

Assault Offences Against the Human Body in Criminal Law: A Comparative Study: A Comparative Study

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Introduction

Every person has the right to preserve their bodily organs intact from any aggression that might disrupt their natural function, completely disable them, or partially impair their function. The criminal legislator, and before him Islamic criminal law, recognized the paramount importance of the human right to bodily integrity from any act that might constitute aggression. The criminal legislator criminalized all forms of harm to the body, regardless of their nature or degree of impact, as long as they possess an element of aggression. This is in contrast to behaviors that fall under the umbrella of permissible actions, which the legislator permitted because they lack the element of aggression. This is even more true under the noble provisions of Islamic Sharia, which addressed this research topic in detail and with precision from all its aspects.

This research is divided into two sections. The first section is dedicated to explaining the provisions of crimes of assault against the human body in criminal law, while the second section examines how Islamic Sharia addresses these crimes.

Crimes Against the Person: Assault and Battery

Provisions for Crimes of Assault Against the Human Body in Criminal Law

Before delving into the details of crimes against the human body, it is essential to understand the meaning of assault, which constitutes the behaviors upon which these crimes are based. Assault can be defined as any act or omission that disrupts the normal functioning of bodily organs, diminishes bodily integrity, causes pain that the victim did not previously experience, or exacerbates existing pain beyond its level before the assault, and so forth.

The Iraqi criminal legislator has addressed the crimes of wounding, striking, causing injury, and administering substances harmful to the human body in several legal articles. This section will be structured as follows: the first article will outline the general elements of these crimes, and the second will examine the forms of assault that affect the human body:

2.1 The Elements of Crimes Against the Human Body

We must briefly discuss the interest that is to be protected by criminalizing the behaviors upon which this crime is based, namely, preserving the physical integrity of every member of society. The body to be protected must be alive¹. We have divided the study into two sections. In the first, we examined everything related to the physical element, and in the second, we addressed the moral element upon which the behaviors constituting the physical element are based, as follows:

¹ Dr. Jalal Tharwat, *Theory of the Special Section - Crimes Against Persons - Part 1*, Dar Al-Nahda Al-Arabiya, Beirut, 1967, p. 401; Dr. Mahmoud Najib Hosni, *Penal Law - Special Section - Dar Al-Nahda Al-Arabiya*, Cairo, 1986, p. 427.

2.1.1 The Elements of the Material Element of Crimes Against the Human Body

Every crime must have a material element to be considered valid. This element is represented by the perpetrator's conduct, which takes on a tangible, external form that prompts legal intervention through the imposition of appropriate criminal penalties. However, this conduct does not have a single external form in all crimes; rather, it varies from one crime to another. Simultaneously, it expresses the underlying criminal intent.²

An analysis of the material element of crimes against the human body reveals that, like most other crimes, this element is comprised of three components: first, the conduct that must be exhibited by the perpetrator; second, the resulting criminal consequence; and third, the causal link between the conduct and the criminal consequence. Therefore, examining the details of these components necessitates studying each one separately, as follows:

1. Criminal Conduct

By reading the texts in which the Iraqi and comparative legislator³ addressed crimes affecting the physical integrity of the human body, we find that they used terms like assault, wounding, injury, and administering harmful substances to refer to the conduct that can be committed in these crimes. It is evident from the wording of these texts that they did not list all the behaviors constituting the first element of the material element exhaustively, but rather illustratively. Moreover, the Iraqi criminal legislator concluded this enumeration with the phrase "(...or by committing any act contrary to the law...)." Therefore, we will briefly address the meaning of these terms, following the example of the commentators on criminal law, for the sake of completeness, as follows:

First: Striking: Striking refers to any contact with body tissues through pressure or impact that does not result in tearing⁴. Striking can be achieved by any means, such as kicking or pushing⁵.

Second: Wounding: Since the body is essentially an infinite number of interconnected and intertwined cells that form body tissue, wounding, as a form of behavior that harms the integrity of the human body, is any cutting or tearing those results in the severing of the close connection that characterizes the cells that make up those tissues⁶. It makes no difference whether the wound is on external body parts such as the hands and head, or whether the wound is deep and affects internal organs such as the liver and spleen⁷.

Third: Giving the victim harmful substances: One of the behaviors that constitutes the first element of the material element in crimes affecting the safety of the body is the perpetrator giving the victim harmful substances. The expression of harmful substances is broad enough to include any substance that causes harm to the body, regardless of its nature or method of use, as long as its entry into the human body leads to a disruption of the normal health condition⁸.

2. The Criminal Result

² Dr. Al-Saeed Mustafa Al-Saeed, *General Provisions in the Penal Code*, 3rd ed., Dar Al-Maaref, Egypt, 1957, p. 224; Dr. Maher Abdul Shweish, *General Provisions in the Penal Code*, Dar Al-Hikma, Mosul, 1990, p. 187; Dr. Mahmoud Najib Hosni, *Explanation of the Penal Code - General Section - 3rd ed.*, Al-Halabi Legal Publications, Beirut, n.d., p. 365.

³ Articles (410-416) of the Iraqi Penal Code No. (111) of 1969, in force and amended; Articles (240-243) of the Egyptian Penal Code No. (58) of 1937, in force and amended; Articles (333-338) of the Jordanian Penal Code No. 16 of 1960, in force and amended; and Articles (129-143) of the Sudanese Penal Code of 1991, in force and amended.

