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MANSLAUGHTER AND ITS SPIRITUAL ELEMENT FROM THE PERSPECTIVE OF ISLAM

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ABSTRACT

Manslaughter is one type of murder which is the intermediate point between murder and killing by mistake. In other words, the murder that can be titled neither unintentional nor intentional in an absolute manner and, in the meanwhile, both of the titles can be used thereto is called manslaughter. Although some of the Sunni jurists do not believe in manslaughter and hold that the dividing of the murder in jurisprudence and law to intentional, unintentional and manslaughter is against the text because the praised Quran has only spoken of two kinds of murder. Thus, the present study's authors aim at reviewing the ĀYĀT and narration as well as the jurisprudential opinions regarding manslaughter crimes thereby to explore such crimes in Islam. According to the library studies, it can be concluded that although manslaughter has not been explicitly mentioned in the holy Quran, narrations and jurists' ideas can be used to come up with the finding that such a type of murder is also existent in Islam. Moreover, the spiritual element in this type of murder has also been mentioned in Islam and jurists' notions.

Keywords: Murder, Manslaughter, Spiritual Element, Islam, Crime.

INTRODUCTION

The most common classification of murder based on psychological element that has also been agreed by a majority is its categorization into murder, manslaughter and purely mistaken kill. The primary criterion for such a classification is the Quranic ĀYĀT, narrations in this regard as well as the jurists' perspectives. The crimes and punishments defined and specified by the Islamic penal code of law stem from the ĀYĀT and narrations as well as the statements and opinions by some jurists. But, in some cases, due to the absence of an explicit text in the holy Quran and, also, the achievement of no consensus by the jurists of various Islamic religions, discrepancies are seen regarding the crime types hence the corresponding punishments. As for the manslaughter, it can be most frequently seen in the various texts and statements. In article 291, the legislator divides crimes, including the manslaughter, into three sets of pure or primary manslaughter, manslaughter stemming from ignorance and manslaughter originating from the murderer's fault. Although there are three different titles given to these three types of murder (manslaughter), it can be stated that all three of them differ in terms of nature. Thus, the present study has been conducted for investigating the existence of the manslaughter, its types and its psychological (spiritual) element based on ĀYĀT, narrations, texts and books and articles written by the jurists as the canonical

foundations of such crimes' elucidation within an analytical format corresponding to the Islamic penal code of law, passed in 2013.

Manslaughter from the Perspective of the Holy Quran:

Although the term manslaughter has not been explicitly used in the holy Quran, it can be somehow inferred from the concept of some ĀYĀT, such as { وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَقْتُلَ مُؤْمِنًا إِلَّا خَطَأً وَمَنْ } قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَّةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ... } meaning “a believer should not intentionally kill another believer unless it has happened by mistake in which case a believer slave should be freed as an atonement thereto and a sum of money has to be paid as blood money to the next of kin ...” (SŪRAH NISĀ'A, ĀYA: 92); { وَ لَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ وَ كَانَ اللَّهُ غَفُورًا } قَرِيبًا } meaning “you are not held liable for what you have performed by mistake on the condition that you have not willed it in the heart and Allah is the most forgiving the most merciful” (honorable SŪRAH AHZĀB, ĀYA: 5). In these two ĀYA, the concepts “crime and murder” have been specified and the Holy Quran substantially emphasizes and insists on the doer's intention and his or her criminal determination. In sum, a person has perpetrated manslaughter if s/he causes the murder of another person with no prior intention and by a means other than a lethal weapon but by an intentional action that may have been forcible and sinful or benevolent and punitive. Therefore, two necessary components of a manslaughter are intention and fault.

