

Categories of Crimes Against Persons Other than Homicide According to The Perpetrator's Intent in Islamic Jurisprudence and Sudanese Law

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Abstract:

This research examines the categories of crimes against persons less than death, according to the perpetrator's intent, in Islamic jurisprudence and Sudanese law. One view divides them into intentional and unintentional, while another view divides them into three categories: intentional, quasi-intentional, and unintentional. The research also addresses their legal rulings according to Islamic jurists and Sudanese criminal law, which applies Islamic Sharia, and the elements of crimes against persons less than death, whether intentional, quasi-intentional, or unintentional.

The research concludes with the following key findings:

The majority of jurists divide crimes against persons less than death, according to the perpetrator's intent, into two categories: intentional and unintentional. The Shafi'i school and the majority of Hanbalis consider them to be three categories.

The general rule regarding crimes against persons less than death, according to the perpetrator's intent, is that whenever harm results, there is liability; if no harm results, there is no liability.

RESEARCH INTRODUCTION:

Islam has established a high status and paramount importance for humankind, honoring and elevating them to a level of distinction not attained by any other creature. God Almighty created him with His own hands, breathed His spirit into him, commanded His angels to prostrate before him, and subjected to him all that is in the heavens and the earth. He granted him free will and choice. Furthermore, He sent messengers to him and revealed scriptures with them, guiding him to that which would save him in the Hereafter and bring him happiness in this world. He did not leave him to wander aimlessly in the valleys of misguidance. God Almighty honored humankind above all other creatures, making this honor universal for all of humanity. Those who obeyed Him received even greater honor. God Almighty said: {And We have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [clear] preference.} [Surat Al-Isra: Verse 70]

This dignity, which God has bestowed upon humankind above all other creatures, has multifaceted dimensions. It is a divine protection for humanity that encompasses respect for human intellect, freedom, and will, and also includes the right to security for oneself, one's property, and one's offspring. To guarantee this divine protection, Islamic law has established five objectives to reinforce it: the preservation of life, the preservation of religion, the preservation of intellect, the preservation of property, and the preservation of lineage. These five objectives all aim to protect humankind, whom God Almighty has honored, and represent the fundamental principles of human rights. Islamic law has given exceptional attention to the preservation of life, legislating rulings that bring benefits to it and ward off harm, thus emphasizing its protection, preservation, and the prevention of aggression against it.

Therefore, in Islam, any attack on the right to life, or the deliberate and aggressive taking of a human life, or any part of a person, is a grave crime committed not only against the victim, their relatives, or their community, but against all of humanity. God Almighty says: {And We prescribed for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution.} (Quran 5:45). This research addresses a highly important topic related to a crucial matter concerning humankind, whom God has honored and protected from harm. It focuses on the categories of crimes against persons less than life, according to the perpetrator's intent, in Islamic jurisprudence and Sudanese law. Specifically, it defines crimes against persons less than life and explains their categories based on the perpetrator's intent in Islamic jurisprudence. We will then examine the categories of crimes against persons less than death according to the perpetrator's intent in Sudanese law. Crimes against persons less than death are defined as any assault on a person's body, such as wounding, cutting, striking, breaking, or disabling a function, without justification and not resulting in the victim's death. Crimes against persons less than death, according to the perpetrator's intent, are divided into two categories according to one view: intentional and unintentional. Another view divides them into three categories: intentional, quasi-intentional, and unintentional. We will then address their legal rulings according to Islamic jurists and the Sudanese Penal Code, which applies Islamic Sharia. The repealed Sudanese Penal Code of 1983 adopted a two-part division, but the Penal Code of 1991 reinstated a three-part division for crimes against persons less than death. This research serves an important segment of society, and the importance of any topic stems from the extent of the need for it. We will now discuss the elements of crimes against persons less than death, which are: the elements of intentional crimes against persons less than death, the elements of quasi-intentional crimes against persons less than death, and the elements of unintentional crimes against persons less than death. Undoubtedly, the need for this research topic has become urgent due to the increasing number of cases involving crimes against persons less than death.

Research Problem:

The research problem is formulated in answering the following questions:

1. What does a crime against persons less than death mean according to the perpetrator's intent, according to Islamic jurists and Sudanese law?
2. What are the categories of crimes against persons less than death according to the perpetrator's intent, according to Islamic jurists?
3. What are the categories of crimes against persons less than death according to the perpetrator's intent, according to Sudanese law?
4. What are the elements of a crime against persons less than death in Islamic jurisprudence and Sudanese law?

Research Objectives:

1. To define crimes against persons less than death.
2. To clarify the opinions of Islamic jurists regarding crimes against persons less than death, according to the perpetrator's intent.
3. A statement of the categories of crimes against persons less than death in Sudanese law, according to the perpetrator's intent.
4. A description of the elements of crimes against persons less than death in Islamic jurisprudence and Sudanese law.

RESEARCH METHODOLOGY:

This research employs a descriptive, analytical, and comparative approach. It examines the opinions of Islamic jurists on this topic, analyzing and comparing them with each other and with the 1991 Sudanese Penal Code. The research also includes relevant jurisprudential and legal comparisons.

