

the relation of taking in tricks with protection of the islamic community from crimes.

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## **The Relation of Taking in Tricks with Protection of the Islamic Community from Crimes.**

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### **1. Introduction**

Crime is a social phenomenon that accompanies all advanced and retarded societies. Most describe it as anti-social behavior against law, and against the culture of society. It is committed in all societies with different pretexts from one society into another. There are many studies on this phenomenon which indicates a high rate of crime, and it increases yearly. Because of the tremendous development in the means of communication and transportation, crimes have developed and multiplied with different forms and methods, as well as the results on people and money. There are other ones, such as economic crimes, terrorism and drug crimes. Hence, it is necessary to confront the growing wave of crimes by working to combat them, and limit their penetration in safe societies. This can only come up through working to prevent crime and specify their reoccurrence.

People differ in character, personalities and behaviors, and their internal programming for good and beneficial performance. These are the most important things for the safety of society. People acquire skills in childhood and distinguish between right and wrong through the guidance of their parents who live close to them. People who are deprived from the correct guidance and advice, life gives them opportunities and challenges to change for better life besides to the support and guidance of friends, policemen and clerics.

The method of reward and punishment is another way for righteousness and reform. Whereas there are some people refuse to listen to the voice of conscience, as well as there are other people who suffer from mental illness or psychological problems result from bad experience or inappropriate control of delinquent feelings and the tendency to wrong behavior and addiction, all of these factors may lead to criminal behavior.

Crime is a major violation of the rules and the rights of individuals and societies which leads to a breach of the rules and controls of the criminal system of the state. Crime prevention consists of multiple strategies and actions carried out by a team of people from multiple specializations, institutions, and a judicial system consist of citizens, families, schools, social centers and policemen.

Crime prevention is the result of citizens' practices centered on different institutional settings including the social stage in which the individual has different roles, such as the role of parents, the neighbor, employee, teacher and the clergyman. Cooperation, coordination and commitment, among all the mentioned institutions, lead to the formation of an effective crime prevention framework.

The Islamic community set rules to prevent committing crimes and attempts to eradicate them. The necessity of inflicting the appropriate punishment on every crime exists in the Islamic states. It comes from complex issues regarding limits, retribution and compensation whether it is blood money or ransom which will be shown in the current study in order to clarify the relationship of taking ransom to confront crimes and their effects.

## **2. The Importance of the Study**

The importance of this study is evident in defining and clarifying the relationship of the rules of taking ransom to deal with the consequences of committing the crime whether it is by mistake or deliberate, and explaining the efforts of scholars in showing the effective methods to overcome contemporary challenges. This is to employ the jurisprudential rules for the benefit of our Shari until Reality harmonizes with the theoretical forensic science.

## **3. Objectives of the Study**

This study aims to identify the practical and realistic aspect of the application of some rules of Islamic jurisprudence especially the rules of taking ransoms and its relationship to criminal legislation. It also shows the impact of the committing the crime, and how these rules have role in the protection of the Muslim community.

In addition to the theoretical study, it attempts to show the pure Islamic criminal legislation so as to identify how the jurists dealt with modern images. This is through the rules of ransom in the light of the pure Islamic jurisprudence particularly the Hanafi jurisprudence according to what was reported by Imam Muhammad bin Al-Hassan Al-Shaibani.

## **4. Limits of the Study**

Such studies cannot determine their spatial or temporal limits due to the difficulty of being familiar with them, due to the complexity and multiplicity of their aspects, and the various and diverse issues. Here, the current study deals with a statement of an aspect of the relationship of taking ransoms with some rules of Islamic criminal legislation related to the effects of committing crime and solutions which are legally available for each new incident.

## **5. Research Questions**

There are several questions imposed by the nature of scientific study, and the researcher tries hard to answer them within the limits of his subject:

- 1-What is the rules of pardoning the beating that leads to death, or not?
- 2- Does the request for a pardon for the felony that applies to oneself?

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3-What is the rule on blood money and retribution if the offender benefited the victim before his death as an offer not to commit it?

4- The effect of using the rule of taking ransom in these issues?

