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Research Article

Islamic Law on Premeditated and Unintentional Murder: A Panacea to Brutal Human Killings

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Abstract. The rate at which human beings take other's lives is pitifully unimaginable, especially intentional or premeditated killing. The sacredness of life has been explained extensively in the noble Qur'an and detailed interpretations are given in the Hadith of the Prophet (P.B.U.H). Apart from judicial legal killing that is allowed, killing for personal reasons, such as: envy or jealousy, being a prosperously successful than the other, as a result of marital issues, being promoted at work, jungle justice etc. Islamic legal system since inception, establishes legal retribution for premeditated killing so as to reduce the deliberate taking of human's lives, (death sentence), while on the other hand, has blood money to be paid by the offender who is guilty of accidental or unintentional murder as a signal to be cautions and prevent future occurrence of such accidental murder. Complete implementation of this primitive punishment and retributive compensation have, to a great extent, helped reduce premeditated and unintentional killing in countries where Islamic legal system is upheld. Saudi Arabia, Egypt, Cairo, Kuwait etc. The findings revealed that, in Nigeria especially, the rate of premeditated and unintentional killings have not considerably reduced because the perpetrators/accused persons go

scot-free, or are given mere prison terms that empowers the accused person to repeat same after their prison terms have been served. The paper adopts library research method where relevant literature works were consulted. In conjunction with making the Noble Qur'an and Hadith the first points of contact; in the same vein, the paper adjudged that adoption of Islamic law on premeditated and unintentional killing, in Muslim majority Nigerian States and Countries, will, in doubt reduce to the barest minimum the number of lives lost in our society. The researcher draws a conclusion/summary and made some plausible recommendations.

Keyword: Premeditated Murder, Unintentional, Retributive, Primitive Punishment, Islamic Law.

INTRODUCTION

In most part of Africa, Nigeria inclusive, premeditated killing is tremendously overwhelming, as the act is perpetrated on daily basis, social media platforms news on radio and television make this their headlines. Such news of planned murder stand a psychological threat to every reader or listener for the thought of colour could be the next time of great concern that causes serious enigmatism to humans in particular is the murder perpetrated by some youths, referred to as yahoo (boys), who, by all means intend to get quick riches, through ritualism that involve human parts: kidney, intestine, heart, tongue, eyes, and so is, in the case of desperate politicians who want to emerge as the winner, or, those who may want to retain their juicy position, religious clerics and scholars, in this dirty game are not left behind.

Government should make a policy based action that will mother amendment of constitution that will prescribe death penalty for the guilty offenders of premeditated killings. Such murderers should not be allowed to hold public offices and the Islamic scholars and Christian clerics be challenged of their religious ports and get their names published in all national dailies. There must be public execution for the premeditated murderers.

Content analysis revealed that the buying and selling of human parts for rituals as a trending business in Ilorin that involves men and women, including youths, where human parts and bodies to prepare spiritual concoctions by religious clerics for some vague reasons, politicians are also among major perpetrators¹. The trend of premeditated killing also extends to women and men and women in marriages who take law into their hands and feel that taking the lives of their spouses or co-wives is the remedy to domestic matrimonial

It is high time that the Nigerian constitution, Islamic Law or Qisas and other Muslim countries considered stringent or capital punishment of life-for-life in order to reduce drastically, the Of deliberate killing. It was critically observed that because offenders hardly received commiserate punitive punishment to their nefarious act premeditate killing and also, unintentional or accidental killing by the accused person during domestic violence that results in killing etc. and very rampant in major parts of the world today.

¹ Monsurat, I., Abdullahi, K.I., Abdulbaqi, S.Z. and Ismail, A.N., Trent of ritual killings and the involvement of politicians and religious clerics as perpetrators in Ilorin City, 2023. University of Ilorin, Faculty of Social Science.

Concept of Murder

A deliberate, planned and intended taking away of a life of another person without justification is referred to as murder. Murder is a great sin as far as the violation of the rights of a human being is concerned i.e, by unlawfully taking ones life.² Due to the gravity of the offence, extreme penalty is therefore prescribed for it.³ Islam proclaims the sacredness of life, be it human or otherwise, that it cannot be taken for sport or any sacrificial or medical purposes.⁴ Life is not therefore, created by any human except by the creator of humans, the right to take any life solemnly lies in the jurisdiction of its creator:

And they ask you. [O Muhammad], about the soul. Say, "The soul is of the affair of my Lord. And mankind have not been given of the knowledge except a little (Q17:85)"⁵.

