



Criminal Liability Termination of Vegetative State from Perspective of Islamic Jurisprudence

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<http://dx.doi.org/10.18415/ijmmu.v12i12.7206>

Abstract

The termination of Vegetative state is among the emerging crimes whose criminal liability in this writing has been explained in a descriptive-analytical manner and has been compiled by the library method. Vegetative state is a medical term and means a life in which the patient, due to the death of the cerebral cortex and the living of its stem, only possesses involuntary activities such as growth, development, evolution, heartbeat, respiration, digestion, and similar ones, but does not benefit from actions such as speech, cognition, sensation, and voluntary movement. Research in recognizing the ruling and inferring the jurisprudential ruling regarding the cessation of Vegetative state showed that the Termination of any stage (Vegetative state, animal life and human life) from the stages of human life has a different and separate criminal liability relative to the other stages. By relying on valid jurisprudential evidence, it was concluded that the criminal liability for the Termination of Vegetative state is the same as the criminal liability for the Termination of the life of a fetus (before the blowing of the soul). For a better understanding of the subject, it is suggested that the criminal liability of the Termination of Vegetative state from the perspective of Islamic jurisprudence be investigated comparatively with common law.

Keywords: Termination; Vegetative State; Criminal Liability; Islamic Jurisprudence

Introduction

One of the subjects that, alongside the issue of brain death, has attracted the attention of the public, especially specialists in this field, in various domains such as jurisprudence, law, medicine, and the like, is the condition of Vegetative state. This phenomenon, recognized in 1972, is a state that occurs following a coma and sometimes the individual remains in this state for a long time, and it appears that the person is awake and has a series of involuntary movements of the limbs, while having no mental or cognitive function whatsoever; although similar apparent symptoms might exist in each of these two

conditions, in medical science, each has its own specific definitions and specific jurisprudential, legal, etc. consequences are attached to each.

These two conditions arise following the irreversible destruction of the cells of the cerebral cortex and brain stem due to an irreversible brain injury, but the extent of this destruction in brain death is wider and occurs to a lesser degree in Vegetative state.

Although research has been conducted regarding criminal liability and the determination of blood money for offenses resulting in Vegetative state (Shadanfar and Qodousi: 2012, 107-112 & Askari Pour and Taghi Zarde Baghi: 2012, 66-78), concerning the criminal liability for the Termination of this phenomenon, no research has yet been undertaken. Therefore, it appears necessary that in order to reach a jurisprudential solution to the problem, research be conducted regarding its ruling from the perspective of Islamic jurisprudence.

Now, considering the aforementioned necessity and objective, the aspects raised concerning Vegetative state will be examined in this writing. First, this phenomenon and its similar and related individual terms are conceptualized, and their limits and boundaries are determined and distinguished. Secondly, the differences between the ruling on the Termination of Vegetative state and the Termination of animal-human life will be examined according to jurisprudential evidence. Finally, after attaining the rulings for the stages of life, this question will be answered: What is the criminal liability for the Termination of Vegetative state from the perspective of Islamic jurisprudence?

Expressing Concepts

Laying the groundwork for entering the discussion requires that first, the individual terms of the subject under discussion be conceptualized and distinguished from similar concepts, so that subsequently, with the subject clarified, the main discussions can be addressed:

Vegetative State

The phenomenon of Vegetative state is a condition that always occurs following a coma, and the patient is unable to perform voluntary actions, and due to the destruction of the tissues of the cerebral hemispheres, their return to normal life is uncertain. Consequently, the injured individual has no sensation, movement, thought, or will; however, they naturally enjoy a regular sleep cycle, normal blood circulation, and normal pulmonary, renal, and digestive functions, and can remain in this condition for many years with the help of medical care.

Coma leading to Vegetative state occurs following a severe trauma to the skull, drowning, suffocation, etc., and Vegetative state after coma occurs if the tissues of the cerebral cortex area, which is the center for controlling the body's voluntary activities, are completely destroyed, but the tissues of the brainstem area (medulla oblongata), which is the center for controlling the body's involuntary activities, remain undamaged. In other words, Vegetative state is a specific type of brain death (cerebral cortex death) that occurs following the destruction of the cerebral cortex.

