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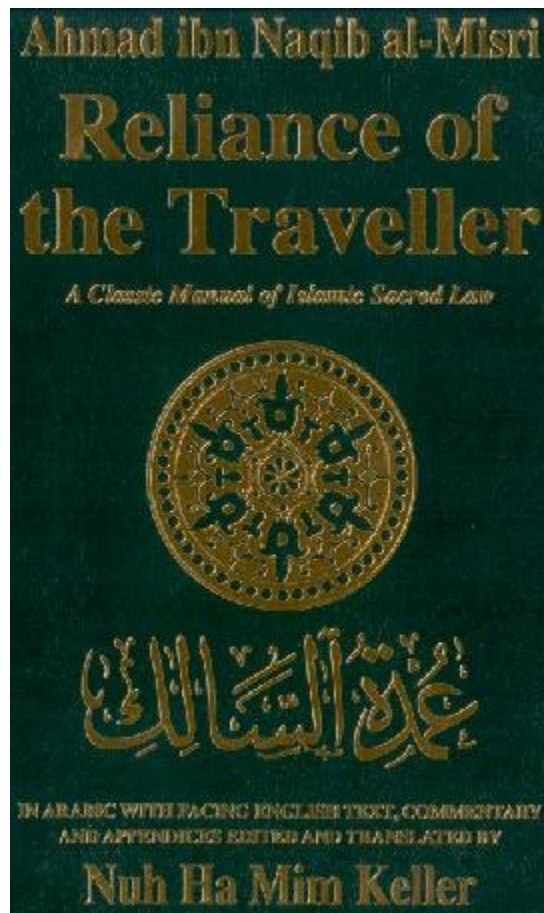
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RULE OF SHARIA

Categories of murderers not subject to retaliation (Section o1.2)



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committed with injurious weapons, but those inflicted otherwise as well, such as with sorcery (def: x1.36). Killing without right is, after unbelief, one of the very worst enormities, as Shafi'i explicitly states in (n; Muzani's) *The Epitome*. The Prophet (Allah bless him and give him peace) said:

“The blood of a Muslim man who testifies that there is no god but Allah and that I am the Messenger of Allah is not lawful to shed unless he be one of three: a married adulterer, someone killed in retaliation for killing another, or someone who abandons his religion and the Muslim community.”

and in another hadith,

“The killing of a believer is more heinous in Allah's sight than doing away with all of this world.”

Allah Most High says:

“... and not to slay the soul that Allah has forbidden, except with right” (Koran 6:151),

and,

“O you who believe, retaliation is prescribed for you regarding the slain...” (Koran 2:178.)

o1.1 Retaliation is obligatory (A: if the person entitled wishes to take it (dis: o3.8)) against anyone who kills a human being purely intentionally and without right. (O: *Intentionally* is a first restriction and excludes killing someone through an honest mistake, while *purely* excludes a mistake made in a deliberate injury (def: o2.3), and *without right* excludes cases of justifiable homicide such as lawful retaliation.)

o1.2 The following are not subject to retaliation:

(1) a child or insane person, under any circumstances (O: whether Muslim or non-Muslim.

وبغيره كسحر. والقتل بغير حق من أكبر الكبائر بعد الكفر نص عليه الشافعي في المختصر. قال عليه السلام: «ولا يحل دم امرئ مسلم يشهد أن لا إله إلا الله وأني رسول الله إلا بإحدى ثلاث: الثيب السراي والنفس بالنفس والتارك لدينه المفارق للجماعة»، وفي الحديث: «القتل مؤمن عند الله أعظم من زوال الدنيا». قال تعالى: ﴿وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ﴾ [الأنعام: 151] وقال تعالى: ﴿يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ﴾ [البقرة: 178].

o1.1 يجب القصاص على من قتل إنساناً عمداً محضاً عدواناً. (فالعمد قيد أول خرج به الخطأ وبالمحض عمد الخطأ وبالعدوان ما لو قتله بحق كالقصاص).

o1.2 لكن لا يجب على صبي ومجنون مطلقاً (سواء كانا مسلمين أو

The ruling for a person intermittently insane is that he is considered as a sane person when in his right mind, and as if someone continuously insane when in an interval of insanity. If someone against whom retaliation is obligatory subsequently becomes insane, the full penalty is nevertheless exacted. A homicide committed by someone who is drunk is (A: considered the same as that of a sane person,) like his pronouncing divorce (dis: n1.2);

(2) a Muslim for killing a non-Muslim;

(3) a Jewish or Christian subject of the Islamic state for killing an apostate from Islam (O: because a subject of the state is under its protection, while killing an apostate from Islam is without consequences);

(4) a father or mother (or their fathers or mothers) for killing their offspring, or offspring's offspring;

(5) nor is retaliation permissible to a descendant for (A: his ancestor's) killing someone whose death would otherwise entitle the descendant to retaliate, such as when his father kills his mother.

كافرين . والسلي جنونه متقطع فهو كالعاقل في وقت إفاقته وكالمطبق في وقت جنونه . ومن وجب عليه القصاص وقد جن بعد الوجوب استوفى منه في حال جنونه . وقتل السكران كقتله ، ولا على مسلم يقتل كافراً [ولا على حر يقتل عبداً] ولا على ذمي يقتل مرتد (لأن السلمي معصوم والمرتد مهدر) ولا على الأب والأم وأبائهما وأمهاتهما يقتل الولد وولد الولد ولا يقتل من يثبت القصاص فيه للولد مثل أن يقتل الأب الأم .

o2.0 INTENTIONALITY IN INJURIOUS CRIMES

o2.1 Injurious crimes (O: of all types, whether killing or something less) are of three types:

- (1) an honest mistake;
- (2) a mistake made in a deliberate injury;
- (3) or purely intentional.

o2.2 An *honest mistake* is an act such as shooting an arrow at a wall and hitting a person (O: or shooting at a person and hitting someone else), or

o2.0 أقسام الجنايات

o2.1 ثم الجنايات (من حيث هي سواء كانت على النفس أو على ما دونها) ثلاثة: خطأ ، وعمدٌ عظيمٌ ، وعمدٌ محضٌ .

o2.2 فالخطأ مثل أن يرمى إلى حائط فيصيب إنساناً (وكذا لورمي إنساناً