Théoretical Analysis of Islamic Legal Sanctions and Jurisprudential Principles Applied to Traffic Accident Crimes.

تحليل نظري للعقوبات الشرعية والمبادئ الفقهية في جرائم حوادث المرور.



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Abstract:

Research explores the Islamic legal rulings on penalties for traffic violations based on the Qur'an, the Sunnah, and scholarly consensus. It explains the legitimacy of these penalties and outlines their jurisprudential foundations while defining the concept, types, and legal implications of traffic offenses. The study concludes that such penalties align with the objectives of Islamic law, particularly the preservation of life, property, and public order. Depending on the nature of the violation and the degree of fault, penalties may include full blood money (diyah), partial compensations (arsh), expiations (kaffārah), fasting, or discretionary punishments (ta'zīr). The research also affirms the state's authority to regulate these penalties in ways that serve the public interest, ultimately confirming that traffic violation penalties are lawful and consistent with Islamic legal principles.

Keywords: Traffic accidents, punishment, Death, kaffarah, Road Terrorism, Islamic Sharia

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INTRODUCTION

God has prescribed punishment to prevent people from committing the prohibitions He has forbidden, because forbidding an act or commanding it is not enough alone to make people commit the act or stop doing it: Without punishment, commands and prohibitions would be wasted and futile, so it is the legislation of divine punishment that gives God's commands and prohibitions clear concepts and desired results, and it is also the punishment that deters people from crimes, prevents corruption on earth, and compels people to stay away from what harms them, or turn to what is good for them, such as traffic accident crimes, which are considered the scourge of our time, as the ruls.

The situation and its deterrent penalties aimed at curbing the growth of traffic accidents.

The obsession with traffic accidents has harvested and is still thirsty to claim human and non-human lives with an astonishing increase that has reached many times the damage

caused by the earthquake of nature and the volcano of the Black Decade, so it is not surprising that it deservedly took the name **(road terrorism)** Due to the importance of this phenomenon, which is represented in the growth of traffic accidents, we conducted this research, which aims to show a

practical and legitimate alternative that contributes to limiting the growth of this phenomenon, namely the legitimate penalties that Allah, the Almighty, has legislated and revealed in His dear Book and the Sunnah of the Prophet (PBUH).

Imam San'ani said, "The law of this nation is lighter than the laws of those before it." "**Al-Imam Al-Sina,p444"** (2) He removed from them the burdens that were on those before them .

Punishments in Islam are either predetermined and predetermined punishments, represented by hudud and qisas, which include (killing, flogging, cutting), or they are not predetermined, i.e. their determination is left to the ruler or It is called

ta'zeer, which

refers to all offenses for which the Islamic law does not specify a certain amount

and iscalled

ta'zeer when penalizing most traffic accidents, and penalties in Islam

are of two types:Either penalties for acts that represent an infringement on the right of the individual slave) include: Theft, beating, insulting.....

The research question is the extent to which penalties can be applied to traffic accident offenses.

I adopted a descriptive approach with a realistic characterization of the issues by means of jurisprudence in line

with the purposes of the wise Sharia, especially in matters where there is no text.

I also focused on the issue of building General models for various issues related to traffic accidents, based on what Islamic jurisprudence has built and defined, its characterization of the reality, and its adaptation of the contemporary reality.

Since enjoining good and forbidding evil can only be accomplished through legitimate punishments, it is the responsibility of the rulers to administer hudud.

The research plan is as follows: The first axis: What is the traffic accident in which we discuss its concept, followed by the second axis:

traffic accidents in Algeria, the third axis, factors of traffic accidents, and finally the fourth axis, applications of legal penalties for traffic accident crimes and explaining this in the case of murder and in the case of injury, then the conclusion of the research in which the results and recommendations that the research reached and called for.

1. The definition of traffic accident:

A traffic accident is an accident that occurs suddenly and without prior planning by one or more cars with other cars, pedestrians, animals or fixed objects on a public or private road. As it is The accident takes the form of a collision between opposite cars, a collision at an angle, i.e. a collision between cars at an intersection), a collision from behind cars traveling in the same direction, a side collision, a collision while turning, or a

collision with a parked car. A traffic accident usually results in damage that varies from minor to property and cars to severe, leading to death or permanent disability, in addition to the wounds that inflict on the large number of people injured in accidents.