The affected individual sometimes remains in this state for many years, with their eyes open and having a series of involuntary movements of the limbs, and it appears that they are awake and conscious; but they have no mental or cognitive function and cannot communicate with their surroundings (Aghababaei, 2014: 12-13 & Amani, 2009: 160) because the upper part of the brain (including the cerebrum and cerebellum), which controls the body's voluntary actions such as movement of limbs, sensation, thought, speech, etc., has been destroyed. (Samsarzadeh, 2018: 162).

Brain Death

Brain death is a phenomenon in which both the brainstem and the cerebral cortex are destroyed due to injury, severe trauma to the skull, and insufficient oxygen and blood reaching the brain tissues. The factors controlling the body's voluntary and involuntary activities are destroyed, and only by the immediate use of medical equipment such as a "respirator" can the injured person's heart be set in motion for a very limited time to pump blood to the body's vessels; otherwise, breathing ceases and the last vestiges of life, which until then remained unstable within them, will bid them farewell (Bahrani, 1992: 71 & Abbasi, 2012: 52). Of course, this life, which continues for a very short period via the machine, is organic life.

The evidence that this life is organic and machine-dependent is that in recent years, physicians of the Faculty of Medicine in Mansoura, Egypt, to test whether brain death is real death or not, beheaded a dog using a specific technique so that blood would not leave its vessels. Then, they maintained its heart activity for eighteen hours with the help of a machine, in such a way that its body temperature and breathing were also normal (Jamal al-Din, 2008: 17). This experiment shows that brain death is definitive death, because the organic life observed via machines in brain death was demonstrated in this experiment on a headless animal, which is certainly considered dead. Consequently, it can be said that the existence of Vegetative state is contingent upon the health of the brainstem, and the stability of animal-human life is related to the cerebral cortex. With the destruction of all brain organs (including the cortex, cerebellum, and medulla oblongata), the foundation for established life is destroyed, and if the rest of the body's organs are functioning via machines, it indicates that the machine is merely sustaining for a short while that same unstable life which was tending towards deficiency, decrease, and departure.

Established Life in Jurisprudence

A group of jurists (Najafi, 1984: Vol. 36/141-142 & Vol. 42/58-59; Khui, 2001: Vol. 2/21; Tabrizi, 2005: 54; Rouhani, 1992: Vol. 24/53) and some legal scholars (Aghababaei, 2014: 12-13) have defined established life as follows: Established life is a life in which the living being possesses speech, perception, consciousness, sneezing, survival for two to three days, and voluntary movement (Rouhani, n.d.: Vol. 3/351). (Zarkashi, 1982: Vol. 2/105). (Hanafi, 1895: Vol. 8/335). Some (Hilli, 1992: 303 & Tusi, 1987: Vol. 6/54) have added the qualification "strong" to voluntary movement, and others (Ibn Idris (Hilli), 1990: Vol. 3/108) have added the qualification "intense" to it.

The signs mentioned in the statements of the jurists for established life fall into two categories: The first category consists of signs that jurists have mentioned in the context of civil and criminal law... But the second category, such as surviving for one to two days (Shahid Thani, 1993: Vol. 11/447; Najafi Mar'ashi, 1995: Vol. 1/150) or half a day (Ardabili, 1983: Vol. 11/50), are signs mentioned in the chapter on hunting and slaughtering.

Considering the concept and signs of established life in jurisprudence, it seems that Vegetative state in medical terminology is not the same as established life in jurisprudential terminology. This is because signs such as speech, movement, sensation, etc., which jurists have mentioned for established life, are signs of animal-human life, and the source of animal-human life is the health of the cells of the cerebral cortex (the cerebral hemispheres in the upper part of the skull).

