



Evaluation of incentive position on intentional murder punishment determination in Iran's criminal law

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Abstract

Homicide and intentional homicide, in particular, is a heinous criminal phenomenon that deprives an individual of God's greatest blessing, life. This horrible act is mentioned and wholeheartedly condemned in the Holy Quran. Considering the sanctity of human life and the requisite laid out by Iran's Islamic Penal Code in its protection, Qisas (retaliation in kind) has been designated as the punishment for this criminal offense. Given the current existing cases of this nature in courts as well as the news of such incidents in the society, it's quite clear that criminals possess varying motives for committing such crimes, the existence of honor killings among homicide cases can serve as a testament in this matter. Consequently, based on criminological perspectives and the analysis conducted on the Islamic Penal Code, the present research concludes that the legislator has adopted a dual procedure in designating the punishment of Qisas for intentional homicide in the view of the motives influence. However, the decision-making authority has been left to the judge in designating the punishments of Taziri (Discretionary punishment) imprisonment.

Keywords: Intentional homicide, motive, intent, qisas, islamic penal code

Introduction

Homicide is a heinous criminal phenomenon that deprives an individual of God's greatest blessing, life. Therefore, death is the ultimate injury, and it is this finality of death that obligates us to consider it as the most severe injury that can be inflicted upon another and to recognize the person who inflicts it without any excuse or justification as the guiltiest of criminals. (Ashworth A., 2003: 256)

In like manner, it is articulated in the divine words of verse 32 of Surah Ma'idah in the Holy Quran "that whoever kills a person—unless it is for murder or corruption on earth—it is as if he killed the whole of mankind." With a touch of contemplation on this holy verse, it becomes evident that all humans are considered a single body and the members of society constitute the parts of this body. The murder of a person who is a part of this singular great body is in fact an attack on the collective social life of a society. Such an attacker and murderer is recognized as an outlaw and is not acknowledged by the Holy Quran as a member of society as he is in active conflict with society. In such a circumstance, his survival is in conflict with the continued life of the society thus he must be eliminated, as in Qisas, the continuation of social life is guaranteed.

From the perspective of the Holy Qur'an and that of society, violating one's right to life and depriving one of it, is the most reprehensible of behaviors and thus carries a severe punishment. Accordingly, the legislator has formulated punishment for the act of intentional Homicide in the Islamic Penal Code in order to preserve the lives of individuals.

Despite these strict measures against the perpetrators of intentional Homicide, sadly, news of intentional murders is heard in society, which leads to emotional distress. By reviewing the news of such incidents and the reports from the judicial authorities, it becomes evident that the crime of intentional murder in our society often occurs due to varying motives and reasons. Based on their motivation, sometimes the perpetrators may even consider it their right to take

another's life. It is certain that no criminal is born as a criminal, and all human beings are born with a pure nature. It is only after going through the early period of life that they may commit criminal acts as the behavior of people and their personality is the product of the unique conditions of their family, social and educational environment.

Thus, it seems that compiling a character file of criminals in advance can be effective in discovering their motivation to commit intentional homicide as penologists approach the effect of motivation from personal aspects with a different perspective and examine it as a precursor in the occurrence of the crime in order to prevent and eliminate effects caused by it.

This has advanced to the extent that presently, it is not possible to define the crime and determine and implement punishment without first considering various social, medical, psychological, etc. aspects. For this reason, it is paramount to identify and recognize the impact of motivation, which has mental and psychological origins and aspects.

Based on the aforementioned premises, the present research endeavors to investigate and answer the following questions:

- How do motive and intention differ when it comes to committing the crime of intentional homicide?
- What effect does motive have in determining punishment for the perpetrators of intentional homicide?

Elucidation of Concepts

It is necessary to explore the concepts of two terms, motive and intent so as to better examine the subject of the present research.

1. Motive

Motive is defined as cause, reason and what motivates someone to commit an action (Dehkhoda, 1995: 86). Also, in the definition of motivation in committing a crime, it has

been said: "The benefit or joy that encourages the criminal to commit a crime." (Seif 2002: 38) In addition to the above definitions, it can be argued that the potential internal inclination or tendency to respond to a specific situation or external incentive among the various situations and incentives available can be called Motive. (Shamlou, 2004: 103)

Therefore, motive can be considered one of the vital aspects of human life to the point where it can be argued that a person needs motivation to continue living, surviving, being active and even changing. Without motivation, human life will grow stagnant, cold and soulless. It can be articulated that the motive is the feeling, benefit or avoidance of loss that drives the criminal to commit the criminal act. The motive is born from the criminal's mind and is often self-conscious, therefore, it must be sought within the criminal. Hence, ascertaining the true motive of the perpetrator of intentional homicide is perpetually crucial and can play an effective role in the discovery, prosecution, justification and defining the nature of the crime. It can also help in evaluating the roots, preventing the crime and rehabilitating the criminals. Understanding the motivation of criminals connects us with the origin and factors that provide grounds for delinquency in society. Therefore, disregarding this important factor and relying solely on evidence to prove the guilt of the intentional murder perpetrator raises questions regarding "the penal justification of committing murder" using the "murderer's purpose".