Life is sacred, be it those of humans, animals or plants, except where a killing is justifiable or excusable. A homicide defined as the killing of human being by another. At common law, there is justifiable, excusable and criminal homicide.⁶

LITERATURE REVIEW

Murder is a criminal act which refers to criminal event or criminal offence.⁷ Surmahin, sulisyawati and Setyawan⁸ admitted that it is a behaviour that does not reflect humanitarian norms because it is a violation of an individual's human right to live without the intervention of violence that is not commendable. According to Putra & Santoso.⁹ Yahaya¹⁰ postulated that since murder is the violation of the rights of human being, it is the reason why penalty is prescribed for it – a sentence of death in case of culpable homicide. Reviewing the above referenced authorities, it has been discovered that Yahaya maintained the same view with Surmalin et al, except that Yahaya's addendum reflected the prescribed death sentence as it is pointed out in the Glorious Qur'an.

Because of that, we decreed upon the children of Israel that whoever kills a soul or for corruption (done) in the land, it is as if he had slain mankind entirely.

Q5:32

² Yahaya, Y.B., (2003), Crimes and Punishments under Islamic Law, Malthouse Press Limited, Lagos; 2nd ed., P109

³ Ibid

⁴ Doi, A.R.I (1404AH-1984AD) Shari'ah: The Islamic Law, Bilqisu Ilori; P231

⁵ The Qur'an English meaning and Notes, Saheeh International

⁶ Law shelf (N.D) Criminal Law-Homicide-Definition and Classification www.lawshelf.com.np
– Accessed on 09-04-2025.

⁷ Syamsari, F.N. & Yaudiantra, I.G. (2023); Analysis Terhadap. Tindale Pidana Pembunuhan in Triny, S. & Abdur Rozak (2024) Yang Dilakukan Oleh Anak Dibawah Umur, Jurnal Kertha Desa 11(6), 2637-2650.

⁸ Surmalin, A., Sulistyawati, S., & Setyawan, I. (2019) in Triny, S. & Abdur Rozak (2024): Analysis Meganai Faktor-Faktor Orang Dapat Melakukan Tindak Pidana Pembunuhan. Prosiding Seminar Nasional & Expo II Itasil Penelitian dan Panagabdian Masyarakat 2019.2, PP1376-1385. Medam: Universitas Muslim Nusantara Alwashliyah

⁹ Doi, A.R.I (1404AH-1984AD) Shari'ah: The Islamic Law, Bilqisu Ilori; P230

¹⁰ Yahaya, Y.B., (2003), Crimes and Punishments under Islamic Law, Malthouse Press Limited, Lagos; 2nd ed., P109

And whoever saves one – it is as if he had saved mankind entirely. And our messengers had certainly come to them with clear proofs. Then indeed many of them, [even] after that throughout the land were transgressors.¹¹

Distinction between Premeditated and Unintentional Murder

Premeditated Killing (Qatl al-amd): usually have five elements, namely: mens rea, actus reus, concurrence, causation and harm.¹² According to Yahya, premeditated, intentional or willful murder involves the use of implements or weapon i.e gun, sword, spear, firewood, iron rod etc. on another person and kills him¹³. Willful or premeditated killing must have been intended (mens rea), in conjunction with a particular purpose for the action (Actus reus); additionally, the perpetrator must have concurrently engaged in the act at other times, simultaneously he must also be the cause of the victim's death; and the act and the intent must have resulted to the harm (death).

Unintended Killing (Qatl L. Khatai): on the other hand, known as involuntary manslaughter or accidental killing which may be as a result of recklessness, carelessness or negligence. Unlike intentional killing, unintentional killing is the taking the life of a person without mens rea or the use of dangerous weapons or objects, be it liquid or solid. This may occur where the accused does not have to intend to kill or injure the person who (subsequently) died.¹⁴ Other forms of unintentional killing may involve reckless driving that results in road crash, perhaps due to negligence, or being under the influence of drugs, alcohol or anger, or a continuous nonstop hours of driving. Islamic law therefore recognizes the two different Q4:93¹⁵ and Q4:92¹⁶ draw distinction between the two.

Devastating effects of a Murdered Person

Relatives Predicament:

In every murder case, an irreparable colossal damage is recorded. In 2004, homicide claimed the lives of 16,611 victims; each murdered person leaves behind between 7-10 relatives, in addition to friends, neighbours and co-workers (CDC, 2004 & Redmond 1989) in Heidi et'al¹⁷. The effect epitomized in the above submission is prevalent on the relatives, associates and close family members that will be affected socially, economically or otherwise, the departure of the murdered individuals. In accordance with Islamic perspective, murdering an individual is equivalent to murdering the entire human race due to the sacredness of life.

