



(9)
**THE TYPES OF MURDER IN IRAN LAW AND ITS DIFFERENCE FROM
DELIBERATE MURDER.**
ALI SHAHBAZI YOUSIF OGLI⁸⁸

The murders are divided into deliberate murder, murder because of types of error or carelessness in the Western division of the practical law. There are 4 types of murder are observed in a law of Western countries: premeditated murder, murder on the basis of heart insistence to implement, murder in an ambush and murder of error. The murderer's will and intention determined all these murders being deliberate or non-deliberate (carelessness, etc.). The factors of being deliberate or his preparing for crime does not affect the principle of being premeditated or non-premeditated. Non-deliberate or murder because of the types of error is in the range of crimes in foreign law which degrees of fault are took into consideration. Different classifications are made on murder crime in Iran jurisprudence (Fiqh) and law source. The murderer's aim and tools which are used in crime are presented in this classification. A well-known and documentary criteria is murderer's aim and legal side of this task is also more reliable.(1,p24).

The late Sheikh Muphid considers also the killing type of action as a criteria pointing to the murderer's aim.(2,p35). However, there must be also an evidence of killing type. So. the main criteria is a murderer's aim.(3,p18).

5 types of murder are said by Hanafi lawyers: deliberate murder, killed in a similar case, error in ruling and killed without any purpose.(4,p275).

General Procedure Code, the sum of the items 170,171 and 177 observed 4 types of murders of such kind: premeditated murder, premeditated murder ruling, deliberately killed in a similar case, non-premeditated murder. Islamic Procedure Code, article 204 is considered 3 types of murder: premeditated murder, intentionally killed in a similar case, error. However, in other articles of the Code, including article 295, 5 types of murder are shown: premeditated murder, error, deliberately killed in a similar case ruling, error in ruling. We also insist on this classification here. Because it is more legal. Murders of carelessness are not differ from premeditated murder from material point of view. May be, the moral element is the main difference between them. But moral elements of murders of carelessness must insist on the crime elements like in premeditated murder. The moral element also rules physical behavior, but it is not going to make a result.(5,p175).

the member of the scientific staff of Islamic Azad University of Rasht

PREMEDITATED MURDER.

As expressed in the Qur'an : if anyone kills person- unless it be for murder or for spreading mischief in the land-it would be as if he killed all people. And if anyone saves a life, it would be as if he saved the life of all people.(Qur'an,Maida5,32).

In premeditated murder task the Islamic Procedure Code hasn't a clear explain. But there are different juridical and jurisprudence explains.

We read in "Masalikalapham": "premeditated murder is to put an end to the life of a man intentionally and unjustly" .(6,p188). Imam Khomeyni writes about premeditated murder in "Tahriralvasila" : "premeditated murder is a taking the spirit of innocent people deliberately and in special conditions".(7,p268).

Modern Islamic lawyers explain premeditated murder: murderer's serious aim for doing crime is a premeditated murder".(8,p19).

⁸⁸ the candidate for a degree of criminal, law of Baku State University, Baku/AZERBAIJAN.



At the same time, criminal lawyers described different explanations about premeditated murder in their works. Some lawyers write about murder: “murder is putting an end intentionally to other person or to his/her life illegally with primitive will”(9,p40).

Premeditated murder is conscious being killed of another man as a result of deliberately and illegal act of the person.(10,p 450).It is said in other explanation :”crime of premeditated murder is bring about copying spirit deliberately and illegally of innocent person or to kill him”.(11,p 17).

Law-makers in Islamic Procedure Code deviated from giving a perfect explanation about premeditated murder. Legislator satisfied with remembering the circumstances in determining the cases of crime. Crime is considered to be a premeditated murder in the following cases:

- a) if the cases, that murderer did for intentional killing of a particular person or a group of certain people ,depending on being or not being murderous, are the reason of murder.
- b) the cases, which murderer intentionally did for fatal case but without the aim for killing.
- c) the cases which murder kill without a purpose and the cases when he knows it could be fatal for others due to a sickness, weakness, old age and children.

