening the penalty in case of severity of the injury that is taken into consideration in the Egyptian Penal Code.

In addition, by prescribing the penalty of imprisonment and fine for the by-mistake injury 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 blood money on his part to be awarded to the victim.

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 fine on the guilty' s part, not awarding blood money to the victim 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⁽⁶³⁾;

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 ⁽⁶⁴⁾.

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 injury 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 a compensation (blood-money) to be given to the victim as a penalty for those who proved committed of injuring by mistake offence.

Second; the Egyptian Penal Law imposes an alternative penalty.

It prescribes the penalty of imprisonment and fine 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 fine on the person who is proved guilty of by-mistake injuring. 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 a compensation (blood-money) to be given to the victim as a penalty for those who proved committed of injuring by mistake offence . 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:

-Any person proved guilty of by – mistake injuring offence shall pay blood-money to the victim in compensation.

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-Targheeb wa Tarheeb**, edit. 1, p.3.
- 5) Ibn Hajjar. **Fath Al-Bari**, edit. 1, vol. 22, p. 36.
- 6) Narrated by Ibn Umar, may Allah please him and his father. Refer to, Al-Bukhari, **Sahih Al-Bukhari**, Book of Courtesy, Chapter of Love for the Cause of Allah, Hadith no. (5825) and Book of Pilgrimage, Chapter of the Sermon on the Days of Mina, Hadiths no (1700), (1701), (1702) and (1703), pp. 480-481.
- 7) Al-Kady Iad, **Ikmal Al-Mo'lem be Fawaed Muslim**, edit. 1, vol. 5, p. 483.
- 8) Al-Faiuomi, **Al-Mesbah Al-Munir**, edit. 2, p.112.
- 9) Al-Faiuomi, **Al-Mesbah Al-Munir**, edit. 2, p.174.
- 10) Some Scholars widen the definition of Al-Jinaya to include any kind of unlawful hurt against one's blood or wealth such as murdering, injuring, extortion and theft. Refer to: Al-Kasani, **Badae'h A-Sanaeh**, edit. 2, vol. 7, pp. 233-251, Al-Hoskofy, **A-Dorr Al-Mokhtar**, edit. 1, p. 697 and Al-Qaderi Al-Hanafi, **Takmelat Al-Bahr A-Raeq Sharh Kanz A-Daqaeq**, edit. 1, vol. 9, p. 2.
- 11) 'Ibanah Al-Atraf' means maiming the human body limbs. Refer to: A-Razi, **Mokhtar A-Sahah**, edit. 5, vol. 1, p.42.
- 12) 'Al-Onthaihan' means the testicles. Refer to: Al-Faiuomi, **Al-Mesbah Al-Munir**, edit. 2, p.25.
- 13) 'Al-Ashfar' means eye edges. Refer to: Al-Faiuomi, **Al-Mesbah Al-Munir**, edit. 2, p. 317.
- 14) 'A-Shejaj' means injuries on the face and the head. This is in comparison with 'al-Jiraha' that means injuries on the other parts of the bdy. Refer to: Al-Kasani, **Badae'h**

A-Sanaeh, edit. 2, vol. 7, p. 296 and Ibn Qudama. **Al-Moghni**, no edition, vol. 8, p. 367.

15) 'A-Semhaq' is soft tissue that covers the bones of the body. Refer to: Al-Qaddori, **Mokhtasar Al-Qaddori**, edit. 1, p. 189.

16) 'Al-Jirah' means the cuts. Refer to: Al-Kasani, **Badae'h A-Sanaeh**, edit. 2, vol. 7, p. 233, p. 296 and p. 325.

17) Al-Kasani, **Badae'h A-Sanaeh**, edit. 2, vol. 7, p. 296.

18) A-Dia is the blood money given to the victim or his family in compensation. In the case of by-mistake killing, the family of the victim has the right to be given full blood money that equals one hundred adult camels, one thousand gold dinars or ten thousand gold dirhams. It is noteworthy that if the blood money given in camel, twenty camels must be Ibnat Makhad, that is, they must be females at the age of two, twenty camels must be Ibnat Laboon, that is, they must be females at the age of three, twenty camels must be Ibn Laboon, that is, they must be males at the age of three, twenty camels must be Heqqa, that is, they must be females at the age of four and the last twenty must be Jatha'h, that is, they must be females at the age of five. Refer to: Al-Qaddori, **Mokhtasar Al-Qaddori**, edit. 1, p. 187, Zarrouq, **Sharh Zarrouq Ala Matn A-Rishalah**, edit. 1, pp. 839-840 and A-Siddiqi **Oun Al-Ma'boud**, edit.1, vol. 1, p. 2109.

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

20) Surat Al-Ma'idah (The Table Spread with Food) V, verse 45.

21) That is, if a person's nose is completely cut off. Refer to: A-Sindi, **Hashiat A-Sindi Ala Sunan A-Nasaei**, edit. 1, vol. 7, p. 428.

22) Narrated by Abu-Dawoud and A-Nasaei 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 Organs' Blood Money, Hadiths no. (4556). (4559), (4561), (4564) and (4566), pp. 571 and 572, A-Nasaei, **Sunan A-Nasaei**, edit.2, Book of Al-Qasama (Oaths of Not Being Killers), Chapter of Amru Ibn Hazm' Hadith of Blood Money, Hadith no. (4853), p. 654 and Al-Albany, **Sahih Sunan Abi-Dawoud**, edit. 1, vol. 3, pp. 105-106.