¹¹ The Qur'an English meaning and Notes, Saheeh International. Q5:32

¹² The Qur'an English meanings (2004) Abdul-Qasin Publishing House, 1997, Jeddah.

¹³ Lucy, H. & Kenneth, P. (2003). Elements of Murder – Overview, Definitions & Types. Study.com (np). Assessed on 10-04-2025.

¹⁴ Yahya, Y.B., (2003), Crimes and Punishments under Islamic Law, Malthouse Press Limited, Lagos; 2nd ed., P111

¹⁵ Galbally, P. (2023). The Legal Consequences of Intentional Killing galballyparker.com.au (np). Assessed on 10-04-2025.

¹⁶ The Qur'an English meaning and Notes, Saheeh International (Q4:93)

¹⁷ Heidi, Z., Alyssa, A.R. (2009). Losing a Loved one to Homicide: Prevalence and Mental Health Correlates in a National Source of Young Adults, pmc.ncbi.nlm.nih.gov

That is why we ordained from children of Israel that whoever takes a life – unless as a punishment for murder of mischief in the land it will be as if they killed all of humanity; and whoever saves a life it will be as if they saved all of humanity ... (Q5:32)¹⁸

Population Reduction:

Reduction of human population especially where avenge or relative killing occurs. During Jahiliyyah period, the Arabs were always prone to take revenge is even the killing took place centuries ago; the revenge of a clan member was always taken by killing innocent member of the enemy's clan, and that continued for generations¹⁹ after which the advent of Islam abolished such practice and strict sense of equality and justice for retaliation was introduced by Islam in order to curb population reduction in the society.

Displacement:

Internally displaced persons in some Northern parts of Nigeria, especially those in Maiduguri, Borno State had about 1.8 million displaced persons. As of August, 2022, Borno state authorities had relocated over 140,000 people from eight camps, shut down in Maiduguri since May, 2021, those closed included: Bakassi, Stadium Teachers' Village, Farm Centre, Dalori I, Dalori II, Mogolis and National Youth Service Corps (NYSC) Camps.²⁰

Refugee's Crisis:

The conflict that erupted in Sudan that has led to killing of people of which 12.9 million people were displaced (becoming homeless) began on April 2023²¹ according to United Nations.

Enforcement of Law: Law is an instrument of force for a social positive change in human's behaviours. Law played major roles in social change in both pre-colonial and colonial Nigeria; likewise in post colonial contemporary Nigeria society²². However, human rights agitations have become predominantly preponderating upon African cultures, by extension, affecting the free will to practice what Islamic laws stipulate on punishment and punishing the criminal acts, such as murder, homicide, manslaughter etc. it should be a great notice that human rights agitation is of Western origin, not in conformity with African cultural systemic way of punishing the offenders. Thus, there is fair degree of consensus that human rights conceptions embodied in the various instruments are of Western region, therefore, human rights

¹⁸ The Qur'an English meaning and Notes, Saheeh International

¹⁹ Doi, A.R.I (1404AH-1984AD) Shari'ah: The Islamic Law, Bilqisu Ilori; P232

²⁰ Human Rights watch (2022). "Those who Returned are Suffering". www.hrw.org. Assessed on 10-04-2025.

²¹ Al-Jazeera (2025). Dozens killed in strike on market in Sudan's North Darfur, aljazeera.com

²² Philomena, I.O.E (2016). Sociology of Law Liberating the Human Race, Sirkuf Ventures, Abuja, Nigeria. Pp57&58.

had specific circumstances tied to the Western society and has no relevance to African²³ cultural and religious practices.

To this end, Islamic law (punishments) for premeditated and unintentional murder stands to be the best solution to the global rate of mortality, arising from deliberate or intentional killing of humans, money ritualism, kidnappers, armed robbers, bloody operations, killing based on jealousy and envy, murder cases based on economic competition, political imbroglio and rivalry acts that have resulted into lost of uncountable innocent souls etc. As it is in Nigeria criminal code, for example, deliberate killing of a human being by another human being is called murder as provided for in section 316(1)-(6);²⁴ while in the penal code, the offence is called culpable homicide punishable with death²⁵. The postulation by the virtue of section 316 has already been made available in Islamic law, two rulings are given: one is related to the hereafter while the other is related to this world; severe punishment is to be meted to the accused or perpetrator in this life; death is the punishment as its equivalent, or equal pardons the killer²⁶, enumerated by the family of the victim is the option of enforcing the death punishment (on the accused) or, demand indemnity, or to agree on a higher sum²⁷. An emphatical statement of Prophet Muhammad (PBUH) recounts:

*Whose kills intentionally shall be handed over to the relations of the killed. If they like, they may kill; and if they like, they may take blood not; and that is 30 she-camels of 4 years old, 30 she-camels of 5 years old, 40 pregnant she-camels; and there is for them what they compromise upon.*²⁸

Basic conditions for premediate murder

The jurists agreed upon three basic conditions for ascertaining intentional murder:

- (i) The victim of murder must be a living human being.
- (ii) The victim must have deed as a result of the accused person's action; and
- (iii) The offender has willful intention of causing the victim's death.²⁹

²³ Philomena, I.O.E (2016). Sociology of Law Liberating the Human Race, Sirkuf Ventures, Abuja, Nigeria. Pp57&58.