Research Scope:

This research is limited to outlining the categories of crimes against persons less than death, according to the perpetrator's intent, in Islamic jurisprudence and Sudanese law. It reviews the opinions of jurists from various Islamic schools of thought and the 1991 Sudanese Penal Code, comparing them where necessary and presenting the most appropriate viewpoint.

Previous Studies:

1. Rulings on Crimes Against Persons Less Than Death in Islamic Jurisprudence and Law: Omar, Ahmed Ismail; Syria, Rayhan Journal for Scientific Publishing, Issue 54, December 2024.
2. Crimes of Assault Less Than Homicide – A Comparative Study Between Islamic and Algerian Penal Law: Al-Mi'yar Journal; Issue 28, September 2024.

Research Plan:

This research plan can be detailed in an introduction, four sections, a conclusion including the most important findings and recommendations, a bibliography, and a subject index.

This research comprises four sections, as follows:

Section One: Definition of a Crime Less Than Homicide.

Section Two: Categories of Crimes Less Than Homicide According to the Perpetrator's Intent in Islamic Jurisprudence.

Section Three: Categories of Crimes Less Than Homicide According to the Perpetrator's Intent in Sudanese Law.

Section Four: Elements of a Crime Less Than Homicide.

I will elaborate on this as follows:

First: Definition of a Crime Less Than Homicide:

A crime less than homicide is defined as: (Any assault on a person's body, such as wounding, cutting, striking, breaking, or disabling a function), without justification and not resulting in the death of the victim. Injuries to lesser injuries, according to the perpetrator's intent, are divided into intentional and unintentional: (Intentional is when the perpetrator deliberately commits the act with the intent to harm, such as someone throwing a stone at another person with the intent to injure them. Unintentional is when the perpetrator deliberately commits the act without the intent to harm, such as someone throwing a stone out of a window to get rid of it and hitting a passerby, or when the act occurs as a result of the perpetrator's negligence without intent, such as someone rolling over onto a sleeping person next to them and breaking their ribs). The Shafi'i school and the majority of the Hanbali school add another category to injuries to lesser injuries, which is: (Quasi-intentional, which is when someone strikes another with a slap, a whip, or something similar that appears not to have been intended to damage the limb, such as slapping someone and blinding them).

Although intentional and unintentional acts differ in their nature and punishment, they share many rulings. Therefore, jurists have often combined them when explaining their respective legal provisions, discussing them together.

The Sudanese Penal Code defines a crime against persons less than death in Article 138, Paragraph 1, under the heading "Wounding," as follows: "Whoever causes a person to lose a limb, a mental function, a sense, or a physical organ, or inflicts a wound or injury on their body, has caused them injury."

Second Section: Categories of Crimes Against Persons Less Than Death According to the Perpetrator's Intention in Islamic Jurisprudence:

The majority of Muslim jurists divide crimes against persons less than death, based on the perpetrator's intention, into two categories: intentional and unintentional. Some jurists divide them into three categories: intentional, quasi-intentional, and unintentional. I will review the jurists' opinions on this matter.

The first opinion: Dividing offenses against persons less than death into intentional and unintentional:

The Malikis, Hanafis, Zahiris, Shi'a, Abu Bakr, and Ibn Abi Musa, among the Hanbali jurists, hold that there is no quasi-intentional offense against persons less than death. Therefore, what constitutes quasi-intentional offenses against persons is considered intentional offenses against persons less than death. They argue that quasi-intentional offenses are not specific to one instrument over another, and thus, quasi-intentional offenses cannot be conceived of in this context. According to this opinion, offenses against persons less than death are divided into two categories:

First: Intentional offenses against persons less than death.

Second: Unintentional offenses against persons less than death.

I will elaborate on this, addressing the definitions provided by jurists, the law, and the prescribed punishment for each offense separately, as follows:

Definition of intentional offenses against persons less than death:

Those who subscribe to this binary division define intentional offenses against persons less than death as follows:

The Hanafi jurists state: "It is when the perpetrator intentionally strikes another with a weapon such as a sword, knife, or spear, or when he intends to strike with a stick, stone, or other object." The Malikis define it as follows: (What the perpetrator deliberately does in an act of aggression, such as intending to strike him aggressively in anger with something that usually wounds, or striking him in a way that is disturbing, and likewise intending to strike aggressively, that is, as an act of transgression, resulting in a wound, not for play or for discipline). The Zahiris say: (That intent is what a person does intentionally). It is also known among the Imami Shiites as follows: (Intending to wound even if the instrument is not usually wounding, and intending to strike that usually leads to wounding even if the wound is not intended). The Zaidi Shiites said: (That intent is when the crime is committed directly by a responsible person or with intent).

