



Feasibility the Intellect Retribution with Emphasis on Crimes Leading to Vegetative State

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Abstract

According to some jurisprudential and legal texts, the intellect of felon is not punished with retribution in intentional crimes against the brain and intellect destruction lead to Vegetative state, due to reasons such as indeterminacy the place of intellect and causing physical harm more than the crime of the offender. Nowadays, with the advancement of medical sciences, artificial intelligence, and the development of jurisprudential and legal knowledge in recognizing the location of the intellect and understanding the verdict of the crime of destroying the intellect leading to vegetative state, independent research has not been done, therefore it is necessary to conduct a coherent research. This research conducted aims to examine the possibility of retribution of intellect in crimes leading to vegetative state, through an analytical and library method, referring to sources such as verses, narrations, medical, jurisprudential, legal texts, and rational principles. The findings showed that the location of many benefits (body functions) including the intellect is in the brain, specifically in the frontal lobe. Any damage to areas of the brain, such as the lobes and cortex, results in the loss of body benefits such as intellect, sensory perception, and movement abilities, leading to vegetative state. This result was obtained that the verdict of Intellect retribution (Qisas-e Aql) could be proven based on the mentioned sources, but its implementation faces serious challenges. In such cases, the felon should be obligated to treatment destroyed intellect and other lost benefits of the victim. If recovery is not possible, the Felon should be condemned to compensate all damages to the victim in the form of blood money, compensation and like that.

Keywords: *Vegetative State; Retribution; Penal Jurisprudence; Destruction of Intellect; Brain Damage*

Introduction

The retribution of intellect in crimes leading to vegetative state in jurisprudence and criminal law is considered one of the complex issues from a conceptual and legitimacy perspective. Serious injuries

such as blows, wounds, poisoning, or other intentional or unintentional incidents to the cerebral cortex, brain, and cerebellum, while the brainstem remains healthy, can lead to intellect damage and result in vegetative state. In vegetative state, the injured person loses benefits such as intellect, vision, hearing, cognitive abilities, movement, and similar functions that cannot control voluntary bodily activities and lack awareness and intelligent responses to him/herselves and him/her surrounding, and only due to the health of the brainstem and their involuntary actions like breathing and heartbeat continue.

From the perspective of medical sciences, jurisprudence, and law; the anatomy of the brain, understanding the position of intellect, defining crimes against the benefits of organs such as intellect destruction, recognizing the vegetative state, rational rules, and methods of compensating damages; all have a close relationship with the possibility and impossibility of retribution of intellect, but understanding them precisely is accompanied by many difficulties.

In the narrative sources, there are no discussions regarding the retribution of benefits such as intellect (except the retribution of vision). Some Books of scholars such as “Sharaye al-Islam,” “Kashf al-Litham,” “Masalik al-Afham,” “Jawaher,” “Tahrir al-Wasilah,” and some legal sources and articles like Article 677 of the Penal Code of Iran in explain of the benefits of organs, with reference to narrations, in compensating for intentional crimes against the intellect leading to vegetative state, have been negated the verdict of retribution for the intellect with the expressions like “there is no retribution for its loss or deficiency” (Muhayyiq Hilli, 1983/4: 255; Fazel Hindi, 2014/11: 406). They believe that intentional intellect destruction, does not warrant retribution (Qisas) and should be compensated with another punishment.

In this regard, based on medical, jurisprudential and legal sources, rational rules, purposes and interests¹ beyond Criminal sentences, answering the following questions is important:

- ◆ Where is the position of intellect in the human body?
- ◆ What is the relationship between brain injuries, the removal of intellect, and vegetative state?
- ◆ What are the documents supporting the possibility of retribution for intellect in crimes leading to vegetative state?
- ◆ What is the best method to compensate the all damages of victim in vegetative state?

This research comparatively, by referencing verses, narrations, and jurisprudential, legal, medical sources, and rational principles, after definitions of keywords and views of proponents and opponents of intellect retribution, it concludes that exists the possibility of proof the verdict of intellect retribution in intentional crimes leading to vegetative state, but this verdict faces serious challenges in the implementation phase. Therefore, it has been attempted to overcome these challenges by presenting the arguments of some jurists regarding the compensation of all damages to the victim and introducing the medical perspectives on identifying the location of the intellect, which are considered novel discussions in their own right.

It is worth mentioning, that this research only examines the rational retribution that is completely destroyed along with other benefits in the brain's lobes such as hearing, smell, vision, and the like, leading to vegetative state, and does not examines the verdict of crime that leads to partial intellectual impairment such as insanity and dementia.

¹ . The purposes and interests behind criminal laws in Islamic jurisprudence refer to the objectives and reasons that underpin the legislation of criminal laws. These purposes include the preservation of religion, life, intellect, lineage, and property. These principles are known as the Maqasid al-Shariah and aim to ensure justice, security, and public welfare.

1. Conceptual Understanding

1-1. Vegetative State

A vegetative state is a condition where the brain, cerebellum, cerebral cortex, and the center controlling voluntary behaviors of person severely damaged due to various reasons, and only the brainstem, which controls involuntary movements, remains intact. The vegetative state refers to a reduced consciousness who a person has no awareness, cognitive communication, purposeful gaze, or ability to interact with their surroundings; although in some cases their eyes may be open (Bender A, Jox RJ, 2015: 235-42).

The vegetative state can be of two types: one is traumatic, caused by a severe head injury that shakes the brain violently and severs the nerve fibers connecting the brain (Christman CW, Grady MS: 1994), but the brainstem remains undamaged; the other is non-traumatic, resulting from poisoning, harmful drug administration, fear, and similar causes. In medical terminology, the vegetative state is also referred to as alpha-coma or life without spirit, where the patient with an intact brainstem, has normal sleep-wake cycles, temperature regulation, breathing, blood flow, and involuntary swallowing, but lacks cognitive, motor, sensory, and instinctive reactions (Roger P and Greenberg, 1999: 135).