⁴ Dr. Mahmoud Naguib Hosni, *Penal Law - Special Section - previous source*, p. 432; Dr. Jalal Tharwat, *Theory of the Special Section - Crimes Against Persons - previous source*, p. 403.

⁵ Dr. Maher Abdul Shweish, *Explanation of the Penal Code - Special Section - Mosul University Press*, 1997, p. 186.

⁶ Dr. Muhammad Zaki Abu Amer, *Penal Code - Special Section -*, Dar Al-Jami'a Al-Jadeed, Alexandria, 2010, p. 531; Mahmoud Mahmoud Mustafa, *Explanation of Penal Code - Special Section -*, Cairo University Press, 1984, p. 241.

⁷ Dr. Abdul-Muhyamin Bakr Salem, *The Special Section in the Penal Code*, Dar Al-Nahda Al-Arabiya, Cairo, 1977, p. 617.

⁸ Dr. Maher Abdul Shweish Al-Durra, *Explanation of the Penal Code - Special Section - previous source*, p. 187.

The criminal result is the second element of the material element of a crime, following the criminal act itself. Whether the act is positive or negative, it necessitates a change in the external world. This change constitutes the criminal result. However, it should be noted that the change that constitutes the criminal result is the change recognized by the criminal legislator, not just any change⁹.

The criminal result is represented by the complete and permanent disruption of bodily functions caused by the criminal act, as in the case of assault or battery, or by the partial and permanent impairment of the function of some of those organs¹⁰.

One of the issues that should be considered in this study is the possibility of these crimes being limited to the level of attempt. If this is possible, does it encompass all forms of attempt in all crimes? Or is its applicability limited to some crimes and not others? In answering such questions, should they be raised, we would say that while most assault crimes are crimes of tangible criminal result, the nature of the conduct upon which their material element is based is often so intertwined with the criminal result that there is no time gap allowing for the attempted crime to be realized in its failed form. It is inconceivable that an act of striking or wounding could occur without physical contact with the victim, whereas an attempted crime in its interrupted form is quite conceivable¹¹.

Regarding crimes where attempt is conceivable, we find a divergence in the positions of comparative legislation on this matter. Some legislations punish attempts to commit felonies as a general rule, while attempts to commit misdemeanors are not punishable unless the law stipulates otherwise. This approach was adopted by both the Egyptian and Jordanian legislators. Article (47) of the current and amended Egyptian Penal Code stipulates that: "The law shall specify the misdemeanors for which attempts are punishable, as well as the punishment for such attempts." It is known that, according to Article (11) of the Egyptian Penal Code, a misdemeanor is a crime punishable by: (1. Imprisonment. 2. A fine exceeding one hundred pounds). However, other comparative criminal legislations have taken a different approach. The Iraqi legislator, and the Sudanese legislator in agreement, punish attempts to commit felonies and misdemeanors as a general rule, unless otherwise stipulated. This includes the crimes under study. Article (31) of the current and amended Iraqi Penal Code stipulates that: "It is punishable by Committing felonies and misdemeanors shall be punishable by the following penalties unless otherwise stipulated by law.

3. Causation

The causal link is of great importance in criminal law. This importance becomes evident when we understand that causation connects the two elements of the material element of any crime. As such, it establishes the unity and integrity of the crime, serving as a fundamental technical means of limiting the scope of criminal liability by excluding all consequences unrelated to the perpetrator's conduct. Consequently, the perpetrator is only held accountable for the conduct itself, if it constitutes a crime, and is not responsible for the final result, which is unrelated to their conduct¹².

In any case, what concerns us is clarifying the position of the criminal legislations under comparison regarding the latter assumptions of causation. As for the Iraqi criminal legislator, we find that he addressed the issue in Article (29) of the current and amended Penal Code, which states: (1. A person shall not be held accountable for a crime that was not a result of his criminal conduct, but he shall be held accountable for the crime even if another cause, prior, concurrent, or subsequent, contributed to its occurrence, even if he was unaware of it. 2. However, if that cause alone is sufficient to produce the result of the crime, then the perpetrator in this case shall only be held accountable for the act he committed.) The Iraqi text is so clear that it requires no further comment. It is evident that it has adopted the theory of equivalence of causes as a principle; however, at the same time, it has

⁹ Mahrous Nassar Al-Hiti, *The Criminal Result in the Penal Code*, Master's Thesis, College of Law, University of Baghdad, 1989, p. 16 and beyond.

¹⁰ Dr. Muhammad Zaki Abu Amer, *Penal Code - Special Section* - previous source, p. 540.

¹¹ Dr. Muhammad Zaki Abu Amer, *Penal Code - Special Section* - previous source, p. 541; Dr. Kamel Al-Saeed, *Explanation of the Jordanian Penal Code*, previous source, p. 185.

