

Factors which can Exempt a Criminal from Penal Punishment in an Intentional Murder in Iran's law

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ABSTRACT

Crimes against physical integrity of people are of harsh crimes. They are done against the physique or soul of a person which is the only real property of a human being and it is part of its being. Murderer deprives a person from its loveliest property which is life and it is the only crime that is not recoverable. Its effect is not only seen on the person, but also his family and relatives even the society. So as an Islamic law, retaliation is its punishment. But all murders even intentional ones are not sentenced to retaliation. There are factors that can reduce the punishment and even exempt the murderer from the crime, but some of these factors are not seen in legal system of the world. This article aims to state the importance of human life and their civil and penal responsibilities against their committed crimes. It also explains the factors that in special cases of committing a crime can reduce the punishment or even in intentional murder exempt him from any civil or penal responsibilities or retaliation.

KEY WORDS: responsibilities-conviction-punishment-intentional murder

1. INTRODUCTION

Conviction of a criminal for an intentional crime depends on his free determination for committing it, in a way that not only physically but also mentally he was involved in the crime and he freely decided to do so.

Providing the mental involvement of a criminal depends on the fact that the criminal was free to decide and aware of the results of his action also he was able to prevent it. So any disturbance in his understanding, freedom of decision and determination can exempt him from the conviction of an intentional murder. Some factors that can change mental involvement of the criminal can be disturbance of determination, loss of awareness and understanding.

These factors can change an intentional murder to an accidental one, but there are special laws in these cases that we are going to explain them in this article.

2. Drunkenness

Drunkenness is a special quality which is caused by the effect of alcoholic liquor. It takes recognition power and causes total or partial disturbance in determination. In this situation the person feels happy and can talk about the subjects which in normal situation he would not tend to talk about, however there is speech disturbance. It is all because of the power that he gains and feels after drinking liquor. (musavi,etal,1992) Drunkenness consists of some stages; some of them take the power of determination and decision of the criminal. Article No.53 of Islamic penal statute states the punishment of committing a crime while drunkenness as follow: If it is proved that a criminal drank alcoholic liquor in order to commit a crime, not only he will be punished because of drunkenness, but also committing the crime itself. But the lawmaker does not just consider public judgment of article No.53, he also passed article No.224 in Islamic penal statute which is about intentional murder in drunkenness: Murder in drunkenness causes retaliation unless it will be proved that the criminal's determination was taken because of drunkenness and previously he had not planned to get drunk to commit a crime. If his action causes social disturbance or public fear, he will be sentenced to 3-10 years imprisonment. Article No.224 is based on religious narratives. (sheikh Amel, etol,1980) But jurists have different ideas, the majority of them believe that a drunk murderer must be retaliated and some jurists like Sani or Allame Heli do not believe in retaliation in this case. Other jurists believe that there is a difference between a drunk person who is aware of the result of his action and the one who commits a murder accidentally, they just sentence the first one to retaliation. (Nahafi,etal, 1984). So a person who commits a murder because of ignorance, unwillingness and drunkenness is not entitled to be retaliated but the one who does not have any religious excuse and intentionally gets drunk to commit a crime should be retaliated.

3- Compulsion

Compulsion is the pressure and effect of a mighty power on human's soul and body in a way that it takes his power of determination and decision. According to article No.54 of Islamic penal statute about deterrent criminal offences, if a person under intolerable pressure and force commits a crime he will not be punished. In this case the person who forced him to commit the crime will be punished based on the level of the crime and stages of chastisement, castigation and punishment.

Islamic lawmakers believe that committing a crime by force is not an excuse for a criminal not to be retaliated and not to pay the blood money ,they have explained it in different situations .Sometimes compulsion is inner and the source of force is the criminal itself without knowing and having any control over it. An example can be an unconscious person who is pushed down a hill and fell on someone and killed him, surely in this case not only he did not have any roles in the crime but also he could not stop it. In some cases the source of compulsion is outer and it takes the person's decision making power, the force can be human or will power oriented. An example can be a person who pushes someone on a third person and causes death of the third person. (ode,etal,1994) .

According to Islamic penal statute article No.329, if a person pushes someone and causes death or injury of a third party, in this case he did not have the intention of the crime and accidentally committed it. So the crime will be considered as a quasi intention and he will be sentenced to pay the blood money.