The scientific method shows as follows:

The researcher relies on employing the descriptive method on the basis of collecting the scientific material by focusing on the relationship between the taking of ransom and the effects of crime in Islamic legislation. This is to clarify relationship and an attempt of revealing the realistic application of these rules, and the efforts of the scholars of the Islamic nation which have a significant impact on establishing the confidence of Muslims in their Sharia and not changing their identity. This is intended to apply their realization in the Holy Quran, and the Sunnah the Prophet Muhammad (Peace and blessings be upon him) through the burden of legal orders and their inconsistency with the development of the times and the progress. It applies issues which are about to mention the ransom in the form of a question and answer, and then mentioning the ransom in brief with its content. Then, it mentions the sayings on the issue in the manner of comparative jurisprudence with an explanation of the evidence, and the point of inference of the sayings of the predecessors and jurists.

## **6. Search Plan**

The first topic is the transmission of felony to the oneself.

The second topic is the types of murder and blood money.

The third topic is pardon about the committer.

The transmission of felony to the oneself.

Issue: Transmission of the crime to the soul and pardon before death.

Q: He said: Qais bin Al-Rabi` told us on the authority of Hammad as based on the authority of Ibrahim that he was asked about a man who had a clear argument, so that he asked and pardoned him, and then died after that argument?

A: He said the shag guarantees the blood money because he only pardons the shagged and did not pardon the blood money. This is for Abu Yusuf who tells us on the authority of Abu Hanifa which is the same, and does not pardon the blood money. Then, he is like his pardon for the shagged, and what happens in it.

Imagine the ransom:

The issues of this study focus on three important things, namely:

1-Retribution of retaliation for someone who is less than self-determined by appointment or choice.

2-The felony applies to oneself before retribution.

3-Will the request for a pardon of the felony be forfeited before it applies to the person?

Statements on the issue carry out retribution without the self on appointment or choice.

Fulfilling retribution in a felony without intentionally committing oneself, the victim may choose between three matters:

**Retribution:**

The scholars unanimously agreed on the necessity of retribution in the felony without the oneself, but with the stipulation of conditions. These depend upon those who convey the consensus:

Bin Qudamah said that the scholars are unanimously agreed that retribution flows through the extremities, and this has been proven by the Almighty's saying: {And the eye for the eye, the nose for the nose, the ear for the ear, and the tooth for the tooth}. One of them is that it was intentional, as we have previously mentioned, and the second: that the victim is equivalent to the offender so that he will be led by him if he kills him. The third is that the limb should be equal to the limb, so that it is not taken to be true with a blunt, nor whole fingers with a missing part nor an original with an extra, and it is not required to be equal in accuracy and thickness, smallness and old age, health and disease. The fourth one is sharing the special name. There is no right taken with a left, nor a left with a right hand. The fifth one is the possibility of fulfillment without a defect as the cut from a joint. Nimr bin Jaber narrated on the authority of his father that: "A man struck a man on the forearm with a sword, and he cut it off without a joint retribution. He said: Take the blood money. He did not judge him with retribution.

Badr Al-Din Al-Ayni said: (Retribution in matters without the soul is prescribed according to the aunt of Anas bin Malik. She broke the tooth of a female slave of the Ansar, so that they came to the Prophet (P.B.U.H.), and he ordered retribution). But the jurists differed in making retribution between men and women, and between slaves in the extremities according to two sayings: The first saying is that there is no retribution between them in the parties, but the blood money. They who say so are Al-Hanafiya.

**Evidence:**

The parties adopt the taking of money because it is a protection for the souls like money, and there is no similarity between male and female party due to the difference between them according to the estimation of the Lawmakers.

The response to them is that the measurement of the parties over the money is a corrupt measure. They are among the validations of the sex of the soul which are attached to it, and just as the soul of a man suffers from retribution from a woman. Al-Haddad Al-Zubaidi said: (There is no retribution between a man and a woman without the soul even if he cuts her hand deliberately. Retribution is not required because the bribes demand different amounts, and equality is considered in relation to less than the soul with evidence that he does not cut the oath with the left nor the right hand with a slash and with missing fingers.

The second saying is revenge which is equal to the man and the woman, and to the two slaves as well. Those who say it is the Maliki, Shafi'i and Hanbali public.

The judge Abdulwahhab said: (The reason for the inequality of the blood money of a woman to a man is that retribution is established between them in the parties as the collective killing is done by

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one, and the father by the child, but the blood money among them is not increased. This is different from the saying of those who say that if a man kills a woman, the woman's guardians return half of the man's blood money because the personal retribution is obligatory. The difference in blood money is not considered as the group by one but retribution is ongoing between them in the extremities and without the soul. This differs from Abu Hanifa who says that the hand of a man is not cut off by the hand of a woman nor is the hand of a woman in the hand of a man because of the Almighty's saying: {And wounds are retribution...}. This is considered as a type of retribution, such as murder because every two persons have had retribution in the soul. The same thing applies to what is less of it, such as the two men and two women.