¹² Dr. Maher Abdul Shweish, Dr. Muhammad Suleiman Al-Ahmad and lawyer Haitham Hamed Al-Masawra, *The Theory of Equivalence of Causes in Criminal Law "A Comparative Study"*, 1st ed., Dar Al-Hamed, Amman, 2000, p. 13 and beyond.

narrowed its scope. The wording of the theory indicates that the causal relationship between the perpetrator's conduct and the final criminal result is only severed by the intervention of a cause sufficient on its own to bring about the criminal result in the manner in which it occurred, not to mention the complete independence of that cause from the perpetrator's conduct. Meanwhile, we find that the legislator The Iraqi in the above article has settled for sufficiency without independence¹³.

2.1.2 The mental element (Mens Rea)

The moral element of any crime includes its psychological components. This means that a crime is not merely a purely physical entity consisting of the act committed and its resulting consequences, but also possesses a psychological dimension. This psychological dimension is represented by the psychological foundations of the physical aspects of the crime and the control exerted over them. The physical aspects of the criminal act are of no concern to society, represented by the criminal legislator, except insofar as they reveal a wicked human will. This element is also the means by which the legislator determines who is responsible for the crime and deserving of punishment¹⁴.

Crimes of assault, battery, harm, and administering harmful substances, like other crimes, are inherently intentional. That is, they are based on criminal intent. The intent required of the perpetrator is general intent, the components of which are knowledge and will. These two elements are present in the perpetrator when their conduct stems from a free and conscious will. In other words, they commit the assault, battery, or harm knowing that it will affect the victim's physical integrity or health, or cause them pain, regardless of its degree, whether slight or severe¹⁵.

The question that arises in this part of the study is: Do the previous rules apply to all crimes of harm or not? In answering the question we say: Crimes that affect the integrity of the human body do not deviate from the previous rules. Rather, intentional harm crimes, like other crimes, are based on general criminal intent, which is based on knowledge and will, knowledge of all the facts that the law requires to be known, such as his knowledge at the moment of committing his harmful behavior that it is directed at the body of a living human being.

2.2 Types of Crimes Against the Human Body

Crime of assault, battery, and harm, according to the penal codes under comparison, are classified into two categories: the first is considered a misdemeanor by the legislator¹⁶, who also stipulates a number of aggravating circumstances for its punishment; the second is considered a felony due to the severity of the resulting consequences. Therefore, studying these two forms of crimes affecting the integrity of the human body requires us to address them in two separate sections, as follows:

2.2.1 Misdemeanors in assault crimes

Article (413) of the Iraqi Penal Code stipulates that: (1. Whoever intentionally assaults another by wounding, striking, using violence, or committing any other unlawful act, causing him harm or illness, shall be punished by imprisonment for a period not exceeding one year and a fine not exceeding one hundred dinars, or by one of these two penalties. 2. The penalty shall be imprisonment for a period not exceeding three years and a fine not exceeding three hundred dinars, or by one of these two penalties: a. If the assault results in a broken bone. b. If the assault results in harm or illness that prevents the victim from carrying out his usual work for a period exceeding twenty days. 3. The penalty shall be imprisonment if the harm is inflicted by using a firearm, an instrument prepared for the purpose of causing harm, or a flammable, corrosive, or harmful substance.) It is noted that the text distinguished between two forms of harm. In the first form, it referred to very simple intentional harm, which is represented by any harm or simple health problem, and the same applies if the result of the assault is harm or illness that prevents the victim from carrying out his usual daily work for a period exceeding

¹³ Dr. Ali Hussein Al-Khalaf and Dr. Sultan Abdul Qader Al-Shawi, *General Principles in Penal Law*, Legal Library, Baghdad, 2006, pp. 145-147.

¹⁴ Dr. Muhammad Ali Suwailim, *Attribution in Criminal Matters*, previous source, p. 218 and beyond.

¹⁵ Dr. Maher Abdul Shweish Al-Durra, *Explanation of the Penal Code - Special Section* - previous source, p. 188.

¹⁶ Dr. Maher Abdul Shweish Al-Durra, *Explanation of the Penal Code - Special Section* - previous source, p. 189.

twenty days¹⁷.

Article (414) of the Iraqi Penal Code, as amended, stipulates a number of circumstances which, if combined with one of the harmful behaviors mentioned in Article (413), result in an increased penalty. The circumstances stipulated in the above article are: (1. The act was committed with premeditation. 2. The act was committed by a group of three or more persons who agreed to commit the assault. 3. If the victim is related to the perpetrator. 4. If the assault was committed against an employee or person entrusted with a public service while performing their job or service, or because of it. 5. If the assault was committed in preparation for committing a felony or misdemeanor punishable by imprisonment for a period of not less than one year, or to facilitate its commission, or to carry it out, or to enable its perpetrator or accomplice to escape or evade punishment)¹⁸. While Article (415) of the current and amended Iraqi Penal Code addresses the offense of intentional assault, stating: "Anyone who commits an assault or minor injury that leaves no mark on the victim's body shall be punished by imprisonment for a period not exceeding three months and a fine not exceeding thirty dinars, or by one of these two penalties," it is a prerequisite for the application of this provision that the injury be very minor, such as a slap to the face or a kick, and so on, leaving no mark on the victim's body.