23) Narrated by Abu-Dawoud and A-Nasaei 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 Organs' Blood Money, Hadiths no. (4556). (4559), (4561), (4564) and (4566), pp. 571 and 572, A-Nasaei, **Sunan A-Nasaei**, edit.2, Book of Al-Qasama (Oaths of Not Being Killers), Chapter of Amru Ibn Hazm' Hadith of Blood Money, Hadith no. (4853), p. 654 and Al-Albany, **Sahih Sunan Abi-Dawoud**, edit. 1, vol. 3, pp. 105-106.

24) Narrated by Abu-Dawoud and A-Nasaei 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 Organs' Blood Money, Hadiths no. (4556). (4559), (4561), (4564) and (4566), pp. 571 and 572, A-Nasaei, **Sunan A-Nasaei**, edit.2, Book of Al-

Qasama (Oaths of Not Being Killers), Chapter of Amru Ibn Hazm' Hadith of Blood Money, Hadith no. (4853), p. 654 and Al-Albany, **Sahih Sunan Abi-Dawoud**, edit. 1, vol. 3, pp. 105-106.

25) Al-Qortoby, **Al-Gamie' Le-Ahkam Al-Qura'n**, edit.1, vol. 8, pp. 9-21.

26) 'Al-Aql' means blood money. Refer to: A-Siddiqi Al-Azeem Abadi, **Oun Al-Ma'boud**, edit. 1, vol. 1, p. 2108.

27) 'Al-Wariq' means silver. Refer to: A-Siddiqi Al-Azeem Abadi, **Oun Al-Ma'boud**, edit. 1, vol. 1, p. 2108.

28) 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 Organs' Blood Money, Hadith no. (4564), p. 571 and Al-Albany, **Sahih Sunan Abi-Dawoud**, edit. 1, vol. 3, pp. 105-106.

29) A-Siddiqi Al-Azeem Abadi, **Oun Al-Ma'boud**, edit. 1, vol. 1, p. 2116.

30) A-Siddiqi Al-Azeem Abadi, **Oun Al-Ma'boud**, edit. 1, vol. 1, p. 2116.

31) 'A-Sulp' means the backbone. Refer to: Al-Faiuomi, **Al-Mesbah Al-Munir**, edit. 2, p.345.

32) Narrated by A-Nasae and Al-Albany said that this Hadith is authentic. Refer to: A-Nasae, **Sunan A-Nasaei**, edit.2, Book of Al-Qasama (Oaths of Not Being Killers), Chapter of Amru Ibn Hazm' Hadith of Blood Money, Hadith no. (4853), p. 654 and Al-Albany, **Sahih Sunan Abi-Dawoud**, edit. 1, vol. 3, p. 306.

33) A-Sindi, **Hashiat A-Sindi Ala Sunan A-Nasaei**, edit. 1, vol. 7, p. 428.

34) Ibn Qudamah, **Al-Moghni**, no edition, vol. 8, p. 435.

35) Ibn Qudamah, **Al-Moghni**, no edition, vol. 8, p. 435.

36) 'Al-Marin' means the soft part of the nose. Refer to: Al-Merghanani, **Al-Hidiah**, edit. 1, vol. 8, p. 73.

37) 'A-Sa'ed' means the part of the human body that is between the hand and the elbow, that is, the forearm. Refer to: Al-Faiuomi, **Al-Mesbah Al-Munir**, edit. 2, p.277.

38) 'Hokomah Adl' means a group of honest experts are asked to assess how much the injury is and decide how much blood money is to be awarded to the victim in compensation. Refer to: Al-Kheraqi, **Matn Al-Kheraqi**, edit. 1, pp. 129-130 and Al-Qortoby, **Al-Gamie' Le-Ahkam Al-Qura'n**, edit.1, vol. 8, p. 33.

39) 'Al-Arsh' means the blood money. Refer to: Al-Faiuomi, **Al-Mesbah Al-Munir**, edit. 2, p. 12.

40) Al-Qaddori, **Mokhtasar Al-Qaddori**, edit. 1, pp. 187-188.

41) Al-Merghanani, **Al-Hidiah**, edit. 1, vol. 8, p. 73.

42) Ibn Battal, **Sharh Sahih Al-Bukhari**, edit. 2, vol. 8, p. 523.

43) Ibn Battal, **Sharh Sahih Al-Bukhari**, edit. 2, vol. 8, p. 524.

44) Al-Kasani, **Badae'h A-Sanaeh**, edit. 2, vol. 7, p. 302.

45) This means that if the organ injured by mistake is wholly or partly nonfunctioning, the blood money is not to be fully due in compensation. Experts will

be asked to estimate the gravity of the injury and decide how much blood money is to be awarded in damages. Refer to: Al-Merghanani, **Al-Hidiah**, edit. 1, vol. 8, p. 73.

46) Al-Merghanani, **Al-Hidiah**, edit. 1, vol. 8, p. 73.

47) Ibn Qudamah, **Al-Moghni**, no edition, vol. 8, p. 436.

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

49) Al-Qortoby, **Al-Gamie' Le-Ahkam Al-Qura'n**, edit.1, vol. 8, pp. 9-21.

50) '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, 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. 137.

51) Zarrouq, **Sharh Zarrouq Ala Matn A-Rishalah**, edit. 1, p. 1172.

52) Ibn Dowwean, **Manar A-Sabeel**, edit1, vol. 2, p. 345.

53) Al-Khateeb A-Sherbini, **Moghni Al-Mohtaj**, edit. 1, vol. 5, p. 295.

54) Al-Qaderi Al-Hanafi, **Takmelat Al-Bahr A-Raeq Sharh Kanz A-Daqaeq**, edit. 1, vol. 9, p. 75.

55) 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.

56) 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.

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

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

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

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

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

62) Article (288) of the Algerian Penal Code prescribes that " Whosoever kills or injures another by mistake shall receive a penalty from six months to three years and a fine from 1000 Algerian dinars to 20000 Algerian dinars".

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

64) 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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