Al-Mawardi reports that Al-Shafi' said that "whoever was subject to retribution in the soul, retribution will be imposed on him in the wound. Al-Mawardi states that this is true if two people whom retribution took place in the soul, retribution is set between them in the extremities. Wounds whether they concord with the blood money like the two Muslim freedoms or they differ in the blood money, such as the man, the woman and the slaves. If there is a difference between them, and if retribution between them is not permitted in the soul, it is not permissible in the parties, as the Muslim against the infidel and the slave against the free one. They are in agreement. Here, it is necessary to differentiate between them in the souls, and drop it in the extremities. The equality is considered in the extremities rather than the souls because it is not permissible to take the healthy hand against the dead, and the healthy soul is taken against the sick one. It does not prevent the difference in blood money from compensating the souls, and preventing it from driving in the extremities. Because the man's parties are more beneficial than the woman's parties due to her competence to dispose of business and earning, the woman's parties do not reward her. So, the weighting is for her.

The second matter is blood money or compensation.

If the victim wills to pardon the retribution and take the blood money in exchange, more or less, and if he removes the sex of the benefit of the member or disrupts his benefit, the blood money is required in full, otherwise, according to him. This is unanimously.

Bin Qudamah said that whoever has retribution, he may reconcile on his behalf of more than the blood money.

The third matter is that pardon is free.

Bin Qudamah mentions that the scholars unanimously agree that it is permissible to pardon retribution, and that is better.

Statements on the issue of whether the request for pardon for the felony drops, or it applies to the soul.

The jurists differed on this issue that there are three opinions:

Firstly: the parents only have the right to demand blood money. This is according to the Ahnaf.

Their argument is that the pardon for retribution from the felony is evident in pardoning retribution from the soul. So, the blood money must be paid. Abu Bakr al-Jassas mentions that "Whoever cuts

off a man's hand intentionally, and he pardons him from the hand, then he dies from it, then he must pay the blood money according to Abu Hanifa's saying. This is expressed that he has pardoned what is not his right because the rule of the felony is related to what it leads to. It shows that his right is the offender, but he pardons rather than his right.

Secondly: the intentional and wrongful killing are according to the Malikis.

Their argument is that the money is the same and the reasons are different, and there is no lesson in his pardon because he does not know what will happen to him. Abu Zaid Al-Qayrawani states that bin Al-Qasim and Ashhab mention that whoever cuts off a man's hand intentionally or by mistake, he pardons him and then dies from the cutting. In his pardon, he forgives the wound and everything that results from him. This is necessary to specify that there is no blood money in it or anything else.

The third one is the crime in the parties involved blood money, and the wrong action, there is retribution. This is according to Shafis and Hanbalis.

Their argument is that pardoning the felony of the parties necessitates pardoning the blood money if it goes to the soul because pardoning a part requires pardoning the whole, but for the wrongdoer, it is not considered as pardon because of the lack of knowledge of the money.

Overbalance:

I see that the ransom is disciplined except in the issue of forgiveness, and then applies to the soul. Everyone agrees that the pardon for the felony of the parties requires blood money if it goes to the soul.

## **8. Conclusions**

It is found that the main element in the crime is the act. Therefore, the study concludes that the main cause of crime in Islamic jurisprudence is emptiness. Because if the human soul is not preoccupied with the truth, it preoccupies its owner with falsehood, as well as the material conflict that makes man combats for the world. The deviation of motives is the dynamic forces of human goals, and the poor economic conditions are represented in poverty and unemployment whose spread leads to the spread of crime, and the lack of a sense of individual and collective responsibility. These result from the absence is social responsibility that causes people to lose confidence in each other. The spread of a cultural violence, and crime and vice affect humans, and then causes crimes as well as injustice and family disintegration because the married ones if dissolved by separation between spouses or the death of one of them. There will be young children left, and the preoccupation with taking care of these youngsters financially and morally may be a reason for their deviation and crime.

The Islamic legislator is keen on the soul and the body to prevent crime by tightening penalties and preserving the right of the victim. One of the rights result from committing felonies makes Islamic criminal legislation an integrated legislation that is valid for every time and place.

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