The foregoing pertains to intentional offenses and violations. As for unintentional offenses, their provisions are addressed in Article (416) of the current and amended Iraqi Penal Code, which states: (1. Whoever, by his mistake, causes harm or illness to another, whether due to negligence, recklessness, inattention, lack of caution, or failure to observe laws, regulations, and orders, shall be punished by imprisonment for a period not exceeding six months and a fine not exceeding fifty dinars, or by one of these two penalties. 2. The penalty shall be imprisonment for a period not exceeding two years if the crime results in a permanent disability, or occurs as a result of the perpetrator's gross breach of the duties of his job, profession, or craft, or while under the influence of an intoxicant or narcotic at the time of committing the mistake that resulted in the incident, or if he failed at the time of the incident to assist the victim of the crime or to seek assistance for him when he was able to do so, or if the mistake leads to injury to three or more persons). The text is so clear that it needs no commentary.

2.2.2 Felonies in assault crimes

After reading the texts of the current and amended Iraqi Penal Code that dealt with crimes of assault affecting the integrity of the human body, it became clear that the crimes that rise to the level of felonies are represented in two forms: the first: the crime of assault leading to death, and the second: the crime of assault leading to permanent disability, which will be the subject of our next discussion:

1. The crime of assault leading to death

Article (410) of the current and amended Iraqi Penal Code stipulates that: (Whoever assaults another by beating, wounding, violence, giving a harmful substance, or committing any other unlawful act, without intending to kill him, but it leads to his death, shall be punished by imprisonment for a period not exceeding fifteen years. The punishment shall be imprisonment for a period not exceeding twenty years if the crime was committed with premeditation, or if the victim was an ascendant of the perpetrator, or was an employee or person entrusted with a public service, and the assault occurred while he was performing his job or service, or because of it)¹⁹.

2. The Crime of Assault Resulting in Permanent Disability

Article (412) of the Iraqi Penal Code, as amended, states: (1. Whoever assaults another by wounding, striking, using violence, administering a harmful substance, or committing any other unlawful act, intending to cause permanent disability, shall be punished by imprisonment for a period not exceeding fifteen years. Permanent disability is established if the act results in the severing or separation of a body part or limb, the amputation of a part thereof, loss or impairment of its function, insanity, mental impairment, total or partial permanent impairment of one of the senses, severe disfigurement that is not expected to be cured, or an imminent danger to life. 2. The punishment shall

¹⁷ Article (26) of the Iraqi Penal Code.

¹⁸ Article (243) of the Egyptian Penal Code.

¹⁹ Article (236) of the Egyptian Penal Code.

be imprisonment for a period not exceeding seven years or detention if the act results in permanent disability without the perpetrator intending to cause it.)²⁰ Based on this, no injury, regardless of its nature, falls under the definition of permanent disability as long as it does not affect the body's and its organs' ability to perform their natural functions as they were before the injury²¹.

The question that arises at this point in the study is: if an injury that could lead to permanent disability requires surgery, should the injured party agree to undergo it? In answer, there is no problem if the victim receives treatment or the surgery is performed, and the result is positive—that is, a full recovery from the injury without any disability—or negative. In the latter case, the perpetrator bears full criminal and civil responsibility. However, the problem arises if the victim refuses treatment or the necessary surgery to remedy the harm inflicted upon them as a result of the harmful act they endured, which resulted in a permanent disability. It should be noted that the general principle is that the victim is obligated to take medication and undergo the standard surgical procedures that a normal person would undergo when they become ill or are involved in an accident. In this regard, we can rely on the ruling of the Egyptian Court of Cassation, which decided that the victim is not permitted to refuse surgery unless it would endanger their life. No one can blame them for prioritizing preserving their life, even with the disability, over... The possibility of his full recovery from the injury, which may not be achieved if the surgical operation fails, but rather the victim's interest in life is preferred and the perpetrator must bear full responsibility²².

.3 Offences against the Person Short of Homicide in Islamic Jurisprudence

The term "crime" in Arabic is derived from the root "jana yajni," meaning to sin or to commit a crime. "Jana ala nafsahu" means he sinned against himself, and "jana ala qawmihi" means he committed a sin for which he is held accountable. In Islamic legal terminology, it refers to an act of aggression against the body that warrants retaliation or compensation. Crimes against what is less than life are divided, according to the location of the injury, into crimes of severing limbs, crimes of disabling organs while preserving their physical form, wounds, and crimes of head injuries²³. They are also divided, according to the punishment, into crimes warranting retaliation and crimes warranting blood money without retaliation²⁴. Since these two divisions overlap, we will divide the study into two sections. The first will address the rulings on crimes against what is less than life and the principles that govern them. The second will explain the legal rulings for the different types of crimes against what is less than life, as follows:

3.1 Offences against the Person Short of Homicide

The crime that results in the removal of an organ or the loss of its function while its substance remains, or the wounding, and before proceeding to explain the controls that govern both retaliation and taking blood money, we must understand the concept of a crime against something less than life, as follows:

3.1.1 The Concept of Offences against the Person Short of Homicide

Explaining the concept of crimes against the body short of homicide requires us to define it, then its legal ruling, and the evidence upon which it is based, as follows:

First, the definition of crimes against the body short of homicide: The term "crimes against the body short of homicide" refers to any prohibited act committed against the limbs or organs of a protected human being, whether by cutting, wounding, or removing the function of organs while

²⁰ Article (240) of the Egyptian Penal Code.