The traffic problem can also be defined as individual behavior that conflicts with traffic rules and regulations, and this behavior represents indifference or indifference to traffic rules, which causes a violation of these regulatory rules, material damage to both roads and cars, and human damage embodied in death or physical disability **(Ibrahim, 1999,p 17)**

2. Traffic accidents in Algeria

Similar to other Arab countries, Algeria also suffers from the burden of traffic accidents, as some studies indicate that it ranks high at the regional and international levels in terms of the number of injuries and deaths resulting from traffic accidents (**newspaper, 2010 p 5).**

During the past year (2010), traffic accidents killed 4,607 people and left 3,000 completely disabled, at a rate of 11 deaths per day in Algeria (.**R.Elvic, 2002, p15)**

Not a day goes by without us hearing and seeing horrific incidents in which a brother, sister, relative, neighbor, or acquaintance has become a victim.

These victims leave behind the grief of families, widows, and orphans. **In reality,** the streets and roads have become a terror and a danger to all members of society, as it can be said that the streets have actually turned into something resembling a

battlefield, where you see everyone trying to escape unscathed and reach safety.

In addition to such human tragedies that cannot be compensated in any way, accidents have a negative impact on the financial level, as they cost the state treasury the equivalent of **200 billion dinars,** equivalent to **2 billion** euros annually, and it was possible to allocate such significant sums of money.To build and implement economic, social, service and construction projects, including preparing roads and other structures that society desperately needs **(R.Elvic, 2002,p 52).**

Perhaps failure to complete such structures in particular, to the extent and specifications required, will in return generate administrative, financial, or organizational corruption that is difficult to address later.

3. factors of traffic accidents:

Traffic accidents are caused by multiple factors, including the direct ones, represented by four basic elements, which include the driver, then the car, the road, and finally the environment surrounding the driving process.

As for indirect factors, they can be linked to the repercussions of government policies in the field of development and their impact on the social, economic, and service sectors.

The successive stages of the post-independence stage and to this day have resulted in a clear weakness in planning and development, as most of the approved plans were not studied with the required accuracy, which made them end in failure, such as the

industrial sector and the agricultural revolution, for example, despite From allocating huge funds to develop these two sectors, the matter is getting worse for other sectors, including traffic, especially the failure to establish the projects required to build or maintain roads, despite the increasing population and the subsequent remarkable urban expansion.

With the start of applying the slogan of the market economy, similar to what is happening in the capitalist West countries, then adopting international companiesIn particular, it brings cars and sells them to the Algerian customer who has long been waiting for this opportunity to choose the style, color and price that suits him.

The demand for purchases increased even more when the banks operating in Algeria implemented, in general and in particular, what is known as the installment payment system.As a result, most Algerians with monthly income have access to loans and facilities with the intention of enabling them to buy a car (**Omar, 2005,p 114)**

Thus, in light of this new situation, supported by the tendency of the Algerian person towards imitating his neighbour, the process of buying cars spread among the neighbors and then the streets were filled with them, especially since the latter had not been subject to any significant positive development **(expansion and construction),** and this resulted in a state of congestion in the streets, especially during the morning and evening peak times.

In order to ensure access to the workplace or home on time, you see drivers using excessive speed and committing traffic

violations, especially in the absence of adequate traffic control and the insistence on enforcing the laws with the required strictness.

The weakness of deterrent measures against violators has contributed to the spread of nepotism and bribery, which has had a negative impact on proper performanceFor traffic security, this in turn led to an increase in the rate of violations, which results in an increase in the rate of accidents and then an increase in the number of traffic victims in society.

This fact can be confirmed through what it reveals.Traffic campaigns organized every year under the auspices of the Traffic Security Service. Although the campaign period is short, they produce results.

3.1. Significant traffic accidents:

Very productive as it significantly reduces traffic accidents. This is exactly what has been confirmed since the beginning of this year, when deterrent measures were implemented against violators, which led to the withdrawal of thousands of driving licenses from their owners, in addition to the financial fines borne by violators of traffic laws.