Manslaughter from the Perspective of the Narrations:

- A) Ali Ibn Ebrahim quotes Abdullah Ibn Sanan in the following words “ سمعتُ ابا عبدالله (ع) يقول: قال امير المؤمنين على (ع): الْخَطَأُ شِبْهُ الْعَمْدِ أَنْ تَقْتُلَهُ بِالسُّوْطِ أَوْ بِالْعَصَا أَوْ بِالْحِجَارَةِ إِنْ دِيَّةَ ذَلِكَ تُغْلَطُ وَ هِيَ ”مِائَةٌ مِنَ الْإِبِلِ” meaning “I heard his highness Abi Abdullah (PBUH) saying that Amir Al-Mo'menin (PBUH) ordered ‘the manslaughter is the one carried out by cane, lace and/or stone and its blood money can be at the most, one hundred camels” (Horr Ameli, 1988, p.27).
- B) Zarareh quotes His Highness Abi Abdullah (PBUH) in the following words: “ قال انَّ الخِطَاءَ ”ان يعمده و لا يُريدُ قتله بما لا يقتلُ مثله والخطاء ليق فيه شك ان تعمده شيئاً آخر فتصيبه ”intentional (manslaughter) fault is defined as the action performed out of determination and by means of a common lethal weapon and the undoubted mistake is defined as the happening of an incident other than what had been intended” (Ibid, p.27).
- C) Abd Al-Rahman Ibn Al-Hajjaj quotes His Highness Abi Abdullah (PBUH) in the following words “انما الخِطَاءُ أَنْ تُرِيدَ شيئاً فتصيبَ غيره فاما كل شيءٍ قصدت اليه فاصبته فهو العمد” meaning “the happening of an action other than what had been intended but anything that is intended and also occurs has to be considered as an intentional action” (Ibid, p.28). The followings can be discerned from the narrations: emphasis on two elements of intention and fault in the presence of both of which the murder has to be envisioned as manslaughter otherwise it would not be a case of manslaughter in the absence of one of the two aforesaid conditions. There is also news (Akhbār) and Ahādith narrated in a general manner though they reach the frequency of the Shiite Ahādith. Thus, they are not presented herein and the interested readers are referred to the eighth volume of the



book “Baihaghi’s Sonan”, pp.42, 44 and 68, as well as the ninth volume of the book “Al-Moqni” by Ibn Qodameh, p.320 on.

Manslaughter from the Perspective of the Jurisprudents:

Saheb Jawaaher defines manslaughter as follows: “... شبيهه العمد أن يكون عامداً في فعله و هو الضرب و للتأديب و المزاح او نحوهما مما لم يرد به القتل meaning “manslaughter is the one that the perpetrator does not intend to kill another person but it occurs during, saying, punishment, joking and others of the like” (Muhammad Hasan Najafi, 1983, v.43, p.3). Saheb Riadh states in this regard that “والشبيهه بالعمد أن يقصد الى الفعل دون القتل، بشرط ان لا يكون الفعل مما يحصل به القتل غالباً” meaning “the manslaughter is the one that an individual intends to do something but does not want to kill another person, of course, provided that s/he takes an action that does not commonly cause murder” (Tabataba’ei, 1997, v.16, p.344). The author of the book “Mabaani Takmelah Al-Minhaaj” states the following words relying on a narration from Imam Sadeq (PBUH) who had been asked about the criterion for the determination of manslaughter: “عن الخطاء الذى فيه الديه” meaning “is the criterion for the manslaughter fault that can be sentenced to the payment of blood money and atonement not that the perpetrator happens to hit a person willfully and out of awareness but with no intention for killing him or her? His highness ordered ‘yes, it is true’” (Abu Al-Qasem Khou’ei, 2007, v.2, p.4). The author of Mohazzab states “و اما ما يشبهه العمد، و هو عمد الخطاء فهو ان يكون عامداً” meaning “manslaughter is the one wherein two conditions have been taken into account: one is the intentionality of the action and the other is its mistakenness” (Abd Al-Aziz Ibn Borraj, 1985, v.2, p.456). Ibn Edris Helli defines it in the following words “عمد الخطاء او شبيهه العمد، والمعنى واحد، و هو ان يكون عامداً في فعله، مخطئاً في قصده” meaning “semantically, intentional action by mistake and manslaughter action are synonymous and it is only the intention that separates them. In the manslaughter, the perpetrator intentionally performs an action but does not mean it” (Muhammad Helli, 1990, v.3, p.322). Imam Khomeini orders in a definition of manslaughter that “شبهه العمد ما يكون قاصداً للفعل الذى و لا يقتل به غالباً غير قاصد للقتل، كما” meaning “manslaughter is that an individual performs an action but with no intention to kill another and such actions do not usually cause death to another person such as when an individual hits another person with lace or other similar instruments for punishment and the other person dies accidentally” (Ruhollah Khomeini, 1982, v.2, p.454). Shahid Sani defines manslaughter as stated in the following words: “و إذ لم يقصد القتل بالنار و إن اتفق” meaning “الموت كالضرب بالعود الخفيف، او العصاء” (Zain Al-Din Ibn Ali Ameli, 1983, v.10, pp.107-108) meaning “if a person does not intend to kill another one but it happens haphazardly, s/he is not retaliated because the instrument by which s/he has hit the other person does not usually kill”. According to the jurisprudents’ ideas and the criteria specified in the law of blood money, it can be stated for the definition of manslaughter that “it is a sort of accidental death caused by a perpetrator who does not intend to kill another person and has not performed or used something lethal”. Based on the abovementioned definition, it is necessary for the manslaughter to be qualified for the following conditions: first of all, no use should have been made of deadly actions; secondly, the perpetrator should be found having had no intention to kill; thirdly, the perpetrator’s murdering of another person should have happened by mistake; fourthly, the obtainment of such a result has to have been non-expectable for the perpetrator.