It is clear from the aforementioned definitions that the Malikis believe that if the perpetrator is not the victim's father, and if he commits an act, whether positive or negative, resulting in harm to the victim, then his action constitutes an intentional crime, provided he committed it out of enmity or anger unrelated to discipline, regardless of the instrument used and whether intent was present or not. Their definitions are thus as we have described. It is also clear from the definitions provided that the striking or wounding must be intentional. The striking or wounding either results in the loss of a limb or does not. If it results in the loss of a limb, then intentionality in this case is defined as intending to strike the person in anger with something that usually causes injury. However, if the wound is inflicted playfully, or playfully with something that does not usually cause injury, or as a

form of discipline, then it is similar to the disagreement that arises in cases of murder resulting from striking in play or discipline with something that does not usually cause death. If the person strikes the limb itself and cuts it, or strikes with an instrument that usually cuts the limb, or strikes it in a way that causes injury, then there is no disagreement that retaliation is required. However, if the person strikes with a slap, a whip, or something similar that shows that the intention was not to destroy the limb, such as slapping the person and blinding them, then the well-known opinion in the Maliki school is that this is intentional and requires retaliation, except in the case of discipline with one's son. Abu Hanifa, Abu Yusuf, and Muhammad held that: (quasi-intentional harm only occurs in the person, not in the wound). If a crime, whether it be a wound, a blow, or anything else, is committed intentionally against something less than life, under the conditions we have mentioned, then retaliation is obligatory. This is based on the verse: "And We prescribed for them therein that a life is for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution." (Quran 5:45). This applies where retaliation is possible, and where the wound is inflicted on the area where retaliation is warranted, and there is no fear of death. This is based on the hadith narrated from the Prophet (peace and blessings be upon him) who said: "There is no retaliation for a wound to the brain, nor for a wound to the abdomen, nor for a wound that dislocates the skull." Imam Malik and those who share his view hold that this ruling applies to injuries that are considered fatal, such as fractures of the neck, spine, chest, thigh, and similar wounds. They stipulate that for retaliation to be applied to injuries less than death, the wound must have resulted from an intentional act of aggression. Therefore, injuries resulting from play or discipline do not warrant retaliation.

According to this view, quasi-intentional acts are treated as intentional acts. They maintain that injuries less than death do not constitute quasi-intentional acts. They argue that quasi-intentional acts are not considered fatal, stating, "There is no quasi-intentional act in injuries less than death. What constitutes quasi-intentional acts in injuries to life is considered intentional in injuries less than death, because injuries less than death are not typically caused by one instrument over another. Therefore, all instruments are equally capable of indicating intent, making the act purely intentional."

They further argue that quasi-intentional injuries to limbs less than death are considered intentional acts warranting retaliation. However, quasi-intentional acts in injuries less than death are not specific to any particular instrument, and thus, quasi-intentional acts are not conceivable. They define quasi-intentional homicide as follows: (Intentionally striking with something that is neither a weapon nor something considered as such, like striking with a slap, a whip, or something similar that appears not to indicate intent to cause harm, such as slapping someone and blinding them).

Those who adhere to this (dual) division, which categorizes offenses against persons less than death into intentional and unintentional, include those who do not recognize quasi-intentional homicide at all. The Malikis do not recognize quasi-intentional homicide at all; for them, an act is either intentional or unintentional. The Hanafis, however, consider quasi-intentional homicide to be intentional because the basis for the distinction between intentional and quasi-intentional homicide, according to them, is the instrument used. For them, the instrument indicates intent to kill, and all instruments are equally valid in indicating intent in offenses against persons less than death.

Definition of unintentional homicide: Those who hold this division define the crime against something less than life by mistake as follows: - According to the Hanafis, the crime by mistake is defined as follows: (It is either a mistake in the mind of the perpetrator or a mistake in the act itself. The first is like a person shooting at game, or a combatant, or an apostate, and it turns out he is a Muslim. The second is when he was shooting at a target

or game and hit a human being. Likewise, like a sleeping person who rolled over on a man and harmed him, or the crime by causing harm, like someone digging a well or placing a stone on someone else's property without the permission of the Sultan). They also defined it as follows: (A mistake is of two kinds: a mistake in intent, which is when someone throws an object and it hits a person). The Malikis say that if the perpetrator is not the father of the victim, and if he commits an act, whether positive or negative, and this act results in a crime against the victim, and the perpetrator's action against the victim is done playfully or as a form of discipline, then the crime is considered a mistake. They define a mistaken crime as (not intending to strike or wound, such as throwing something and hitting a person with it). They specify two cases for this:

First: If he does not intend to strike, such as throwing something or a weapon and hitting a Muslim, then this is a mistake by consensus.

Second: If he intends to strike playfully, then this is a mistake according to Ibn al-Qasim, and his well-known narration in the Mudawwana of Mutarrif ibn al-Majishun. The same applies if he intends permissible discipline, such as using an instrument for discipline.

The Zahiri school defines it as follows: "If someone throws something and it hits a Muslim, not intending to do so with something that might cause death, and the Muslim is injured, or if it falls on a Muslim and is injured by the impact." The Zaidi Shia, however, say that an unintentional act is one that occurs due to a transgression against a public right, or if the offense is committed by a legally incompetent person such as a child or an insane person, or if the perpetrator is an adult of sound mind but unintentionally, or if the perpetrator is unintentional.

An unintentional injury to a person less than death requires blood money (diya), which varies depending on the type of injury, such as wounds, lacerations, amputations, loss of function, and so on.

