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Analysis of the Validity of Quasi-Intentional Homicide in the Iranian Islamic Penal Code

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ABSTRACT

One of the types of homicide that is often accompanied by ambiguity and doctrinal disagreement is quasi-intentional homicide, as it constitutes a composite of both intentional homicide and pure mistake. Since the perpetrator intends to commit the act, it resembles intent, and since there is no intention to kill, it resembles pure error. In Iranian criminal law, homicide is considered quasi-intentional when the offender intends to commit a non-lethal act but does not intend to cause death. The Iranian legislator, drawing upon Imami jurisprudence, defines quasi-intentional homicide in Article 291 of the Islamic Penal Code enacted in 2013. Homicide and bodily injuries are regarded as quasi-intentional when the perpetrator does not intend to kill the victim and the act is not ordinarily lethal, yet the act leading to death is carried out with prior intention. In Article 295 of the Islamic Penal Code enacted in 1991, examples of this type of offense are stated as follows: "such as when a person strikes another for the purpose of discipline in a manner that is not ordinarily fatal, and the act accidentally results in homicide; or when a physician directly treats a patient in a customary manner and accidentally causes death." The objective of this article is to subject the concept of quasi-intentional homicide in statutory law to precise and systematic scientific analysis.

Keywords: homicide; quasi-intentional homicide; Iranian Islamic Penal Code

Introduction

Quasi-intentional homicide refers to a form of killing in which the act is committed intentionally, yet the resulting death is not intended; that is, the perpetrator possesses intent with respect to the conduct but not with respect to the outcome of killing (1, 2). In homicide, the offender is deliberate regarding the act, but not regarding the fatal consequence. One of the categories of homicide that is frequently surrounded by ambiguity and scholarly disagreement is quasi-intentional homicide, because it represents a composite of two types: intentional homicide and pure error. Since the offender intends the act, it resembles intent, and since the offender does not intend to kill, it resembles pure mistake (3, 4). In Iranian criminal law, homicide is deemed quasi-intentional when the perpetrator intends to perform a non-lethal act but does not intend to cause death (2). Article 291 of the Islamic Penal Code of 2013 defines quasi-intentional homicide accordingly (4). Therefore, there is no intention to kill and the committed act is not inherently lethal; however, it accidentally results in death, such as when parents impose customary disciplinary measures upon their child that lead to death, or when a physician treats a patient and the treatment



results in the patient's death (1, 2). According to these criteria, such conduct may be classified as quasi-intentional homicide, and the perpetrator is, as appropriate, subjected to criminal liability for the consequences of the act (4). The Holy Qur'an prohibits the intentional killing of an innocent human being, and such an act is regarded as equivalent in gravity to killing all of humanity (5).

Definition of Concepts and Terminology

Definition of Types of Homicide

In the Islamic Penal Code of 2013, homicide is classified on the basis of the mental element of the offense. In accordance with the prevailing doctrine of Imami jurists, homicide is divided into intentional, quasi-intentional, and purely accidental categories (2, 4).

Intentional Homicide

Article 290 explains intentional crime and states that homicide is considered intentional in the following cases: (a) when the perpetrator performs an act with the intention of inflicting harm upon a specific person or persons, or an unspecified individual from a group, and the intended crime or a similar result occurs, regardless of whether the act is ordinarily capable of producing such harm; (b) when the perpetrator deliberately commits an act that is ordinarily capable of producing the resulting crime or a similar harm, even if the perpetrator did not specifically intend that crime, provided that the perpetrator was aware that the act would ordinarily produce such harm; (c) when the perpetrator does not intend the specific crime and the act is not ordinarily lethal with respect to ordinary persons, but due to the victim's illness, weakness, old age, or any other particular condition, or due to specific circumstances of time or place, the act ordinarily results in such harm, provided that the perpetrator was aware of those special conditions; (d) when the perpetrator intends to cause the resulting harm without targeting a particular person or group, and the intended harm occurs, such as placing a bomb in a public place (2, 4).

Note 1 of Article 290 requires proof of the perpetrator's lack of awareness in case (b), and in the absence of such proof, the crime is presumed intentional unless the harm resulted solely from extraordinary vulnerability of the injured body part, in which case the perpetrator's awareness must be established.