²¹ Dr. Muhammad Zaki Abu Amer, Penal Code - Special Section - previous source, p. 566.

²² Dr. Muhammad Ali Suwailim, Attribution in Criminal Matters, previous source, p. 380 and beyond.

²³ Muhammad ibn Mukarram Manzur al-Afriqi al-Misri, Lisan al-Arab, Vol. 14, entry for "Jana", Dar Sader, Beirut, n.d., p. 153; Ahmad ibn Muhammad ibn Ali al-Muqri al-Fayumi, Al-Misbah al-Munir fi Gharib al-Sharh al-Kabir, Vol. 1, Book of Jim, Al-Maktabah al-Ilmiyah, Beirut, p. 112.

²⁴ Dr. Mustafa Al-Khan, Dr. Mustafa Al-Bugha and Ali Al-Sharbaji, Methodological Jurisprudence, Volume Three, Dar Al-Qalam, Damascus, p. 371.

leaving their physical form intact²⁵.

Second, the legal ruling on crimes against the body short of homicide and its legal basis: Based on the definition, it can be said that crimes against the body of a protected human being are forbidden and prohibited by Islamic law. It is not permissible to assault any part of the human body or to inflict harm upon it. As for the legal evidence, it can be found by referring to the sources of Islamic criminal legislation, represented by the Holy Quran, the noble Prophetic Sunnah, and consensus. Muslim scholars have also agreed that the punishment of retaliation is obligatory upon the ruler whenever the perpetrator is brought before him, and he has the right to pardon him, though pardon is preferable²⁶.

3.1.2 Conditions for Retaliation in Offences against the Person Short of Homicide

Since retaliation for lesser offenses is the same as retaliation for murder, there must be equality between the crime and the retaliation. The perpetrator, even if he was the aggressor, should not suffer more as a result of the retaliation than the harm he inflicted as a result of the aggression²⁷. Indeed, this very meaning is what retaliation restricts, which is defined as punishing the perpetrator with the exact same harm he committed, without increase or decrease. The conditions for retaliation can be summarized as follows²⁸:

First, the inviolability of the victim: that is, the injured party must be someone whose life is protected. There are four categories of protected persons: Muslims, non-Muslims living under Islamic rule (dhimmi), those with whom we have a treaty, and those granted safe passage (musta'min). A Muslim is clearly defined.

Second, the perpetrator must be legally responsible: there is no retaliation for a minor or an insane person. Because intent is inconceivable on their part, if the aggression is committed by a minor or during a state of insanity, they are not subject to retaliation.

Third. Equivalence: This means that the perpetrator and the victim are equal in religion and freedom. That is, the perpetrator should not have superiority over the victim in either religion or freedom. Therefore, a Muslim is not subject to retaliation for a non-Muslim, nor a free person for a slave.

Fourth. Non-relative relationship: This means that the perpetrator is not the victim's parent, whether paternal or maternal, or any other ascendant.

Fifth. Intentionality and free will: This means that the perpetrator must intend to violate the victim's right to bodily integrity. Retaliation is a finite punishment and is only applicable for a finite crime. Intentionality is established when the perpetrator harms the victim with an instrument that is highly probable to achieve the intended criminal result. Furthermore, the perpetrator must act of free will, meaning they committed the act of aggression of their own free volition²⁹. For the application of the punishment of retaliation (qisas) in cases of injury less than homicide, three conditions must be met, in addition to the general conditions for retaliation. These conditions can be summarized as follows³⁰:

1. The punishment must be fair, meaning the amputation must be at a joint or have a defined endpoint, such as the tip of the nose.

2. The punishment must be equal in name and location; the right hand cannot be amputated for

²⁵ Abu Malik Kamal Al-Sayed Salem, *Sahih Fiqh Al-Sunnah wa Adillatuhu wa Tawdih Madhahibuhu*, Volume 4, Dar Al-Tawfiqiyya for Heritage, Cairo, 2010, p. 192.

²⁶ Saud bin Abdul-Aali Al-Baroudi Al-Otaibi, *The Islamic Criminal Encyclopedia*, Volume Two, Dar Al-Tadmuriyah, Saudi Arabia, 2009, p. 632.

²⁷ Abdul Aziz Amer, *Discretionary Punishment in Islamic Law*, no place of publication, 1956, p. 118.

²⁸ Sheikh Muhammad bin Saleh Al-Uthaymeen, *Al-Sharh Al-Mumti' ala Zad Al-Mustaqni'*, Vol. 6, Dar Ibn Al-Jawzi, Cairo, 2009, pp. 111-133; Dr. Majid Abu Rukhiya, *Al-Wajeez fi Ahkam Al-Hudud wal-Qisas wal-Ta'zir*, Dar Al-Nafais, Jordan, 2009, pp. 221-225.

²⁹ *The Kuwaiti Encyclopedia of Islamic Jurisprudence*, issued by the Ministry of Endowments, Vol. 33, 1st ed., Dar Al-Safwa Printing Press, Egypt, pp. 261-270.

³⁰ Mr. Sabiq, *Fiqh al-Sunnah*, Vol. 2, Dar al-Fath for Arab Media, Cairo, 1999, p. 345; Sheikh Muhammad bin Saleh al-Uthaymeen, *Al-Sharh al-Mumti' ala Zad al-Mustaqni'*, previous source, p. 131.

the left, nor vice versa.