The second opinion: Dividing injuries less than death into intentional, quasi-intentional, and unintentional: The Shafi'i school and the majority of Hanbalis believe that injuries less than death are divided into three categories based on the perpetrator's intent:

- (1) Intentional injury less than death.
- (2) Quasi-intentional injury less than death.
- (3) Unintentional injury less than death. They say that just as intentional killing is required, so too is the case with injuries to limbs. Therefore, retaliation is not required for wounds and amputations if they are unintentional or quasi-intentional.

I will now review their definitions for each of the three categories as follows: - First: - Definition of intentional injury to a part of the body short of death: -

The Shafi'i school defines intentional injury to a part of the body short of death as follows: (The definition of intentional injury that warrants retaliation: Intentional action and targeting of a person in a way that usually results in retaliation, which is achieved by striking. If someone throws a large stone at another person, which would usually result in retaliation, then retaliation is required). This definition clearly indicates the intentionality of the act, the intent to harm, and that it usually leads to the result.

The majority of Hanbalis, however, say that intentional acts are of two types: pure intentional and unintentional. By pure intentional, they mean the intentional act as defined by the other jurists whose definitions we reviewed previously. Unintentional, on the other hand, is quasi-intentional. They define intentional homicide as follows: (The intention to strike in a way that usually leads to the result, which is when the perpetrator deliberately strikes another with a weapon such as a sword, knife, spear, bullet, or anything similar to a weapon).

The Shafi'i school of thought stipulates retaliation for intentional homicide, stating: (There is no retaliation except for intentional homicide, not for unintentional or quasi-intentional homicide).

The majority of the Hanbali school of thought also stipulates retaliation for homicide when it is purely intentional.

Definition of a crime against something less than life (quasi-intentional homicide):

The Shafi'i school defines a lesser form of injury, considered quasi-intentional, as follows: (Striking someone's head with a slap or a small stone that does not usually cause a head wound, causing swelling until the bone becomes visible). This definition clearly indicates intent in the act and that it does not usually lead to the desired result.

As for the majority of Hanbalis, as we know, they say that intentional acts are of two types: pure intentional and unintentional. Accordingly, by unintentional intention they mean quasi-intentional, which they define as: (Intending to strike someone with something that does not usually lead to the desired result, such as striking them with a stone that does not usually cause a head wound, but it does). The Shafi'i's stipulate blood money (diya) as the punishment for quasi-intentional injury, stating that: (There is no retaliation except in cases of intentional injury, not in cases of unintentional or quasi-intentional injury). The majority of Hanbalis also stipulate blood money (diya). Abu Bakr and Ibn Abi Musa disagreed, stating that in cases of quasi-intentional homicide, retaliation (qisas) is obligatory, and this is not taken into account due to the generality of the verse and because there is no quasi-intentionality in cases less than homicide. Therefore, what is quasi-intentional in cases of homicide is intentional in cases less than homicide.

Definition of Accidental Injury to a Person Less Than Homicide:

The Shafi'i's define accidental injury to a person less than homicide as follows: (If someone slaps another, causing swelling and a wound exposing the bone, there is no retaliation, but blood money is due. If someone throws a small stone that would not normally cause such a wound, but it does, retaliation is not required, but blood money is due.) Similarly, (if someone intends to hit a wall with a stone but hits a person's head, exposing it).

The Hanbalis, however, define accidental injury as follows: (If a person performs an action without intending to harm the victim, but does so, such as shooting at game or a target and hitting a person, or hitting someone in wartime whom they believe to be an infidel when they are actually a Muslim). The Shafi'i school of thought stipulates that the punishment for unintentional injury less than homicide is blood money (diya). They maintain that blood money applies to both intentional and unintentional acts, and that "there is no retaliation except in cases of intentional homicide, not unintentional or quasi-intentional homicide."

The Hanafi school of thought also stipulates that the punishment for unintentional injury less than homicide is blood money. I find myself in agreement with the binary division of crimes against persons less than life, a division adopted by the Hanafi, Maliki, Zahiri, and Shi'a schools, as well as Abu Bakr and Ibn Abi Musa among the Hanbali jurists. This division categorizes crimes against persons less than life into intentional and unintentional. The distinction between intentional and quasi-intentional homicide lies in the instrument used, which typically kills in intentional homicide but not in quasi-intentional homicide. Therefore, intentional homicide is distinguished by the use of a specific instrument (one that typically kills). This distinction is not applicable to crimes against persons less than life, as the intent to harm someone less than life is not usually expressed through a single instrument. Thus, all instruments are equally indicative of intent, making the act purely intentional. Those who advocate dividing homicide into intentional, quasi-intentional, and unintentional cite the hadith: "Indeed, in the case of unintentional homicide, which is quasi-

intentional, such as that caused by a whip, stick, or stone, the blood money is aggravated, amounting to one hundred camels, forty of which are in their mothers' wombs." This evidence is limited to homicide and does not extend to crimes against persons less than life. **Third Section: Categories of Offenses Against Persons Less Than Manslaughter in Sudanese Law:**

The repealed Sudanese Penal Code of 1983 adopted this classification, but later reverted to the tripartite division in the 1991 Penal Code. Article 138, paragraph (2), stipulates that injuries are intentional, quasi-intentional, or accidental. This reflects the view of the Shafi'i school and the majority of Hanbali scholars.

