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Liability of a Person Committing a Crime Against Himself or His Properties: A Comparative Jurisprudential Study

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Abstract

Purpose: This research aims to clarify the extent of responsibility if the perpetrator is the victim. It seeks to know whether this responsibility is waived by implication, or whether the sanctity of blood and property requires their preservation by imposing a penalty or guarantee in these cases. Theoretical framework: This research is organized into an introduction, two sections, and a conclusion. Design/methodology/approach: The research adopts a comparative analysis of Muslim schools of thoughts to specify the scholars' opinions on the liability of a person committing a crime against himself or his properties. Findings: Sharia law aims to protect lives and property while balancing freedom and responsibility. It requires jurists to be educated in order to understand the reasoning behind rulings and the differences in opinions. This balance sets Sharia law apart from other systems that often prioritize one aspect over the other. Research, Practical & Social implications: Employing legal texts in contemporary issues to address emerging calamities. Originality/value: The value of the study is shown in modernizing the jurisprudential to come up with the new issues that appear in societies.

Keywords: *Felony, guarantee, self -property.*

Introduction

Praise be to Allah, Lord of the Worlds, and the most pure prayers and peace be upon the Master of Messengers, and upon all his family and companions, as for what follows: The issues of liability when a crime occurs are part of jurisprudence because they are linked directly to preserving life and money. Therefore, in this research, I was keen to address one of its aspects related to the victim's contribution to the crime against himself, especially since these issues may have an applied extension in some contemporary cases. So I rolled up my sleeves, seeking the Lord's help, hoping for His acceptance, and explaining the importance, purpose, and matters related to the offering in the following elements. These issues are among the topics that scholars have concerned themselves with because of the rulings they contain are similar to judicial precedents that can be measured and extracted. The significance of these issues lies in their connection to the applied jurisprudence, which enhances the faculty aspect of the jurist. In addition, they provide scholars with the knowledge aspects related to the collection of the issues and rulings discussed. Therefore, these important aspects can be summarized as follows: Contributing to the balance between caring for the sanctity of oneself and money on the one hand, and the freedom of a person to dispose of himself or what he owns, and that this freedom is limited so that the sanctity of the person and his money is not wasted, even if the perpetrator is the same as the victim.

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Explaining a number of examples of the Heritage Code's interest in the criminal and judicial aspects and the mechanism for dealing with these issues that include multiple and complex issues. Identifying the accuracy and depth of the criteria that govern the opinions of judges and scholars.

Literature Review

Despite the importance of this topic, the abundance of its applications, and its frequent mention in jurisprudential works, I have not found anyone to single it out from this angle concerned with financial liability with independent research that explores its depths, explores its details, and explores its components. Rather, this topic appears incidentally, within general jurisprudential theses, or in a non-independent context. Moreover, it is hoped that this study will create a link between this discussion to the financial liability or waste of it.

If a person kills himself or Killing oneself intentionally: Some jurists describe "intentionally killing oneself" as "suicide." This is consistent with what was stated in some accounts of the man who was waging jihad with the Messenger - may Allah bless him and grant him peace - and when he suffered many wounds, he killed himself. As it came at the end of the hadith (...they said: O Messenger of Allah, Allah has confirmed your speech so-and-so committed suicide and killed himself) (Sahih Al-Bukhari 133). Killing himself intentionally is a major sin. This is prohibited in Qur'an, Sunnah, and consensus:

Proofs from Qur'an, Allah says: "O believers! Do not devour one another's wealth illegally, but rather trade by mutual consent. And do not kill each other or˺ yourselves. Surely Allah is ever Merciful to you" (4:29). Allah says: " Say, ˹O Prophet,˺ "Come! Let me recite to you what your Lord has forbidden to you: do not associate others with Him ˹in worship˺. ˹Do not fail to˺ honour your parents. Do not kill your children for fear of poverty. We provide for you and for them. Do not come near indecencies, openly or secretly. Do not take a ˹human˺ life—made sacred by Allah—except with ˹legal˺ right.1 This is what He has commanded you, so perhaps you will understand." (6: 151). The reason for this is that Allah forbade killing, and the inhibition requires prohibition, and it is general in killing oneself and killing others.