²⁴ Bangbose, O. & Akinbiyi, S. Criminal Law in Nigeria, Evans Brothers, Ibadan, Nigeria, 2016 Pp 212-213

²⁵ Bangbose, O. & Akinbiyi, S. Criminal Law in Nigeria, Evans Brothers, Ibadan, Nigeria, 2016 Pp 212-213.

²⁶ Jamal, O. (2012). How families on both sides of the law face tough choices in Somalia. www.theguardian.com. Assessed on 14-04-2024.

²⁷ Jamal, O. (2012). How families on both sides of the law face tough choices in Somalia. www.theguardian.com. Assessed on 14-04-2024.

²⁸ Osoul, G.C. (2025). Deliberate killing or murder. Islamictigh.net/er. Related bylbn majorly No 3622.

²⁹ Masuma, P. (2016). Law of Murder Under Islamic Criminal Law: An Analysis, Journal of Law, Policy and Globalization, P144.

Proof of Premeditated (Intentional Murder)

Certainty is always required in determining the commitment of any criminal case before the law especially before adjudication takes place. In doing that, the following points erupt.

- (i) The confession (Iqrar) of the offender;
- (ii) The testimony of two (2) adult male – reliable and honest;
- (iii) The confession of the offender must be his free consent, without force or coercion;
- (iv) The offender must be an adult; i.e not a minor or underage; and
- (v) He (offender) must be sane (not a mad person).
- (vi) The confession must be before a competent court.³⁰

It must be categorically stated that there is no particular verse of the Glorious Qur'an that stipulates that the two witnesses must be males, except that some related verses are bonowed and use as analogical dediction by the great scholars/jurists of Islam. There are about five verses of the Glorious Qur'an that mention witnesses without specificity to male or female.³¹ One of the verses is:

*O you who believed stand out firmly for Allah, as witnesses to for dealing, and let not the hatred of others to you make you serve to wrong and depart from justice. Be just, that is next to piety and fear Allah. For Allah is well acquainted with all that you do.*³²

It is therefore established that so long the accused person has confessed (Iqrar) the nefarious act of killing, the two reputable and honest mislms may now bear witness to the fact that the killing took place. But if however, two such qualified two witnesses, are not available the confession of the perpetrator suffices, enough for the discerning punishment of "life for life".

A Hadith of the Prophet (P.B.U.H) supports confession as a strong evidence in premeditated murder:

*Anas reported that: A jew crushed the head of a slave girl between two rocks. (As she was dying), then she was asked 'who did this to you? Was it so and so? They kept stating different name of the Jew and she mentioned with her head. The Jew was brought and he confessed to the act. The Prophet (P.B.U.H) commanded that his head be crushed between the two stones.*³³

Implementation of Law and Retaliation: Conditions

For retaliation (killing) of confirmed accused or a person guilty of murder, according to the Islamic Law, certain conditions must be strictly fulfilled:

³⁰ Masuma, P. (2016). Law of Murder Under Islamic Criminal Law: An Analysis, Journal of Law, Policy and Globalization, P144&145.

³¹ Masuma, P. (2016). Law of Murder Under Islamic Criminal Law: An Analysis, Journal of Law, Policy and Globalization, P144.

³² Yahaya, Y.B., (2003), Crimes and Punishments under Islamic Law, Malthouse Press Limited, Lagos; 2nd ed., P109

³³ Badawi, A.A. (2001), The concise presentation of the Fiqh of the Sunnah and the Noble Book, International Islamic Publishing House P615. Reorded in: Buktari, Muslim, Abu Dawood, Trimidhi, Nasin and Ibn Majoh.

- (a) The relatives of the victim of murder who has the right to take decision must be legally responsible. If for example, any of them is a minor (child) or insane; then the murderer has to be imprisoned until such a relative becomes matured i.e. legally responsible³⁴. Badawi did not explain the insane relative's condition. This is perhaps because no one knows when the insane relative member will become sane, and that will be at the detriment of supposed retaliation.
- (b) **Agreement:** There must be a consensus (agreement) among the relatives who matter in the murder case. If one or some among them do not concur to the retaliation exercise, the retaliation is then dropped. Practically, this point was buttressed in Zayd Ibn Wahb's statement in a murder case.

