

Investigation of Murder Psychological Element in Iranian Law and its Comparison with Egyptian Law

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ABSTRACT

PE is one of the constituents of a crime and is used with two broad and limited meaning by jurists. PE in intentional crimes has the limited meaning of commitment intention and penal fault. However, PE has the broad meaning of penal liability conditions in addition to its limited meaning. In Iranian law, murder crime is classified into intentional and unintentional murder based on PE and various types of murder have different punishments according to level of fault and blame. In Iranian legislation system, previous decision does not have any influence on punishment intensification and murder type and criminal titles of murder with previous decision and murder without previous decision have not been mentioned and predicted. In Egyptian law, previous decision is considered as the most important criterion for classification of various types of murder based on PE. Furthermore, criminal titles of murder with previous decision and murder without previous decision have been predicted such that punishment for murder with previous decision is more severe than other types of murder.

KEYWORDS: PE, intentional murder with previous decision, murder without previous decision, intentional and unintentional murder, Iran, Egypt

INTRODUCTION

Murder is one of the greatest crimes and influences on social security adversely and its punishment in Islam is one of the most severe punishments in the world and resurrection. Crime PE which states the level of criminal's dangerousness state has always been interesting for jurists and it is believed that for observing justice, criminal laws must be formulated in a way that criminals with dangerous state are not left without blaming and criminals without dangerous state are not punished. The present penal laws of Iran have been extracted from Islamic law (Imami jurisprudence) in the field of murder; most criminal laws which have been approved before Islamic Iranian Revolution have been extracted from European criminal laws like Egyptian criminal laws (Ardebili, 2007).

Literal meaning of PE

PE is made up of two words "element" and "psychological". In dictionary, element has been defined as: "main, the main base which constitutes objects with various natures." Below the word "spirit", the following meanings have been mentioned: "spirit means rational soul and black-spirit means black-hearted and hardcore." (Dehkhoda, 2010).

Various types of murder based on PE in Iranian Law

After victory of Islamic Revolution led by Imam Khomeini and start of Islamic Republic of Iran Regime, some parts of criminal laws were prepared by supreme judiciary council and were given to the parliament through the government. After a while, nemesis and punishments law was passed in 1982, Islamic punishments law was passed in 1982, and Islamic penal Code (blood money) was passed in 1982, and Islamic punishments code was passed in 1983. In 1991, Islamic punishment law, and punishments, nemesis and blood money laws were reformed and passed under the name of Islamic Penal Code (formal newspaper, number 13640, date 1991).

In 1996, Islamic punishment Code was corrected and revised by The Legislator and was contained as the fifth book of Islamic Penal Code (punishments and deterrent penalties). Considering the fact that most laws concerning murder have been extracted from Imami jurisprudence and regardless of the existing disagreements and in order to avoid lengthy speech, the above question will be investigated in laws which are now binding (Formal Newspaper, number 14943, date: 1996).

In order to answer the mentioned question, different articles of Islamic Penal Code approved in 1991 and 1996 were analyzed. Investigation of the laws shows that the following murder titles have been mentioned:

1. intentional murder (crime mentioned in articles 204 and 206 IPC passed in 1991) 2. Quasi-intentional murder (crime mentioned in clause b of article 295 IPC passed in 1991) 3. Mere fault murder (crime mentioned

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in article 204 and clause (a) of article 295 and article 296 of IPC passed in 1991) 4. Murder considered as quasi-intentional (crime mentioned in notes 2 and 3 of article 295 IPC passed in 1991) 5. Unintentional murder (crime mentioned in articles 616 and 714 IPC passed in 1996) (murder due to driving offences)) 6. Murder recognized as mere fault (crime mentioned in note 1 of article 295 and article 306 and article 323 IPC passed in 1991) 7. Murder in the middle of struggle (crime mentioned in article 615 of IPC passed in 1996). (Aghayee Nia, 2010).