If in this case the crime is intentional it will be considered an intentional murder and leads to retaliation but there is no punishment for the person who was pushed because of the force which was included.

In conclusion, Islamic lawmakers generally believe that cases in which human force is included should not be sentenced to retaliation or paying blood money and if another person's force is included he should be punished as the cause not the obliged person. (Nahafi,etal, 1984)

4-Reluctance:

Reluctance is the forceful obligation of someone to do or abandon something.(sagi,etal,2006)

According to article No.54 about the crimes of deterrent punishment, if a person because of obligation or reluctance which is usually intolerable commits a crime he will not be punished and the person who forced him will be punished based on the level of crime and stages of chastisement, castigation and punishment limits. Based on the general principles in Islamic narratives especially prophet Mohammad's, reluctance is effective in all crimes unless there is a text against it and it will allocate this general rule. One of the allocations is in intentional murder. In Islamic narratives it is mentioned that dissimulation is set because of preventing bloodshed and if there is the risk of someone's life or body then dissimulation is rejected.(Gorji,etal,2003)So in article No.211 it is mentioned that:reluctance in murder or order of someone else is not a permission to commit a murder.So if they force someone to commit a murder or order him to kill someone they will be sentenced to retaliation and the reluctant murderer and the commander will be sentenced to life imprisonment. If the reluctant person is child or mad then just the person who forced him will be retaliated. If the person is a discerning child he should not be retaliated, but his guardian should pay the blood money and the person who forced him should be sentenced to life imprisonment. (sepahvand, etal,1996)

5-Childness and Madness

Maturity and wisdom are two qualities that lack of them will negate any responsibilities from the criminal. Article No .49 of Islamic penal statute about a minor child says that : Children committing a crime don't have any criminal responsibilities and their training will be done by their parents but under the supervision of court and if necessary, juvenile institution.Article No.50 of Islamic penal statute about social duty of a minor child prescribes that : If a discerning minor child commits a murder or assault and battery, his guardian is the guarantor . In the case of destroying people's properties, the child himself is guarantor and paying the loss from the child's property is his guardian's duty. Article No.51 is about not being responsible as a mad person: Any levels of madness at the time of committing a crime reject any criminal responsibilities.Article No.221 says: If a mad or immature person kills someone intentionally it will be considered as a mistake and there is no retaliation but his guardian should pay the blood money to the heirs. (zeroat,etal,2000)

6 - Sleeping or Unconsciousness

Lawmaker in article No. 225 and 323 pays attention to committing a murder in sleep. According to article No.225 if an asleep or unconscious person murders someone just he is sentenced to pay blood money to the heir.

According to article No.323 if a person while sleeping by moving or turning causes injury or death of someone ,his crime is considered as a simple mistake and his guardian should pay the blood money .There are different ideas about the responsible of paying blood money. Legal office of judicial power in one of its advisory opinions states that: Article No.225 and No.323 of Islamic penal rule have differences in the way of committing a crime. It means article No.323 is just observant of the place where the act of tossing or moving is done and in the

other cases article No.225 is followed, in other words what is mentioned in 225 of Islamic judicial power is related to people who while sleeping or unconsciousness have done an action like walking or in a way committing a murder. And it will be considered as an a quasi intentional crime and they are sentenced to pay the blood money but in article No.323 it is just about normal sleeping in which a person might turn and cause hurt or death of someone , in such cases it will be an intentional mistake and the guardian should pay the blood money.(Sepahvand,etal,1997)

7- Murder in marriage

One of the elements which can exempt a person from a crime or reduces the punishment is if the doer is aroused and due to that commits a crime. In this situation the doer doesn't have a normal mood and lacks complete decision making power or control over his actions and behavior. So his responsibility is facing deficiency. One of its justifications can be a man who witnesses his wife's adultery with a stranger and at that moment murders or hurts her. Article No. 630 of Islamic punishment law predicts that: If a man witnesses his wife's adultery and is sure of her compliance, can kill both of them at a time and if she was forced to commit adultery just the husband can kill the man .There are lots of narratives which prescribe murder of both wife and adulterer, (sheikh Amel,1980) and many famous Islamic learned men judged the same. Some of them consider the law so weak and believe that such a murder is not allowable. (khoey,etal,2007) But if we can find a way to reduce the murderer's punishment and consider it as a legal excuse then it will be closer to legal laws. (Sanet,etal , 1976) In order to prove this judgment is true we need some necessary conditions:

The first condition is that the murderer is the adulteress' husband, so other male members of her family don't have this right.