A man killed another man and the case was reported to Umar (R.A). the relatives of the victim wanted the murderer to be killed. However, the sister of the victim who was also the wife of the murderer said that she has pardoned her share for the husband. Umar (R.A) then said: "The man has been rescued from death penalty"³⁵.

- (c) **The punishment cannot be extended:** This is applicable to the adage "it is only the finger that errs that will be amputated" or cut off. Islamic law legal ruling means that if a pregnant woman is expected to receive a punishment or retaliation (to be killed), the punishment will be delayed till she gives birth and breastfeeds the baby³⁶.

In such a situation (of pregnant) murder, Islamic law consider the fact deserved mercy treatment hence it was not the baby that committed the murder rather, the mother of the baby. A foster mother can take over the breastfeeding of the baby while the mother is executed, after the first breast feeding by the biological mother. However, if no foster is found (to breastfeed the baby); then, the biological mother of the baby will be given the concession or consideration to breastfeed her baby for two (2) years³⁷. This is evident in a Hadith recorded by al-Bayhaqi that:

Abdullahi Ibn Buraydah narrated from his father who said: A woman from the tribe of Ghamd told the Prophet (P.B.U.H) "I have committed adultery." He said to her, return home, she returned to her home, and the next day, she came and said: perhaps you are going to turn me away like you did (to) Ma'iz Ibn Malik. By Allah, I am pregnant. He (prophet) again said, return. On the following day, she came again, He told her, return (home) until you give birth. When she gave birth, she came back with her child. He then told her, return (home) and breastfeed him (child), until he is weaned ... The Prophet (P.B.U.H) ordered that the child be given to one of the Mulims and a pit was dug for her, and he gave the command to have her storied ... He had the prayer performed on her and had her buried.

Unintentional Murder

The major obvious difference premeditated and unintentional murder is intention; other reasons are: preparedness, use of determined instrument: dagger,

³⁴ Ibid

³⁵ Ibid: See Shaykh al-bani, Irwa' al-ahaleel no 2222, recorded by Abaher - Razzaq

³⁶ Ibid

³⁷ Ibid: See Shaykh al-bani, Irwa' al-ahaleel no 2222, recorded by Abaher - Razzaq, P617

cutlass, arrow, gun, stick, bottle, metal or iron, poison, strangulation etc. *Qisas* is therefore the punishment, i.e. retaliation for deliberate or premeditated murder. Unlike intentional killing, where there is no intent to carry out murder, but murder occurs due to mistake accident or negligence. While retaliation *Qisas*, life for life serves as the punishment in the crime of premeditated murder, unintended crime (of murder) is punished by payment of blood money (*Diyya*)³⁸. The Glorious Qur'an explicates:

*And do not kill the soul (i.e. person) which Allah has forbidden except by right. And whoever is killed unjustly – we have given his heir authority, but let him not exceed limits in (the matter of) taking life. Indeed, he has been supported (by the law).*³⁹

Unintentional murder is not to be retaliated or punished onto death but it only involves payment of normal blood money *Diyya muhakkaka*⁴⁰. The act of killing a person by mistake or through the intention to cause death⁴¹. Accidental discharge of a gun bullet when a different person was targeted mistaking by hitting a person while driving a car or vehicle, shooting an arrow or gut at human during forest hunting of wild animals, mistaken for a human being⁴²; or a Quranic incidence of an unintentional death caused by a of Prophet Musa (AS) while trying to separate a two department parties, based on the intention by one of the parties.

And he entered the city at a time of intention by its people and found therein two men fighting: one from his faction and the other from among his enemy. And the one from his faction called for help against the one from his enemy. So, Moses struck him and (unintentionally) killed him (Moses) said: This is from the work of Satan. Indeed, he is a manifest misleading enemy.⁴³

According to the majority of Islamic jurists, three elements are contained in murder by mistake, namely:

- (i) The offender must have no intention to cause death or harm to the victim;
- (ii) The offender must have committed to some total act; and
- (iii) The victim must have died as a result of the act of the offender.⁴⁴

Murder by Mistakes: Punishment

If a Muslim mistakenly killed another Muslim, parts of the punishments include: payment of blood money (*diyah*) to the family of the deceased person, *tazir* by the presiding judge, freeing a slave, but if the deceased was from a people of war with you (but is a believer), then freeing a believing slave is required; but it, however,

³⁸ Yahaya, Y.B., (2003), Crimes and Punishments under Islamic Law, Malthouse Press Limited, Lagos; 2nd ed., P108 & 109

³⁹ The Qur'an English meaning and Notes, Saheeh International; Q17:33

⁴⁰ Yahaya, Y.B., (2003), Crimes and Punishments under Islamic Law, Malthouse Press Limited, Lagos; 2nd ed., P111

⁴¹ Masuma, P. (2016). Law of Murder under Islamic Criminal Law: An Analysis, Journal of Law, Policy and Globalization, P147.