It is more like when an individual hits a child to punish him or her and cause his or her death accidentally or when a physician kills a patient accidentally in the course of treatment and/or when a person kills another by hitting him or her by a piece of wood that is not lethal and the hitter is found not having intended to kill him or her. These cases are viewed as manslaughter. Saheb Jawaher (may Allah consecrate the honorable soil of his tomb) states in his conclusion of the manslaughter that “it can be stated in sum that manslaughter is the case wherein a person performs an action without intending to kill the other on the condition that the action is found not deadly by itself” (Muhammad Hasan Najafi, 1983, v.43, p.3). Anyway, the aforementioned definitions by the jurists are excerpts from the narrations and two other cases have been presented below as examples:

- 1) It is narrated that the great apostle (may Allah bestow him and his sacred progeny the best of His regards) ordered during his farewell pilgrimage that “شبه العمد ما قتل بالعصاء و الحجر” meaning “manslaughter is the one in which an individual kills another by something like cane and stone” (Muhammad Ibn Hasan Horr Ameli, 1988, v.19, chap.11, Hadith, 15).
- 2) Zerareh quotes Imam Sadeq (PBUH) in the following words: “أن الخطاء ان يعمده و لا يُريدُ قتله” meaning “the manslaughter mistake is the action intended by a person by using a non-lethal means but with no intention to kill” (Ibid).

Manslaughter from the Perspective of the Jurists:

Abbas Imani defines manslaughter as follows: it is a crime wherein the doer does not want to kill another person rather s/he solely intends to cause simple physical injuries in him or her and s/he is also found having not made use of lethal actions and tools; however, his intentional and volitional action has been followed by such an unexpected and accidental result as death. It means that a murder is considered manslaughter when the murderer is found having an intention for performing an action that does not typically cause any crime and s/he has had no intention for perpetrating such a crime as murder” (Imani, 2003, p.363). Abu Al-Qasem Gorji defines manslaughter in the following words: “hitting an individual with such intentions as punishment and correction but s/he dies. In manslaughter, the perpetrator intends to perform an action but it is not a deadly one and s/he has no intention to kill” (Gorji, 2001, p.53). In the Islamic penal code of law, article 291(a), manslaughter has been explicitly defined: “when the perpetrator intends to exhibit a certain behavior towards a victim but having no intention for any crime or other things of the like and it is not envisioned as cases included by the definition of the intentional crime”. Of course, the examples of the manslaughter have been also expressed in the two other paragraphs of the foresaid article:

Paragraph (B): when the perpetrator has no knowledge of the subject like when an individual perpetrates a crime towards a victim while believing in the idea that the subject of his or her behavior is an object or an animal and/or persons included by article 302 of this law but it is found in the end that the opposite holds true.

Paragraph (C): when a crime occurs by the perpetrator’s fault provided that the crime is not included by the definition of the intentional crime.