In Sudanese law, "injury" refers to the offense against persons less than manslaughter as understood by Muslim jurists. Paragraph (1) of the same article states: "Whoever causes a person to lose a limb, a mental function, a sense, or a physical organ, or inflicts a wound or injury on their body, has caused them injury." It is clear from the text of the article that it encompasses the categories of offenses against persons less than manslaughter according to the consequences of the act, as defined by Islamic jurists. The Sudanese law of 1991 distinguishes between intentional, quasi-intentional, and unintentional crimes against persons less than life, with the same distinction it makes between the three types of killing. If the same article mentioned in paragraph (2) states: "The same distinctions that are taken into account in distinguishing between them shall be observed in distinguishing between the three types of killing," then the Sudanese law has not established separate definitions for the three categories of crimes against persons less than life. This means that the definitions provided for the three types of killing are each considered a definition of a crime against persons less than life, which is known in the law as wounding if it does not result in death. We find that the law defined intentional killing in Article (130), paragraph (1) as follows: "Killing is considered intentional killing if the perpetrator intended it or if he intended the act and death is a likely result of his act." This means that intentional killing against persons less than life occurs when the perpetrator intended the aggression and the act and death is a likely result of his act, by using the instrument that usually results in the crime. The law defined quasi-intentional killing in Article (131), paragraph (1) as follows: "Killing is considered quasi-intentional if the perpetrator caused it with a criminal act against the human body and the perpetrator did not intend to kill and death was not a likely result of his act." This means that a crime against something less than life, quasi-intentional, occurs when the perpetrator intends the act without intending aggression and without using a tool that usually results in the crime, i.e., using a tool that does not usually lead to the result that occurred in the usual way.

According to Article 138, Paragraph 2, the exceptions stipulated in Article 131, Paragraph 2, also apply to unintentional homicide. The law defines manslaughter in Article 132, Paragraph 1 as follows: "Murder is considered unintentional if it is not intentional or quasi-intentional and is caused by the perpetrator through negligence, lack of caution, or an unlawful act." In light of this legal definition of unintentional homicide and considering Article 138, Paragraph 2, an unintentional homicide is defined as: an act that is not intentional or aggressive, and which occurs as a result of negligence, dereliction of duty, or lack of caution, and results in harm to another.

However, in the repealed Sudanese Penal Code of 1983, the definition of an unintentional homicide was found in separate articles from the definitions of homicide, under the heading "Wounding and Severing of a Limb." Article 273 defines intentionally causing injury as follows: "A person is said to have intentionally caused injury if they commit any act intended to injure someone, and this act results in injury to someone, or if they know that such an act is likely to injure someone, and this act results in injury to someone."

Similarly, Article 274 states: "A person is said to have intentionally caused the amputation of a limb if they intentionally caused the amputation, or if the injury they intended to cause, or which they knew was likely to cause, resulted in the amputation of a limb."

The same law defines unintentional injury in Article 275, which states: "Any injury or amputation of a limb that is not intentional, as defined in Articles 273 and 274, is considered unintentional injury or amputation." Injury (a crime against something less than life, according to legal scholars) was not a separate category before the 1983 Sudanese Penal Code; rather, it was included under the heading of harm. The Sudanese legislator adopted a tripartite division in the 1991 Penal Code, dividing crimes against persons less than death into intentional, quasi-intentional, and unintentional, as previously explained.

However, the legislator was criticized for failing to provide definitions for intentional, quasi-intentional, and unintentional acts of bodily harm (legal terminology for crimes against persons less than death). Nevertheless, the Sudanese legislator had previously adopted a two-part division in the repealed 1983 Penal Code, where crimes against persons less than death, legally termed as wounding and mutilation, were divided into intentional and unintentional, with no mention of quasi-intentional acts.

The Sudanese Penal Code of 1991 stipulated the punishment for causing injury in Article (139), paragraphs (1) and (2), as follows:

(1) (Whoever commits the crime of intentionally causing injury shall be punished by retaliation if its conditions are met. If those conditions are not met, or retaliation is waived, he shall be punished by imprisonment for a period not exceeding three years, or by a fine, or by both penalties. This is without prejudice to the right to blood money.)

(2) (Whoever commits the crime of intentionally causing injury in the southern states shall be punished by imprisonment for a term not exceeding five years, or by a fine, or by both penalties, without prejudice to the right to blood money.) Article (140) stipulates the penalty for causing unintentional injury as follows: (Whoever commits the crime of causing unintentional injury shall be punished by imprisonment for a term not exceeding three years, or by a fine, or by both penalties, without prejudice to the right to blood money.) Article (141) stipulates the penalty for causing unintentional injury as follows: (Whoever commits the crime of causing unintentional injury shall be punished by imprisonment for a term not exceeding one year, or by a fine, or by both penalties, without prejudice to the right to blood money.) It is noteworthy that although the Sudanese legislator adopted the tripartite division of injuries according to the opinion of the Shafi'i school and the majority of the Hanbali school, he only prescribed retaliation for intentional injuries and not for unintentional injuries.

Likewise, we find that the Sudanese legislator added imprisonment to the penalty of blood money, and this varies for intentional, unintentional, and accidental injuries.