Consequently, the difference of the premeditated murder from others crimes is cruelty and moral elements of the murder. As, the items ‘b’ and ‘c’ about fatal cases and tools are effective in this topic.(9,p39).

The aim of explanation is determining the cases of extents of crime. Because, the laws on liberty and rights are observed for offender, murderer and innocent person generally. However, the main law source of Islamic Republic of Iran- Islamic Penal Code hasn’t the power for carrying out, it is investigated as a bringing up and educating system. So, in analyzing the structure of premeditated murder we insist on the Islamic Penal Code which accepted in 1991.(12,p22).We shall use another bringing up and educating sources for comparing.

PREMEDITATED MURDER SIMILAR CASE.

The item ‘b’, article 295 of the Islamic Procedure Code explain the premeditated murder similar case. Murder, if it is causes wounding of body that is the similar case of the premeditated murder, in this case, the murderer has an aim , but he hasn’t any aim to victim. For example, if anyone beats someone for reason to bringing up or the doctor treats patient, then the occasionally murder happens. The material element of premeditated murder in similar case is the material element of the same premeditated murder. So, the victim must be a living person and some physical action must be done against him for calling it murder. There is a purposeful connection between physical behavior and murder. Moral element is a separation between premeditated murder and premeditated murder in similar case. The purpose of premeditated murder in similar case may be by error or without any error. So, in defiance of foreign law which considered to be a criteria of a crime of error in premeditated murder in a similar case, it is not considered a criteria for premeditated murder in Iran law. So, for the condition of premeditated murder there must be a physical behavior of fatal kind. This, was explained in the item ‘b’, article 295 ,simultaneously.(5,p176).

Material elements exist in all crimes with murder including the topic of the crime, murderer’s action and result and there is no difference between them from this point of view. So, there must be a fact of killing or a connection between action and result in premeditated murder similar case like in premeditated murder.

According to the item ‘b’, article 295 of Islamic Procedure code the details of moral elements of premeditated murder in similar case are:



1. Knowing about topic: in this type of murder the murderer must know of being alive of victim.
2. Being the intentional crime: in premeditated murder in similar case murderer must act intentionally.
3. Not having the will for murder: as it shown in item ‘b’ article 295 the word “if the murderer hasn’t any aim for murder to a victim ‘ means that there must be no aim for killing. This, is the main difference between premeditated murder similar case and premeditated murder.
4. Not being fatal: In premeditated murder in similar case the murderer has not another reason for murder. And the action must not also be fatal. So, if the murderer makes a crime and his behavior will be fatal, then it considered to be premeditated murder and will concern to revenge. So, the cases which differ the premeditated murder in similar case from premeditated murder , are in the article 206, items ‘b’ and ‘c’, being the action fatal in the first item and not fatal in the second.(12,p172).

MURDER DONE BY ERROR.

In item ‘a’, article 295 of Islamic Procedure Code it is expressed about murder done by error: ”murder, is considered to be an error by wounding the body in such cases either murderer has an aim for crime or a goal to implement the action. For example, if he shot a person in spite of hunting, it wasn’t noticed any specifications for material elements of crime. So, murder done by error is the same with premeditated murder from material element point of view and the difference between them related to moral element. It must be paid attention from material point of view that murderer wanted to do neither the action nor the result the action. Surely, it doesn’t mean that having a goal to implement the action is the same with the having a will to implement the action. Murderer may be decided to implement the action but not in this way. (5,p 176).

The common feature between premeditated murder and murder done by error is not having any purpose in the result of the action. And their difference is comparatively having a purpose to the victim in the first and not having in the second. If the action done against the victim will do away, the action being fatal doesn’t affect the crime.

