

A COMPARATIVE STUDY ON MENS REA (GUILTY MIND) OF VARIOUS FORMS OF MURDER IN IRANIAN RELIGIOUS JURISPRUDENCE AND STATUTE LAW

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ABSTRACT

The mens rea of murder is among the most difficult and well-known issues when investigating the murder and determining the nature of offence. With regard to it, the court have passed two forms of judgments on the case, including retaliation for intentional crime and payment of blood money for unintentional crime. The mens rea of murder based upon religious jurisprudence and legal law encompasses the intention of behavior and the intention of result; although by adding some clauses to the article 290 of the Islamic Penal Code, it is presumed that the legislator has accepted other causes for the mens rea of the murder, such as specified and unspecified malice, and so forth; the clauses seems to be dedicated to intentional murder, so the sole criterion for the mens rea of the murder is what has been mentioned later. The present research aimed to address the intentional and unintentional mens rea of murder in the Iranian jurisprudence and statute law.

Keywords: *Mens rea, Murder, Religious jurisprudence, Law.*

INTRODUCTION

Given to the most serious effects of committing a murder, the legislator predicates two intentional and unintentional forms for it. Perpetrator's action and mental element while committing any form of a murder are among well-documented criteria to classify murders and consequently to predicate criminal sanctions for it. The mental element seems to appear in negative or positive behavior. As a result, murders are categorized into two groups, including intentional and unintentional.

Studying the mens rea for intentional murders

Murder is a result crime; that is trying to kill a person; so in addition to behavior, malice also has to be included as a necessary element to materialize the mens rea for intentional murders. Therefore, both having criminal will with a general malice and intention of acquiring the result with a special malice are required for committing an intentional murder; as a result, intention of acquiring the result is a sine qua non for mens rea of an intentional murder.

Practically, committing an intentional murder with the intention of acquiring the result corresponds to some principles and standards related to mens rea of qualified intentional

crimes; so the mens rea of murder encompasses guilty intent and the intention of acquiring the result. However, there are many other forms of intentional murder predicated in law of a variety of countries without explicitly underlying the intention of acquiring the result. The procedure is also common in the Iranian criminal law.

The mens rea of an intentional murder with the intention of acquiring the result

The mens rea of an intentional murder with the intention of acquiring the result includes the guilty intent with a general malice or intention of acquiring the result with a special malice.

The guilty intent (general intent)

ntent is common among all intentional crimes. In the viewpoint of the legislator, having conscious will for committing a crime by a perpetrator in all intentional offences is necessary to treat it as a crime. The guilty intent to commit an intentional crime means being aware of a living slain and having intent, that is conscious will to commit an action against someone else which finally leads to kill his/her (Aghaei Nia, 2010: 173)

In other words, the guilty intent means the conscious will to commit a crime in order to kill someone, even with being aware of its prohibition.

Intention of acquiring the result (specific intent)

Intentional murders are classified under result crimes. According to article 144 of the Islamic Penal Code as to qualified crimes, the Iranian legislator stipulates that, the intention of acquiring the result or even being aware of it, needs to be realized for committing those crimes that are legally expected to produce a result.

Therefore, according to the religious jurisprudence to commit an intentional murder both general malice and the intention of acquiring the result, that is special malice, are necessary; therefore, the murder is not intentional unless there is no special malice.

From jurisconsult's viewpoint, as mentioned in clause (a) of article 290 of the Islamic Penal Code, committing an intentional crime will inevitably entail the intention of acquiring the result. Furthermore, in the view of reasonable men and also according to traditions, an intentional action needs to be done by conscious will (Najafi, 1983, vol.42:13).