Different Kinds of Manslaughter in the Statutory Provisions:

The legal document and the legal pillar of the manslaughter is article 291 of the Islamic penal code of law wherein the legislator stipulates that “the following crime cases are deemed manslaughter: a) when a perpetrator wants to exhibit a sort of behavior towards a victim but having no intention for committing a crime of a sort and it is found not enumerated amongst the cases of the intentional crimes; b) when the perpetrator has no knowledge of the subject such as when a person perpetrates a crime to a victim while believing in the idea that the subject of his or her behavior is an object, an animal and/or a person introduced in article 302 of this law but the opposite is found holding true in the end; c) when a crime occurs as a result of the perpetrator’s fault provided that it is not found included by the definition of the intentional crimes”. As it is observed, three different types of crime and, subsequently, murder, have been legislated under the title of manslaughter crimes and murders in the above article whereas all of the three paragraphs stated in article 291 of the Islamic penal code of law are substantively and structurally different from one another and their only common feature is the unintentional nature of the perpetrated action. The reason for stating of these three types of different murders in one place and under a single article seems to be the adoption of a unified method for determining the blood money payment. Thus, it has to be noted that the legislator’s intention of the article’s beginning part, i.e. the phrase “the crimes of the following types are considered manslaughter”, is the imposition of the punishments as inserted in article 462 of the Islamic penal code of law on the perpetrators included by article 291 of this law. Article 462 of the Islamic penal code of law stipulates that the “blood money for the intentional and manslaughter crimes has to be paid by the perpetrator” (Agha’ei Nia, 2010, pp.298-299). Now, considering the three paragraphs of article 291 of the Islamic penal code of law, it can be noted that the division of the crimes, including quasi murders, into three types: purely and primarily manslaughter, manslaughter stemming from ignorance of the subject; manslaughter originating from the perpetrator’s fault. The upcoming part deals with a brief investigation of each of them.

1) Pure or Primary Manslaughter:

Paragraph (A) of article 291 of the Islamic penal code of law stipulates regarding the manslaughter crimes, including the manslaughter, that “when a perpetrator intends to exhibit a certain behavior towards the victim but with no intention for a perpetrated crime of a type and it is not included by the definition of the intentional crimes”. As it is inferred from the article mentioned above for substantiation, the pure or primary manslaughter is the one in which the perpetrator intends performing of an action towards a victim which is predominantly not lethal but with no intention to kill him or her”. Several points have to be mentioned regarding this paragraph. The first one is that the perpetrator’s action might be permissible or impermissible in the pure or primary manslaughter the same way that the jurisprudents, as well, realize a perpetrator’s action as permissible or impermissible in the manslaughter. For instance, Saheb Jawaher states in this regard that “” (Najafi, 1983, v.42, p.3) meaning “the criterion in the manslaughter is that the murderer intends to perform an action such as hitting a person for punishment or correction of his or her behavior or other actions of the like that usually do not cause death or when a physician happens to kill a person in the course of treating him or her or when a husband forcibly hits his wife but in a manner



that it is not usually deemed lethal but it happens to kill her (Pourbaferani, 2013, pp.68-69). The second point is that although the main difference of the pure or primary manslaughter from the murder lies in the psychological pillar of these two types of murder, they are also different in their material premise in that the perpetrator's action is definitely impermissible and illegal in the murder while it may be permissible or impermissible in the pure or primary manslaughter. In case that the perpetrator's action is deemed impermissible in the pure or primary manslaughter, the only difference between the murder and the manslaughter will be the psychological element (Pourbaferani, 2013, p.69).