2. Intent

Intent is defined as aim, goal and objective (Dehkhoda, 1995: 371), however, within the realm of law, intent consists of the two elements of intent and consent:

Intent is the execution of a decision made with resolve by an individual. It begins in the stage of imagination and perception, then the individual ponders on the possible benefits and harms in accordance with his/her material and spiritual needs (the stage of assessment, evaluation and consideration). Subsequently, the individual may acknowledge the necessity and benefit of the said action in his/her mind, becoming willing and eager to execute it (consent stage). In such a situation an individual could decide to execute the action which he/she consents to with resolve. (Emami, 2010: 109)

Hence, according to the above interpretation, it could be argued that in penal law, criminal intent consists of two elements as well: One is the knowledge of the perpetrator that his action or inaction is in contrast with the penal law, the second element is that the perpetrator seeks to actualize the criminal outcome. Many scholars have defined criminal intent as "the perpetrator's knowledge and understanding of violating the penal law. (Afrasiabi, 1997: 27)

In essence, intent is the purpose that is directly and immediately achieved for the individual harboring said intention. For example, in intentional homicide, killing another individual is the criminal intent of the perpetrator and is considered the cause of the murder. If death does not occur, the perpetrator will not be prosecuted for the crime of murder.

Therefore, the criminal intent, both general and specific, should be sought within the penal law, and accordingly, it has a singular, fixed concept in every crime. As an example, the general ill intent in all intentional homicides is the departure of the soul from the body (Legal death).

In accordance with the above-mentioned concepts, it is necessary to first examine the elements of the crime of intentional homicide in the following paragraph, and subsequently explore the place of motivation in determining its punishment.

Intentional Homicide and the Role of Motive in Determining its Punishment

1. Elements of the Offense of Intentional Homicide

The crime of intentional homicide is comprised of three elements: materials, spiritual and legal, which we will explore in the following order:

1.1. Legal Element

Article 290^[1] of the Islamic Penal Code has stated examples of intentional homicide without clearly defining it. However, due to the fact that penal law in Iran is derived from Fiqh (Islamic jurisprudence) fortunately, the definition of this concept is laid out in books written in the subject of Fiqh. As an example, Muhaqqiq al-Hilli, in his work "Sharia Al-Islam," states on this matter: "It is the intentional loss of the soul from the body (killing) of an innocent and adequate soul by an enemy." (Muhaqqiq al-Hilli 1408: 971) In the explanation of this phrase, it is stated that "loss" literally means to take out, and an "innocent soul", refers to a life which is not permissible to take. Penal jurists have defined intentional homicide as the taking away the right to live from a living individual by another individual. However, some believe that the term "without legal permission" should be added to the definition. As long as someone's life is taken away in accordance with the law, it is excluded from the scope of the aforementioned definition. Moreover, some jurists have proposed the following definition for homicide or intentional homicide in different legal systems: "Intentional homicide is the intentional and conscious behavior of a human being without legal authorization in a way that leads to the death of another human being." (Goldouzian, 2003: 109)

1.2. The Material Element

According to the text of Article 290 of the Islamic Penal Code, the existence of a living person, the previous life of the aggravated party, the material act of intentional homicide, which transpires in the form of positive material action and inaction, are the material elements of intentional homicide.

The material action of homicide in the positive and affirmative aspects and in the negative and privative aspects is exclusive to the cases that are clearly specified by the penal law. In other words, any current action or inaction which is explicitly prohibited in the penal law is considered a crime. Illegal imprisonment and detention, refusal to breastfeed a child with the intention of taking life, refusal to save a child in danger with the intention of taking life, refusal to give medicine or food with the intention of taking life, deliberate refusal to save a drowning person, etc. are some examples of the material act of intentional homicide in its privative aspect (inaction). (Habibzadeh, 2006: 84)

The Juristic Department of the Judiciary^[2] Also announced in a consultative theory: Just as homicide is materialized as a result of committing an act such as wounding, strangulation and the like, it could also be realized as a result of inaction. For instance, the refusal to provide food or medicine with the intention of murder or should a mother who has pledged to breastfeed her child, refuse to do so with

the intention of killing the child, the perpetrator is considered a murderer. This is also mentioned in Article 295 of the Islamic Penal Code^[3].