Proofs from Sunnah:

The Messenger of Allah - may Allah bless him and grant him peace - said in the agreed upon hadith: "Whoever kills himself with an iron, his iron will be in his hand, and he will thrust it into his stomach in the fire of Hell, abiding therein forever. And whoever drinks poison and kills himself, he will sip it in the fire of Hell, abiding therein forever. Whoever mounts and kills himself, he will return to the fire of Hell, abiding therein forever (Sahih Al-Bukhari 5778). On the authority of Abu Hurairah - may Allah be pleased with him - he said: We witnessed with the Messenger of Allah - may Allah bless him and grant him peace - Khaybar, and the Messenger of Allah, may Allah bless him and grant him peace, said to a man among those with him who claimed to be Muslim, "This is one of the people of Hell." When the fighting came, the man fought fiercely. The wounds were many, and they made him strong. Then a man from the Companions of the Prophet, may Allah's prayers and peace be upon him, came and said: O Messenger of Allah, have you seen the man whom you spoke about as one of the people of Hell? He fought in the cause of Allah in the most intense fighting, and his wounds became many. Then the Prophet, may Allah's prayers and peace be upon him, said: -: (But he is one of the people of Hell) Some Muslims almost became suspicious, but while he was in that state, the man felt the pain of the wounds, so he leaned his hand towards his quiver and extracted an arrow from it and committed suicide with it, so some Muslim men turned to the Messenger of Allah, may Allah bless him and grant him peace, and said: Oh The Messenger of Allah - may Allah's prayers and peace be upon him - has confirmed your speech. So-and-so committed suicide and killed himself.

Then the Messenger of Allah - may Allah's prayers and peace be upon him - said (O Bilal, stand up and announce: No one will enter Paradise except a believer, and Allah supports this religion with the immoral man) (Sahih Al-Bukhari 4203). The scholars have unanimously agreed that it is forbidden to kill a person himself. In fact, it is considered one of the biggest sins. They differed regarding the ruling regarding his eternity in Hell like a polytheist, based on the previously mentioned hadith (Ibn Abidin, 1992). Talking about wasting the blood of a killer himself in this topic and what comes after it in this topic cannot be imagined as an implication of the crime because it is out of place. The culprit is the victim himself, but it is in the matter of paying the blood money of the murdered person to his heirs - whether from the family or the treasury. The jurists distinguished in this regard between intentional and mistaken killing of oneself: As for the one who killed himself intentionally, there is no disagreement among the jurists that he wasted blood, so he is not guaranteed a blood money and it is not paid to his heirs neither from the rational nor from treasury (Al-Kharshi, 1317A H; Ibn Abidin, 1992; Ibn Qudamah, 1968). They justified this as follows: Since blood money is a specific punishment for the killer, a rational person cannot bear him intentionally killing someone else. As a matter of fact, he killed himself, so there is no right on a rational person to do so intentionally (Ibn Abidin, 1992). The obligation of blood money on the sane person or on the treasury was only to console and mitigate the offender, and the offender here does not have anything that needs help and consolation, so there is no basis for obligating it (Al-Kharshi, 1317A H). Blood money is a financial obligation, and the heirs' eligibility for it cannot be proven except with evidence. Moreover, there is no evidence that the heirs of the suicide are entitled to blood money (Ibn Qudamah, 1968).

Second section: Killing himself by mistake

The jurists differed regarding wasting the blood of someone who killed himself by mistake, based on two opinions: The first opinion: Whoever kills himself by mistake is not obligated to pay blood money by killing him, and the rational person will not bear any of it. Hanafis (Hashiyat al-Shalabi 176), Malikis (Al-Imam Malik, 1324 AH; Al-Qarafi, 1994; Al-Qayrawani, 2019; Ibn Abdel Barr, 1980), and Shafi'is (Al-Maawardi, 1999; Al-Shafi'I, 1983) adhered to this opinion. They demonstrated this as follows: What was narrated by Al-Bukhari and Muslim is that Amer ibn Al-Akwa' (Amer bin Sinan (and Sinan is Al-Akwa') - may Allah be pleased with him - came out to welcome the Jew on the day of Khaybar, and Amer's sword returned on himself and he died, and the Prophet - may Allah's prayers and peace be upon him - did not pay a blood money or anything else on him (Sahih Al-Bukhari 4196). As he committed a crime against himself, no one else is responsible for it, such as intentionally (Al-Zaila'i, 1314 AH). The obligation of blood money on the responsible person in the mistake was only to console and alleviate the perpetrator, and the perpetrator here does not have anything that needs help and consolation, so there is no basis for obligating it (Al-Kharshi, 1317A H). The second opinion: The killer's family must pay the blood money to the heirs of the murdered person. It is the Hanbali doctrine (Al-Zarkashi, 1993; Ibn Abdel Barr, 1980). They demonstrated this as follows: What was narrated that a man was driving a donkey and was riding on it, so he hit him with a stick that he had with him, and a piece of it flew out, hitting his eye and gouging it out. This was submitted to Omar bin Al-Khattab. Omar bin Al-Khattab said: (It is one of the hands of Muslims that has not been harmed by an assault on anyone, so he made the blood money for his kind to be paid by his family) (Musannaf 27704). The evidence is that Omar obligated the woman to pay blood money for the mistakenly injured eye, and the soul was to be measured against it. The majority responded to their reasoning regarding the ruling of Omar ibn al-Khattab that it is weak, since in its chain of transmission is Layth ibn Abi Salim, and his narration is weak, and assuming it is proven, it is the saying of one of the companions, and the text and analogy are contrary to it, so it was better than it (Al-Maawardi, 1999). As it was a mistaken crime, the compensation (blood money) was due to his rational people, just as if he killed someone else (Ibn Qudamah, 1968). The proponents