Note 2 requires proof of awareness in case (c), otherwise the offense is not deemed intentional (4).

Purely Accidental Crime

Article 292 defines purely accidental crime as follows: (a) when it occurs during sleep, unconsciousness, or similar conditions; (b) when committed by a minor or an insane person; (c) when the perpetrator neither intends harm to the victim nor intends the act that causes the harm, such as when a person shoots for hunting and accidentally strikes another individual (2).

The note to Article 292 provides that in cases (a) and (c), if the perpetrator was aware that the conduct would ordinarily cause harm to another, the crime shall be considered intentional (4).

Definition of Quasi-Intentional Homicide

Quasi-intentional homicide is also referred to by other expressions, including quasi-deliberate homicide and semi-intentional homicide. Article 291 of the Islamic Penal Code of 2013, which corresponds to Article 295(b) of the

repealed 1991 Code, demonstrates that the element of intent plays a fundamental role in determining the nature of the offense; because the act is intentional, it resembles intent, and because the intent to kill is absent, the result resembles pure mistake (3, 4).

Under statutory definitions, homicide resulting from traffic accidents is classified as purely accidental. However, in cases of negligence, recklessness, lack of skill, or violation of regulations, such homicide was regarded as intentional under the 1991 Penal Code and as quasi-intentional under the 2013 Code; in any event, because fault and self-causation exist, it is considered quasi-intentional from a jurisprudential perspective (6).

Article 291 of the 2013 Code establishes criteria for quasi-intentional homicide, including situations of mistake in subject matter, as when a person commits an act believing the target is an object, an animal, or a person falling under Article 302, but it later becomes clear that the victim was someone else (4). These criteria are also reflected in Article 303 and in Article 295 and its Note 2 of the repealed 1991 Code (4).

According to Article 291: (a) when the perpetrator intends the conduct against the victim but does not intend the resulting crime and the act does not fall within the definition of intentional crime; (b) when the perpetrator commits the act under a mistake of subject matter; (c) when the crime occurs due to the perpetrator's fault, provided that it does not meet the definition of intentional crime (2, 4).

Quasi-intentional homicide is a hybrid of intentional and accidental homicide; the offender is intentional in conduct but mistaken in intent. The perpetrator possesses general intent to strike or wound the victim but lacks intent regarding the fatal outcome, and the act is not ordinarily lethal, yet it results in death. Therefore, the act must be unlawful or aggressive; otherwise, quasi-intentional homicide is not realized (1, 3).

The most precise legal definition of quasi-intentional homicide is that it consists of the intentional infliction of bodily injury that results in death. In fact, the immediate act is bodily injury, and death is its unintended consequence (2).

In Imami jurisprudence, quasi-intentional homicide is described as a case in which the offender intends the act but not the result of killing, and this understanding fully corresponds with both the repealed 1991 Code and the currently applicable 2013 Code, being directly derived from authoritative jurisprudential sources (1, 7).

Situations of Quasi-Intentional Homicide

In general, by examining the statements of legal scholars, relying on Qur'anic verses, traditions, and the opinions of jurists, and placing the Islamic Penal Code at the center of analysis, it may be concluded that quasi-intentional homicide occurs in three distinct situations (1, 3).

First Situation

This is the case in which the offender does not intend to kill another person but does intend the act itself; that is, the offender intentionally performs a behavior that is not customarily lethal. A typical example is traffic accidents. Person A (the driver) does not intend to kill Person B (the pedestrian); the conduct (driving) is not ordinarily lethal, yet due to the driver's fault—such as excessive speed—the pedestrian dies. This type of homicide is quasi-intentional (2, 6). Another example is death resulting from medical malpractice, where the physician does not intend to kill the patient, and the medical act is not ordinarily lethal, but due to negligence the patient dies (1). It is evident that whenever the perpetrator's act is customarily lethal, the classification of homicide changes and becomes intentional (4).