1.3. The Spiritual (Psychological) Element

Homicide is intentional when it leads to taking the life of the victim while the perpetrator has previous knowledge of the result of the criminal act. Therefore, the perpetrator of the murder must have the intent to take the victim's life. In the Islamic Penal Code, intentional homicide is also defined by a way of a typically lethal action, which, as soon as intended, results in an outcome, it is also referred to as secondary intent, and with an effective action towards the victim by the perpetrator, intentional homicide is materialized. (Mir Mohammad Sadeghi, 2011: 81)

Furthermore, intentional homicide is tied to the result in terms of the material element, that is, until the victim's life is completely taken away, intentional homicide will not be realized, and consequently, the perpetrator will not be prosecuted under the full crime of intentional homicide.

2. The Impact of Motivation on Determining the Punishment for Intentional Homicide

Killing or taking the life of a living human being is the most heinous crime committed against human beings and for this very reason, despite the opposition from certain legal scholars and philosophers, the designated punishment for intentional homicide is Qisas in the legal frameworks of many countries. In Iranian law, Article 381 of the Islamic Penal Code stipulates that "The punishment for intentional homicide upon the request of the legal heir or family of the deceased with adherence to other conditions stipulated in the Law, is Qisas, otherwise, according to the other articles of this law, it is carried out in terms of Diya (monetary compensation) and Ta'zir. Article 612 of the Islamic Penal Code of Punishment also stipulates that "Should the actions of a perpetrator of intentional homicide who does not have a plaintiff, or has a plaintiff who has waived the right to Qisas, or is not the subject of Qisas for any reason cause fear or a disturbance in the order, safety and security of society, the court shall sentence the perpetrator to imprisonment with the duration of three months to ten years."

Hence, according to the above-mentioned articles, the main punishment for intentional murder is Qisas from the point of view of the Islamic Penal Code. In case of the absence of a plaintiff or case the plaintiff has waived the right to Qisas, the punishment of imprisonment is carried with the duration of between 3 months to 10 years.

Now this question arises: Can the type of criminal's motivation to commit intentional homicide impact the determination of the punishment?

There have been differing views regarding the effect of motivation on the description of criminal acts and the type of punishment. On one hand, the scholars of the classical school believe that motivation should not impact the deterioration of criminal responsibility, they are of the opinion that what matters in the realization of a crime is the intent and criminal will. In fact, this group of jurists pays more attention to the committed act than to the perpetrator in determining responsibility. (Ardabili 2013: 72)

On the other hand, the proponents of the positive school are of the belief that what puts society and its order in danger is the character of the criminal, not the committed act, and

since the motive is one of the determining factors of the character, logically, it should not be ignored in the realization of the crime. In essence, although the motive has no effect on the realization of the crime, in certain cases, even though the three elements of the crime are realized, the motive strips the criminal character from the act or assigns the criminal character to the act.

In modern criminology, the identification of the perpetrator's motive for committing a crime is of vital importance to the extent that the initial trial process in cases, particularly homicide cases, is identifying and verifying the perpetrator's motive, documenting a character file and psychological evaluation of the perpetrator. Therefore, contemporary criminology is also focused on the importance of understanding the perpetrator's motive for committing a crime. (Safari and Tajrobekar, 2014: 5)

In the Islamic Penal Code of 2013, the legislator has initially adhered to the classical school's point of view in Article 381. This article has categorically designated the punishment of Qisas regardless of the perpetrator's motive. However, in certain cases the motive of the perpetrator could be defending honor, etc. With careful examination of the Islamic Penal Code, it becomes clear that in some cases, the perspective of the positive school has been followed and more focus has been placed on the perpetrator's character and its constituent elements. For instance, Article 301 of the Islamic Penal Code stipulates that Qisas is confirmed on the condition that the perpetrator is not the father or paternal grandfather of the victim.

These types of intentional homicides, which are unfortunately prevalent in today's society, are known as honor killings, in which a father or paternal grandfather murders an innocent person due to extreme prejudices and with the motive of preserving honor and dignity. In this type of murder, if the killer is the victim's father or paternal grandfather, the perpetrator does not face Qisas. (Asghari, 2019: 3) Despite the legislator's generalization and lack of clarification on the subject of the impact of motive in determining the punishment, it appears that the reasoning leading to the impossibility of Qisas in this case is the perpetrator's motive. This means Article 301 is in conflict with the text of Article 381 of the Islamic Penal Code.

Another example where the punishment of Qisas is lapsed based on the motive of the perpetrator is the "murder in bed" mentioned in Article 630 of the Islamic Penal Code. This article states that should a man find his wife in the act of adultery with a stranger and has knowledge of the woman's consent, he may kill them on the spot. And if the woman is unwilling, he may only kill the man, the sentence for physical assault in this case is the same as murder.