I believe that what the legislator adopted In Sudan, there is a dual punishment system. According to the provisions of the penal code, the perpetrator pays blood money and is imprisoned. This duality requires legislative intervention to review and adapt it according to Islamic law.

Section Four: Elements of Crimes Against Persons Less Than Homicide: -

In this section, I will address the elements of crimes against persons less than homicide according to the tripartite division adopted by Sudanese criminal law, namely: elements of intentional crimes against persons less than homicide, elements of quasi-intentional crimes against persons less than homicide, and elements of unintentional crimes against **persons less than homicide. This is as follows: -**

Elements of Intentional Crimes Against Persons Less Than Homicide: -

We can deduce from the books of Islamic jurisprudence, which mention the opinions of scholars of the Islamic schools of thought, that intentional crimes against persons less than homicide are based on the following elements: -

First Element: - (That an act be committed against the body of the victim or affect their well-being. This element is fulfilled by any act, regardless of its nature—whether wounding, striking, strangling, pulling, pushing, pressing, cutting hair or nails, squeezing, etc.)—from the various types of acts of harm and aggression, whether the act is physical, such as striking and wounding, or psychological, such as someone who frightens a man, causing him to become paralyzed or lose his mind, etc. This act must be committed against the victim's body or affect their physical well-being in any way. It is not necessary for the perpetrator to use a specific instrument or means of inflicting harm. It could be through biting, shaving the head, plucking hair, twisting the arm, or other means. The assault may be carried out using a weapon such as a gun, sword, knife, stick, or poison, or by using one's hand, foot, teeth, or other means.

The act may also be direct or indirect. For example, striking with the hand or digging a pit in the victim's path to obstruct it constitutes this crime. It is also a condition that the act does not result in death. If the act does result in death, it is considered a crime against the person. It may be considered intentional homicide if it is proven that the perpetrator intended the act and the killing, or it may be considered manslaughter if it is proven that the perpetrator committed the act intentionally but did not intend to kill. The second element: Crimes against persons less than life are either intentional or unintentional. These are specific to intentional crimes, where the act must be deliberate, meaning it must stem from the perpetrator's will and be committed with the intent to harm. This condition is clear from the definition of this crime: the perpetrator must intend to strike with aggression, i.e., transgression. If the perpetrator does not intend the act, or intends it but does not intend aggression, then the act is not intentional, but rather a condition. The perpetrator is held accountable for their probable intent and is questioned about the result of the act, not about their intention at the time of the act. For example, if someone strikes another with a slap, a whip, or something similar that shows they did not intend to destroy a limb, disable a function, or cause a deep or penetrating wound, or even lesser damage, such as slapping someone and blinding them, they are questioned about the result of their action, even if they did not intend that specific result at the time of the act. Similarly, the perpetrator is questioned about their unlimited intent. For example, if someone throws a stone at a group with the intention of injuring one of them, they are questioned about the result of their action, whether they know the members of that group or not.

In the case of a crime against something less than life, it is the same whether the perpetrator intentionally commits the act with the intent to kill or without intending to kill. The attempt to commit a crime is considered by Muslim jurists to be a complete crime, in view of the perpetrator's right, regardless of the result the perpetrator wants. (If someone assaults another person with the intent to kill them, the law states that they have attempted murder, and this attempt carries its own specific punishment as stipulated by law. However, in Islamic law, it is not said that they have attempted murder, but rather that they have committed a crime against someone less than death, if they intended to kill. This is because, in Islamic law, murder, as a crime or felony, is only completed by causing death. This does not mean that Islamic law does not differentiate between a completed crime and an attempted crime. In fact, it has distinguished between a completed crime and an attempted crime since its inception, establishing discretionary punishment (*ta'zir*) for two types of crimes. First, it applies to every crime for which a prescribed punishment (*hadd*) has not been prescribed. Second, it applies to every crime for which a prescribed punishment has been prescribed, provided the crime has not been completed, because the prescribed

punishment is only for a completed crime. Therefore, lesser crimes fall under the discretionary punishment.) Elements of a crime against someone less than death (quasi-intentional): A crime against someone less than death (quasi-intentional) has three elements, as follows: First: An act must be committed against the body of the victim or affect their well-being. Second: The act must be committed with intent. Aggression.

Third: There must be a causal link between the act and the crime.

I will detail these elements as follows:

First element: An act must be committed against the victim's body or affect their well-being.

This element requires that the perpetrator commit an act, whatever its nature, against the victim's body or affect their well-being. This means that the act results in the severance of a limb or limbs, or the severance of any organ considered a limb, or the loss of the function of that limb or limbs, or inflicts any kind of harm upon them. All of this is considered unless the act typically leads to the same result. For example, if someone slaps another person on the head, causing it to swell and then split open, this is considered manslaughter because a slap usually does not lead to such a split. Similarly, if someone throws a stone at another, causing the head to swell and then split open, this is considered manslaughter.

The second element: - The act must be committed with the intent to commit aggression.