⁴² Ibid

⁴³ The Qur'an English meanings (2004) Abdul-Qasin Publishing House, 1997, Jeddah. (Q28:15)

⁴⁴ Masuma, P. (2016). Law of Murder Under Islamic Criminal Law: An Analysis, Journal of Law, Policy and Globalization, P144&145.

there is no capacity to free a slave, then, the option of fasting for two months consecutively is resulted to. This actually shows how Islamic law values life.

And never is it for a believer to kill a believer by mistake. And whoever kills a believer by mistake – then the freeing of a believer slave and a compensation payment (diyah) be presented to his (i.e, the deceased’s) family. (It is required), unless they give (up their rights as) charity. But if he (I,e the deceased) was from a people at war with you and he was a believer – then (only) the freeing of a believing slave; and if he was from a people with whom you have a treaty – then a compensation payment presented to his family and the freeing of a believing slave. And whoever does not find (i.e one cannot afford to buy one) then (instead), a fast for two months consecutively (seeking) acceptance of repentance from Allah. And Allah is ever knowing and wise⁴⁵.

Objectives of Capital Punishment in Islam

Allah is not human so there is no way he would have established capital punishments for capital offences, as perpetrated by the offenders and or criminals without genuine objective. As 2021, according to Amnesty International as cited in Sulaiman, more than 13 countries apply and implement capital punishment today in the world.⁴⁶ There were 579 executions carried out in 2021 by 18 countries, as they used beheading, hanging, lethal injection and shooting. The countries included: China (1,000+), Iran (314+), Egypt (83+), Saudi Arabia (over 120 executions) which included a mass execution of 81 people, Japan (6 executions) between 2019-2021. In Europe, Belarus still performs executions.⁴⁷

It is pertinent to note that non-Islamic countries execute capital punishment, especially for capital offences, which actually dictates the necessities or the need for doing so as their main objective remains to correct or show deterrent to others. It is therefore, correct to say that the objective of application of capital punishment include: to secure justice for people, protection of human right⁴⁸, prevention of commission of further offences by the offender are other members of the society and for reformation of the offender⁴⁹ others include to justify the execution of certain offenders (offences) safeguarding the wellbeing of individuals, fairness and mercy.⁵⁰

Need for Applicability of Islamic Law’s Capital Punishment

A critical observation of the eventualities of murder and homicide cases around the global world cause for application of capital punishment. This is as a result of rampant premediated murder that has drastically reduced the growing number of humans, causing immeasurable colossal damages to the family members of the victims. Lives lost during kidnapping, robbery, jungle justice, dangerous theft,

⁴⁵ The Qur’an English meanings (2004) Abdul-Qasin Publishing House, 1997, Jeddah. Q4:92

⁴⁶ Sulaiman, L.R. (2021), Capital Punishments in Islamic Law. papers.ssrn.com/so/3/pa, Easter University Sri Lanka. Accessed on 17-04-2025.

⁴⁷ Judiciaries worldwide (nd) Death penalty judiciaries worldwide.fjc.gov. Assessed on 17-04-2025.

⁴⁸ The Qur’an English meanings (2004) Abdul-Qasin Publishing House, 1997, Jeddah. Q4:92

⁴⁹ <https://talenta.usu.ac.id/what> are the objectives of punishment in Islam

⁵⁰ <https://death.penalty.info.org>: what is the purpose of capital punishment?

poisoning, bombing, assassinating, hired killing, political murdering etc. are too numerous to be accurately accounted for; while scores of the perpetrators-offenders go scot-free even after proven beyond reasonable doubt.

Unknown Murderer and Liability

There are some situation where the murderer is unknown while the murdered person's corpse is discovered, seen or found in a place. It then becomes the collective responsibility of the residents of the house, shop, vehicle, etc. to take an oath of having no hands or knowledge of the murdered person/ the inhabitants of the quarter (owner of the house and his *Aqila*) or, if it is in a ship or boat or car etc., the passengers and the crew must swear fifty (50) oaths⁵¹ that they were not responsible for killing the deceased person and that they had no information of how and who murdered him or her. In a case where they are not up to fifty (50), they will swear more than once; and if they refuse to swear (which makes them suspicious of the act), they will be imprisoned until they do so (swear)⁵². Swearing will then bail them from the liability of *Qisas*, the blood money, must however be paid as *Akila*⁵³. According to Muhammad Subhi, *Qasamah* refers to a situation where a victim of murder was found in an area thereby a living man was found with blood stains on him; or a single impartial witness testifies that so-and-so killed him; or a group of slaves and women who came separately said so; the accuser must swear fifty (50) oaths⁵⁴. A prophet tradition from the authority of Bushair Ibn Yasar claimed that:

*Sahl Ibn Abi Hathamah (R.A) reported that a number of people from his tribe went to Khaibar and dispersed, and one of them was found murdered. They said to the people with whom the corpse was found: "You have killed our companion!" Those people said: "Neither have killed him, nor did we know the killer." The bereaved group went to the prophet (P.B.U.H) and said: "Oh messenger of Allah! We went to Khaibar and found one of our number had been murdered". The prophet (P.B.U.H) said: "Let the older among you come forward and speak." Then, the prophet (P.B.U.H) SAID TO THEM: "Bring your proof against the killer". They said: "we have no proof". The prophet (P.B.U.H) said: Then (they- the defendants) will take an oath." They said; "we do not accept the oaths of the Jews". The messenger of Allah prophet (P.B.U.H) did not like that the blood money of the murdered victim be lost without compensation, so he paid one hundred camels out of Zakah (to the relatives of the deceased) as *deyah* (blood money)⁵⁵.*

From the foregoing Hadith, the following legal rulings are critically noted as part of Islamic law suit on an unknown murderer: The fact that a Muslim's murderer is not known, the people around, instead of receiving capital punishment as it will, in premeditated killing identified murderer, the people around will have to take an oath

⁵¹ Yahaya, Y.B., (2003), Crimes and Punishments under Islamic Law, Malthouse Press Limited, Lagos; 2nd ed., P112

⁵² Ibid

⁵³ Ibid

⁵⁴ Muhammad Subhe, B.H.H (2008) Fiqh According to the Qur'an & Sunnah, Maktaba Dar-us-salam, vol.2, pp497&498, Riyadh.

⁵⁵ Bukhari, 12/229, no:6898, Muslim 2/1291, no 1/1669 and others.

fifty (50) times. Besides, responsible and honest old persons' oaths are accepted, nor minor; and they must be the defendants, in addition, such oaths must be made by the qualified Muslims; not non-Muslims. Following the refusal to take oaths will prompt payment of the compensation from the treasury of Muslims as the prophet (P.B.U.H) paid them one hundred (100) camels from the alms and blood money (diyah). All these explain the sacredness and dignity of life of humans according to the Islamic law.

Legal Retribution

• A father who murders his son

Views of Islamic school of thought vary on liability to legal retribution: (*Qisas*). Hanafi, Shafi'i and Hanbali schools maintain the father who kills his son is not liable to legal retribution as the following arguments were postulated that:

- (i) Since the father remain the direct cause of his son being brought to life, the son ought not to be the cause of his father's death.
- (ii) Legal retaliation (*Qisas*) is to prevent the commission of homicide and the love of the father for his son would prevent him from such an act⁵⁶.

The three schools of thought referred to under this heading firmly rely on the Hadith reported by Miyahid about a man who threw a sword at his son and killed the son. As he was brought to Umar (may Allah be pleased with him) for judgement, Umar said:

*Had I not had the messenger of Allah (P.B.U.H) say: A father if not to be killed (in retribution) for killing his child. I would have ordered you to be killed before you leave.*⁵⁷

It should be observed that despite that the father will not be liable to retribution (*Qisas*) the majority of the scholars agreed that, in such a case, the father has to pay the blood money.

• Diah of a Male Muslim

Islamic law in some cases of ratio gives double a share of a female to a male: Allah commands you concerning your children: the share of the male is like of two females ...⁵⁸ The sharing formula is manifested in the Islamic law of inheritance. As witnesses in Islamic law of transaction, trade or business, two males are first required, except in the absence of two that a male and two females are required ... *and call upon two of your men as witnesses; but if two men are not there, then, let there be one man and two women...*⁵⁹

When a Muslim male is murdered, the amount of diyah to be paid for a Muslim man is a hundred camels, or two hundred cows, or a thousand sheep, or a thousand deenars, or twelve thousand dirhams, or two hundred garments. The blood money,

⁵⁶ Yahya, Y.B., (2003), Crimes and Punishments under Islamic Law, Malthouse Press Limited, Lagos; 2nd ed., P113

⁵⁷ Al-Bawil a-Infadir, vil, IV pp5834 as narrated by Ibn Majah, At-Tirmidhi and Ahmed cited in Yahaya, Y.B., (2003), Crimes and Punishments under Islamic Law, Malthouse Press Limited, Lagos; 2nd ed., P113.