Generally, in patient with vegetative state, the following damages, characteristics, and symptoms can be observed:

- ♦ Head injury, skull fracture (shajjah), death of cerebral cortex cells, destruction of meninges, lobes, and cerebellum, and failure of other organs;
- ♦ Loss of benefits such as intellect, cognitive abilities, movement skills, sensory functions, sexual functions, hearing, vision, smell, taste, and speech;
- ♦ Lack of control over urination and defecation, suffering from incontinence and urinary infections, paralysis, imbalance, swallowing disorders, bedridden state, bedsores, and other physical and mental damages.

Approximately 5% of persons afflicted to the vegetative state may return to normal life. In a study conducted on the records of 847 persons afflicted to the vegetative state in California, the average survival time based on etiology ranged from 3 to 6.8 years (Ashwal S, Eyman RK, 1994: 27-33). In these cases, the patient may turn in bed, exhibit reflexive behaviors such as laughing, crying, swallowing, and even squeezing others' hands involuntarily, which in some cases can indicate improvement in the patient's condition (Bender A, Jox RJ, 2015: 235-42).

Studies by Qadi-Pasha and colleagues to determine the survival duration of individuals in vegetative state based on the chi-square test in SPSS, using their records in the Tehran Forensic Medicine Organization from 1999 to 2017, showed that the average overall survival after entering vegetative state was 1.50 ± 6.39 months, with a minimum survival time of 2 months and a maximum of 192 months (16 years) (Qadi-Pasha et al., 2019: 34). According to this specialized study, only 5% of peoples afflicted to the vegetative state have the possibility of complete recovery and return to normal life, about 90% survive on average up to 3 months, and about 5% remain in vegetative state for up to 16 years; overall, 95% of them die (Qadi-Pasha et al., 2019: 34).

According to the medical definition of vegetative state, in general humans have the following three stages of life:

- a. **Vegetative State** (involuntary functions such as breathing, blood circulation, heartbeat...)
- b. **Animal State** (sensory, movement, sexual functions, movement balance, consciousness...)
- c. **Human State** (reasoning, speech, perception, logical calculations, voluntary actions, memory, foresight...)

Therefore, in persons afflicted to the vegetative state, their animal and human life completely disappear, and only vegetative life and involuntary human functions continue to operate.

Understanding crimes, including the destruction of intellect leading to vegetative state: If the issues are related to customary laws, they are determined by common sense, and if the issue is complex, such as the destruction of intellect leading to vegetative state, it is determined by an expert. Some jurists require multiplicity and justice in the expert (Khomeini, 2013/2: 413). It seems that identifying the destroyed benefits and determining the extent of intellectual damage, and damage of offender, based on jurisprudential and medical criteria, considering the complexity of the vegetative state issue, should be prioritized through an expert committee.

1-2. Intellect

Intellect (Aql) is an Arabic word and a noun, equivalent to “wisdom” in English. Intellect comes from the root “aql ya-qilu 'aqlan,” meaning to understand, to perceive: “intellect is the opposite of ignorance” (Farahidi, 1988/5: 35). Many jurists consider intellect to mean as some of “benefits of a human” such as understanding, complete comprehension of something, perception, restraint, and all intellectual perceptions (Tabatabaei, 1991/1: word 'aql; 1981/8: 194). However, according to the views of some jurists and linguists, intellect is a “spiritual faculty” of discernment, the ability to perceive, compelling a person to do good and preventing corruption, and the faculty of choosing good (Kulayni, 2014/1: 11; Moein, 1981: word 'aql).

1-3. Position of Intellect (Frontal Lobe)

The human brain is located in the head, within a bony protection called the skull, the meningeal membrane, and the spinal column. It consists of the cerebral cortex, cerebrum, cerebellum, and brainstem. Generally, it is divided into four lobes: the frontal lobe (PFC), parietal lobe, occipital lobe, and temporal lobe (Emadi, 2021; Nourbakhsh, 2023).

According to medical science sources, the location of intellect in the brain has been identified. The frontal lobe is the most developed part of the brain responsible for more complex tasks such as reasoning, thinking, decision-making, and issuing movement commands. The main center of consciousness, logic, thinking, and to some extent, memory is located in the front area of this lobe (Guyton-Hall, 2007/2: 201-204).

Dr. Farhad Emadi, a neurologist believes in an article titled “The Most Human Part of the Brain” and in a film with “Medical Analysis of the Position of Intellect” that the position of intellect, judgment, and thinking, which fundamentally differentiates us from other animals is located in the front part of the cerebrum in the frontal lobe. The frontal lobe is the largest part of the brain and is related to human rationality (Emadi, 2021). Dr. Reza Jabari a neurology specialist indirectly confirms Dr. Emadi’s view, stating that cognitive thinking and a person’s personality stem from the frontal lobe, and logic, thinking, consciousness, problem-solving ability, and decision-making are dependent on the frontal lobe (Jabari, 2023). The study of the viewpoint of other physicians shows that the position of intellect is in the frontal lobe. Because of thinking and analyzing perceptions, memories, and physiological situations of humans are carried out in the physical body (frontal lobe) of the brain. (Alqasi, 2023; Brain Functions, 2022; Zahedi, 2024).

Some psychologists define dementia (intellect destruction) as the inefficiency of the mind, judgment, and chronic or acute mental disorder caused by brain injury or organic brain disease, leading to personality changes, forgetfulness, and impairments in memory, thinking, and judgment. (Sadock, 2016: 84).

Some traditional and jurisprudential sources, including an authentic narration from Imam Baqir (AS), identify the seat of the intellect in the brain: a man struck another man on the head with a tent pole, reaching his brain and causing him to lose his intellect (Sheikh Saduq, 1982/4: 98). In this statement the blow to the brain resulting in the loss of intellect indicates that the seat of the intellect is located in the brain. Imam Sadiq (AS) states explicitly: “The place of intellect is the brain...” (Allameh Majlesi, 1989/14: 141). Many Shia and Sunni jurists, including Sabzevari, Ibn Qudamah, and others have considered the location of intellect to be in the brain (Sabzevari, 1995/29: 254; Ibn Qudamah, 1982/25: 517).