Mens rea of murders without the intention of acquiring the result

Given adverse consequences of committing an intentional murder, legislators of countries worldwide try to describe the examples of intentional murders which don't explicitly need intention. In the Iranian penal code, these forms of unintentional murders only have one example where intention to commit a fatal crime is displaced by intention to kill someone. The fatal action may be typically or rarely killing. The following attempts to explain both of them:

According to the Islamic Penal Code (2013), the legislator stipulates the fact that the offender needs to be aware of committing a typically fatal action. Clause (b) of article 290 of the Islamic Penal code stipulates that, when the perpetrator intentionally performs an action typically leading to a murder, and such like, even without having intention to commit a crime, he/she becomes aware that it would be a typical crime.

The issue is repeated in clause (c) of the same article, so courts are not allowed to treat such an action as an intentional murder. As mentioned later, the term "intention" in the



aforementioned article means willing to realize a murder, that is, the perpetrator commits an intentional murder, according to clause (b) even without willing to kill someone, but due to being aware of its typically fatal action.

From the viewpoint of the legislator, and according to clauses (b) and (c) of article 290, intention to carry out a crime is not a prerequisite for committing a crime, but performing a typically absolute fatal action and a typically fatal action in clauses (b) and (c) of the same article respectively, are prerequisites to realize an intentional murder; accordingly a typically fatal action is divided into two groups, including typically absolute fatal and typically partial fatal.

In clause (b) of article 290, legislator has classified some murders as intentional on the basis of the perpetrator behavior, whose most striking feature is being typically fatal. The term “typically” in the phrase “a typically fatal action” indicates a normal and healthy-minded person.

Given the great importance of this form of intentional murders, some legislators believe that a fatal-natured crime is always the prerequisite for committing an intentional murder, therefore, to accuse somebody of an intentional murder is not true, unless having intention of acquiring the result (Naguib Hosni, 1992:326).

In the same way, a typically fatal action is also included as the main cause of committing an intentional murder in clause (c) of article 290.

The aforementioned clause (c) similar to clause (d) more attends the slain, on the other hand, compared to clause (b), the victim in clause (d) is presumed ill, unhealthy or weak; however, in the clause (c) of article 290, the mode of victim and specific spatial or local situation are both evaluated. A notable example of relatively fatal conditions is an insistency judgment of the Supreme Court¹.

The judgment indicates that, although it is not a typically fatal action to burn someone using petrol, when the victim is sitting nearby the fire, the action is classified under a typically fatal one, as a result the committed crime becomes intentional, providing the victim is dead or injured. Given special conditions in clause (c) of article 290, the legislator removed the aforementioned legal gap by adding the phrase “or due to specific spatial or local situation” to it.

It must be noted that, committing a typically fatal crime like the case mentioned in clause (b) of article 290, requires a mental element, however against clause (a) the mental element of the perpetrator does not here refer to intention to kill someone; rather it refers to lethal intention even being aware of the dangerous action. In 2013, to resolve any ambiguity about clause (b) of article 290, the legislator explicitly added a term entitled “knowledge of the perpetrator about their typically fatal action”. The intentional murder with the intention of an adult intelligent person to commit a murder against someone, not only is occurred with a typically fatal weapon, but also is happened with a rarely fatal one.

The issue is also mentioned in clause (a) of article 290 of the Islamic Penal Code (2013), because an intentional murder with an intention of acquiring a murder is realized without a lethal weapon. Therefore, the case is not included in the evidence of murder, however, there is no retaliation against the perpetrator when committing a crime with a rarely fatal weapon

¹ insistency judgment, No.24/84:2005



such as thrashing someone with a thin stick, because the weapon is not typically fatal and there was no intention to kill. By and large, it is not an intentional murder, rather it is quasi-malice. Instances mentioned in clause (b) of article 290 are included as intentional murder because from the viewpoint of jurisconsults, the murder is occurred intentionally and there is no special compulsory obedience for it, because ordinances of the law rely on subsidiary matter. There are many well-known traditions indicating there is retaliation for these faults (Koleini, 1986:280). Jurisconsults also estipulate that the crimes are occurred intentionally (Najafi, 1983:12). Accordingly, from the jurisprudential viewpoint, the mens rea of murders refers to both the intention of behavior and intention of result.