2) **Manslaughter Resulting from Ignorance of the Subject:**

Regarding the manslaughter resulting from ignorance of the subject, paragraph (B) of article 291 of the Islamic penal code of law stipulates that "when the perpetrator has no knowledge of the subject such as when s/he perpetrates an action towards a victim believing in the idea that the subject of his behavior is an object or an animal and/or the individuals included by article 302 of this law but the opposite is found holding true". Several points have to be clarified regarding this paragraph. The first is that it is made clear considering the term "such as" which has been mentioned before the examples in the aforementioned article that the offered examples only serve exemplification and they are not exclusive. The second point is that considering article 303 of the Islamic penal code of law, "when a perpetrator claims that the victim is primarily or secondarily included by article 302 of this law in a case-specific manner or that s/he has committed such a crime towards him or her with such a belief ... If it is proved that s/he has perpetrated such a crime with such a mistaken belief and the victim is found not included by article 302, besides paying blood money, the perpetrator is sentenced to the penalties specified in the fifth book of Ta'azir Punishment". Now, the question is raised that how do this article and article 291(b) of the Islamic penal code of law differ? It can be stated in response that the two articles differ in that there is surely a person in article 291 of the Islamic penal code of law whose blood can be permissibly shed and the perpetrator reckons that the person who is the subject of his or her behavior is the same person the shedding of whose blood is permissible and s/he can kill but having no knowledge that the victim is a person other than the one the shedding of whose blood is permissible; this is while there is not necessarily any person the shedding of whose blood is permissible in article 303 and the perpetrator might only subjectively think of the subject of his or her behavior as the person the shedding of whose blood is permissible. So, it can be concluded that the crime occurring under the inclusion of article 303 of the Islamic penal code of law is murder in nature while the legislator has considered it as included by the verdicts of the manslaughter for the fact that the perpetrator included by this article, as stated in the ending part thereof, is sentenced to the payment of blood money plus the penalties specified in the fifth book of Ta'azir Punishments which are also ruled for the cases of manslaughter (Pourbaferani, 2013, pp.70-71). The third point is that, as it was mentioned before regarding the psychological element of murder, the mere existence of a living human being and the perpetrator's knowledge of the humanity of the subject of his or her behavior only suffices the actualization of a murder assuming the existence



of the other conditions. As for knowledge of the crime subject that was examined in the investigation of the psychological pillar of the murder, as well, there is no knowledge required other than the humanity and aliveness of the subject of the perpetrator's behavior for the actualization of a murder. This is while the legislator realizes as necessary both the knowledge of the aliveness of the victim and the knowledge of the impermissibility of shedding his or her blood in article 291(b) of the Islamic penal code of law; in more precise terms, the mistaken knowledge regarding the permissibility or impermissibility of shedding the victim's blood has been considered equal to the mistaken knowledge of the crime subject's being an object or an animal whereas when the perpetrator thinks that the subject of his or her behavior is an object or an animal, s/he has no knowledge indeed of the subject of the intentional crime that is an alive human being and, as s/he imagines, the subject of his or her behavior is just a living human being. But, when the perpetrator makes a mistake in the permissibility or impermissibility of shedding a person's blood, his or her knowledge about the crime subject is not flawed and, in fact, s/he has knowledge in both of these states that the subject of his or her behavior is an alive person which has also happened to be the subject of an intentional crime. Here, the perpetrator's action is murder in nature and it has been considered by legislator as manslaughter (Agha'ainia, crimes against individuals, 2010, p.304).

3) **Manslaughter Resulting from the Perpetrator's Fault:**

Manslaughter stemming from the perpetrator's fault is a type of murder the nature of which is pure fault but the legislator loads the effects and verdicts of manslaughter thereon. The expressions "manslaughter stemming from the perpetrator's fault" and the "murder as manslaughter" are not so much old in jurisprudence and they entered the penal laws of Iran for the first time in 1991 (Pourbaferani, 2013, p.74). One of the most important reasons for the making of laws on this type of murder which is deemed as purely mistaken murder in nature hence envisaged as manslaughter stemming from the perpetrator's fault is that the close relatives should not be liable to the criminal conviction for they have not been involved in the perpetrator's behavior and they are sometimes found severely at odds with him or her.