According to the item ‘a’ article 295 of Islamic Procedure Code the moral element of the murder done by error are applied to the following:

1. Error in action and result: generally the term error means murderer is either guilty in offending a crime or in result. He hadn’t done any action intentionally against victim, there is no guilt against him.
2. Action being volitional: in all of them – murder done by error , premeditated murder in similar case and premeditated murder the murderer must have a will to offend.
3. Not having a purpose to implement the action: in murder done by error the murderer’s action can also be intentional.
4. Not having a goal to implement the action: at the beginning of the article 295,the item ‘a’ of Islamic Procedure Code was written: ”murderer must have



neither a crime goal against victim nor a goal against the matter.” And this insist on not having a goal in murder done by error.

5. Error in essence: in murder done by error the lapse is not took into consideration on the subject. This task in the item ‘a’, article 295 fully shows not having purpose against victim.(12,p 173).

ERROR IN MURDER RULING.

Error murder ruling is a murder which happen with the rules of premeditated murder or premeditated murder in similar case. But, the legislation ,because of some purposes takes into consideration as error. Crime made by child or madman is an obvious case of it.

The note of article 306, the note of article 295 and the article 221 of Islamic Procedure Code explain it. The main purpose of considering madman and child offence of this type of murder is exist the psychological elements in these two groups. So, there was a will against action and result when someone was killed. So, the crime was done in reality but legislative considered the crime in

error murder ruling as it can’t punish the murderers. The degrees of madness and periods of childhood were not differed in this case.

One of the forms of error murder ruling is murder in dream. It is expressed in article 322 of Islamic Procedure Code: ‘ if anyone will move and wound another person during the dream ,then it is considered as error murder ruling.’(5, p 182).

INTENTIONAL KILLING OF THE RULING MURDER CASE.

One of the forms of the intentional killing of the ruling murder case is making an error committing about person. It was expressed in the article 295 of the Islamic Procedure Code :’ if someone kills anyone on the purpose of revenge or thinking that to shed his blood is not a crime and if this case will be clear to the Court, than if it will be known that the injured wasn’t the same person then, it is considered as the intentional killing of the ruling murder case. Here all the motives and material-moral elements exist and it is a premeditated murder. But as it was a lapse in murderer’s conviction legislative considered it as error murder ruling. One of the forms of premeditated murder is error murder ruling and it realizes simultaneously with error of crime.

It is considered an error when it was not realized simultaneously with the error of crime, otherwise it will be a premeditated murder similar case .Article 295 of Islamic Procedure Code explains it: murder or wounding is always happen from carelessness or setting up the problems not in proper way. As, if the rules are obeyed there wouldn’t be any event. This case will be intentional killing of the ruling murder case or wounding. The main thing of the crime is error of crime. There the result of the crime is not wished and though the murderer can stop the crime. He doesn’t do it.

If murderer will wait for the result of the crime his error is an informed error, if not than it is uninformed error.(5,p 184).Consequently, the material element, the topic of the crime ,the action of crime ,result and purposeful connection are the same in all murders. There is no difference between them from this point of view. The difference is between moral and



psychological motives of the murder. The murderer's goal and will determines border between premeditated murder and non-premeditated murder .

LITERATURE:

1. M.AMILI, VASAILASHSHIA, BEYRUT, 1986
2. Sheikh Muphid, Almuanna fisful valforu, Tehran, 1988
3. M.Nacafi, Chavahiralahkam, Tehran, 1984
4. A.Jaziri, Alfiqh alalmazhabal arbaa, Tehran, 1996
5. A.Ziraat, Crime against persons, Tehran, 2007
6. M.Allama Tababati, Almizan Tafsirinin tercumesi, Tehran, 2000
7. R.Musavi Khomeyni, tahriralvasila, Qom, 1987
8. M.Marashi, Faslnameyi rahnamun, Tehran, 1992
9. M.Sadiqi, Crime against persons, Tehran, 2002
10. E.Qolduzan, Specialized crime law, Tehran, 2003
11. M.Bahrami, Specialized crime law, Tehran, 2004
12. Aqainia, H, Crime against persons, Tehran, 2006