Second Situation

This situation arises when the offender is mistaken about the subject matter. For example, Person A intends to perform an act upon an object or an animal, but it later becomes clear that the subject was in fact a human being. In this case, the offender neither intended to kill the victim nor performed a customarily lethal act; rather, the offender was merely mistaken about the subject. It is evident that if the offender had intended to kill, or if the act were customarily lethal, the resulting homicide would be classified as intentional (2, 4).

Third Situation

This situation resembles the first and concerns cases of fault. It includes negligence, recklessness, violation of regulations, or lack of skill. What renders the act quasi-intentional is that the offender neither intends to kill nor engages in conduct that is customarily lethal, as in the case of traffic accidents (3, 6).

The legislator, in the Islamic Penal Code of 1991, regarded homicide as quasi-intentional when the offender intended an act that is not ordinarily capable of causing harm and did not intend to commit a crime against the victim, such as when a person strikes another without intent to kill in a manner not customarily lethal and the act accidentally results in death, or when a physician treats a patient in a customary manner and accidentally causes the patient's death (2, 4). As can be observed, in paragraph (b) of Article 295 of the 1991 Code, the legislator, influenced by the opinions of jurists and their juridical treatises, explicitly enumerated instances of quasi-intentional homicide, whereas it would have been preferable to adopt a general rule stating that whenever a person, through an act or omission without intent, by carelessness, negligence, lack of skill, or failure to observe regulations, causes the death of another, quasi-intentional homicide is committed. Such a formulation could have encompassed numerous cases and avoided the need for extensive enumeration. Fortunately, this deficiency was remedied in the new law with slight modification of wording (4). For example, paragraph (a) of Article 291 of the 2013 Code provides that a crime is quasi-intentional when the offender does not intend the resulting harm against the victim and the conduct does not fall within the definition of intentional crime; for instance, when a parent disciplines a child—a recognized parental right—using a belt, and the hard part of the belt strikes the child's head and causes death, or when the child dies from a slap, or when a physician, in the course of treatment, miscalculates the dosage of medication or prescribes the wrong medicine. These and numerous other cases may constitute quasi-intentional homicide (1, 2).

A further point worthy of mention is that, in addition to quasi-intentional homicide, Iranian law recognizes the concept of "homicide in the status of quasi-intentional." The doctrinal foundation of this concept in Iranian judicial practice, and subsequently in statutory law, derives from the legal opinion of Imam Khomeini in *Tahrir al-Wasilah*. In volume two of that work, Imam Khomeini maintains that in vehicular collisions resulting in death or property damage, if both drivers are found at fault, each is liable for half of the blood money for the loss of life or half of the value of the destroyed property, and if only one is at fault, that person bears full liability, while the non-fault party bears none (7). The Supreme Court of Iran, in Insistence Judgment No. 59 dated 20 February 1985, relying on this juridical position, held that the defendant's failure to exercise due care constituted negligence toward life and, in accordance with the said jurisprudential opinion, was to be treated as quasi-intentional homicide (3). Subsequently, the Supreme Court's General Assembly issued Unification of Practice Decision No. 23 dated 11 November 1986, which has the force of law, stating that unintentional homicide resulting from negligent driving without a valid license,

whose punishment was prescribed in Article 153 of the Law of Ta'zirat of 1983, is, by its nature, negligence toward life and therefore falls under the category of quasi-intentional homicide for the purpose of payment of blood money (2).

Criteria of Quasi-Intentional Homicide in Iranian Positive Law

Under this heading, it is necessary to refer to the development of Iranian criminal law from 1925 to the present and to the criteria established in major legislative enactments concerning quasi-intentional homicide. The General Penal Code of 1925 and its 1973 amendment recognized only intentional and unintentional homicide. However, in the post-1979 criminal statutes, including the Islamic Penal Codes of 1991 and 2013, homicide has been categorized into three types: intentional, quasi-intentional, and purely accidental, with additional classifications in some cases as homicide "in the status of quasi-intentional" or "in the status of pure mistake" (4).