The Spiritual Pillar of Manslaughter:

The difference between the murder and manslaughter lies in such a feature as their spiritual pillar and the majority of the jurists and jurists have accepted this characteristic. The property and criteria of the manslaughter is "intentional action" and "unwanted result"; so, the spiritual pillar of the manslaughter includes the following elements and conditions:

1) **Intention for Performing an Action:**

The action intention which is the psychological pillar in the manslaughter crimes is very much and completely similar to the psychological pillar of the intentional crimes in such a way that the murderer should have intended the action s/he has done to a victim as in intentional crimes with the difference being that the retaliation is justified in intentional crimes when the intended action is coercive and unlawful whereas, in manslaughter, when an action is performed in person, retaliation is not justified if the action is coercive; moreover, unlike in murder that the action can be predominantly or



rarely deadly, the action in the manslaughter should have been intended by the murderer with its most substantial attribute being the creation of a crime of a type (Muhammad Hadi Sadeghi, 2015, p.260). According to the recent statement in article 291, it becomes clear that when the perpetrator has directly intended the creation of the obtained result, to wit death or injury, or when the legislator assumes that his intention has been so due to the deadly or injuring nature of the action, the perpetrated crime cannot be considered manslaughter but intentional. Due to the same reason, article 327 of the former Islamic Penal Code of Law, passed in 1991, knows intentional the case that a person jumps down from an elevated position to fall on a person and cause the creation of crime in case s/he is found having intended to do so or if his or her action is typically lethal; consideration of such a type of crime as manslaughter is limited to a state wherein the perpetrator “does not intend killing but intends jumping down and no murder usually comes about by such an action ...”. The penal code of law, passed in 2013, as well, stipulates in article 502 that “when an individual jumps down from an elevated position on another person and causes the creation of a crime, s/he will be sentenced to retaliation or blood money based on the definitions of various kinds of crime”. This way, the apparent difference in the verdict for a person who incumbently jumps down as pointed out in Tahrir Al-Wasileh and Sharh-e-Lam’eh loses its significance with the explanation being that the obtained crime is stated to be manslaughter in Tahrir Al-Wasileh (Ruhollah Al-Musavi Al-Khomeini, 1982, p.562).

2) **The Condition of Not Intending the Obtained Result:**

In manslaughter, the murderer perpetrates murder without having intended any criminal result and this is viewed as manslaughter; it means that should a person, without intending to perpetrate a crime, commits an action that unwantedly and accidentally causes death to another person, s/he has done manslaughter. When an individual injures another and/or pushes a person off an elevated position and the person subsequently dies while s/he is found not having intended murder and his/her action is found not typically causing murder, it is envisaged as manslaughter and s/he is liable to the payment of blood money. When a person pushes another person off an elevated position to fall on a third person who happens to die or become injured consequently, it is considered as a manslaughter and the person is liable to blood money payment in case that s/he has not intended to perpetrate a crime and his/her action is not typically lethal (article 503 of the Islamic penal code of law). Therefore, the murderer should generally have not generally intended the criminal result whether preliminarily or subsequently otherwise in case of having intended to perform a deadly action, it has to be considered as murder due to the perpetrator’s intention for performing such an action and the indirect obtainment of a criminal result; thus, in manslaughter, the murderer should have not originally or subsequently and indirectly intended the obtained result (Muhammad Hadi Sadeghi, 2015, p.261). The fundamental point in the manslaughter crimes in Iran’s laws and Islamic jurisprudence is that the perpetrator is held liable despite the fact that the result has come about beyond what s/he had intended (Mir Muhammad Sadeghi, 2013, p.135).



3) Non-Essentialness of the Criminal Mistake:

Although the actualization of the unintentional crimes is suspended on the existence of a criminal fault, since the incident might have not been a crime, its occurrence, in many of the cases, has not been left to the occurrence of a criminal mistake hence the legislator has excluded the verdicts related to the unintentional crimes from the inclusion circle of the necessity of the existence of guilt in the unintentional crimes (Muhammad Hadi Sadeghi, 2015, p.261). It has been stated in article 145 of the Islamic penal code of law that “the actualization of the unintentional crimes depends on the verification of the perpetrator’s guilt. The regulations in the book of retaliation and blood money are enforced in unintentional crimes, including intentional and pure mistake”. The manslaughter might be or might not be accompanied by criminal mistake that constitutes the spiritual pillar of the unintentional crimes and it includes “going to extremes or practicing default”; in other words, it incorporates carelessness, heedlessness, non-versatility and non-adherence to the governmental rules. The existence or absence of criminal mistake has no effect on the actualization of the manslaughter unless in cases that the crime comes about by intermediation and the murderer, in spite of observing all the criteria and regulations related to the perpetrated action, will be still held liable. Furthermore, the criminal mistake would cause liability in case it is considered as an example of a coercive action of a type. That is because any criminal mistake is not to be envisioned coercive. Keeping the above explanations in mind, medical operations or sport actions and other actions that are performed within the limits of the rules and regulations will be considered as examples of manslaughter if they happen to cause death and the doer is found having intended to perform them to the victim but with no intention for the criminal result and s/he will be sentenced to the payment of blood money (Muhammad Hadi Sadeghi, 2015, p.261).