According to the presented medical and jurisprudential views, it is possible to identify the location of intellect with the help of medical technology and introduce the basis for implementing the laws of retribution for intellect.

2. Proponents Views in Possibility of Intellect Retribution

It is possible to derive the verdict of intellect retribution in crimes leading to vegetative state by relying on rational principles, verses, narrations, and the views of jurists.

2-1. Jurisprudential and Rational Principles

The reliance of many jurists on principles such as causation, proportionality of crime and punishment, and the jurisprudential-rational principle of no harm and compensation for all damages generally proves liability and compensation for harm, shows that felon in the intentional crime of causing the loss of intellect leading to vegetative state is also liable and felon can be obliged to compensate for the crimes, including retribution and similar measures. The principle of no harm is derived from the famous prophetic hadith: “There is no harm and no reciprocating harm” (Kulayni, 1986/5: 280; Sheikh Saduq, 1991/3: 78). According to this principle, any kind of harm, including harmful sentence is negated.

According to the late Naraqi’s viewpoint, the negation in the hadith means the negation of uncompensated harm, meaning that harm without compensation does not exist in Islam (Naraqi, 1994: 18). Based on the views of the late Maraghi and the late Fazel Tooni, the negation in no harm means prohibition, in the sense that one should not harm anyone; causing harm to others is considered reprehensible by reason and Sharia, and until it is not compensated, its reprehensibility and liability remain. Based on reason and custom, it must be compensated by the one who caused the harm. (Hosseini Maraghi, 1996: 318; Tooni, 1995: 79). The principle of no harm also applies to non-existent matters (proving liability and compensating for harm) and can be a new verdict established based on this principle (Sadr, 1996: 492). However, Imam Khomeini (RA) considered the negation in no harm to mean a governmental and sovereign prohibition, meaning that the Holy Prophet of Islam (PBUH) as the Islamic ruler, with a governmental order, negated and prohibited any harmful verdict from the subjects (Khomeini, 1988/1: 55) and he also can issue verdicts for compensating others’ harm.

Some sources have mentioned the principle of no harm with the condition “in Islam” (Sadouq, 1992/4: 334). It seems that this condition in addition to presenting it as a purely jurisprudential rule, has also faced some criticisms (Khomeini, 1988: 25). On the other hand, with this condition, cannot be interpreted this “no” as a prohibition, and beyond negating a harmful ruling, it cannot establish a new verdict (prohibition of harm and obligation to compensate). Consequently with the rule conditioned to “in Islam” cannot argue for retribution of intellect in vegetative state.

Therefore, according to the views of some jurists like the late Maraghi, Martyr Sadr, and Fazel Tooni, whenever a person intentionally causes harm and loss of another’s intellect placing them in vegetative state, and according to the independent judgment of intellect and the practice of rational people to compensate for all damages that person is liable. (Siyouri, 1994/2: 398). Who must compensate for the loss of intellect according to their criminal responsibility and the exigencies of the situation, either through retribution of intellect, improvement of benefits, or if not possible, compensate for all damages.

2-2. Citing to Verses and General Quranic

Some jurists believe that the general Qur'anic verses about retribution, also imply the retribution sentence of crimes against the intellect. A passage from a Quranic verse considers one of the wisdoms of retribution to be life and the continuation of security in society: "And there is for you in legal retribution [saving of] life" (Baqarah, 179). Similarly, the principle of the obligation of the ruling of retribution is established by the verse "O you who have believed, prescribed for you is legal retribution" (Baqarah, 178). The late Fazel Miqdad a Shia jurist, by referring to the word "prescribed" in this verse, argues that "prescribed" means "obligatory," thus in the essence and reality of intentional crime, the first right for the guardian of the blood is the obligation of retribution. Pardon and taking blood money are secondary to the right of retribution (Siyouri, 1994/2: 354). According to the general concept of this verse, the punishment for the crime of murder, beating, injury, or a crime leading to vegetative state that meets the conditions of retribution, is retribution.

By referring to verse 45 of Surah Al-Ma'idah: "A life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution" the following points can be inferred:

1. Establishing the principle of retribution
2. Retribution for life
3. Retribution for organs
4. Retribution for Beat
5. Retribution for Wound an injury
6. The possibility of pardon from retribution
7. The prohibition of not executing retribution (if there is no pardon and conditions are met) with the phrase "And if any fail to judge by what Allah hath revealed, they are (No better than) wrong-doers"

This verse, while proving the retribution of intellect, considers its non-implementation as haram due to the oppression of the victim; because it emphasizes retribution for beating and wounding that including "shejaj"² which includes the loss of intellect leading to vegetative state. From the generality of the following verses, the obligation of retribution, including retribution for the intentional loss of mind leading to vegetative state, can be derived: "So whoever has assaulted you, then assault him in the same way that he has assaulted you" (Baqarah: 194) and "And if you punish [an enemy, O believers], punish with an equivalent of that with which you were harmed" (Nahl: 126). According to these verses, every crime should be punished like itself; for example intellect should be punished with intellect.