The second condition is that the murdered person can just be the wife not mother, sister or daughter and a man can not kill them in a similar situation.

The third condition is that the husband must see his wife doing adultery or have enough evidences to prove that his wife has sexual affair with a stranger and it would be enough if his wife and the adulterer do not abandon the place of adulterer or change situation.

The forth condition is witnessing the adultery accidentally because the right of killing his wife is just in cases that the husband does not doubt about his wife's chastity and to his surprise she commits adultery and it will arouse the husband to lose control. (Zera at . et al , 2000)

The fifth condition is that the husband should kill them in that place and at that time, he cannot postpone it. The last condition is that the husband must have the aim of murder so if the man does not intend to kill the wife and it happens unintentionally then he will not be able to use the justification. (Zera at , et al, 2000)

8-Murder of a person whose killing is legal

One of the reasons which can exempt a murderer from the punishment of an intentional murder is, if the murdered person is someone whose murder is legal and his blood is of no value and killing him is allowable .Article No. 226 of Islamic penal law: There is no retaliation for killing the person and based on this law the murderer is exempted from retaliation or paying blood money.(Aghaenia , et al , 2006)

8-1-Legitimate defence

Legitimate defence is using power to prevent an unfair aggression .(Nokandehi, et al ,2004)

This explanation is similar to the definition of necessity and some believe that legitimate defence is a kind of exigency.General laws of legitimate defence in article No.61 of Islamic penal law is as follow: If a person in order to defend his life ,soul ,chastity , reputation , property or against any probable danger to him or others does an action , he willnot be punished in case of following conditions :

- 1.Defence is appropriate for the violence or aggression .
2. Overdoing of commission will not be necessary.
- 3.Asking for an urgent governmental help is not possible or their participation cannot be effective on the aggression or danger .

Defense against violation is defence of the right which is supported and accepted based on law and the lawmaker did not set special way or method to defend so even if defence leads to murder it is legal and the murder can even leave the action in order to defend himself .
(Zera at , et al . 2003)

8-2. Execution of law

Sometimes the lawmaker prescribes an action or duty for people and this prescription or duty is for the public and sometimes it is just for specific group of people. Doing such actions even against other's right or interest is not considered as a crime. Although in normal situation it is a crime, because we can't permit an action and at the same time consider it a crime. The way of execution of law is an acceptable excuse of the crime and it will

exempt the criminal from the responsibility of crime and execution of law doesn't need order of a lawful superior.

This law is mentioned in article No.56 of Islamic penal law:

Action for which some punishments are set, in following cases are not considered a crime:

1. In the case that committing an action is based on a lawful superior's order and not against religious law.
2. In the case that doing an action is necessary to execute.

9. Lawful superior's order:

Order of a lawful superior is also one of the acceptable excuses of a crime. Article No.332 of Islamic penal law states that : If it is proved that an administrative or military officer shot in order to perform a lawful superior's order he will not pay blood money and it is one of the cases in which blood money should be paid from the public treasury. The some article mentions an officer's situation who based on a lawful superior's order shot and did not commit any offence against the law , his shooting causes death of someone and based on the above mentioned law the officer is exempted from any civil or penal responsibilities.(Nokandehi, et al , 2004)

10-Conclusion and Suggestion

Intentional murder is one of the biggest physical damages which can happen against human being and it has always been hated , when the learned man of penal law categorized crime according to the level of its density and intentional murder is on the top of the list .It is one of the biggest sins in a way that murder of an innocent person is equal to murder of all human beings.Although in Iran's law the punishment of intentional murder is retaliation and this is different from any other countries, if a person commits an intentional murder, there are some laws that can exempt or reduce the punishment of the laws to save value, reputation and credit of people. It also shows the delicate points that are considered in the law and in this article the writer described 10 of the factors that can reduce or reject any civil or penal responsibilities of the criminal.

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