For an offense against a person less than death to be considered manslaughter, the perpetrator must have intended to commit the offense, and this offense must have resulted in the infliction of wounds, injuries, the severing of limbs, or the loss of their function, without the perpetrator intending to cause such injury. This is the difference between intentional and manslaughter of a person less than death. In the former, the perpetrator intends to commit the offense, while in the latter, the perpetrator does not intend to commit the offense but rather intends to commit the aggression. The perpetrator is considered responsible based on their potential intent, meaning that they did not intend the resulting injury, whether it be wounds, injuries, the severing of a limb or limbs, the loss of function of a limb or limbs, or anything else, at the time of committing the act. They did not expect their action to lead to such an injury, but they are considered responsible for it when it occurs as a result of their action, which they should have foreseen or could have foreseen.

The third element: - The existence of a causal link between the act and the injury: -

For an injury to the person less than the victim to be considered quasi-intentional, a causal link must exist between the act committed by the perpetrator and the injury inflicted on the victim. If this link is absent, then the injury to the person less than the victim is not considered quasi-intentional.

Elements of unintentional injury to the person less than the victim: -

We can also deduce the elements of unintentional injury to the person less than the victim from books of Islamic jurisprudence, and they are limited to three elements, as follows: - The first element: - An act is committed against the body of the victim that affects their well-being.

The second element: - This act is committed unintentionally by the perpetrator.

The third element: - A causal link exists between the unintentional act and the result of the act.

I will detail these elements that constitute unintentional injury to the person less than the victim as follows: -

The first element: - An act is committed against the body of the victim that affects their well-being.

This element of the crime of causing injury less than death by mistake requires that the perpetrator, or someone acting on their behalf, commit an act against the victim's body or that this act affects their well-being. This occurs when the act results in the loss of a limb or any organ that functions as a limb, such as the eyes, ears, teeth, etc., or when the act causes the loss of the function of those limbs or the loss of what functions as limbs while their physical form remains intact. It also includes acts that cause a head wound or wounds, or any other type of bodily injury. This applies whether the perpetrator intended the act, as when they aim at game and accidentally hit a person, or whether the act occurs due to negligence or lack of caution, such as when they roll over while sleeping on a child next to them and kill it. The act need not be of a specific type, and it may be committed directly or indirectly. For example, if the perpetrator fires a shot at game but misaims and accidentally hits a person, firing the shot is a direct act by the person. An example of the second type of harm is someone who digs a well or pit without taking any precautions around it, and a person falls in and loses a hand or an eye, or suffers other types of injury or harm. The act may be physical or mental. An example of the former is throwing water in the road, causing someone to slip and cut themselves, injure their head, or suffer other forms of injury short of murder. An example of the latter is when a perpetrator disturbs someone, causing them to fall from a height and injure themselves, lose a limb, or suffer a head or facial injury, or have some of their bodily functions impaired. Similarly, the act may be an act of negligence, such as someone throwing a stone from their balcony to get rid of it without intending to harm anyone, but it hits someone. The act may also be an act of inaction, such as someone leaving a vicious dog in the road, which then injures a person. The second element: that the act be committed by the perpetrator's mistake: - The second element of this crime is that the act be committed by the perpetrator's mistake. This is because mistake is the distinguishing element of unintentional crimes in general. If there is no mistake, there is no punishment. A mistake is considered to exist whenever an act or omission results in consequences that the perpetrator did not intend, directly or indirectly, regardless of whether the perpetrator intended the act or omission or not. In both cases, it occurred as a result of their lack of caution or their violation of the orders of public authorities and the provisions of Islamic law.

Jurists have established rules governing the issue of liability, and the summary of these rules is as follows: - (1) Whenever an act is permissible, a person is not held accountable unless they did not take precautions or were negligent in their due care or discernment.

(2) If an act is not permissible, it constitutes a transgression, and the person is held accountable for its consequences. A person is held accountable in two cases: - The first case: - Lack of caution.

The second case: - Committing unlawful acts that result in a crime unintentionally. All of this applies if the act or omission results in harm. The rule, as we mentioned, is that whenever harm results, there is liability; if no harm results, there is no liability. Liability also exists if the perpetrator did not take precautions due to negligence, carelessness, or lack of caution.

CONCLUSION

With God's help and guidance, I have completed what I intended to explain and detail in this research. It remains for me to conclude with the most important findings and recommendations I have reached through this research: - First: The most important findings:

1. A crime against a person, short of homicide, is any assault on a person's body, such as wounding, cutting, striking, breaking, or disabling a function.
2. The majority of Muslim jurists divide crimes against a person, short of homicide, according to the perpetrator's intent, into two categories: intentional and unintentional. The Shafi'i school and the majority of Hanbalis consider them to be three categories.
3. The repealed Sudanese Penal Code of 1983 adopted this division, but later reverted to the tripartite division in the 1991 Penal Code, specifically in its classification of crimes against persons.
4. Sudanese law does not provide separate definitions for the three categories of crimes against persons.
5. The general rule regarding crimes against persons is that liability arises when harm results, and if no harm results, there is no liability. Liability also arises when the perpetrator fails to take necessary precautions due to negligence, carelessness, or lack of due diligence.