3. The perpetrator and the victim must be of equal health and completeness; a healthy limb cannot be taken in retaliation for a paralyzed one, as this would mean the victim would receive more than their due.

Several questions may arise in this context, such as: When is retaliation carried out against the perpetrator? Is retaliation carried out against a group for an individual if they participated in harming him? What is the nature of the mental element upon which the crimes under study are based in Islamic jurisprudence, and is attempted retaliation conceivable? In answer to the first question, we say that Muslim jurists were divided into two groups. The first, represented by the majority of scholars (Hanafis, Hanbalis, and Malikis), held that retaliation against the perpetrator is not permissible until the wound has healed, whether the victim requests it or not. This is due to the fear that the injury might lead to death through infection, thus becoming murder rather than mere harm such as cutting. In that case, the victim would have received more than their due, which is impermissible.

3.2 Classifications of Offences against the Person Short of Homicide and their Corresponding Legal Sanctions

Crimes that affect the human body without resulting in death take several forms, which can be categorized into four types: first, the severing of limbs and similar structures; second, the loss of function of organs while preserving their physical form; third, head wounds; and fourth, lacerations. Therefore, we will examine their legal rulings as follows:

3.2.1 The Islamic legal ruling on the severing of limbs and the loss of their function:

To begin, we say that if an injury to something less than life is intentional, then retaliation is obligatory, as evidenced by the Prophetic hadith narrated by Abdullah ibn Abbas (may God be pleased with him), who said: The Messenger of God (peace and blessings be upon him) said: "Intentional killing is punishable by retaliation for the hand, while unintentional killing is punishable by blood money, not retaliation. And whoever kills unintentionally with a stone, stick, or whip, then he must pay aggravated blood money in camels." There is no retaliation for unintentional killing; rather, blood money is obligatory, as indicated by the noble hadith. And God Almighty says: "...and for violations of sacred things there is retaliation. So whoever transgresses against you, then transgress against him in the same way that he transgressed against you. And fear God, and know that God is with those who fear Him." Retaliation is carried out for the eye, based on the verse, "An eye for an eye," and because it has a defined limit, thus ensuring equivalence and preventing excess³¹.

Retaliation is also carried out for the nose if it is severed, based on the verse, "A nose for a nose." Retaliation is carried out according to the parts, not the area³².

As for crimes that result in the loss of bodily functions while the organs themselves remain intact, such as the mind, hearing, speech, smell, taste, sexual function, and paralysis, there is no retaliation. Our basis for this is the ruling of the just Caliph Umar ibn al-Khattab (may God be pleased with him) regarding a man who struck another, causing him to lose his hearing, sight, sexual function, and mind, in which case he was ordered to pay four blood-money payments while the man was still alive³³.

3.2.2 The Islamic legal ruling on wounds

The act of inflicting a wound is the common link between the two forms of injury that do not result in death: head wounds and wounds. What distinguishes the two forms is the location of the injury on the victim's body. If it is on the head or face, it is called a head wound, while if it is on other parts of the body, it is called a wound. Therefore, determining the Islamic legal ruling on both types of injuries requires us to divide it into two sections. In the first, we will clarify the rulings on head wounds, and in the second, we will examine the rulings on penetrating and non-penetrating wounds, as follows:

³¹ Imam Al-Kasani, *Bada'i' Al-Sana'i'*, Vol. 7, p. 308; Imam Al-Shafi'i, *Al-Umm*, Vol. 6, p. 51; Imam Ibn Hazm Al-Zahiri, *Al-Muhalla*, Vol. 10, p. 403.

³² Sheikh Ibn Uthaymeen, *Al-Sharh Al-Mumti'*, Vol. 6, p. 133.

³³ Sabiq, *Fiqh al-Sunnah*, Vol. 2, p. 358.

1. Cranial Injuries (Shijaj) and their Legal Rulings under Islamic Law

The term "wounds" refers to injuries sustained by a person in the head and face. However, discussing the rulings concerning wounds requires us to first clarify the following:

First: Categories of wounds: Wounds are divided into several categories³⁴:

Harisah (Superficial Scratch).

Damiyah (Bleeding Wound).

Badi'ah (Flesh Wound).

Simhaq (Periosteum Wound).

Muwaddihah (Skull-Exposing Wound).

Hashimah (Depressed Fracture).

Munaqqilah (Displaced Fracture).

Ma'mumah (Head-Penetrating Wound).

Secondly, the ruling on head wounds: The basic principle is the obligation of retaliation for all wounds, including head wounds, due to the general statement of God Almighty: "And for wounds, there is retaliation." However, for some types of head wounds, it is impossible to achieve equality in retaliation. This has led some scholars to elaborate on this issue as follows:

1. They agreed that there is no retaliation for wounds greater than the exposing wound (the fracture, the displaced wound, and the permanent wound), because it is impossible to achieve equality in breaking the bone or to guarantee its movement from its place. The blood money for these wounds is determined according to the amounts mentioned in the Prophet's hadith.