The mens rea of unintentional murders

Although, in jurisprudential sources unintentional murders including murders for wound are divided into four groups such as quasi-intentional murder, simple mistake, considered as quasi- intentional murder and are admitted as a simple mistake; the author has categorized unintentional murders into quasi-delictual murder and simple mistake because the legislator also has classified crimes under two groups in article 298 of the Isalmic Penal Code.

Quasi intentional murder

A quasi intentional murder is committed when absolute accommodation of both intentionally and mistaken terms are necessary but are insufficient for a murder. However, some Sunnite jurisconsults do not accept quasi-intentional murders, as they believe that classifying murders as intentional, simple mistake and quasi intentional is against the tradition; because, according to Quarn, murders are divided into two groups including intentional (but whoever kills a believer intentionally) and unintentional (and never it is for a believer to kill a believer except by mistake), adding a new third group is in the excess of the text.

Types of quasi-intentional murders in the statute law

The legal basis and ground of quasi-intentional murders lies in the article 291 of the Islamic Penal Code.

The article includes three forms of quasi-intentional crimes, while all triple notes stipulated in article 291 of the Islamic Penal Code vary substantively and structurally. The following addresses these three forms of murders:

Original or simple quasi-intentional murder

Clause (a) of the article 291 of the Islamic Penal Code as to the quasi-intentional fault and specifically quasi-intentional murder stipulates that, when the perpetrator is willing to commit a crime against the victim, but neither he/she has intention to commit the intended crime nor intended crime is included as the definitions of intentional murders.

A quasi-intentional murder arising from the ignorance of fact

Clause (b) of the article 291 of the Islamic Penal Code as to quasi-intentional murder arising from ignorance of fact states that, when the perpetrator remains in ignorance of the fact and commits a crime but the contrary is proved, for instance committing a crime assuming the subject would be a thing, animal or individuals included in article 320 of the civil law.

A quasi-intentional murder arising from the perpetrator's fault

The nature of offence in a quasi-intentional murder arising from perpetrator fault is simple mistake, however, the legislator includes effects and judgments of a quasi-intentional murder on this form of murder since criminal convictions are not applicable for a nearer kins (agheleh) who had no liable intervention for an action or even had serious hostility with the victim.

Mens rea of a quasi-intentional murder

From most jurisconsults and lawyers viewpoint, intentional and quasi-intentional murders vary in mens rea.

The feature and criterion of a quasi-intentional murder include "the intention of behavior or purpose of action" and "mistake in result", respectively; therefore, the mens rea of a quasi-intentional murder are:

- The intention of behavior or purpose of action
- unintentional result clause
- unnecessary criminal fault
 - Intention of behavior

There is a close similarity between the intention of behavior, mens rea or mental element in a quasi-intentional murder, and mens rea of an intentional murder. It means, similar to an intentional murder having an intention to do and committing a crime against the victim, is necessary for the murderer; but retaliation is for intentional murder providing the intended murder be either violent or against the law, however, committing a direct quasi-intentional murder proving guarantee depends on committing an unjust unintended crime. Furthermore, contrary to intentional murder in which the behavior could be typically or rarely fatal having an intention to commit a crime, is a prerequisite for committing quasi-intentional murders (Sadeghi, 2015:260).

According to the last sentence in Art.291, it is obvious that the committed crime will be intentional not quasi-unintentional, providing the perpetrator commits a murder or an injury with a direct intent or when the legislator stipulates that the murderer have had an intention to commit it.

Furthermore, according to Art.502 of the Islamic penal code (2013), given the definition of murder, there is either retaliation or compensation if an individual commits a crime due to dropping on someone else, while throwing him/herself down. As a result, the apparent available difference in Thrir al-wasileh and Sharh al-lumah for someone who drops him/herself down inevitably, is neutral. Moreover, it should be noted that the murder is classified under a quasi-intentional in Thrir al-wasileh (Khomeini, 1983:562).