Therefore, when jurists use the expression "established life," their intended meaning is the same animal-human life which is the source of effects such as speech, movement, thought, sensation, etc. Their intended meaning for "non-established life" is a state or condition lower than animal-human life, which corresponds to Vegetative state in medical terminology, regardless of whether that Vegetative state is stable or unstable. The source of Vegetative state in medical terminology is the health of the brainstem cells (medulla oblongata). Unstable life in medical terminology is organic life which, with the help of medical equipment like a "respirator," continues the activities of the heart, lungs, digestive system, etc.,

for a very limited period. Therefore, the jurisprudential term "established life" differs essentially from the term "Vegetative state."

Criminal Liability

Criminal liability is a compound term coined from the two words 'responsibility' and 'punishment'. The word 'responsibility' is one of the words referred to in some verses of the Quran, including in Surah As-Saffat: "And stop them; indeed, they are to be questioned." (As-Saffat, 24). Also, in Surah Al-Hijr it is stated: "Then by your Lord, we will surely question them all." (Al-Hijr, 92-93).

Responsibility and accountability for inappropriate actions are prominent features of the Holy Quran. This word is an artificial or coined infinitive of the word "mas'ool" and means being answerable for an action or something that an individual performs or omits. (Dehkhoda, 1998: Vol. 13/20907).

'Criminal' is attributed to 'punishment' this means recompense for good and evil; in Arabic, it means recompense, reward, and retribution for a bad action. (Ibid, Vol. 12/18833). 'Punishment' is equivalent to the word 'criminal' in English. One European lexicographer defines this word as: "Criminal; something that belongs or relates to rights concerning crimes or the administration of criminal justice..." (Jafari Langroudi, 1995: Vol. 1/642).

The term 'criminal liability' in law means "the liability of the perpetrator of one of the crimes explicitly stated in the law, and the responsible person will be subject to one of the punishments prescribed by law. The party harmed by the crime is society, unlike civil liability where the parties harmed by the act are individuals." (Jafari Langroudi, Ibid, 642).

In other words, "Criminal liability is when a person, complete in physical and mental terms, is answerable for the consequences of a crime they have committed. In Islam, the basis of criminal liability is the occurrence of a crime intentionally and with awareness or by mistake, which must have occurred accompanied by the general conditions of legal obligation." (Zera'at, 2015: 299).

A third formulation: "Criminal liability is the attribution of a criminal act or its omission to a person or persons who, by committing an offense, have violated criminal and penal laws, whether as principals, accomplices, or accessories, be it intentionally or by mistake, and who bear the capacity to endure the burden of punishment and possibly preventive and educational measures for their act or omission." (Noor Beha, 2012: 210). Criminal liability essentially creates the connecting link between the crime and the punishment of the perpetrator, and the criminal, by crossing this link, is recognized as a responsible individual and is punished proportionally to the criminal act or its omission. (Ibid, 53).

In shorter terms, "Criminal liability is the commitment of a legally obligated person to be accountable for the individual and social effects and consequences of a crime they have committed." (Velidi, 1999: 298).

Criminal liability in Islamic law means that a person bears the effects and consequences of those prohibited acts which they have committed with awareness and free will, knowing their results and content. Therefore, an individual lacking free will, such as one compelled or a person who committed a prohibited act while in a state of coma, is not criminally liable. Likewise, someone who, like a child or an insane person, is involved in a prohibited act with will, but is unaware of the nature of that act, will also not be criminally liable. (Hajizadeh & Nasrani, 2013: 56).

In Islamic criminal law, criminal liability has three pillars: The first pillar is that an individual has committed a prohibited act. Second, the behavior of the perpetrator must have been performed with free will. Third, the perpetrator must have committed the prohibited act with awareness. With the conjunction

of these three pillars, criminal liability is realized; as long as one of these pillars is missing, criminal liability will not be realized. ('Awda, n.d.: Vol. 1/292).

Consequently, the intended meaning of criminal liability for the Termination of Vegetative state is the commitment of the legally obligated individual to be answerable for a prohibited act (such as the Termination of Vegetative state) that they have performed with free will and awareness.