⁵⁸ The Qur'an English meaning and Notes, Saheeh International, Q4:11

⁵⁹ The Qur'an English meaning and Notes, Saheeh International, Q2:282

paid as compensation has to be paid to the victim's family or his heirs; be it intentional or unintentional homicide. Another clear difference is the

Maliki's school of thought holds different opinion from other three schools; on the issue of a murder committed by a biological father of a child. He maintains that the father is liable to qisas for killing his son if the homicide is proven beyond reasonable doubt. Generally, the Glorious does not discriminate between the murderer; rather, it maintains that a murderer is a murderer. Q5:45 no specialty or preference is given in the chapter or verse quoted above. To avoid rampant murdering of sons by their fathers, the opinion of Maliki's school of thought is more appropriate in this content.

- **Committing Suicide: Punishment**

Life is full of tests for every human and there is no way a believer can proof his total belief in Allah without being tested with calamities, health challenges, lost of properties, death of his beloved ones etc.

We will surely test you with something of fear and hunger, and a loss of wealth and lives and fruits, but give glad things to the patient (Q2:155),⁶⁰

The legal consequence of a person who commits suicide cannot be meted on the corpse, however, the legal punishment because the offence is a capital one (haram), the means with which he committed the offence is how the offender will be resurrected and at the end, will still face incessant burning in the Fire of Hell. Abu Hurayroh (may Allah be pleased with him) narrated that the prophet said:

Whoever throws himself down from a mountain and kills himself will be in the (Hell) fire falling down perpetually forever; and whoever drinks poison and kills himself with it, he will be carrying his poison in his hand and drinking it in the (Hell) fire wherein he will abide eternally forever; and whoever kills himself with an iron weapon will be carrying that weapon in his hand and stabbing his abdomen with it in the (Hell) fire wherein, he will abide eternally forever.⁶¹

- **Intentional or Unintentional Killing of a Fetus**

In a situation where during a fight or physical combat, the mother of a fetus was targeted with infliction of injury or death, but an attempt tort, battery or harm that results to the death of the fetus even though the mother was intended, the liability falls on the accused person; whether its mother miscarried the fetus or it was born dead or as a still baby.⁶² This illustration is evident in a Hadith of the prophet, reported on the authority of Abu Hurairah (R.A), he said:

Two women from the tribe of Huzail (fought with each other) and one of them threw (a stone at) the other, causing her to have a miscarriage, and the messenger of Allah (P.B.U.H) GAVE his verdict that, the killer (of the fetus) should give a male or female slave (as a diyah)⁶³.

⁶⁰ The Qur'an English meaning and Notes, Saheeh International, Q4:11

⁶¹ Bukhari, 5778, Book 76, Hadith No. 90. <http://sunnah.com>

⁶² Muhammad Subhi Ibn, H.H. Fiqh, According to the Qur'an & Sunnah, Darusalam, Riyadh, First edition, 2008, P497.

⁶³ Ibid

The giving out of male or female slave, as legal retribution (diyah) is the liability for the offence of killing the fetus, by stoning or with the use of any other object.

Furthermore, if the child is delivered alive but dies, as a result of the battery or injury caused by the accused, then, full blood-rit must be paid by the accused person who caused the injury to the mother of the baby. For a male child, a hundred camels must be paid; and for a female, fifty (camels) must be paid.⁶⁴

CONCLUSION AND SUMMARY

Islam generally, and Islamic legal system in particular, attaches a greater importance to life (soul) of humans and establishes a very serious punitive punishment to deliberate killing – “life for life”; while unintentional killing attracts legal retribution of taking the liability of paying ransom of a very huge amount or, emancipate a believing slave to the family of the deceased Muslim; or must fast for two months consecutively Q4:92. Other lives of animals and plants cannot be taken as well except that the proper channel is followed.

As a Muslim, care must be taken so as not to involve or engage in taking others lives wither intentional or unintentional.

Recommendations

The following recommendations are made sequel to the discussion of the topic:

1. Muslim countries in the global world, where Islamic legal system preponderates over other man-made law should not discontinue the Islamic law of legal retribution on deliberate / intentional killing.
2. Other countries where Muslims exit should also implement Islamic law of retaliation on offenders of intentional killing in order to reduce drastically, the number of lost souls via kidnapping, robbery, banditry, bombing etc.
3. The sacredness and importance of soul should be taught at every family level by the church clerics and Islamic scholars, they should also lay more emphasis on it at their various functions; and
4. Every government of every nation should go strictly by the punitive punishment to be meted on the offenders.

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