Traffic police and gendarmes from time to time, the main cause of road accidents is the driver and his behavior Recklessness and negligence in driving, or perhaps due to the fatigue he suffers from while driving the car, or even his lack of awareness about the risks resulting from his committing traffic violations. Perhaps all of this is due to the causes and negligence surrounding this activity, i.e. the practice of driving, by the competent authorities,

including driving schools, which do not seem to do the adequate training and effort required to qualify drivers, The more this car turns into a positive and utilitarian vehicle, which is what is expected of it.

Here it is worth noting that more than a decade ago, that is, before the aforementioned installment sales system was implemented, many analysts of traffic accidents in Algeria claimed that the foot of the car park in the country was playing a prominent role in traffic accidents.

Perhaps this belief is what prompted the authorities concerned with the transport and trade sector.The Ministry of Trade and Commerce called for rapid approval to provide facilities for the urgent acquisition of new cars, while preventing the import of old cars.

Despite all this, traffic accidents are on a steady increase, and most of them are not due to any damage or age of the car, but rather to a driver driving a good car.

The issue again relates to this driver's psychological, social and rehabilitation status and even his local cultural background, as some areas in Algeria in the Setif region are known for how much their residents love to own them.

The distinctive car and their passion for excessive traffic speed, which is why we are not surprised that these areas rank first in traffic accidents nationwide in Algeria.

In addition to pretending in front of acquaintances, relatives, and neighbors of the decent position that a person occupies, to the

point that so-and-so is no longer recognized by his car, as if we say so-and-so has such-and-such a car. What is strange about the matter is that **this reality matters.**

The rich matter as much as the poor, so perhaps we may be surprised when we encounter many cases represented by families with a limited financial situation and living in inappropriate neighborhoods, including a sense of freedom and recreation.In addition to pretending in front of acquaintances, relatives, and neighbors of the decent position that a person occupies, to the point that so-and-so is no longer recognized by his car, as if we say so-and-so has such-and-such a car. What is strange about the matter is that this reality matters.

The rich are as important as the poor, so perhaps we may be surprised when we encounter many cases represented by families with a limited financial situation and living in inappropriate neighborhoods, including tin houses.

However, we find that these people own new and expensive cars.

If you asked a sample of these people about the secret of this contradiction in their situations, their answer would be quick and almost automatic, and would boil down to the issue of the feeling on their part that they are not inferior to those who live in decent apartments and even villa owners, as long as they own the cars that those people own.

This is in addition to the multiple services the car provides that help in their entirety to reduce the severity of the negative

situation of inadequate housing.doubling in the rate of traffic accidents, resulting in thousands of victims every year.

•**Through the above,** the serious role played by the driver in committing the traffic accident is confirmed, in addition to other reasons that can be presented as follows:

1.Excessive use of speed in an attempt to gain time and then avoid violating established times, even if this conflicts with traffic laws, especially in the absence of care for their actual and strict application. This behavior is widespread among young drivers, especially if they are driving newly manufactured cars.

2.Obtaining a driver's license without receiving theoretical and practical training, thus showing a lack of competence of drivers. There is no doubt that what encourages all of this is linked to the spread of the ph2Traffic accidents in Algeria

enomenon of corruption and bribery in the first place.

3.Limited spread of traffic culture among pedestrians, as it is rumored that they do not commit to using the places designated for crossing the road, as they believe that this wastes part of their time.

4.The driver is busy with other things while driving, such as using a mobile phone, listening to music, or talking with passengers.

5.The presence of the driver in psychological, emotional and pathological states (perhaps resulting from fatigue and exhaustion or taking tranquilizers, drinking alcohol...) which causes him to lose control and concentration while driving.

6.Wear of the roads and damage to the car, which contributes to a traffic accident.

4.Applications of legal penalties for traffic accident crimes:

4.1 Case of murder:

The crime of murder assumes that the victim was a living human being at the time the perpetrator committed his criminal act, because human life is what he aims

He is a suitable subject for the crime of murder, regardless of his age, gender, health condition, social or professional status, even if he is a national of the state or a foreigner. The living human being is the subject of legal protection. Sharia and the law protect the right to life abstract **(Mahmoud Naguib Hosni, 1989,p169)**

4.2. Felony premeditated murder:

It may happen that the driver of a vehicle intentionally runs over a pedestrian on his feet with the intention of killing him, or intentionally rams another vehicle with the intention of killing those in it, and this happens.