of the first opinion responded to this evidence by saying that it is an analogy with a difference, since the rational people's bearing of the mistake of the one who killed another was for solidarity, consolation and cooperation, so it is not an analogy to their bearing the mistake of the one who killed himself due to the absence of a reason (Ibn Abdel Barr, 1980). The preponderant opinion is as follows: It appears - and Allah knows best - that the first opinion (the majority opinion) prevails. It is so due to the strength of its evidence, despite the weakness of what the people of the second opinion relied on, as it is clear from the reply to it.

Refraining from saving oneself and adopting the means of salvation.

The status of this issue is that a perpetrator commits a crime against a person for an act that the victim is able to get rid of, but the victim abandons possible means of salvation and submits himself to destruction. For example, it is like someone who is thrown into a small amount of water that is not considered drowning, and the victim remains lying in it until he dies, or is thrown into a small fire that he can turn away from to get rid of it, yet he does not do that until he perishes, and so on. The jurists differed to three opinions regarding whether the thrown was included - considering his transgression in throwing it - or wasting the thrown - considering his abandonment to save himself and taking into account the reasons for its salvation. The opinions are as follows: The first opinion: Distinction between burning and drowning, they said: If the perpetrator throws the victim into a little water from which he is able to get out, and he stays in it voluntarily until he dies, then it is wasted, with no retaliation or blood money. The reason for this is that this act did not kill him, but rather his death occurred by him staying in it, and he did it himself and no one else was responsible for it. If the perpetrator left the victim in a fire that he could get rid of due to its scarcity, or if he was at one end of it and could get out with the slightest movement, and he did not get out until he died, then he must pay blood money for semi-intentional punishment, and there is no restriction on him. The reason for this is that it is considered a transgression and a felony involving something that does not usually kill and something that is not intended to kill. This opinion is approved by Shafi'is (1983), and Hanbalis (Qudamah, 1994). The basis of their distinction between a little water and a little fire is that a little water is not destructive in itself. This is why people enter water for washing, swimming, and fishing. As for fire, a little of it is fatal because it has an intense heat that may astonish him from knowing how the victim can get rid of, or make him lose his mind with its pain and horror, or cause his nerves to cramp Ibn (Qudamah, 1994). The second opinion: Considering drowning and burning as means that lead to killing, but since water and fire are few and often lead to killing, killing, here, is almost completely intentional, and this is the Hanafi doctrine (Al-Ayni, 2000). The reason for this opinion is that even if fire or water kills, it is not intended to kill. This can be justified as by not accepting the addition of drowning to death with heavy water - which according to the Hanafi school of thought is considered quasi-intentional - because heavy water often kills - even if it is not intended to kill (Al-Ayni, 2000), unlike drowning in little water, which usually does not kill. The third opinion: Burning and drowning is absolutely intentional, even if it is minor, and this is the Maliki doctrine (Ibn Abdel Barr, 1980). This is based on the fact that they do not consider murder to be quasi-intentional, since every intention of committing a crime is intentional, and there is no regard to the instrument (Ibn Abdel Barr, 1980). This is justified as that by something that denies this dual division of murder and proves "semi-intentional" killing, as the Prophet Mohammed said - may Allah's prayers and peace be upon him - (The one killed by mistake is semi-intentional, like the one killed by a whip or a stick. The blood money is one hundred, of which forty are pregnant (Musnad Ahmad 89). The preponderant opinion is as follows: It appears - and Allah knows best - that the first opinion is preferable for the validity of their argument and its safety from the opposition.

The owner's crime against his property and vice versa. It contains an introduction and two sections: Ownership in this issue is specific to human beings only, such as male and female slaves and same like that. The focus of the research – as it is clearly evident from the title

- revolves around the issue of blood, and accordingly, all other possessions are not included in this topic.