Murder crime in the middle of struggle has its own independent criminal title and special characteristics which will be discussed separately but other types of murder are classified under one of the following titles in terms of PE:

a)intentional murder b)unintentional murder(quasi-intentional or mere fault)

Different types of murder based on PE in Egyptian Law

Murder crime in Egyptian law is classified into two intentional and unintentional categories but the types of intentional murder in Egyptian legislation system are different from that of Iran. In Egyptian law, intentional murder includes: intentional murder with previous decision or through lying in ambush (this crime has been mentioned in article 230 of penal law of Egypt and its the guilty party is punished by execution; the words previous decision in article 231 and lying in ambush in article 232 of the mentioned law have been defined in the mentioned law), simple intentional murder (crime mentioned in article 234 of Egyptian penal code, the guilty party receives imprisonment for life or aggravated prison as punishment. if simple intentional murder is followed by or accompanied by another crime, the punishment will be execution. If murderer intention is commitment of a crime or facilitation of this crime or assistance with the guilty parties in escaping from crime scene or releasing them from murder punishment, the punishment will be execution or life imprisonment and also if the murder mentioned in article 234 is intended to do terroristic actions, the punishment will be execution), poisoning someone to death (this crime has been mentioned in article 233 of Egyptian penal code and poison includes each material which is fatal and its punishment is execution), intentional battery leading to death (crime mentioned in article 236 of Egyptian penal code, this crime is punished by imprisonment with hard labor or imprisonment from 3 to 7 years), unintentional murder resulted from penal fault (this crime has been mentioned in article 238 of Egyptian penal code and includes cases in which murder takes place as a result of penal fault (negligence, carelessness, imprudence, violation of public regulations and legal instructions). One who commits this crime receives at least 6 months imprisonment and up to 200 small mistake cash punishment. If the mentioned crime is committed due to failure in doing duties or carelessness in observing regulations related to job or drinking alcohol or abusing drugs, he/she will be sentenced to 1 to 5 years in jail and cash punishment equal to 100 to 500 small mistake or one of these two punishments, murder resulted from intentional arson (this crime has been mentioned in article 257 of Egyptian penal code: "in all mentioned situations, if the arson results in one or more people death which, the arsonist will be sentenced to execution"). Murder of spouse and strange man in bed (crime mentioned in article 237 of Egyptian penal code) (Ghanoun-al-Oghubat, 1992 and Abdottavvab, 1988)

PE Of intentional murder

Islamic Penal Code states the instances of PE Of intentional murder in article 206: murder is intentional in the following cases:

a)cases in which the murderer intends to kill one or more people, whether the action is typically deadly or not, but it causes murder. b) cases in which the murderer does something deadly even if he/she does not intend to commit murder. c) cases in which the murderer does not mean to kill someone and his/her action is not typically deadly but it is deadly for the victim due to disease or oldness or disability or babyhood or things like that and the murderer knows this." (Jahangir, 2006).

1-5. comparison of clause (a) of article 206 of IPC with Egyptian law

In Iranian legislation system, the clause (a) of article 206 of IPC states: " cases in which the murderer intends to kill one or more people, whether the action is typically deadly or not, but it causes murder." therefore, it is inferred that there is no difference between intentional murder with former spite (aggravated murder) and intentional murder without previous decision (simple intentional murder) in Iranian legislation system and both types of murders receive the same punishment. If all conditions of intentional murder are satisfied, the murderer will receive nemesis punishment according to article 205 IPC. In the previous laws like public penal code passed in 1973 and 1925 also there is no difference between intentional murders with previous decision and simple intentional murder and both of them receive execution punishment according to article 107 of public penal code. However, Egyptian Law explains intentional murder with previous decision (article 231 of Egyptian penal code (EPC)): " previous decision means murderer's intention before committing crime or crime to irritate and annoy a particular person whom he/she has considered or faced accidentally, whether the intention fulfillment is dependent on doing something or dependent on a condition.". on intentional murder through lying in ambush, EPC states (article 232 of EPC): "preparation of arrangements or lying in ambush means an

individual's waiting for committing a crime or annoying or battery and other criminal cases concerning a particular person"). According to article 230 of EPC: "everyone who commits murder with previous decision or contributes to preparation of arrangements, will be sentenced to execution". Concerning intentional murder without previous decision (simple murder), article 234 of EPC states: "everyone who commits murder intentionally and without previous decision or without preparation of arrangements will be sentenced to imprisonment for life or aggravated prison and ...". In case of spite towards uncertain people from a group of people, Egyptian jurists believe that: "when a person shoots a bullet towards a group of people or throws hand grenade towards a group of people and he does not mind who will be killed and the personality of victim is not recognized by murderer, this action will be considered as murder with uncertain intention. Therefore, previous decision or previous thought is an aspect of punishment intensification in murder crime in Egyptian law. (Ghanoun-al-Oghubat, 2011 and Avaz Mohammad, 2009).