According to Article 291 of the Islamic Penal Code of 2013, homicide is quasi-intentional in three circumstances: (a) when the offender does not intend to kill but intends an act that is not ordinarily lethal and the act accidentally results in death; (b) when a person intends to kill an animal, shoot at an object, or kill a person whose blood is lawfully forfeit under Article 302, but mistakenly strikes an ordinary person; (c) when a human death occurs as a result of negligence or fault, such as in traffic accidents, which constitute the clearest example of this category (2, 4).

Conclusion

In the Islamic Penal Code enacted in 2013, in addition to Article 291, further explanations are provided, and cases such as the absence of criminal intent toward the victim, the offender's mistake regarding the subject matter, and the occurrence of the offense due to fault are regarded as grounds for classifying homicide as quasi-intentional. The superiority of this provision over paragraph (b) of Article 295 of the 1991 Code lies in the fact that, under Article 291 of the 2013 Code, whenever a person, without intent, through tolerance, negligence, lack of skill, failure to observe regulations, or through an act or omission, causes the death of another, the offender is deemed to have committed quasi-intentional homicide; thus, both acts and omissions are taken into account. By contrast, under paragraph (b) of Article 295 of the 1991 Code, omission could not be considered in determining quasi-intentional homicide.

The issue of homicide resulting from mistake of subject matter also renders the killing quasi-intentional. Paragraph (b) of Article 291 of the Islamic Penal Code provides that if the offender commits a crime under the belief that the subject of the act is an object, an animal, or a person falling under Article 302, and it later becomes clear that this belief was mistaken, the homicide is considered quasi-intentional. The offender may err in the act committed; for example, when one fires a weapon intending to strike a dog, but the bullet ricochets and strikes a passerby, resulting in death, the killing is quasi-intentional. Moreover, paragraph (c) of Article 291 identifies another instance of quasi-intentional homicide, stating that whenever the crime occurs due to the offender's fault, provided that the act does not fall within the definition of intentional homicide, it shall be deemed quasi-intentional. The final clause of this provision—"provided that it does not fall within the definition of quasi-intentional homicide"—is redundant and should have been omitted. If paragraph (c) had been explained more comprehensively, there would have been no need for paragraphs (a) and (b), as it could have encompassed them as well, for example by stating: whenever a crime occurs as a result of the offender's fault or mistake, it is quasi-intentional.

Another issue concerns the commission of homicide while in a state of imbalance caused by the consumption of psychoactive substances and the innovation of the law in this respect. The current law makes no reference to these subtleties; however, in light of contemporary needs, this matter requires reassessment and updating, which unfortunately has not been adequately addressed. We do not consider a person who is insane or underage as deserving of retaliation for homicide; the question therefore arises: if a person is intoxicated—whether a member of a religious minority for whom alcohol consumption is not prohibited, or a Muslim accustomed to consuming alcoholic beverages—and commits homicide, should the act be classified as intentional?

Irrespective of the moral reprehensibility and punishability of consuming such substances, it must be acknowledged that such an individual lacks control over his or her behavior and is effectively deprived of volition. A person who consumes substances such as methamphetamine, psychoactive pills, or other materials that disturb mental balance and remove control over behavior cannot, in principle, be considered a murderer deserving of retaliation, because for criminal responsibility and the attribution of penal liability, the general conditions of legal capacity must exist. Reason, volition, and intent—especially volition and intent—are absent in such a person, as the will is affected by narcotics. Therefore, how can such a person be regarded as guilty of quasi-intentional homicide?

Some argue that such an act may be considered quasi-intentional. In my view, this argument is valid only if the person knows that by consuming these substances he may accidentally kill someone, or if he consumes them in order to increase aggression and deliberately commit homicide; in these two cases, there is no dispute that the homicide is quasi-intentional. However, in the case of a person who, for example while traveling, engages in this harmful habit, consumes drugs or alcohol, suddenly becomes intoxicated, loses self-control, and commits homicide without knowing what he is doing and without possessing volition, the situation is different. As explicitly stated in Islamic law, criminal responsibility is lifted from nine categories of individuals, including the sleeping person, the intoxicated person, the insane, the minor, the forgetful, and others; therefore, it would have been preferable for the law to have explicitly provided for this matter.

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Authors' Contributions

All authors equally contributed to this study.

Declaration of Interest

The authors of this article declared no conflict of interest.

Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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