2. They also agreed on the necessity of retaliation in the case of a wound that has been exposed.

2. Non-Cranial Injuries (Jurāḥ) under Islamic Criminal Law

The wounds referred to in this section of the study are those that affect the rest of the body except for the face and head. We will first explain the types of wounds and then examine their legal ruling, as follows:

First: Types of wounds: Wounds are divided into two types: the first is called penetrating and the second is non-penetrating. Penetrating wounds are those that penetrate and reach the abdominal cavity, the chest, and the jugular notch³⁵.

Secondly. The ruling on penetrating and non-penetrating wounds: There is no retaliation for penetrating wounds, because their extent cannot be determined without injustice, but rather there is an estimated compensation for them³⁶.

4. Conclusion

In conclusion, this study, through which we attempted to record some conclusions to achieve the desired goal, God willing, is as follows:

1. We found that the approach taken by comparative criminal legislation was somewhat distinctive, particularly in terms of criminalization, as it criminalized every behavior, no matter how minor. However, it was not successful in terms of the penalties, which ranged between imprisonment and detention.

2. It became clear to us that the nature of the mental element in some crimes of assault (crimes of intent) has sparked much debate and disagreement among criminal jurisprudence. The prevailing opinion was that it has a dual nature, as it combines intent and negligence simultaneously.

3. It became clear to us that the extension of retaliation in cases of lesser offenses to the death of

³⁴ Sheikh Ibn Uthaymeen, *Al-Sharh Al-Mumti'*, Vol. 6, pp. 183-185; Saud Al-Otaibi, *The Islamic Criminal Encyclopedia*, Vol. 2, pp. 497-499; Dr. Mustafa Al-Khin and others, *Al-Fiqh Al-Manhaji*, Vol. 3, pp. 390-391; Imam Al-Allamah Al-Baha' Al-Maqdisi, *Kitab Al-Udda*, Vol. 2, pp. 688-693.

³⁵ The Kuwaiti Encyclopedia of Islamic Jurisprudence, Article (Ja'ifa), Vol. 15, p. 82 and beyond.

³⁶ Abdul Aziz Amer, *Discretionary Punishment in Islamic Law*, p. 153.

a person is not applicable, unlike the extension of retaliation in cases of felonies, which is guaranteed, as evidenced by the traditions of the Rightly Guided Caliphs. 4. We found that the positions of comparative criminal legislations have varied in terms of whether or not it is possible to conceive of attempted assault crimes..

REFERENCES

First. Books of Islamic Jurisprudence

1. Imam Abu Bakr Ahmad ibn al-Husayn ibn Ali al-Bayhaqi, *Al-Sunan al-Kubra*, 1st ed., vol. 8, Dar al-Ma'arif, India.
2. See Imam Abu Bakr ibn Ali ibn Muhammad al-Haddadi al-Abadi al-Yamani al-Zubaydi, *Al-Jawhara al-Nayira*, vol. 4, source: Islamweb, Al-Maktabah al-Shamila.
3. Abu Umar Yusuf ibn Abdullah ibn Abd al-Barr al-Namari, *Kitab al-Istidhkar*, 1st ed., vol. 8, Dar al-Kutub al-Ilmiyya, Beirut, 2000.
4. Abu Malik Kamal al-Sayyid Salim, *Sahih Fiqh al-Sunna wa Adillatuhu wa Tawdih Madhahibuhu*, vol. 4, Dar al-Tawfiqiyya li al-Turath, Cairo, 2010.
5. Imam Abu Abdullah Muhammad ibn Idris al-Shafi'i, *Al-Umm*, vol. 6, Maktabat al-Kulliyat al-Azhariya, Cairo.
6. The learned Imam Abu Muhammad Abd al-Rahman ibn Ibrahim ibn Ahmad al-Ansari, known as "Baha' al-Maqdisi," *Kitab al-Udda fi Sharh al-Umda*, Al-Maktabah al-Uthmaniyya, Baghdad. 7. Imam Abu Muhammad Abdullah ibn Ahmad ibn Qudamah, *Al-Mughni*, vol. 9, Al-Asimah Press.
8. Al-Hafiz Ibn Hazm al-Andalusi al-Zahiri, *Al-Muhalla*, vol. 11, Al-Imam Press, Egypt.
9. Al-Hafiz Ibn Hajar al-Asqalani, *Subul al-Salam Sharh Bulugh al-Maram*, 2nd ed., Al-Rayyan Foundation, Beirut, 2009.
10. Imam al-Bayhaqi, *Al-Sunan al-Saghir*, vol. 6, source of the book: Jami' al-Hadith website.
11. Saud bin Abdul-Aali Al-Baroudi Al-Otaibi, *The Islamic Criminal Encyclopedia*, Volume 2, Dar Al-Tadmuriyah, Saudi Arabia, 2009.
12. Sayyid Sabiq, *Fiqh Al-Sunnah*, Vol. 2, Dar Al-Fath for Arab Media, Cairo, 1999.
13. Abdul-Aziz Amer, *Discretionary Punishment in Islamic Law*, no place of publication, 1956.
14. Imam Ala' Al-Din Abu Bakr bin Masoud Al-Kasani Al-Hanafi, *Bada'i' Al-Sana'i' fi Tartib Al-Shara'i'*, 2nd ed., Vol. 7, Al-Imam Press, Cairo.
15. Imam Ala' Al-Din Al-Samarqandi, *Tuhfat Al-Fuqaha'*, Dar Al-Kutub Al-Ilmiyyah, Beirut, 1984.
16. Imam Ali bin Omar Abu Al-Hasan Al-Daraqutni, *Sunan Al-Daraqutni*, Vol. 3, Dar Al-Ma'rifah, Beirut, 1966.
17. Dr. Majed Abu Rukhiya, *A Concise Guide to the Rulings on Hudud, Qisas, and Ta'zir*, Dar al-Nafais, Jordan, 2009.
18. Imam Muhammad ibn Ibrahim ibn al-Mughirah al-Bukhari, *Sahih al-Bukhari*, vol. 13, source: Islamweb.
19. Imam Muhammad ibn Ahmad ibn Rushd al-Qurtubi, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, vol. 2, Matba'at al-Istiqamah, Cairo.
20. Sheikh Muhammad ibn Salih al-Uthaymin, *Al-Sharh al-Mumti' 'ala Zad al-Mustaqni'*, vol. 6, Dar Ibn al-Jawzi, Cairo, 2009.
21. Dr. Mustafa al-Khan, Dr. Mustafa al-Bugha, and Ali al-Sharbaji, *Al-Fiqh al-Manhaji*, vol. 3, Dar al-Qalam, Damascus.
22. *The Kuwaiti Encyclopedia of Islamic Jurisprudence*, published by the Ministry of Awqaf, vol. 33, 1st ed., Matba'at Dar al-Safwa, Egypt, 1404-1427 AH.