2-3. Narrative Arguments for Intellect Retribution

- a. It can be in said that the generality of some narrations that indicate the obligation of the principle of retribution also includes intellect retribution. Imam Sajjad (AS) says; retribution prevents the felon from murder, saves the life of the victim, and deters others from murder (Hurr Amili, 1988/29: 55). Imam Baqir (AS) says that the Prophet (PBUH) at the time of his death, said, "O people, revive retribution" (Sheikh Sadouq, 1982/4: 163). These instances in general command the revival of all types of retribution, including retribution of intellect.
- b. According to the Refa'a's authentic narration from Imam Sadiq (AS), the benefit (vision) of the felon's eye was retaliated for the benefit of the victim's eye: "From Rifa'a... he said, 'I only want retribution. Ali (AS) wanted a mirror and heated it, then wanted a cotton and wetted it then placed it on the eyelids, he faced his eye towards the sun. He brought the mirror and said, 'Look.' He looked, and the fat melted, and his eye remained intact, but his vision was destroyed.'" (Kulaini, 1986/7: 319). A person filed a complaint against another person in the presence of Ali (AS) and

² . Injuries to the head and face. (Khansari, 1984/6: 263)

said that this person had struck his eye and he could not see anything; the accused was willing to pay double the blood money for the eye. But he said; I want retribution. As stated in the hadith, Ali (AS) retaliated the vision of the felon's eye against the vision of victim.

The narration of Refa'a bin Musa Asadi Kufi is authentic and trustworthy. Refa'a was a Shia narrator and a companion of Imam Sadiq (AS) and Imam Kazim (AS). Sheikh Tusi has fully authenticated Refa'a (Sheikh Tusi, 2019: 194). Many scholars of Rijal³ have considered him to have a good method and to be a reliable narrator. From Najashi's expressions, "He was trustworthy in his narration, reliable in his transmission" (Najashi, 1986/1: 166), it is understood that Rifa'a was trustworthy in narrating hadith and his narration was reliable. Some jurists have considered this narration weak due to the presence of Suleiman al-Dahan In the collection of hadith narrators, but consensus (Sheikh Tusi, 1986/5: 175), practical fame and the actions of Companions (Ashab) based on this narration, have compensated for its weakness, and the fulfillment of this type of eye retribution by jurists has been well-known (Fazel Lankarani, 2000: 396; Shahid Thani, 2011/10: 84).

According to this narration, Imam Ali (AS) retaliated the vision and benefit of offender's eye with the possibility of non-equivalence with the hot light of the mirror. Based on this performance of Imam Ali (AS) as a model, the sentence of retribution for benefit of the eye, can be a fortiori considered in the crime of destroying a benefit such as the intellect which is the control center of all benefits. Because the cause for issuing the verdict was the 'intentional destroying of the benefit' of the eye; also exists in the vegetative state that cause "intentional destroying of the benefit" such as intellect, hearing, speech, motor abilities, sexual functions, and the like, therefore one cannot overlook the retribution for a benefit such as the intellect.

If this criticism is raised that argument on this narration and similar narrations to prove the retribution of the intellect are based on analogical reasoning (Qiyas) or fortiori argument derived, which has issues in terms of validity. It seems that this objection is justified if analogical reasoning derived from speculative cause and the like is used. However, according to the view of some jurists, acting on fortiori argument and analogical reasoning derived from definitive cause and priority is a type of acting on the text and is valid, but analogical reasoning derived from speculative cause is not valid (Makarem Shirazi, 2003/3: 69; Subhani, 2009/2: 69-70; Zarkashi, 2000/4: 63-68). Some jurists have accepted the validity of analogical reasoning derived from definitive cause due to the inherent validity of certainty; some have even acted on analogical reasoning derived from speculative cause (Najafi, 1983/39: 309-310; Naqibi, 2009: 35).

- c. The Narration of Hafs bin al-Bakhtari, another reason for the retribution of the intellect in a crime leading to vegetative state is the narration of Hafs bin al-Bakhtari: "He said: I asked Abu Abdullah (AS) about a man who was struck on his head, causing his hearing and vision to be lost, and his tongue to be paralyzed, then he died. He said, if he was struck a blow after another blow, he would be retributed for those injuries first, and then he would be killed" (Hurr Amili, 1988/29: 112).

From a documentary perspective, this narration has been considered authentic, by the late Khoei (Khoei, 2001/42: 26) and is among the reliable and authoritative narrations. However, regarding "Ibrahim bin Hashim," who is the father of Ali bin Ibrahim, there is no explicit authentication. Nevertheless, Ibrahim is praised in the statements of the scholars of Rijal as "the first to spread the hadiths of Kufis in Qom" (Najashi, 1986: 16; Sheikh Tusi, 2008[a]: 36). Some jurists believe that Ibrahim's ultimate reliability is due to the consensus of jurists on his authentication, his narration of hadiths to the people of Qom, their trust in him, and the lack of any criticism from the people of Qom (Khoei, 1993/1: 291; Bahr al-Ulum, 1984/1: 463). Allameh Hilli writes about Ibrahim bin Hashim that although there is no explicit statement on his reliability or unreliability, some have stated that he is above the level of reliability and

³ . Biographical evaluation.

holds a high rank among the narrators of the hadiths of Ahl al-Bayt (a) (Allameh Hilli, 1991: 45; Mir Damad, 1984/1: 48).

In argument to this narration, it can be said that the destruction of benefits here is similar to the destruction of intellect in the crimes lead to vegetative state in the following aspects, which can be discussed to prove the possibility of retribution for the intellect:

- ♦ The cause of retribution in a head injury, i.e., “intentional destruction of benefit” such as vision, hearing, and speech, also exists in crimes leading to vegetative state “intentional destruction of the benefit” such as intellect. Therefore, the ruling of retribution can also be applied to the intentional destruction of intellect.
- ♦ The location of hearing, vision, and speech is respectively in the temporal lobe, occipital lobe, and frontal lobe of brain, the felon sentenced to retribution with the word “Oqtossa” for their destruction; the location of the intellect that is the control center of all benefits, also located in the frontal lobe of brain. Therefore, with the similarity of the location of intellect to the mentioned benefits (lobes of the brain) and with acknowledging that the intellect is the control center of all other benefits, it can be said that the felon a fortiori is retaliated for the intentional destruction of intellect.
- d. According to the authentic narration of Abi Ubaidah Hazza from Imam Baqir(AS), retribution for the intellect destruction, can be cited: “Abi Ubaidah Hazza said: I asked Abu Ja’far (AS) about a man who struck another man on the head with a tent pole, splitting his skull and reaching his brain, and destroyed his intellect... He said: will wait for a year, if the injured person dies within this period, the invader will be retaliated against... He continued: And if the invader hits three times, one after another, committing three crimes with each strike, I oblige him to compensate for each of the three crimes exactly as they are, unless death occurs, in which case the invader will be retaliated” (Kulaini, 1986/7: 325). Abu Ubaidah said; I asked Imam Baqir (a) about a man who struck another man on the head with a tent pole, splitting his skull and reaching his brain, causing him to lose his intellect; he said... wait for a year, if the injured person dies within this period, the striker is retaliated... He continued: And if the striker hits three times, one after another, committing three crimes with each strike, I oblige him to compensate for each of the three crimes exactly as they are, unless death occurs, in which case the striker is retaliated.

From a documentary perspective, this narration is authentic. Narrators such as Muhammad bin Yahya, Ahmad bin Muhammad, Ali bin Ibrahim, his father Ibrahim bin Hashim, Ibn Mahbub, Jamil bin Saleh, and Abu Ubaidah Hazza have transmitted this narration. Except for Ibrahim bin Hashim, all of them are considered reliable. Regarding Ibrahim bin Hashim, it has been said: “Imami, trustworthy and esteemed upon verification” (Sheikh Saduq, 1982/1: 251). This verification is specific to Ibrahim bin Hashim and not mentioned for others. Therefore, based on the opinion of the Dirayat al-Nur software, the conclusion is that he is trustworthy.

The following points can be elucidated regarding the possibility of retribution for the intellect in this narration:

1. The cause for retribution in a head injury is “intentional intellect destruction leading to death” which the felon will be retaliated with the word “Aqida”; in crimes leading to vegetative state that cause: "intentional intellect destruction leading to the death of human and animal life" exists". Therefore, in crimes leading to vegetative state due to the intentional destruction of animal and human life, the felon will be retaliated. It can be argued that this destruction of the human and animal life of the person to vegetative state, It includes the concept of “So if he/she dies” (فإن مات) and “As long as the hit not led to death” in this hadith, and the felon in this intentional crime is deserving of retribution only for the death of the human and animal life of the victim, with the words “Aqida”(أقيد) and “Fayuqadu.”
2. As Dr. Haji-Deh-Abadi, using the word “Aqida” (أقيد) in this narration, based on the principle of non-interference of retribution, considers retribution (Qisas) to be applicable in cases of head

injury (Shajjah): "فَمَا تَرَى عَلَيْهِ فِي الشَّجَّةِ شَيْئًا" (Haji-Deh-Abadi, 2015: 244). His argument is that when a hit causes injury and subsequently leads to death, the felon has sentenced to the retribution, based on the same principle and the view of non-interference, retribution has also proven for the injury (Shajjah)". Therefore, according to his principle, retribution should be accepted in addition to the head injury, in crimes of intellect destruction leading to vegetative state, because the cause and reason for the crime in the head injury and destruction of intellect are the same and have been committed with intent and purpose.

3. Imam Baqir (AS) further emphasizes that if the offender commits three crimes with three strikes, I oblige the offender to compensate for all three crimes in the same manner "as they were" (كأنَّه ما كانت). This means that the Imam (AS) has ruled that the compensation for the assault exactly should be the same. Now, the crime of intentional intellect destruction leading to vegetative state, based on this description "as they were" in this narration, the principle of non-interference of causes and effects, and the famous view of jurists on the non-interference of crimes on benefits (Shahid Thani, 1993/15: 444), is compensated with the retribution of the offender's intellect and other benefits.

2-4. jurist's Viewpoint on the Possibility of Intellect Retribution

Many Imami jurists and legislators, generally borrowing and relying on the the appearance of retribution narrations, have not explicitly stated retribution for intellect. However, it can be said that some jurists consider retribution to be the "right" of the heirs or victim (Sheikh Tusi, 1986/5: 467). On the other hand, the philosophy of retribution being general deterrence, ensuring justice and public order, executing the divine command, and providing spiritual healing for the heirs of the victim (Shambati, 2001/1: 269) or the emotional healing of the victim in cases of injuries and damages. However, some Sunni jurists believe that retribution for intellect is obligatory: "His statement: the obligation of retribution in it, i.e., in the intellect" (Bujayrami, 1995/4: 147). They argue that those who do not believe in retribution for the intentional crime of removing intellect cite the disagreement among jurists in determining the location of the intellect, and retribution is converted to blood money. Kasani considers the ruling of intentional crime in the destruction of organs's benefits, especially the destruction of intellect, to be retribution (Kasani, 1986/7: 311). Maliki, Shafi'i, and Hanbali jurists believe that the offender in crimes of removing the benefits of organs would be retaliated in the same manner as the crime committed (Al-Tiyar, 2011/7: 80).

The Judicial Legal Research Center, in response to a question about the crime committed on the benefits of organs, has written that if the conditions for benefits retribution are met, the offender would be retaliated, and the general texts on retribution indicate this. However, if retribution is not possible, according to the conditions the blood money for the all organs and intellect should be paid. (Ganjineh Vali Asr: 2020).

5-2. Evaluation of Views on the Possibility of Intellect Retribution

- a. It can be said that the evidence for retribution, and specifically the reasons for retribution for intellect, were valid for proving retribution in a specific context and time. The philosophy of these rulings includes titles such as ensuring welfare and avoiding corruption, reforming the offender, providing justice, maintaining social order and security, compensating the victim, defending values and similar goals derived from the objectives and purposes of Sharia. (Gharavi, 1995/2: 186). Some jurists believe that all rulings based on interests and corruption will be change with time and the changes in the obligated individuals, and in some circumstances, their implementation may be prevented (Allameh Hilli, 1986/1: 358). Shahid Awwal believes that the main purpose of penal laws such as hudud, retribution, and blood money is worldly and not otherworldly (Shahid Awwal, 1990/1: 32). The proof for retribution can also change according to the conditions and circumstances of the obligated individuals. For example, in the absence of precise identification of the location of the intellect, lack of equivalence, damage to the offender, and insistence on implementing retribution, it will lead to corruption. In this case, the offender

can be condemned to tangible compensation, i.e., the improvement of intellect, and if not possible, to compensate for all the victim's losses.