Criminal Liability for the Termination of the Stages of Life

Since life has multiple stages and levels, and Vegetative state is one of those stages, this discussion arises: Does the Termination of all stages and levels of life carry equal and equivalent liability, or does each stage and level have its own proportionate criminal liability? Therefore, we turn to jurisprudential texts and sources to see whether the cessation of the different levels of life carries equal penal rulings or they have different criminal rulings.

The Narration of Hossain ibn Khalid al-Barqi

Hossain ibn Khalid al-Barqi (Barqi, 1992: Vol. 2/305) says: Imam al-Sadiq (AS) was asked about the [ruling concerning] a man who had severed the head of a dead body. The Imam said: "Allah has forbidden every act towards a dead person that He has forbidden towards a living human. So, whoever performs an act on a dead body that would cause the destruction of a living human, incurs the full blood money (diyah)." Hossain ibn Khalid says, "I asked Imam al-Kazim (AS) about this matter, and the Imam said: 'Imam al-Sadiq (AS) has spoken the truth, [because] the Messenger of God (PBUH) also said likewise.' I said, 'So if someone did something to a living human that would destroy him, the full blood money would be incumbent upon him. Now, if he does this same act to a dead body, is the ruling still the same?' The Imam said, 'No, but his blood money is the blood money of a fetus in its mother's womb before the soul has been blown into it.'"

In the chain of transmission (sanad) of this narration, no problem is seen in the science of Rijal (biographical evaluation), except that there is some doubt regarding the reliability (thiqah) of Hossain ibn Khalid himself. Researcher al-Khoei (al-Khoei, 2007: Vol. 42/520) writes about him: "It is sometimes said that 'Hossain ibn Khalid' is ambiguous between Hossain ibn Khalid al-Khaffaf, who is reliable (thiqah), and Hossain ibn Khalid al-Sayrafi, who is not reliable (ghayr thiqah), and there is no contextual evidence (qarinah) indicating that the first one is intended. However, the assumption is that these two individuals are in the same generation (tabaqah), and we have mentioned in detail in the book 'Mu'jam Rijal al-Hadith' that the intended meaning of 'Hossain ibn Khalid' without qualification is Hossain ibn Khalid al-Khaffaf, who is reliable." Consequently, the narration has no problem from the perspective of its chain of transmission.

Now, approximating the implication (dilalah) of the narration regarding the subject under discussion is that this narration distinguishes between the ruling for the Termination of Vegetative state and animal-human life. This is because it sets the blood money for the offense against a dead body as the blood money for the offense of removing the life of a fetus before the soul is blown into it – which possesses Vegetative state – whereas the blood money for an individual possessing animal-human life is one thousand dinars. As for how a fetus is one of the instances of an individual possessing Vegetative state, it can be argued thus: The fetus, before the soul is blown into it in its mother's womb, has life, but its life is Vegetative state, because it has growth, development, and evolution, and all its organs are complete; its heart, lungs, stomach, brainstem, etc., all function; only the animal-human soul has not been blown into it.

An individual afflicted with Vegetative state has these very same characteristics. Therefore, both are among the instances of Vegetative state, and the Termination of life for both has uniform penal rulings because the animal-human soul is not present in the individual suffering from Vegetative state, just as it is

not present in the fetus. This argument might be surprising, but the reality is that it is derived from the textual evidence (*dalil riwayi*) for this ruling. Someone might object that with this conclusion, the criminal liability for the Termination of Vegetative state and the penal ruling for an offense against a dead body are equal, since the blood money for severing the head of a dead body is also one hundred dinars. This is incompatible with reason, that someone whose heart, lungs, stomach, brainstem, etc., are active should be equal in penal ruling to an individual who is dead. In response, it is said that, in fact, the narrator of the aforementioned narration had this very same mental concern and asked the Imam (AS) about the reason for this equality, and the Imam (AS) replied: "The reason for this equality is that there is hope for the fetus to attain benefit in the future, whereas the benefit of the dead person, who has passed away, is gone." Therefore, the ruling for both is equal. (Barqi, 1992: Vol. 2/305).

