



Research Paper

Substantiation of Murder through Act of Omission in Islamic Jurisprudence

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Abstract

The issue of whether it is possible to commit the crime of murder by act of omission is a topic of discussion in Islamic penal jurisprudence, which has been concerned by jurists for a long time; that is, whether the crime of murder may be realized in certain circumstances by act of omission. This research uses the descriptive-analytical method to study the issue. The majority of Islamic jurists (Mālikīs, Shāfi'īs, Hanbalīs, Imāmīs, Zaidīs, and Zāhirīs), believe that it is possible to commit the crime of murder both through affirmative action and act of omission. In Hanafī school, Abu Yusuf and Muhammad believe that this type of murder is among the murders caused by reason; however, Abu Hanīfa believes that the destruction of a human being by act of omission is not basically murder and is not liable to indemnification (ḍimān). Those who doubt the validity of act of omission as a material element of the crime of murder, state that act of omission and refusal are non-existent which cannot cause existence. Based on the findings of this research and available jurisprudential evidence, the belief that the crime of murder by omission is fulfilled in the case of intent to commit murder and the existence of a religious obligation indicating the performance of a duty/obligation and the abstained ability to perform the deed, are more consistent with the spirit of Shari'a, which among the existing views, this opinion seems preferable. Accordingly, if a person has a Shar'i/legal or contractual obligation, his refusal to fulfill this obligation is not just a pure act of omission, but rather, it is a type of breaching contract, that itself manifests as an act. In other words, omission of a pure act itself does not create criminal responsibility, and what is seen objectively is the human actions that have the form of an action. However, it is important to consider the subtle distinction between abstaining and violating in this context.

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Extended Abstract

1- Introduction

The material element of a crime is one of the three essential elements of a crime in general and the crime of murder in particular. One of the issues raised concerning crimes, especially murder, is the possibility of committing this crime through omission. This issue has been the subject of debate and disagreement because in the case of murder, one of the components of the material element of the crime is proving the causal link between the act committed and the resulting consequence. While this link can be proven in affirmative acts, such certainty does not exist in the case of omission; as it is sometimes argued that omission is a negative act and in a negative state, a causal link, which is a positive matter, cannot be proven. In addition, omission does not have an external, visible manifestation and therefore its occurrence cannot be measured and evaluated. Nevertheless, both Islamic law and Islamic jurisprudence have considered the possibility of murder occurring through omission. Furthermore, some of the religious duties are in the form of prohibitions, in which case, not doing something is itself the subject of the duty. Another issue is that a result that is usually obtained from a positive and affirmative action may also occur through omission; for example, murder or injuries inflicted by gunfire or knife wounds may be the result of the perpetrator's negligence or recklessness. That is, one can imagine a situation where, due to reasons not attributable to the person, an event is about to occur and despite the fact that the person can prevent it from happening by their action, they make no effort and the event occurs. In this case, can the result of this event be attributed to the person who omitted to act? For example, suppose a blind person is about to fall into a well while crossing and an observer who is able to help and guide them refuses to do so and the blind person falls into the well and dies; can the refusal of this help be considered an omission in this case? In this article, in order to answer the above questions and explain the views of jurists regarding the possibility or impossibility of committing murder through omission, the matters related to the research issue have been organized in

three sections: 'Neglect of duty and responsibility from the perspective of the Shari'a', 'The concept, foundations, and conditions of murder through omission', and 'A review of existing viewpoints'.

2- Method

This article, based on library resources and a descriptive-analytical approach, seeks to investigate the impact of omission on attributing murder to the omitting party. In other words, the causal relationship between omission and the crime of murder is examined. To precisely clarify the subject, the concept of neglecting a religious duty or responsibility from the perspective of Islamic jurisprudence is first explained. Then, omission is conceptualized, and the conditions for the occurrence of the crime of murder in cases of omission are examined in terms of refraining from performing a positive act, intentional omission, or neglect of a religious or legal duty. In this research, an attempt has been made to elucidate the realization or non-realization of murder through omission by analyzing the nature of omission.

3- Results

The findings of this research indicate that, while prohibitions or commands are formulated in affirmative or negative forms and indicate that something should or should not be done, it is important to consider the situation where this obligation is placed in the context of a human action or behavior. In other words, what is considered in the realm of concepts and words does not necessarily manifest in the same way when it comes to human action. For example, when God says to establish prayer, the performance of prayer is visible in its outward form. However, when He says do not lie, the act of not lying manifests externally in the form of silence or truth-telling. From this perspective, the concept of omission, which is also



considered in prohibitions, needs to be examined.

4- Conclusion

Like any positive act, an omission must be the cause of a crime in order to hold the perpetrator liable. In other words, a causal link must be established between the omission and the criminal result to hold the omitting party criminally liable or responsible. If the crime cannot be attributed to the omission, the person cannot be held responsible for the resulting crime. From the collective views of those opposing and supporting the possibility of first-degree murder through omission, it can be concluded that an omission constitutes first-degree murder if the following conditions are met: 1) The omission is intentional. 2) A causal link exists between the omission and the victim's death. 3) The person who omitted was legally obligated to perform the act

they omitted, based on laws, regulations, contracts, or customary practices. 4) The duration of the omission was sufficient to cause the victim's death. 5) It is proven that the victim could not have been saved without the intervention of the omitting person.

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6- Authors' contribution

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7- Conflict of Interest

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