- b. Some jurists emphasize that there is no ruling or text regarding retribution for intellect, and the texts on retribution used for the removal of other benefits (the narration on vision retribution) are specific and do not include the intentional removal of intellect. They have used the phrase "no retribution for the loss of intellect" to express their view. However, it can be said that the principle of no harm, new requirements, changes in the subject (vegetative state), interests, corruptions, the taste and purposes of Sharia all of them can be alternative options for accessing some Sharia rulings (Alidoost, 1401: 74). Therefore, jurists, by referring to the verses and narrations and considering new conditions, can find an appropriate ruling other than retribution for punishing the offender in specific cases, such as crimes of intellect destruction leading to vegetative state, where there is no proof from the Quran and Sunnah.
- c. According to the principle of "Dara" (averting punishments) it can be said that with the doubt regarding the exact location of the intellect and the precise determination of the extent of the crime against the intellect, the offender's intellect is not subject to retribution. Although some jurists believe that this principle only applies to Hudud (fixed punishments) and ta'zir (discretionary punishments), other jurists (Shahid Thani, 1993/2: 395; Bojnourdi, 1998/1: 161) believe that this principle also applies to retribution.

The basis of this principle includes narrations from the Prophet of Islam (PBUH): "Avert the Hudud with doubts" (Sheikh Saduq, 1982/4: 53) and from Imam Ali (a): "Release people from every grudge... and avert the Hudud with doubts" (Allameh Majlisi, 1990/77: 245), the consensus of jurists, and other proofs. (Haji-Deh-Abadi, 2021: 62-64).

Some jurists consider the narration of Sheikh Saduq to be *mursal* (with a missing link) and weak. However, other jurists believe that this narration is still reliable for the following reasons: a. the *mursal* narrations of Sheikh Saduq are as reliable as his *musnad* (with a complete chain) narrations, but he omitted the chain for brevity (Bojnourdi, 1419: 120-152). b. Ibn Idris considers this hadith to be widely accepted (Najafi, 1983/39: 348). c. The author of *Riyadh* considers this hadith to be *Mutawatir* (widely transmitted) (Tabatabai, 1992: 495). d. According to the view of some jurists, the practical fame and the practice of the companions according to the content of the hadith compensate for its weakness (Tabatabai, 1992: 495).

Therefore, whenever there is any doubt about the attribution, type, extent, and location of the crime or the manner of the crime of removing intellect leading to vegetative state, the punishment of retribution for intellect will not be carried out. In such a case, the ruling of retribution should be changed to another appropriate ruling, such as compensating for all the victim's losses or something similar.

- d. If, despite all these issues, the ruling of retribution for intellect is issued and executed, will the interests and objectives of Sharia be fulfilled? Is it acceptable from the perspective of common sense and Sharia to add several individuals with vegetative state and permanent mental damage to society? Therefore, considering the objectives of Sharia, the interests, and the executive harms in penal laws, it is not clear that Islam would rule for such retribution. According to Article 677 of the Islamic Penal Code of Iran, in crimes that cause complete or partial loss of intellect, even if intentional, the offender is not subject to retribution but rather pays blood money or compensation as appropriate.

3. Opponents' View on the Possibility of Intellect Retribution

Some jurists and legal scholars have not accepted the ruling of retribution in crimes leading to vegetative state, citing the following reasons and proposing an alternative ruling.

3-1. The Principle of Hatred Sanctity from Religion

Hatred is defined as driving away, fleeing, pushing back, separating, and distancing (Ibn Manzur, 1414 AH/5: 224). In explaining this principle, it can be said that any permissible act that causes aversion to religion is forbidden. The ruling on the prohibition of repulsion from religion is so important and has such a strong criterion that, like the principle of negation of hardship, it governs the primary rulings (Noubahar, 2005: 138). Instances of repulsion from religion can occur in the following cases:

- a. When the implementation of some Islamic penal laws loses its religious, rational, and customary interests but is still insisted upon. Some jurists believe in the necessity of changing the ruling based on changing interests, arguing that rulings are dependent on interests and corruptions, and interests will change with time and obliges conditions. Therefore, a specific ruling may be has interest for a nation at one time and be ordered to implemented, but at another time for another nation, it may be harmful and lose its interest, and its implementation may be prohibited (Allameh Hilli, 1407: 282; Shahid Awwal, 1990/1: 32). It can be said that based on this principle, the legal ruling on the blood money for a woman, which was half that of a man, was changed by the General Board of the Administrative Justice Court of Iran in 1396 (2017) according to the note of Article 551 of the Islamic Penal Code, to be equal to that of a man, and it became mandatory in all judicial references in 1397 (2018).
- b. Insistence on intellect retribution, when it is not possible to implement, and on the other hand, jurists, legal scholars, and customs do not allow resorting to other methods of deriving rulings or cannot find appropriate rulings for new issues, interests, and purposes of Sharia from Islamic teachings and texts. In this situation, a religion that is perfect religion, will not have a ruling for some new issues, and the perfection of religion will be damaged in public opinion, believers will become disillusioned with religion, and non-Muslims will be repelled and will not convert to Islam.

Proof reasons of this Principle, One narration from Imam Baqir (AS): “No punishment is carried out on anyone in the enemy’s land” (Ameli, 1988/28: 24). Another narration from Imam Ali (AS): “I do not carry out punishment on anyone in the enemy’s land until he leaves it, for fear that he might join the enemy out of zeal” (Ameli, 1988/28: 24). Many jurists, such as Sheikh Mufid and Imam Khomeini (RA), believe in the prohibition of carrying out punishment in the enemy’s land due to its negative consequences (Mufid, 1993: 781; Khomeini, 2000/2: 464).