Comparison of the clause (b) of article 206 of IPC with Egyptian Law in Iranian legislation system, clause (b) of article 206 of IPC states: "cases in which the murderer does something deadly even if he/she does not intend to commit murder." in Egyptian legislation system also murder through a typically-deadly action is considered as one of the instances of intentional murder but there is difference between Iranian and Egyptian laws concerning poisoning someone to death. No independent law titled "poisoning to death" has been mentioned in IPC. Courts consider "poisoning to death" included in clause (b) of article 206 of IPC in cases. However, in Imami Clergymen point of view, material element of intentional murder may be "direct" or "directly". intentional murder through poisoning is considered as one of the samples of directly murder. in EPC, poisoning someone to death has been considered as an independent crime and one who commits this crime will receive execution as punishment (article 233 of EPC states: everyone who puts someone to death intentionally and by means of any kind of chemical in a short or long time, will be executed). By comparing article 176 of the previous Iranian public penal code and article 233 of EPC it can be observed that: poisoning to death is completely similar to each other in PE and punishment. Furthermore, in Egyptian legislation system, the murderer must have the intention of hurting and killing or his/her action must be typically deadly to consider the action as intentional murder crime and this is similar to Iranian law. (Mohaghegh Helli, 1995).

Comparison of clause (c) of article 206 of IPC with Egyptian Law

clause (c) of article 206 of IPC states: "cases in which the murderer does not mean to kill someone and his/her action is not typically deadly but it is deadly for the victim due to disease or oldness or disability or babyhood or things like that and the murderer knows this." In Iranian legislation system, the above clause is one of the instances of article 206 while in Egyptian legislation system, there is no such instance but it can be narrowly included in simple murder instances. The reason for including the clause c of article 206 is the legislator's following jurisprudence principles, which have supported victim (Aghayee Nia, 2010 and Ghanoun-al-Oghubat, 1992)

PE of quasi-intentional murder

a) Knowledge about subject b) intention in committing c) lack of murder intention d) non-fatality of the committed action

Quasi-intentional murder

this crime has been mentioned in notes 2 and 3 of article 295 of IPC (note 2 of article 295 of IPC states: "if a person murders someone believing in the fact that he/she is illegal blood and for nemeses and this is proved for court and after a while it is proved that victim is not illegal blood, the murder will be considered as quasi-intentional fault and if his/her claim is proved in a court, he/she will not be sentenced to nemeses ۃ blood money). The nature of action in note 2 of the mentioned law is intentional murder. In other words, the murderer intends to kill but believes that murdering victim is acceptable and murders him/her. Finally, it is proved that victim is supported by law and does not deserve murder. in this case, the nature of the murder is intentional but its punishment will be like quasi-intentional murder. Saheb Javaher says: "in cases in which doer intends to kill victim believing the victim's murder is acceptable but it is proved that the victim was Legitimate blood, the murder is considered as quasi-intentional. The nature of the mentioned murder in note 3 of the law is considered as mere fault according to regulations of Islamic Penal Code because murderer does not intend to hurt the victim but because his action has caused taking someone's life, his behavior will be considered as quasi-intentional murder in terms of penal liability and punishment rules and the murderer must pay blood money. After ratification of article 616 of IPC, it seems as if the note 3 of article 296, the mentioned law has been abolished. (Aghayee Nia, 2010).

PE of mere fault murder

Considering the clause (a) of article 295 of IPC and other articles, PE of mere fault murder includes the following cases:

a) Fault in action and outcome b) intentionality of action c)lack of intention in action d) lack of outcome intention

