

Complicity in Murder under Non-fatal Duress

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Abstract: The purpose of the present study is to investigate and clarify the legal system of Iran regarding complicity in murder caused by threats that do not involve one's life. The research **method** is document analysis. Significance: It is highly important to perform some research into this particular subject with regard to the value of human lives in the Iranian law and the fact that the forced murder committed by the perpetrator is invalid. Conclusion: Since the legal system of Iran is often based on the tenets of Islamic jurisprudence, the analysis of the legal foundations of jurisprudential principles will be important. In this regard, according to the famous jurists and the Islamic Penal Code of the country (Article 211 of the former law and Article 375 of the new law), duress and coercion do not rescind the criminal responsibility in case of forced murder.

Keywords: Homicide, forced murder, complicity in murder, Iranian penal system

STATEMENT OF THE PROBLEM (INTRODUCTION)

Since time immemorial, human life has enjoyed a great deal of value in the religion of Islamic and, therefore, certain rules and regulations have been developed by Imamiyah jurisprudence for the protection of the physical integrity and lives of the people. (Montazeri, 1429 AH)

The penalty for intentional homicide in Islam and the Islamic Penal Code is Qisas and the execution of the murderer. In this way, the murderer's life shall be taken for the life of the human being who has been murdered. However, the case of murder is different in a situation in which the perpetrator has been under duress (Gamduzian, 2006).

In the Holy Quran, we read: "There shall be no compulsion in the religion. The right course has become clear from the wrong" (Surah al-Baqarah, Verse 255). One of the events that can affect the intention and also the free will of the subject is the element of force. Since the judiciary system of Iran is based on the conventional theory of jurisprudence, the striking difference between one of the great Islamic jurists of the present era and other jurists challenges the legitimacy of these legal articles. Therefore, it is necessary to examine this subject.

- The fundamental question of the research is: Can a threat that does not involve one's life be a license for murder?
- The main hypothesis of the current research is that: according to the criminal laws of Iran, the non-fatal threat is not a license for murder and has no impact on the punishment of the perpetrator of the homicide.

With regard to the foregoing, the essential elements of this study will be focused on the "someone else's order of murder" and "complicity in murder".

With regard to the research background, it is necessary to know that most of the research published in the form of articles has noted the coerced murder but perhaps the claim can be advanced that no article has been observed so far with this particular title.

Research method

This research is an applied study. It seeks to find alternatives for the existing punishments drawing upon the Iranian penal codes in relation to coerced homicide. A descriptive and analytical method will be used to do this research. Moreover, the research adopts a library method mostly based on legal and jurisprudential principles.

The position of the Iranian legal system about murder under duress

In all the heavenly religions, the laws of human beings, and especially in the religion of Islam, the element of coercion has been used to exempt a person from punishment. Iranian civil and criminal law is no exception to this rule. They have followed the discussion on coercion in the sources of jurisprudence and the interpretation of the writings related to these rules (Shambiyati, 2008). As a term used in Islamic jurisprudence and law, coercion is a regular expression of force in which a person is forced into action or inaction against his or her will. The source of this psychological pressure is an unlawful threat to the life, property, or family members of the coerced person. In 1991, this was stipulated in article 54 of the Islamic Penal Code as the following:

“In the offenses associated with certain penalties and preventive punishments, if someone commits a crime under the coercion or duress that are not usually tolerable, he will not be punished...”

Article 151 of the Islamic Penal Code of 2013 replaced Article 54 of the former law and is now regarded as the main law concerning coercion in the Iranian criminal law. The legislator states in this article that:

“If someone commits a behavior that is considered a crime through an intolerable coercion, he will not be punished. In crimes punishable by certain penalties, the coercing party will be punished according to the penalty regarded for an offender. In the crime punishable by Qisas (i.e. retributive justice), the punishment will be executed according to the relevant regulations.”

The term “coercion” which was used 18 times in the Penal Code in the former laws was considered in more detail in the New Islamic Penal Code and was used more than 34 times in the legislative process.

The term “force or reluctance” which was used 18 times in the law of 1991 as “coercion” was only used twice with a dramatic decrease in its frequency. It was used once in the provisions of Article 23 concerning additional and consequential punishments with the following details:

“In accordance with the terms and conditions specified in this law and the offense and its characteristics, the court may condemn the person who has been sentenced to imprisonment or Qisas (that is to say, Islamic retributive justice) from the first degree to the sixth degree to one or more punishments of the following punishments: A – Mandatory stay in a certain place ...”

Moreover, the other case is in article 169 that explains the case of confessions under torture:

“The confession which is made under duress, compulsion, torture and mental or physical pressure is invalid and the court is obliged to interrogate the accused again.”