The owner's crime against his property: The jurists of the four schools of thought (Al-Kharshi, 1317 AH). agreed that if a master kills a slave, he is not killed by it, even if it was intentional. Rather, there was consensus on that (Al-A'madi, 2004). Their evidence for this - in addition to the previous consensus - is: The meaning of the Almighty's saying (O believers! ˹The law of˺ retaliation is set for you in cases of murder—a free man for a free man, a slave for a slave, and a female for a female.1 But if the offender is pardoned by the victim's guardian, 2 then blood-money should be decided fairly 3 and payment should be made courteously. This is a concession and a mercy from your Lord. But whoever transgresses after that will suffer a painful punishment" (2: 178). Its meaning is diversification and division, and that the free person is not killed for the slave (Tafsir Al-Qurtubi, 2/247). Prophet Mohammed's saying - may God bless him and grant him peace : (A slave is not led by his owner, nor is a child by his father) (Mustadrak 2856). It was narrated that Abu Bakr and Omar - may God be pleased with them - would not kill a man for his slave. They would beat him a hundred times, imprison him for a year, and deprive him of his share with the Muslims for a year if they killed him intentionally (Musannaf 18139). Consensus opinion: Ibn Abd al-Barr said in "Al-Istithkar": Abu Omar said: God Almighty says: (It is not lawful for a believer to kill another except by mistake. And whoever kills a believer unintentionally must free a believing slave and pay blood-money to the victim's family—unless they waive it charitably. But if the victim is a believer from a hostile people, then a believing slave must be freed. And if the victim is from a people bound with you in a treaty, then blood-money must be paid to the family along with freeing a believing slave. Those who are unable, let them fast two consecutive months—as a means of repentance to Allah. And Allah is All-Knowing, All-Wise (4:92). Therefore, the scholars unanimously agreed that slaves are not included in this verse, but rather it is meant free people, so likewise His saying - peace be upon him - (Muslims will be rewarded for their blood) (Abu Dawud 2751) by which I mean free people and not slaves. If there is no retaliation between slaves and free people for what is less than the soul, then the soul is more likely to do so, and God Almighty has said (O believers! ˹The law of˺ retaliation is set for you in cases of murder—a free man for a free man, a slave for a slave, and a female for a female.1 But if the offender is pardoned by the victim's guardian,2 then blood-money should be decided fairly3 and payment should be made courteously. This is a concession and a mercy from your Lord. But whoever transgresses after that will suffer a painful punishment (2: 178). Was it not for the consensus in killing men for women, this would be the rule in killing a female for the other female (Al-Istiktar 8/175).

The slave's killing his master

The jurists of the four schools of thought agreed (Al-Sarkhasi, 1955) that a slave's crime against his master by mistake is not liable, but intentionally it is guaranteed and he must be punished. The error is explained as follows: The slave's crime is a mistake and requires money payment, and he is not entitled to anything due to his slave's crime against him except what he had before his crime, and he does not have a debt against him because it is his money, so how can he have a debt on his money (Ibn Qudamah, 1968). As for the reason for saying that punishment is a case of intentionality: it is the generality of the evidence of retaliation and killing the killer. In fact, here it confirms the right of the master over his slaves of righteousness and obedience - and the absence of anything that excludes the slave (Ibn Qudamah, 1968).

Methodology

This research is organized into an introduction, two sections, and a conclusion. The research adopts a comparative analysis of Muslim schools of thoughts to specify the scholars' opinions on the liability of a person committing a crime against himself or his properties.

Results/Findings

Sharia law aims to protect lives and property while balancing freedom and responsibility. It requires jurists to be educated in order to understand the reasoning behind rulings and the differences in opinions. This balance sets Sharia law apart from other systems that often prioritize one aspect over the other. Research, Practical & Social implications: Employing legal texts in contemporary issues to address emerging calamities. Originality/value: The value of the study is shown in modernizing the jurisprudential to come up with the new issues that appear in societies.

Conclusion

After reviewing and editing the previous issues and addressing the jurists' words about them, we can extract from this research several observations and results, the most prominent of which are the following: Sharia law brought a just system by protecting lives and property from aggression, even by those who have the right to dispose of themselves. This is not considered a violation of a person's freedom to dispose of himself or what he owns. These freedoms must be limited and governed in a way that does not waste a person's sanctity or property, even if the perpetrator is the victim. What is involved in dealing with these judicial applications is the education of the faculties that the jurist needs and the development of the deductive ability by knowing how the scholars arrived at the rulings based on their evidence and why they differed in their views. The ingenuity of Sharia law in balancing between protecting the sanctity of self and money on the one hand, and the principle of freedom in action and choice, and its superiority over other philosophies and systems that usually exaggerate and overpower one side at the expense of the other. The possibility of employing legal texts in contemporary issues to address emerging calamities.

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