Unintentional murder

unintentional murder has been mentioned in two articles 616 and 714 of IPC (clause (b) of article 714 of IPC: "when carelessness or non-observation of regulations or lack of skill in a driver (including sea and air and land vehicles) or operator of a motor vehicle results in unintentional murder, the criminal will be sentenced to 6 months to three years of imprisonment and payment of blood money if blood money owners request it). (clause (a) of article 616 of IPC: "if an intentional murder takes place due to carelessness or imprudence or violation of regulations, the criminal will be sentenced to imprisonment from 1 year to 3 years and also payment of blood money if Blood Owners requests unless it is mere fault "). In both articles, criminal's fault has been emphasized. Before 1989, unintentional murder was used only in crimes due to driving offences (article 149 of Punishments Law passed in 1983) but in this year, note 3 of article 295:"when a murder or battery takes place due to carelessness or imprudence or violation or regulations such that if the regulations observed, the crime would not happen, the crime will have quasi-intentional form" was passed and offender's liability in cases other than driving cases was clarified and after that, in 1996, article 616 determined payment of blood money for unintentional murder the guilty party as well as punishment penalty:"if an unintentional murder takes place due to violation of regulations or carelessness or imprudence or an action in which the guilty party does not have enough skill, the guilty party will be sentenced to 1 to 3 years of imprisonment and payment of blood money if Blood Owners request unless it is mere fault." Although article 616 cannot be cited in unintentional murders resulted from driving offence considering the text of article 714 of IPC which emphasizes on the necessity of vehicle (motor of transportation), the Legislator has insisted on this point by the mentioned article: "regulations of this article does not include unintentional murder due to driving accidents." Therefore, the main difference of the two articles is that article 714 is valid in case of a particular vehicle and based on some expediencies and concerns crimes arisen from driving offences. (Aghayee Nia, 2010)

a) PE of unintentional murder mentioned in article 616 of IPC:

PE of the mentioned crime is a penal fault or error, (comparative law: but in Egyptian law, unintentional murder arisen from driving offences has been mentioned in article 238 of EPC and PE of the mentioned article is the very 616 article's penal fault or error although the guilty party does not intend to hurt but he/she is punished due to penal fault ended in death). Various types of penal fault which have been listed in the mentioned article are as follows:

1. Carelessness 2.imprudence 3. Lack of skill 4. Violation of public regulations (Hajjariyan, 2011).when a person murders someone by doing intentional behavior without intending to hurt or kill someone and due to his/her penal fault of his/her behavior, the action will be considered as unintentional murder mentioned in article 616 of IPC. Considering the article 616 of IPC "if...", it can be inferred that: unintentional murder mentioned in article 616 takes place when one of the instances penal fault is present and it can be inferred from contraposition of the phrase "if" that if the guilty party lacks penal fault, his/her action is not included in this article.

b) PE of unintentional murder mentioned in article 714 of IPC:

commitment of murder in article 714 of IPC is dependent on recognition of the fault of the driver of motor vehicle in one of the instances of carelessness, imprudence, lack of skill and violation of public regulations (comparative law: but in Egyptian Law, murder and physical injuries in driving offences have been mentioned in article 169 of EPC and its punishment is imprisonment. The mentioned article has predicted unintentional murder or unintentional injury due to vehicles accidents and its punishment is more severe than the mentioned punishment concerning unintentional murder mentioned in article 238 of EPC). Driver does not have any intention in hurting and committing murder but he/she commits murder due to penal fault or error). (Hajjariyan, 2011)

Murder PE in struggle

struggle is an intentional crime and its PE takes place with recognition of intentional involvement in struggle. This crime although depends on outcome, the guilty party's specific spite is not necessary. In other words, there is no need to prove that the guilty party had meant the result (murder, injury or disability) as well as involvement in struggle, unless the guilty party of crime is clear and in such cases, recognition of intention for the result is necessary for attribution of intentional crime to the the guilty party (Aghayee Nia, 2010).

Conclusion

Investigation of Iranian laws passed as IPC in 1991 and 1996 reveals that the following murders have been titled in the mentioned law: 1-intentional murder 2-quasi-intentional murder 3. Mere fault murder 4. Murder

considered as quasi-intentional 5. Unintentional murder 6. Murder considered as mere fault 7. Murder in the middle of struggle, this kind of crime has an independent criminal title and special characteristics and has been discussed separately; however, other mentioned murders are classified in one of these two categories in terms of PE: a) intentional murder b) unintentional murder (quasi-intentional or mere fault); therefore, it is inferred that murder crime is classified in intentional and unintentional categories based on PE of murder and intentional murder has different cases in legislative system and application of a deadly instrument or vehicle in giving injury has been replaced by criminal intention. However, various types of murder based on PE of crime in Egyptian Penal Code (and IPC passed in 1991 and 1996 were reviewed) are classified into intentional and unintentional murder but the types of intentional murder in Egyptian law are different from Iranian law such that intentional murder in Egyptian law is classified into intentional murder with previous decision and simple intentional murder. Therefore, it can be inferred that murder in Egyptian law is classified into intentional and unintentional murder as like Iranian law but different types of intentional murder are different in Egyptian and Iranian laws.

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