And the felony of murder occurs.... These examples of intent of the act and intent of its consequences, and although they are under positive law, may be classified as murder crimes, and are not classified as the results of traffic accidents... In Islamic law, whenever their occurrence is proven with conclusive evidence, they are considered premeditated murder, and whoever commits them is considered a premeditated offender...

Intending the act without intending its consequences, such as someone throwing a stone or anything in front of a vehicle while

it is moving and hitting it and killing its driver, or another rider, if he intended to throw and hit the vehicle and not intending to kill, then the driver of a vehicle may commit a traffic violation with intent, meaning that he knows that his action is prohibited and in violation of traffic safety rules, and therefore he is taking a risk if he is walking in the prohibited direction, or in a state of drunkenness, or overtaking a car in front of him in an area where overtaking is prohibited.

Therefore, his action differs from the mistake that occurs unintentionally, and the resulting act, if it is not a pure mistake, and is not intentional, it can be qualified as semi-intentional, and thus takes its ruling -. Manslaughter unless it is intentional: that is, every killing resulting from an act committed.

for. Atonement: which is freeing a believing slave, and if that is not possible, then fasting for two consecutive months. God, Blessed and Most High, said (And it is not for a believer to kill a believing man except by mistake.

If he is from a people who are enemies to you and he is a believer, then freeing a believing slave, and if he is from a people between you and them, is a covenant of ransom.

As a Muslim to his family and the freeing of a faithful slave, whoever does not find fasting for two consecutive months is a repentance from God, and God is All-Knowing, All-Wise.)

In most traffic accidents, the resulting death is accidental, for the reasons some of which we mentioned previously, and because the original assumption is that error occurred.

To avoid the causes and actions that lead to accidents and murder, and therefore

Every felony murder resulting from traffic accidents is considered a felony murder

It legally entails the following matters:

A. Blood money from the family of the killer: It is an amount of money given to the heirs of the murdered person, estimated by the law at 100 camels, or estimated in cash according to the estimation of the jurists, and it has been detailed previously.

God, Blessed and Most High, says: "And whoever kills a believer by mistake, the freeing of a believing slave shall be freed as a blood money delivered to his family unless they give charity." (**An-Nisa, 92),** and on the authority of (the Prophet, may God bless him and grant him peace), "Whoever seizes a believer, he must be killed for his own sake."

Clear evidence, for it is a reward unless the guardians of the murdered person are satisfied, and that the soul is subject to blood money.)

for. Atonement: which is freeing a believing slave, and if that is not possible, then fasting for two consecutive months. God, Blessed and Most High, said (And it is not for a believer to kill a believing man except by mistake.

If he is from a people who are enemies to you and he is a believer, then freeing a believing slave, and if he is from a people between you and them, is a covenant of ransom.

As a Muslim to his family and the freeing of a faithful slave, whoever does not find fasting for two consecutive months is a repentance from God, and God is All-Knowing, All-Wise.) (**An-Nisa, 92)**

secondly. The state of injury and damage to what is less than the soul: It is what happens to a person's body, such as wounds,

bruises, bruises, or cuts or amputations... and does not lead to murder and is the result of the action of another person, or it is every harm that befalls a person from others and does not lead to his life in the event of a traffic accident and physical or moral damage occurs.

. **1 Types of crimes against the soul:** According to the type of harm inflicted on the body, there are five types: (**Odeh, 2015, p 235)**

A. Explaining the limbs and what follows from them, i.e. cutting them off, which includes cutting off the hand or leg, or the finger, or the braid, or the nose, or the penis, or the two, or the lip, or the eye, cutting off the labia, eyelids, and plucking or shaving the hair, eyebrows, or moustache.

for. The disappearance of the meanings of the limbs while their essential elements remain: This is represented by strengthening the benefit of the organ while it remains standing, such as: the disappearance of hearing, sight, smell, walking, and the mind.

C. Chagag: It is used to refer to wounds of the head and face, especially in the areas of the forehead bone. The cheeks, the temples, the chin without borders, and the rest of the imams believe that they are not in the head and face at all, and the cheeks are: the teary, bloody, intrusive, conjoined side.D. Wounds: These are what occurs in the rest of the body except the head and face, and they are of two types: The first: wounds that reach the thoracic and abdominal cavities, whether they are in the chest or

abdomen

The second: Non-cavitary wounds that do not reach the stomach.