Another objection is that the individual afflicted with Vegetative state previously possessed animal-human life. Now, after his affliction with Vegetative state and subsequently after the Termination of his life, we doubt whether he, at the time the offense leading to the Termination of Vegetative state was inflicted, possessed animal-human life so that the Termination of his life would incur the full blood money – or not? In case of doubt, we apply the principle of continuance (*istishab*) to the animal-human life and impose the legal ruling of the full blood money upon him. In response, it is said: Firstly, one of the conditions for applying *istishab* is the continuance of the original attribute (title) of the subject, whereas in the person suffering from Vegetative state, the subject has changed. This is because previously the subject of liability (*damān*) was a human with the attribute of animal-human life, but now the subject of liability is a human with the attribute of Vegetative state. Therefore, this is not a case for applying *istishab*. Furthermore, the narration concerning the fetus established that these two attributes (animal-human life vs. Vegetative state) differ in terms of liability. Secondly, the content of the statements of the jurists also indicates that these two titles differ in ruling, because the jurists do not consider someone who lacks speech, sensation, thought, etc., as possessing animal-human life, and they consider an offense against an individual lacking these signs as an offense against a dead person. Therefore, if this case were one for applying *istishab*, the jurists would not have made this statement.

A third objection is that the precise identification of the effective cause (*tanqih al-manat*) between the two subjects – the fetus and the individual afflicted with Vegetative state – is not complete. This is because the individual with Vegetative state breathes through the natural passage (the mouth), whereas the breathing of the fetus occurs via the oxygen that, through the mother's breathing, enters its blood through the umbilical cord. Therefore, fetal life and Vegetative state are not a single instance (or exact same reality) to have the same ruling.

In response, it can be said: If breathing through a means other than the mouth disrupts the precise identification of the effective cause between the fetus (before the blowing of the soul) and the person with Vegetative state, then it should also disrupt it after the blowing of the soul. Consequently, a fetus possessing a soul, which breathes through the umbilical cord, should not have the same ruling as a human possessing animal-human life who breathes through the mouth – but in reality, they do have the same ruling.

The Narration of Abdullah ibn Muskan

In this narration (Kulayni, 1987: Vol. 7/342), Abdullah ibn Muskan reports from Imam al-Sadiq (AS) that the Imam said: "The blood money (*diyāh*) for a fetus has five parts: One-fifth is for the *nutfah* (sperm drop), which is twenty dinars; two-fifths are for the *alaqah* (clot), which is forty dinars; three-fifths are for the *mudghah* (chewed lump of flesh), which is sixty dinars; and four-fifths are for the *izām* (bones), which is eighty dinars. Then, when the fetus's creation is complete, its blood money is one hundred dinars."

The chain of transmission (*sanad*) of this *hadith* also has no serious problem. Only Sheikh Tusi (Tusi, n.d.: 140) in his book '*Al-Fihrist*' considered Muhammad ibn Isa ibn 'Ubayd – who is one of the

individuals in the chain of this hadith – as weak (da'if). However, in contrast, al-Najashi (al-Najashi, 1986: 333-334), one of the great scholars of Rijal, describes Muhammad ibn Isa ibn 'Ubayd as follows: "Muhammad ibn Isa ibn 'Ubayd is among the prominent figures of our companions, reliable (thiqah), eminent ('ayn), narrated many ahadith (kathir al-riwayah), and has good compilations. He reported narrations from Abu Ja'far al-Thani (the second, i.e., Imam al-Jawad (AS)) in writing and orally."

In refuting the statement that Abu Ja'far ibn Babawayh reported from Ibn Walid that he said, "Whatever Muhammad ibn Isa ibn 'Ubayd reports alone from the books and hadith of Yunus is not trustworthy," al-Najashi writes: "And I found our companions denying this statement." That is, he examined the opinions of the companions regarding this statement and found them denying it; rather, they said, "How can anyone be like Abu Ja'far Muhammad ibn Isa?"