Non intention of result

The offender unintentionally and without any criminal purposes commits a murder in a quasi-intentional murder; as a result having no purpose of behavior is a prerequisite for such a murder. When someone is dropped on the third person and he/she dies or gets injured, it is an



instance of a quasi-intentional crime, therefore the perpetrator shall be liable for its compensation providing there is no intention for murder and the behavior is typically fatal (article 503 of the Islamic penal code).

Therefore, the offender should be primitive or subordinate or motiveless. When he/she intends a typically fatal behavior, along with such a behavior, the intention of result is also indirectly achieved; consequently, it becomes an instance of an intentional murder. As a result, for a quasi-intentional murder, the offender shall be motiveless, either primitive or subordinate (Sadeghi, 2015:261).

There is a point about quasi-intentional murders in the Iranian law and Islamic jurisprudence that is worth nothing. Regardless of the result that is beyond his/her control, the perpetrator is liable for what is occurred (Mir Mohammad Sadeghi, 2007:135).

Unnecessary criminal fault

Although realizing unintentional crimes depend on existing criminal fault, in many cases the occurrence of non-criminal crimes do not depend on committing criminal fault when the fault is not considered as a crime; as a result the legislator does not include obligations for fault for the judgments of unintentional crimes (Sadeghi, 2015:261).

Given article 145 of Islamic penal code, accomplishment of unintentional crimes depends on proving the perpetrator's fault. For unintentional crimes, including quasi-intentional and simple mistake, regulation of the book "retaliation and compensation" is applied.

Since the mental element of unintentional crimes is criminal fault, a quasi-intentional murder shall be along with the same or different criminal faults. It means "excessive use or failure of due care", in other words it consists negligence, recklessness, unskilfulness and disregards governmental provisions and regulations.

Existent or lack of criminal fault has no effect on committing a quasi-intentional murder unless of course, in the case of indirectly killing for which the offender is still liable despite observing all interrelated regulations. Furthermore, a criminal fault brings about liability when it is an instance of violent, because any form of violent fault does not encompass violent criminal crime. As a result, when undertaking medical or sports activities according to standards and provisions led to a murder, it would be an instance of a quasi-intentional murder and would bring about a liability to compensate, providing the perpetrator had the intention of what has been occurred (Sadeghi, 2015:261).

Mens rea of the simple mistake murder

The term "simple mistake" generally means the perpetrator neither is offender for committing a crime against the victim, nor what is occurred, therefore, there is neither intention against the victim, nor committing any fault.

Simple mistake murder from jurisconsults' view

According to Mohammad Jamaluddin al-Amili, also known as Shahid Awwal, when someone is shot dead mistakenly, the committed crime is an instance of a simple mistake murder.



From al-Shahid al-Thani's viewpoint, in the simple mistake crimes, contrary to two other faults, the attribution principle is generally forbidden, that is neither what is occurred against the victim was under the control of the offender, nor the murder was intended. On the other hand, it should be noted that contrary to a quasi-intentional murder, the victim is not intended in a simple mistake murder.

Abdul Qader Audah in his book stated the opinion of Ibn Hamze, one of well-known Shiite jurisconsults, to classify and summarize various forms of murder; a simple intentional crime requires five main prerequisites to materialize including, a victim, having the intention of murder, a rational murderer equipped with a typically keen, heavy, torrid, chocker or fatal tool, prohibiting the victim from eating and drinking, drowning him/her or drawing bleed in a way he/she dies or even through undergoing an unsuccessful medical treatment by a doctor.

The existence of a reasonable adult offender, making mistake in behavior, and result are prerequisites for a simple mistake fault. Committing a murder by a child or an insane person are both instances of mistake whether done intentionally or unintentionally. A simple mistake murder is committed when the perpetrator shoots at a prey or something else but a person is shot die mistakenly. A quasi-intentional murder must have four main conditions, that is an adult reasonable offender has the intention of purpose but he/she makes a mistake.