In crimes with certain punishments such as adultery, robbery, drinking and so on, if they have taken place with coercion, the punishment of the perpetrator will be rescinded. As regards these crimes, because the coerced person is not willing to commit the act and another person has forced him to commit the offense, then the coercer is guilty and the accused shall not get punished (Tabasi, 2003). There are, of course, crimes for which the question of coercion is irrelevant and the coercer and the perpetrator can both be punished. As the legislator has stated in Article 211 of the former Islamic Penal Code:

“Coercion in murder or the order of another murder is not a license for such an act. Thus, if someone is compelled to kill another person or gives an order to do so, the perpetrator will be sentenced to Qisas and the coercer will be sentenced to life imprisonment.”

This article was changed in 2013 and it was stipulated in Article 375 of the new Penal Code that “coercion in the cases of murder is not a license for this offense and the perpetrator is punished by Qisas and the coercer will be sentenced to life imprisonment.”

Complicity in murder under non-fatal duress

The word ‘threat’ has been used four times in the new Penal Code. In light of what has been discussed thus far, it should be said briefly that in the matter of complicity in murder, it is stated in paragraph A of Article 126 that “the following persons are considered as accomplices: (A) Anyone who encourages, threatens, deceives, or incites another person to commit a crime or allow a certain crime by deceit, deception or abuse of power.”

In the note to article 126 of the new Penal Code, it is stipulated that “in order to fulfill the complicity in the offense, the unity of intention, precedence or time between the conduct of the accomplice and the offender is a requisite. If the perpetrator of the crime commits an offense which is more severe than what the accomplice intended, the accomplice will be given the sentence commensurate with the less serious crime which he has encouraged initially.”

We describe the subject by giving an example that if someone threatens another person to do something and orders him to beat the other person in such a way that he would not die from the injuries and he does so, but the victim dies from his injuries, a few cases are considered here:

The agent or the accomplice is certainly the murderer because the death has been caused by his action and the coercion in this case has only been used for hurting the victim and not for taking his life with the intention of homicide. It seems that there is no difference in this subject according to what exists in the jurisprudential texts and the relevant laws.

According to the sentence that says that “the accomplice is sentenced to the punishment considered for a lesser offense”, it can be concluded that the accomplice may be known in such a case; however, he would not be an accomplice for the homicide that would lead to the issuance of this verdict against him in this regard.

In this case, the accomplice will be sentenced to imprisonment for fifteen to twenty five years (second degree) or imprisonment for more than ten to fifteen years (third degree) in accordance with paragraph A of article 127 of the same law which states that “in the event that there is no other penalty imposed on the accomplice in

Sharia or the law, his punishment shall include the following: A) In offenses punishable by life imprisonment or execution, a second or third degree Taziri imprisonment will be used.”

According to Article 129 of the Penal Code, “when the perpetrator cannot be prosecuted for a number of reasons such as being a minor or insanity or his prosecution or punishment is suspended for such reasons, there will be no effect on the prosecution and punishment of the accomplice.” Therefore, in this case, the accomplice will be still sentenced to the punishment mentioned in the law.

The last issue in this case that is namely the nonfatal threat and duress and the act of murder committed by the individual is related to Article 128 of the Islamic Penal Code approved in 2013. The legislator stipulates in this article that “anyone who uses an immature person as a means of committing a crime, shall be sentenced to the maximum sentence for the same crime. In addition, anyone who participates in the criminal behavior of a minor shall be condemned to the maximum punishment for their complicity in that crime.” Here, there are two different or somewhat contradictory interpretations. First, if an immature person is used in committing a nonfatal crime in which he or she is murdered, the threatening person will receive the maximum penalty for the same crime (which is an act of murder punishable by Qisas) and this case can be reasonably justified. The reason is that the accomplice who has taken advantage of a minor in a crime such as burglary must have been aware of the likelihood that the minor would commit murder with a knife. Secondly, the article discusses crimes in general. Therefore, the verdicts about homicide are beyond this scope with regard to the gravity of the matter. In light of the legal principles concerning the limited interpretations of the law in favor of the defendant in criminal matters, it is better that the threatening person be sentenced to the second-degree (more than fifteen to twenty five years) or the third-degree imprisonment (more than ten to fifteen years). This is in accordance with paragraph A of Article 127 of the Islamic Penal Code. In sum, both views have rational justifications but the second view has a higher legal credibility according to the principle of interpretation in favor of the accused.

CONCLUSIONS

Given the value of human life in the religion of Islam and the criminal cases, the famous jurists of Imamiyah jurisprudence do not consider reluctance and coercion as a reason for the innocence of the murderer and the penal code of Iran has followed this conventional position.

Coercion is indeed an external and illegal force imposed on a person and he might act accordingly to save his life, property or dignity against his will. In the area of Islamic law, coercion does not have any effect on some of the crimes and does not lead to the justification of the criminal acts and the removal of the prohibition from the principle. Therefore, their offense will not be forgiven even though they have been committed under duress. If a crime is committed, the offender will face the determined statutory or legal punishment. Among these crimes, we may refer to homicide, amputations and fatal injuries. Thus, the coercer deserves Qisas in the case of forced murder and this sentence is fully implemented with respect to nonfatal crimes.

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