Therefore, it appears that regarding intentional homicides that occur due to motives such as protecting honor, reputation, etc., the legislator of the Islamic Penal Code has made an exception in determining the punishment and removed the punishment of Qisas. It is certain that life is the most valuable possession of any individual, if the objective is to uphold this right and provide security, the protection of the right to life of all individuals should be absolute, and it should not be possible to violate another life in certain cases in the name of preserving honor and family relationships.

In the case of another example of homicide, referred to as "euthanasia" which occurs out of pity with an honorable motive, the punishment of Qisas has also been determined, and in this regard, no consideration has been given to the

motive element. In fact, the philosophy of considering this type of behavior as murder should be sought within the necessity of preservation of life as a divine gift. From a religious point of view, the roots of such thinking can be found within the teachings of divine religions, particularly that of the Islamic Shari'a found in Quranic verses, hadiths and authentic fatwas, where emphasis has been put upon the obligation to preserve life and the sanctity of the soul and the taking of life without specific Shari'a and legal permission has been strictly prohibited.

However, in other cases of intentional Homicide, including murder due to robbery, quarrels, etc. the legislator has determined the punishment of Qisas upon the fulfillment of the conditions.

Therefore, the Penal lawmaker in Iran has deemed the motive behind a crime to be ineffectual in the nature of the criminal act, and whatever the final intention, goal or motive of the perpetrator in committing the act may be, it has no effect on the decision and commission of the crime by the perpetrator. A person who knowingly commits an illegal act is responsible, whether he/she performs said act bearing a good or a bad motive, as what matters for society is the preservation of the public order. When an individual violates this order, regardless of the motive and ultimate purpose, he/she stands responsible and deserves punishment.

Hence, considering these reasons, the legislator has adopted a dual procedure in determining the punishment of Qisas for intentional homicide, which is not rational or acceptable.

According to the sum total of the recent part of Articles 381 and 621 of the Islamic Penal Code, when Qisas cannot be applied or the plaintiff has waived his/her right away, a prison sentence of between 3 months to 10 years is determined. The aforementioned prison sentence is a judicial punishment and has a punitive aspect. The judge determines its duration, having considered the different aspects of the case. According to Article 18 of the Islamic Penal Codes, these types of punishments are based on the principle of individualization of punishments, and the perpetrator's motive, the possibility of his correction, rehabilitation etc. can play a role in determining its severity. Article 38 of the Islamic Penal Code has also stated the minute aspects of punishment that can be applied to punishments. One of these aspects, according to paragraph "C" of this article, is the special circumstances that are impactful in committing a crime, such as the provocative behavior or speech of the aggravated party or the existence of an honorable motive in committing a crime.

Therefore, it can be argued that in cases of intentional homicide, should the individual on trial not be eligible for the sentence of Qisas or its execution due to his/her motive in committing the homicide, in accordance with paragraph "C" of Article 38 of the new Islamic Penal Code, there will be the possibility of applying a reduction in his/her sentence, and the judge can determine the prison sentence of between 3 months to 10 years.

Conclusion

Countries enact varying laws regarding different crimes to create order and observe justice. One of the most heinous offenses is the act of homicide. It is a violent and criminal act that could even be considered the gravest crime against any individual. As a result, the punishment for homicide will be one of the most severe punishments as well. In order

to ensure social order and preserve the right to life, the Islamic Penal Code has determined the punishment of Qisas for the perpetrators of intentional Homicide, a punishment rooted in the Islamic Sharia.

Considering the constituent elements of the crime of intentional homicide and in the same vein as many other criminal acts, the motive of the perpetrators of this type of crime varies greatly. In a manner such that among the cases, even honorable motives can be seen as well. In the Islamic Penal Code, the legislator has categorically determined the punishment of Qisas for intentional homicide, which shows that the motive has no significance in this matter, and only the criminal act itself has been criminalized.

However, in certain cases, intentional homicides, particularly those with honor and family motives, have been dismissed from the punishment of Qisas despite no such exclusions being mentioned in the law. Therefore, it can be concluded that the characters of the perpetrator and related factors play a role in this matter.

Additionally, in case of the unfeasibility of Qisas or the forgiveness of the plaintiff, the punishment of imprisonment has been foreseen as a penalty, due to the judicial nature of this punishment and the principle of individualizing the punishment, the judge can determine the prison sentence term, taking into account the motive of the perpetrator.

In conclusion, it is suggested that due to the significance of human life and the need to protect the lives of all people, a singular procedure should be adopted regarding the impact of motive in determining Qisas punishment for the perpetrators of intentional homicide. Exceptions in cases of intentional murders with honor motives and similar circumstances are not reasonable. It is preferable to take motive into account regarding Ta'zir punishments by referring to the principle of individualization of punishments. To achieve this objective, the Islamic Penal Code should be revised by incorporating criminological findings.

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