An instance of a quasi-intentional murder is when someone is intentionally punished, educated or forbidden by a typically safe tool, or when a medicine treats a patient correctly (Audah, 1982:143). Given the clause (a) of article 292 of the Islamic penal code, a simple mistake murder is committed when the victim is sleeping or insensible, because in these cases, the perpetrator has neither will nor intention (Najafi, 1982, vol.43:3) and the crime is imputed to him/her conventionally (Khoei, 2007:276).

According to some jurisconsults, given the clause (a), attribution of a crime to an offender with no intention and will is determined and the offence is committed by mistake (Hilli, 1999:656-657) or at least it is an instance of a simple mistake crime.

There is a consensus among jurisconsults about the clause (b) of the aforementioned article, that is all intentional and unintentional crimes committed by an insane immature offender are appended to simple mistake crimes (Towsi, 1979:760) and there are also many traditions about it:

According to Imam Bagher, from Imam Ali's viewpoint, all crimes make the criminal liable for compensation, except for crimes committed by an insane person whom the liability rests with the nearest kin (agheleh), Mohammad Moslem said.

In other tradition, Imam Bagher said: there is a single judgment for both intentional and unintentional crimes committed by an immature.

According to traditions, there is also consensus among jurisconsults about mistaken crime mentioned in the clause (c) (Ardebili, 1982:378-379):

Sahihe Abdul Rahman ibn Hojaj said: mistaken offence is occurred when the perpetrator intends to shoot at a determined thing but hits someone else (Koleini, 1986:280).

Although ascertainment of liability in a simple mistake crime entails taking an action by the offender, the committed crime not only shall be the lack of any criminal fault, but also the offender should have neither intention of behavior, nor intention of result against the victim;



for example, someone is shot died when the perpetrator shot at the board. As a result, the following need to be underlined to study mental element of a simple mistake crime.

Intention of behavior is the premise of crime

As mentioned later, the liability is voluntary in crimes. Otherwise, attribution of a crime to the offender is forbidden; as a result, to attribute a crime to the perpetrator, he/she must commit a crime; because no crime would be committed in the absence of purpose.

Therefore, doing an intentional behavior is a premise for committing a crime by the offender, for example, someone who is going to drop a stone, shoot, driving and so forth (Sadeghi, 2015:274). The first situation is also required for both two other crimes (intention and quasi-intentional) but as the offender has the intention of behavior against the victim, the term “intention of behavior is a premise of crime” is not necessary for these two cases.

Having no intention for what is occurred against the victim

Although having a will to commit a simple mistake murder is necessary, having no intention against the victim is a prerequisite for it. On other words, having intention for what is occurred is entirely different from having intention against the victim for what is occurred. It means that, the perpetrator possibly has intention to fulfill an action but what is occurred hits against someone else for whom there is no intention.

According to the legislator, the phrase “not what is occurred against she/he” emphasizes this issue. The condition is interpreted in three forms:

The first condition occurs due to making mistake, that is the example in the clause (c) of article 292, “ like committing a crime against someone when shooting bullets with an intention for hunting “, here the prey is not killed but an individual is hit. In other word, the main purpose is far from the victim; practically the legislator intends to say making mistake in identity is forbidden to the simple mistake murder (Aghaei Nia, 2010:176). The second mistake is made when the purpose is a human. It means the shooter intents to shoot at the target but he/she assumes it is not a human.

For example, someone successfully shoots at an animal to kill it, but it turned out to be a case of mistaken identity and the target was a person in a figure of animals in order to approach to hunt them. Here, neither the perpetrator has the intention of behavior against the victim, nor he/she makes mistake to identify the target. Practically, the case is an instance of the law stipulating “without the intention of what is occurred against him/her”.