Secondly. Language Books

1. Ahmad ibn Muhammad ibn Ali al-Muqri al-Fayumi, *Al-Misbah al-Munir*, vol. 1, Al-Maktabah al-Ilmiyyah, Beirut.
2. Muhammad ibn Mukarram Manzur al-Afriqi al-Misri, *Lisan al-Arab*, vol. 14, Dar Sader, Beirut.

Third: Law Books

1. Dr. Jalal Tharwat, *The Theory of the Special Section - Crimes Against Persons*, vol. 1, Dar al-Nahda al-Arabiyyah, Beirut, 1967.
2. Dr. Al-Saeed Mustafa Al-Saeed, *General Provisions in the Penal Code*, 3rd ed., Dar al-Maaref, Egypt, 1957.
3. Dr. Abdul-Muhymin Bakr Salem, *The Special Section in the Penal Code*, Dar al-Nahda al-Arabiyyah, Cairo, 1977.
4. Dr. Ali Hussein al-Khalaf and Dr. Sultan Abdul-Qadir al-Shawi, *General Principles in the Penal Code*, Al-Maktabah al-Qanuniyyah, Baghdad, 2006.
5. Dr. Kamil al-Saeed, *Explanation of the Jordanian Penal Code - Crimes Against Persons*, 2nd ed., Maktabat al-Thaqafah, Amman, 1991.
6. Dr. Maher Abdul Shweish, *General Provisions in the Penal Code*, Dar al-Hikma, Mosul, 1990.
7. Dr. Maher Abdul Shweish, *Explanation of the Penal Code - Special Section* - Mosul University Press, 1997.
8. Dr. Maher Abdul Shweish, Dr. Muhammad Sulaiman al-Ahmad, and Attorney Haitham Hamed al-Masawra, *The Theory of Equivalence of Causes in Criminal Law: A Comparative Study*, 1st ed., Dar al-Hamid, Amman, 2000.
9. Dr. Muhammad Zaki Abu Amer, *The Penal Code - Special Section* - New University Press, Alexandria, 2010.
10. Dr. Muhammad Ali Suwailim, *Attribution in Criminal Matters*, University Press, Cairo, 2006.
11. Dr. Mahmoud Mahmoud Mustafa, *Explanation of the Penal Code - Special Section* - Cairo University Press, 1984.
12. Dr. Mahmoud Najib Hosni, *The Penal Code - Special Section* - Arab Renaissance House, Cairo, 1986.
13. Dr. Mahmoud Najib Hosni, *The General Theory of Criminal Intent*, 3rd ed., Dar Al-Nahda Al-Arabiya, Cairo, 1988.
14. Dr. Mahmoud Najib Hosni, *Explanation of the Penal Code - General Section* - 3rd ed., Al-Halabi Legal Publications, Beirut.

Assault Offences Against the Human Body in
Criminal Law: A Comparative Study: A Comparative
Study

Fourth: Theses

1. Dilshad Abdulrahman Yousef Al-Barifkani, Attribution Restrictions in Criminal Law, Master's Thesis, College of Law, University of Mosul, 2008.
2. Abdulmuhamin Bakr Salem, Criminal Intent in Egyptian and Comparative Law, Doctoral Dissertation, College of Law, Cairo, 1959.
3. Mahrous Nassar Al-Hiti, The Criminal Result in the Penal Code, Master's Thesis, College of Law, University of Baghdad, 1989.
4. Munif Hawas Al-Shammari, Crimes with Transitive Result, Doctoral Dissertation, College of Law, University of Mosul, 2004.

Fifth: Laws

1. Egyptian Penal Code No. (58) of 1937, as amended.
2. The Iraqi Penal Code No. (111) of 1969, in force and as amended.