Some jurists consider the condition of fear of joining the enemy as the “wisdom” of the verdict, meaning that punishment should not be carried out even if there is no fear of joining (Mousavi Ardebili, 2006/1: 540). However, some jurists consider the condition of “fear of joining the enemy and repulsion from religion” as the “cause” of the prohibition of carrying out punishment, arguing that wherever there is fear of joining and repulsion from religion, carrying out punishment is forbidden (Tabrizi, 1417: 136; Haji Dehabadi, 2021: 251). This is not limited to a specific place, time, or condition. Therefore, the specific characteristic of the enemy’s land can be eliminated, and the prohibition verdict can be applied wherever the cause of the ruling, i.e., “repulsion from religion,” exists, and the punishment should not be carried out. Some jurists, based on this principle, believe that carrying out stoning in some conditions and times has great harms, so other punishments should be used instead (Makarem Shirazi, 1997/1: 373).

Therefore, if it is not possible to execute the sentence of retribution in the crime of intentional intellect destruction leading to vegetative state, it causes repulsion from religion, and it is appropriate for such verdicts to be changed by jurists to another suitable verdicts, and the offender should be obliged to compensate for all damages.

3-2. Narrations of Impossibility Retribution of Intellect

In many narrations, there is no sentence for retribution against the offender in intentional crimes against the benefits of organs, including intellect, but the offender is condemned to pay blood money, compensation and the like.

- a. In a reliable narration from Imam Baqir (AS) the offender was not punished with retribution for benefits destruction of organs, but was condemned to pay full blood money for each benefit, and in total to pay three blood monies: “Abu Ja’far (AS) said: A man struck another man on his head... so that he could not see with his eyes, could not smell, and became mute... thus, three blood monies were obligatory for him” (Sheikh Saduq, 1982/3: 19).

This narration has been transmitted correctly by Sheikh Saduq and is considered authentic (Moqtadaei, 2021). In some recent studies, the entire chain of transmission of this narration has been recorded as reliable and authentic by Imamite scholars. Some believe that this narration, transmitted through Asbagh ibn Nabata, is weak and disconnected due to Muhammad ibn Furāt (Najafi, 1983/43: 303). However, the late Khoei states that although some consider the narration disconnected, the late Saduq transmitted it through another correct chain (Saduq, 1983/3: 19), which is reliable, and we act upon this narration (Khoei, 2001/42: 440), making it trustworthy.

The point of argument is that considering the blow to the “head - brain” which is usually fatal, the intention of the act and its result that “the removal of brain functions” is assumed, and the crime is considered intentional, and the offender should be subject to retribution. But, according to this narration, the offender is not subject to retribution.

- b. In the trustworthy narration of Ibrahim ibn Umar from Imam Sadiq (AS), the offender in the crime against intellect, without being sentenced to retribution, is obliged to pay six blood monies: “The Commander of the Faithful (AS) sentenced in the case of a man who struck another man with a stick, causing him to lose his hearing, vision, speech, intellect, and sexual function, and his ability to have intercourse, while he was alive, to pay six blood monies” (Kulayni, 1986/7: 325). Imam Sadiq (AS) in this narration the offender condemned to pay six blood monies, and has not been sentenced to retribution.

From a documentary perspective, the late Sabzevari and the late Khoei have referred to this narration as reliable (Sabzevari, 1995/29: 251; Khoei, 2001/42: 455). The late Majlisi considered the narration to be good (Majlisi, 1986/16: 539). In the chain of transmission of this narration, Ali ibn Ibrahim, Ibrahim ibn Hashim, Muhammad ibn Khalid al-Barqi, Hammad ibn Isa, and Ibrahim ibn Umar are included, all of whom, except for Barqi, have been authenticated (Najashi, 1986/1: 20-680). However, some Shia scholars of Rijal, such as Sheikh Tusi, Allameh Hilli, and others, have praised Barqi and considered him trustworthy (Sheikh Tusi, 2019: 363; Behr al-Uloom, 1984/3: 270).

Intellect the implication of this narration, it should be said that these crimes, due to the broad concept of “hit” (ضَرْبٌ) include intentional acts; however, Imam Ali (AS) did not sentenced for retribution of benefits and instead obliged the offender to pay six blood monies for each of these crimes. Some jurists have found ambiguity in the concept of the narration that includes six blood monies and have argued that the idea of the loss of sexual function (farj) is not logical, thus the loss of sexual function and the inability to have intercourse should be considered one and sentenced as five blood monies. In response to this objection can be said that according to some jurists, the loss of sexual function refers to two crimes: one is the loss of sexual pleasure, and the other is the inability to control urination and defecation, not one crime. Or if the loss of sexual function and the inability to have intercourse are considered one, some jurists have considered the loss of the tongue as two crimes: one is the loss of taste and the other is the impairment of speech (Majlisi II, 1983/24: 114; Moqtadaei, 2021), which in total makes six crimes, so the sentenced to compensate for six crimes in the narration is not ambiguous.

3-3. Jurists' Views on the Impossibility of Intellect Retribution

Many jurists, in compensating of intentional intellect destruction for the following reasons, they have not sentenced on retribution, but instead of retribution, they have shown a tendency to pay Diya, Arash, and the like.