The third condition is occurred when the target is an alive human but the perpetrator has no intention of behavior against him/her but mistakenly the murder is realized. Imagine that someone turns a gun on his/ her friend thinking there is no bullet in it, but his/her friend is mistakenly killed. Invoking clause (c) of article 292 of the Islamic penal code, “without the intention of what is occurred against him/her”, can such a murder be considered as an instance of a simple mistake?

It should be noted that, there is no intentional crime providing it is approved that the perpetrator included none of aforementioned instances in the note of article 145 (Aghaei, 2010: 176).



Two main prerequisites are required to commit a crime, having intention for what is occurred and the intention of victim, however the committed crime would be unintentional when each of them are not realized.

Having no intention for result

Clause (c) of article 292 of the Islamic penal code begins with the phrase “the offender neither had intention toward the result nor he had the intention of behavior to kill the victim” explicitly emphasizing that he had no intention to commit a simple mistake murder. Here, the term “crime” is the same intended result, especially the murder. Practically, it is obvious that due to the lack of intention against the victim, the perpetrator is not reasonably criminal.

However, the simple mistake murder is occurred when the perpetrator does not naturally, partially or generally intent to commit a crime against the victim at all (Marashi, 1994: 106). Because, the term “intention for result” refers to an intention simultaneous with, adjunct to what is occurred, insomuch that the perpetrator is willing toward the result from the intended purpose, therefore, no intention of behavior shall be forbidden on the intention of results.

Having no criminal mistake

If the offender commits excessive use or failure of due care to fulfill an action which is the criminal premise, in a way that the unintentional crime arises from his/her criminal mistake, it would be known as a quasi-intentional murder; therefore, committing a simple mistake crime depends upon the lack of criminal mistake of the perpetrator to perform a completely occasional action caused by a crime.

As a result, a simple mistake crime only takes place with direct killing by the offender, since he/she is not liable for the crime when a murder or injury is caused indirectly; therefore unless occurring a criminal fault (excessive use or failure of due care) committing a quasi-intentional offence is assigned to this form of crime.

Regarding aforementioned conditions, for example, if the offender kills someone due to a mistaken shot, it would be a representative sample of a simple mistake crime; because the intention of offender to commit a crime against someone else does not mean the intention of what is occurred (Sadeghi, 2015:275).

CONCLUSION

The current research has led the researcher to conclude; according to jurisconsults the principle of jurisprudential element about mens rea of an intentional murder that it is the intention, including the intention of behavior and intention of result. However, quasi-intentional murders' jurisprudences also stipulated both the intention of purpose and the intention of result. With regard to changes in the mens rea of murder in the new law, although there were some instances in articles 290 and 291 comparing the former law, criterion for mens rea is still criminal intention consisting both the purpose of behavior and result called general and specific intent, respectively.

With regard to the clauses of article 290 of the Islamic Penal Code, the legislator seems to stipulate that certain and uncertain intents are criterion to identify the nature of offence (intentional or unintentional); however the cases are just considered as an example, so it does



not affect the mens rea, that is the criminal intention. However, regarding both clauses (b) and (c) of the same article, the intention and being typically fatal are prerequisites for the commission of intentional offence. Clause (d) is also appended to clause (a) as one of its criterion; however new changes in the law are about a quasi-intentional murder stipulated in article 291 of the Islamic Penal Code.

If the mens rea be only considered for intentional murders, it would not include all required forms to realize justice and discipline in the society, therefore, with regard to jurisprudential principles, the legislator adds other forms of mental elements to the mens rea called criminal fault consisting of negligence, recklessness, unskilfulness and disregarding the governmental provisions and regulations.

To sum up, regarding triple clauses of article 291 of the Islamic Penal Code, the legislator divided a quasi-intentional murder into three groups: simple or original quasi-intentional murder, quasi-intentional murder arising from ignorance and finally a quasi-intentional murder arising from the perpetrator's fault, and it should be noted that the intention for behavior and the intention for result constitute the mens rea of all of them.

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