Researcher al-Khoei (al-Khoei, 1993: Vol. 18/122) writes: "Sheikh Tusi's weakening (of Muhammad ibn Isa) in 'Al-Istibsar' and 'Al-Fihrist' is based on the fact that al-Saduq and Ibn Walid excluded Muhammad ibn Isa ibn 'Ubayd from among the narrators from whom the author of 'Nawadir al-Hikmah' reported. However, what is apparent from their statements is that they do not question Muhammad ibn Isa himself, but rather they question two categories of his narrations: The first category is narrations that the author of 'Nawadir al-Hikmah' reports from him with disconnected chains (isnad munqati'), and the second category is narrations that he reports from Yunus ibn Abd al-Rahman. Aside from these two cases, the abandonment of his narrations by Ibn Walid and al-Saduq is not clear. What is evident is that Sheikh al-Saduq followed his teacher Ibn Walid in the aforementioned exclusion, and in 'Man La Yahduruhu al-Faqih', he did not narrate even a single narration from Muhammad ibn Isa through Yunus. However, through channels other than Yunus, he reported from him in more than thirty instances. This practice of his is the strongest evidence that the exclusion is not based on weakening Muhammad ibn Isa himself, but rather it specifically pertains to his narrations from Yunus, which is based on the ijihad and opinion of Ibn Walid, and the reason for it is unknown." Therefore, the narration has no problem with its chain of transmission.

Now, the implication (dilalah) of this hadith, like the previous hadith, can be applied to Vegetative state. This is because a fetus whose creation is complete, before the soul is blown into it, is the same as an individual possessing Vegetative state, as it has all the latter's characteristics. Since the liability for a completely formed fetus (before the blowing of the soul) is, by the ruling of the narration, one hundred dinars, the liability for an offense leading to the cessation of life of an individual afflicted with Vegetative state is also one hundred dinars. This is because the soul and animal-human life, which are the prerequisites for the full blood money, are not present in him.

Conclusion and Summary

The results obtained from the research on the subject of criminal liability for the Termination of Vegetative state are summarized as follows:

Firstly, the term 'Vegetative state' in medicine and the term 'established life' in jurisprudence are two completely different and distinct concepts. This is because the intended meaning of 'established life' in jurisprudence, considering its signs such as speech, movement, sensation, and thought, is the highest level of life, which is the level of human life, and the source of its establishment is the health of the tissues and cells of the cerebral hemispheres. However, the intended meaning of 'Vegetative state' is the lower stage of life, whose signs are growth, development, evolution, etc., and the source of its establishment is the health of the brainstem cells.

Secondly, the criminal liability for the Termination of Vegetative state is completely different from the penal rulings for the Termination of animal-human life. That is, if an offense against an individual suffering from Vegetative state leads to the cessation of their life, it differs, in terms of liability

ruulings, from an offense leading to the death of an individual possessing animal-human life. This is because, according to the evidence, the liability for an offense leading to the death of an individual possessing animal-human life, if intentional, is retribution (qisas), and otherwise, is the payment of the full blood money. In contrast, the criminal liability for an offense leading to the cessation of life of an individual suffering from Vegetative state is the payment of one-tenth of the full blood money. Furthermore, the liability for an offense causing injury short of death to an individual suffering from Vegetative state is calculated proportionally to their total blood money. For example, for a healthy person, the liability for an injury short of death was calculated relative to their total blood money, which is one thousand dinars, but for an individual suffering from Vegetative state, the liability for an injury short of removing their life is calculated relative to their total blood money, which is one hundred dinars.

Thirdly, the criminal liability for an offense leading to the cessation of life of an individual afflicted with Vegetative state is the same as the criminal liability for the cessation of life of a fetus before the blowing of the soul. This is because, just as a fetus before the blowing of the soul does not possess animal-human life and the liability for an offense leading to the cessation of its life differs from the liability for an offense against an individual possessing animal life, so too does the liability for an offense leading to the cessation of life of an individual suffering from Vegetative state differ from that of an individual possessing animal-human life. This is due to the fact that the fetus before the blowing of the soul possesses growth, development, evolution, heartbeat, respiration, etc., and the individual suffering from Vegetative state also possesses these involuntary activities. Consequently, both enjoy the same level of life (Vegetative state) and bear the same criminal liability.

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