3-3-1. Inability to Determine the Location of Intellect

Some jurists believe in the intentional crime against intellect: "intellect is not guaranteed by retribution even if the offender intended it, due to the lack of knowledge of its location" (Allameh Hilli, 1993/3: 684). This means that where the offender intentionally causes the intellect destruction, due to the unknown location of intellect, the offender is not subject to retribution for intellect. Muhaqqiq Hilli also emphasizes: "There is no retribution for its loss or reduction due to the lack of knowledge of its location" (Muhaqqiq Hilli, 1983/4: 255), meaning that the retribution for the offender's intellect in the loss and reduction of the victim's intellect is not possible due to the lack of knowledge of the intellect location. The author of Jawahir also considers the disagreement on the location of intellect, whether it is in the heart or the brain, as a reason for not issuing a retribution verdict for the loss of intellect. (Najafi, 1983/43: 292). Therefore, whenever the location of intellect cannot be precisely identified, logically, it is not possible to sentence for retribution and the removal of something that cannot be seen, so another suitable sentence should be substituted instead of retribution.

3-3-2. Offender Damage and Lack of Equivalence Intellect Retribution

Some jurists believe that even the location of intellect is known, due to the risk and harm greater than the offender's crime, retribution cannot be carried out: "Even with knowledge of it(intellect location), due to risk to offender" (Najafi, 1983/43: 292). For example, if the offender intentionally strikes the head causing the loss of the benefits of organs leading to vegetative state, in the case of retribution with the same strike, it may not only will it cause lose the intellect, but may cause the offender's death. The late Tabrizi believes that equivalence in retribution for intellect is not possible, so the offender cannot be sentenced to retribution (Tabrizi, 2007: 242). The well-known jurisprudential principle also emphasizes that in any intentional crime where retribution is not possible for any reason, to protect the right of the victim or the victim's guardian, the retribution verdict is converted to blood money and the like (Khoei, 2001/2: 210).

3-3-3. Jurists Emphasis on Compensating the Intellect Crime by Dyah

Ayatollah Fazel Lankarani, in response to a question about the amount of blood money for brain death, blood money for organs, and blood money for the benefits of other organs, stated: The blood money for a blow that leads to death of cerebral cortex must be paid, and if the mentioned blow does not have a specified blood money, it has an indemnity (Arsh). The destruction of brain activity has full blood money; brain activity (intellect) also has full blood money, and if it does not lead to death, the blood money for intellect and six other blood monies for other senses that have been disabled must be paid (Fazel Lankarani, 1998/1: 612; Amani and colleagues, 2019). Ayatollah Shirazi believes that in compensating for crimes against the brain, cerebral cortex, spinal cord, and similar areas, each has an indemnity and if damage to the brain causes the loss of benefits such as speech, the blood money for benefits is applicable (Makarem Shirazi, 2006/3: 468).

In compensating and paying the blood money for intellect with other benefits or organs, some jurists believe in interference. (Sheikh Tusi, 2008[B]/7: 127). However, some jurists, based on the authentic narration of Ibrahim bin Umar, the famous practice, and the rule of non-interference causes and effects, believe that the blood money for intellect does not interference with fractures and other benefits (Ibn Idris, 1990/3: 414; Shahid Thani, 1990/10: 256). Other jurists ultimately voted for reconciliation (Khomeini, 2013/2: 588). The Islamic Penal Code in Articles 542, 544, and 545 stipulates that the blood money for organs and benefits do not interference, meaning that if a skull fracture causes the loss of

intellect, the offender must pay one blood money for the loss of intellect and one blood money for the skull fracture.

Conclusion

Based on the previous discussions and the examination of verses, narrations, and obligatory jurisprudential and rational rules regarding the feasibility of retribution for intellect in crimes leading to vegetative state, it can be said that the possibility of proving the verdict for intellect retribution exists. However, given the complexity of the brain and brain injuries such as intellect destruction and jurisprudential and legal critiques on intellect retribution, the verdict implementation of intellect retribution faces to serious difficulties. On the other hand, if the offender pays the blood money for intellect after one year and the intellect of the victim does not return, that amount of blood money cannot compensate for all the damages of victim in vegetative state, such as years of treatment, bedsores, disability, deprivation from jobs, sports, social presence, and the like. For example, even if will be verdict to pay 2 to 6 blood monies, or if they want to compensate for the lost benefits through indemnity the law does not allow for more than the amount of blood money in determining indemnity (Article 548 of the Islamic Penal Code). Therefore, the crime responsibility of offender remains on him.

It seems that insisting on compensating with monetary values such as blood money, indemnity, or retribution in intentional crimes against intellect does not fulfill the rights of the parties, nor do the purposes of Sharia and justice beyond criminal rulings get fulfilled, and it will lead to aversion from religion. On the other hand, liability and responsibility are matters of credit that occupy the perpetrator's or offender's liability to the criminal or financial rights of individuals, and until compensation is made it remains with them. According to rational rules, including principle of no harm and rule of lifting liability, the matter of clearing liability is done sequentially with logical precedence-delay through three methods: first, tangible compensation, then similar compensation, and finally monetary compensation (Bejnourdi, 1998/4: 58-59).

Therefore, in the absence of the possibility of implementing retribution and the insufficiency of paying only blood money, it can be said that to compensate for the loss of intellect and all the damages of an individual intellect vegetative state, considering the advancements in medical technology in the field of treatment, especially laser therapy, artificial intelligence, brain embolization, and the like for brain treatment, the offender at the first should be obliged to tangible compensation and improvement of the intellect and other destroyed benefits of the victim. If tangible compensation is not feasible, the offender should be condemned to compensate for all the side damages based on evidence and documents (Article 680 of the Islamic Penal Code). As such, the Legal Department of the Judiciary, in order to compensate for all damages, has also confirmed compensation for damages exceeding blood money in its ruling No. 7/4125 dated 3/3/1998.

It seems that in the retribution of benefits, especially the retribution of intellect, from a jurisprudential and legal perspective with a comparative approach and utilizing medical resources, no comprehensive research has been conducted, or these topics have not been independently addressed. The present writing, on the complex subject of the vegetative state, retribution for intellect, and generally retribution for benefits, is only a problem statement. We hope that scientific and research centers will provide deep and groundbreaking comparative research in this regard.

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