Secondly: Key Recommendations:

1. The terms used in Sudanese law and in all Islamic countries should be defined according to the definitions of Islamic jurists from the four schools of thought.
2. The laws and regulations of Islamic countries should adopt the agreed-upon punishment for crimes against persons, based on their established two- or three-part classification.
3. The definition of crimes against persons in Sudanese Penal Code should be unified according to Islamic Sharia.
4. Medical evidence should be used to establish crimes against persons committed by the perpetrator.
5. Sudanese law should provide separate definitions for the three categories of crimes less serious than murder.

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- Ibn al-Qasim: (He is Abd al-Rahman ibn al-Qasim ibn Khalid al-Atqi al-Misri, a learned and authoritative scholar, a companion of Imam Malik, and he narrated the Mudawwana from him. He died in Cairo.) See: Al-A'lam by al-Zarkali: vol. 4, p. 97.
- Mutarrif ibn al-Majishun: (He is Abd al-Malik ibn Abd al-Aziz ibn Abd Allah ibn Abi Salama al-Majishun al-Tamimi by affiliation, originally from Persia, a Maliki jurist, born in 212 AH.) See: Al-A'lam by al-Zarkali: vol. 4, p. 305.
- Hashiyat al-Dasuqi: Previous reference, vol. 4, p. 244.
- (Al-Muhalla: previous reference, vol. 10, p. 343.)
- (Al-Taj al-Mudhahhab li-Ahkam al-Madhab: previous reference, vol. 4, pp. 290-291.)
- (Al-Mawsu'ah al-Fiqhiyyah: previous reference, vol. 16, p. 65.)
- (Shams al-Din Muhammad ibn al-Abbas Ahmad ibn Hamza ibn Shihab al-Din al-Ramli al-Misri al-Ansari, known as al-Shafi'i al-Saghir: Nihayat al-Muhtaj ila Sharh al-Minhaj, n.d., Lebanon - Beirut: (n.p.) (1414 AH - 1993 CE), vol. 6, p. 281.)
- (Al-Mughni wa al-Sharh al-Kabir: previous reference, vol. 9, p. 411.) (Al-Mughni: previous reference, vol. 7, p. 703.)
- (Mughni al-Muhtaj: previous reference, vol. 4, p. 25.)
- Previous reference: p. 25. The Fiqh Encyclopedia: Previous reference, vol. 16, p. 65.
- (Al-Mughni and Al-Sharh Al-Kabir: Previous reference, vol. 9, p. 411.)
- Mughni Al-Muhtaj: Previous reference, vol. 4, p. 25.
- (Al-Mughni: Previous reference, vol. 7, p. 703. The Fiqh Encyclopedia: Previous reference, vol. 17, p. 65.)
- Mughni Al-Muhtaj: Previous reference, vol. 4, p. 25. The Fiqh Encyclopedia: Previous reference, vol. 16, p. 65.)
- Mughni Al-Muhtaj: Previous reference, vol. 4, p. 25.)
- Al-Mughni: Previous reference, vol. 8, p. 273.
- Mughni Al-Muhtaj: Previous reference, vol. 4, p. 25.
- Narrated by Abu Dawud, Al-Nasa'i, and Ibn Majah from the hadith of Abdullah ibn Amr ibn Al-Aas (may God be pleased with him).
- Article (29) of the Sudanese Penal Code stipulates that The conditions for retaliation are: a) The two limbs must be identical in terms of gender, soundness, and size. Retaliation is only carried out against the corresponding limb of the injured party. A healthy limb cannot be taken for a crippled or defective one, a complete limb for an incomplete one, or an original limb for an extra one. The entire limb must be taken in its entirety, and any part for a part, as the retaliation is required.

b) The retaliation must be carried out without injustice, such that it does not result in the death of the victim or exceed the harm inflicted on the injured party.

Article (31) of the Sudanese Penal Code stipulates the grounds for nullifying retaliation, which are:

- a) If the victim or their guardian is a descendant of the perpetrator.
- b) If the victim or some of their guardians pardon the perpetrator, with or without compensation.
- c) If the injury was inflicted with the consent of the victim.
- d) If there is no hope of the perpetrator's recovery if they become insane after being sentenced to retaliation.
- e) If the subject of retaliation is no longer applicable in the case of injury.

This was before the secession of the Republic of South Sudan and the Southern States (defined in the Constitutional Decree). The fourteenth point concerns the implementation of the 1997 Comprehensive Peace Agreement, specifically Article 2, which established ten states: Upper Nile, Bahr el Ghazal, Lakes, Jonglei, Eastern Equatoria, Northern Bahr el Ghazal, Western Equatoria, Western Bahr el Ghazal, Warrap, and Unity. When the Criminal Code of 1991 was enacted, the Southern states numbered three, according to Constitutional Decree No. 4 of 1991: Upper Nile, Bahr el Ghazal, and Equatoria.

- Islamic Criminal Legislation: Abdul Qadir Awda, 4th ed., Beirut: (Al-Risalah Foundation), 1403 AH/1983 E, Vol. 2, p. 208.
- Islamic Criminal Legislation: Ibid., Vol. 2, p. 210.
- Ibid., pp. 62-63, 210-211.
- Islamic Criminal Legislation: Ibid., Vol. 2, p. 110.