What does not fall under the previous sections and includes any harm that does not lead to the exposing of the parties or the disappearance of their meaning, and does not lead to a quarrel or wound.

It is an assault that leaves no trace or leaves a mark but is not a quarrel or wound.

The felony in traffic accidents is often an act of mistake, resulting from negligence in avoiding the accidents themselves, and negligence in avoiding the causes of their occurrence, such as:

failure to maintain vehicles, or negligence in doing so, and negligence in respecting traffic rules and safety and security reasons when traveling on the road, whether as a passenger or pedestrian.

4.3. Felony for what is the same without a reason:

Abortion is the act committed by a woman, causing the miscarriage of the fetus she is carrying. Jurists agree that the subject of a crime against the fetus is the pregnant woman's miscarriage and assault on the life of the fetus, or anything that leads to the separation of the fetus from its mother.

This crime occurs whenever a traffic accident leads to a woman miscarrying, whether as a result of a direct collision she was exposed to from a vehicle, or being run over, or as a result of injury as a result of a vehicle overturning, or suffocation inside it,

which is the resulta of traffic accident.

-Felony against property by destroying it: It consists of destroying property, which is represented by vehicles

In whole or in part, or in buildings adjacent to roads, or in animals, and other property that may be close to the site of a traffic accident. If vehicles are the most vulnerable to damage due to traffic accidents, then the tools and means carried on them and which are part of them are often damaged as a result of direct exposure to the accident. The perpetrator must do the following

A. Compensation in kind: performing the necessary specific work to eliminate the damage that befell another

In his money, this is because transgression is an illegal act in the first place.

B. Financial compensation: It consists of the obligation to return the equivalent or value of the financial damages and to pay the necessary blood money and compensation as a result of the physical damages.

What is less than the soul) and it was reported on the authority of the Prophet (may God bless him and grant him peace) on the authority of Ibn Abbas, may God be pleased with them, that the Prophet (may God bless him and grant him peace)

He said: (There is no harm or harm) **(Majah & Majah, 2021,p 95)**

CONCLUSION

Traffic accidents have become a defining problem of our time—complex, multifaceted, and one of the greatest threats to

individuals and communities due to the thousands of deaths and injuries they cause each year.

Transportation and its associated social needs hold great importance because of the services they provide across various sectors, an importance that has grown with the rapid technological development of vehicles and transport systems.

This advancement has contributed to urbanization, social development, and easier communication and exchange among people, influencing their habits and behaviors. Yet, despite this remarkable progress in social life and transportation, the issue of accidents remains a serious and persistent challenge.

From the results we have reached:

due to the worsening of traffic accidents and their increased danger to lives and property, as a result of excessive speed and violating the laws that control traffic in the presence of a legal impediment, and given that the driver in this case is responsible for the damage he causes to others in terms of body and money, and therefore, if a murder accident results in him, the criminal provisions stipulated in Islamic Sharia are applied to him, even if it is mostly a mistake.

Therefore, people's lives were surrounded by a system of protection to prevent infringement upon it, which is called the penal system. "And making an attack on the life of one individual an attack on the life of the entire nation, and that preserving his life is preserving the life of the entire nation.

This meaning is confirmed by the Almighty's

saying:(Whoever kills a soul, unless for manslaughter or for corruption in the land, it is as if he had killed all of mankind, and whoever saves a life, it is as if he had saved all of mankind.) **(sorat almaida,aya 32),** punishments are a punishment for sins, disobedience, misdeeds, transgression, and aggression. Punishments may be imposed by the street, and the urban population may return, only to become miserable and secure in their lives and with their money and honor obliterated.

Therefore, people's lives are surrounded by a system of protection to prevent infringement upon it. It is called the penal system.

Islamic teachings consider an attack on a single life as an attack on the entire community, and preserving one life as preserving all. This principle is affirmed in God's words:

whoever unjustly kills a soul is as if he has killed all of humanity, and whoever saves a life is as if he has saved all of humanity. Indeed, God, Blessed and Most High, says in His decisive revelation: "And do not throw yourselves into destruction by your own hands, but do good. Indeed, God loves those who do good." **(Al-Baqarah, 195)**

I consider this modest study an addition to the efforts of those who came before me. I hope it will be an effective addition to the issue of finding solutions to the problem of traffic accidents and reducing their damage. I swear there is no intention behind it.

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