CONCLUSION:

According to the present study, it can be perceived that although manslaughter has not been explicitly mentioned in the holy Quran, the use of narrations and the jurisprudents’ ideas makes it clear that it is also existent in Islam and its spiritual elements, i.e. the prior will and want of the perpetrator for the performing of an action, also exist and it is a type of murder in which the doer has no intention to perform a crime towards a victim and no use has been made of a lethal instrument and it only occurs as a result of an accident that can originate from the perpetrator’s fault; it has also been clearly stated in jurisprudence. In addition, the three paragraphs of article 291 that were mentioned in the text of the current study have jurisprudential roots. Additionally, as for the various kinds of manslaughter, an innovative research can be conducted for the investigation of the constituents of each of the types of manslaughter, including pure or primary manslaughter, manslaughter stemming from the perpetrator’s fault and manslaughter originating from the ignorance of the subject so that the judicial mistakes in identifying the type of murder can be reduced via precise recognition of the pillars constituting them.

References

Agha'ainia, Hussein, (2010), "crimes against individuals", v.1, 5th ed., Tehran, Mizan.

Ameli, Zain Al-Din Ibn Ali, (1983), "Al-Rawzah Al-Bahiyyah fi Sharh Al-Lam'eh Al-Dameshiyyeh", v.10, 1st ed., Beirut, Ehya'a Al-Torath Al-Arabi.

Gorji Abu Al-Qasem, (2001), "blood money", 1st ed., Tehran, Tehran University Press.

Helli, Muhammad Ibn Mansour Ibn Ahmad, (1990), "Al-Sara'er Al-Havi Li Tahrir Al-Fatawi", v.3, 2nd ed., Qom, Islamic publication office.

Holy Quran

Horr Ameli, Muhammad Ibn Hasan, (1988), "Wasa'el Al-Shi'ah", v.19, 1st ed., Qom, Al-e-Bayt (peace be upon them) publication institution.

Ibn Borraj, Abd Al-Aziz, (1985), "Al-Mohazzab", v.2, 1st ed., Qom, Islamic Publication Office

Imani, Abbas, (2003), "the dictionary of the criminal law terms", 1st ed., Tehran, Aryan.

Khou'ei, Abu Al-Qasem, (2007), "Mabani Takmelah Al-Minhaj", vs.1-2, 1st ed., Qom, the institution for the revitalization of Imam Al-Khou'ei's works.

Mir Muhammad Sadeghi, Hussein, (2013), "crimes against individuals", 20th ed., Tehran, Mizan.

Najafi, Muhammad Hasan, (1983), "Jawaher Al-Kalam fi Sharh Shara'e Al-Islam", vs.41-43, 7th ed., Beirut, Dar Ehya'a Al-Torath Al-Arabi.

Pourbaferani, Hasan, (2013), "crimes against individuals", 1st ed., Tehran, Jungle Publication Center.

Ruhollah Khomeini, (1982), "Tahrir Al-Wasileh", vs.2-4, 1st ed., Qom, Dar Al-Elm Press.

Sadeghi, Muhammad Hadi, (2015), "crimes against individuals", 21st ed., Tehran, Mizan.

Tabataba'ei, Ali Ibn Muhammad, (1997), "Riadh Al-Masa'el Fi Tahqiq Al-Ahkam Bi Al-Dala'el", v.16, 1st ed., Qom, Al-e-Bayt (peace be upon them) publication institution.

