

Examining the impact of fatal errors and mistakes on the type of person and personality in the degree of penalty and crime in intentional homicide

Abstract

Before the approval of the Islamic Penal Code in 1991, the judicial procedure regarding unintentional homicide indicated that mistakes had no effect, and there was almost consensus on this matter. However, after the approval of this code and the allocation of Article 206 to intentional homicide, some argued that the term "specific intent" added to achieve intentional homicide referred to the determination of identity. In other words, the murderer could only be punished if they intended to kill a specific individual and that person is the same one who they killed. Therefore, if someone mistakenly kills a person other than their intended target, the murder will no longer be considered intentional and will not be subject to retribution. As a result, a mistake in identifying the victim of an intentional homicide may effectively reduce the charge to unintentional homicide. Some others interpret the term "specific intent" as physical identification and believe that even if the murderer mistakenly identifies the victim and kills the wrong person, the act would still be considered intentional murder because the murderer pointed towards and targeted the actual victim.

However, there is no specific judicial procedure created for this matter and only one insistent verdict has been issued, which considers the actual murder as quasi-intentional and this statement has been strengthened in the present study. Regarding the mistake in target, with the approval of Article 296 of the Islamic Penal Code, which had no legislative history before, a disagreement arose over the effect of this type of mistake on intentional homicide. Some believe that a mistake in target turns the murder into pure accidental killing and refer to Article 296 in this regard. This article stipulates that even if someone intends to shoot at a person, object, or animal, and their arrow hits an innocent person, their action is considered purely accidental. Others consider this article to apply only to cases where the perpetrator was performing a legitimate task.

Keywords: *Error and mistake, murderer, person and character, penalty and crime, intentional murder*

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Introduction

Among crimes against bodily integrity, homicide is also the most important because, by definition, homicide is the act of taking a living human being's life. Therefore, the crime of murder takes away from an individual the most valuable divine gift to humans, which is their body and life. Hence, in all legal systems worldwide, the crime of murder holds considerable importance, and particularly for its intentional type, severe punishments such as the death penalty or life imprisonment are stipulated in the criminal laws of various countries. However, in examining various types of homicides, we sometimes come across cases where a person has been murdered due to a mistake (in a shooting or the victim's identity). (Goldouzian, 1391: 16)

Whenever a person is not aware of the law, they are subject to judgmental error. Judgmental errors are divided into two types: errors resulting from ignorance of the law and errors resulting from the interpretation of the law. According to the principle, "ignorance of the law does not excuse," but in some crimes, Iranian criminal laws explicitly consider judgmental error as a barrier to attribution and imputation of criminal acts. Examples of such crimes include adultery, theft of a certain amount, and drinking alcohol. (Shahid-Sani, 2015: 367) However, substantive errors occur when a person believes that they are

performing a legitimate act, but they are mistaken about the nature, qualities, or results of the action.

Before the enactment of the Islamic Penal Code in 1991, the judicial practice indicated that mistakes had no effect on intentional homicide, and there was almost a consensus on this issue. However, after the enactment of this law and the allocation of Article 206 to intentional homicide, and the addition of the phrase "specific intent" for investigating an intentional homicide, some argued that the term "identification" in the mentioned article referred to identifying the victim's identity, and the murder would only be subject to retribution if the victim was the same person who had been intended for murder. Therefore, if someone kills someone other than their intended target by mistake, the murder will no longer be considered intentional and will not be subject to retribution. As a result, a mistake in identifying the victim in intentional homicide effectively reduces the charge to unintentional homicide.

Others have considered "identification" in the article to be "physical" and believe that if someone points to and kills the wrong person, even though they have made a mistake in identifying them, the murder will still be considered intentional. However, in any case, there has been no specific judicial practice on this issue, and only one insistent opinion considers the murder as a borderline major offense (Waledi,

2014: 27). However, in the case of a mistake in the target, with the approval of Article 296 of the Islamic Penal Code, which had no legislative history before, a disagreement arose over the effect of this type of mistake on intentional homicide. Some believe that a mistake in target turns the murder into pure accidental killing and refer to Article 296 in this regard. This article stipulates that in cases where someone intends to shoot at a person, object, or animal, and their arrow hits an innocent human being, their act is considered a pure accidental error. Others believe that the article applies to cases where the offender was engaged in a legitimate activity, such as trying to kill a desperado, and mistakenly took down another person. (Najafi, 2013: 201)

As retribution is a type of punishment, one should refrain from carrying it out in case of doubt, suspicion, hesitation, or even conjecture. Essentially, execution is an irreversible and irreparable form of punishment. This means that once someone's life is taken, it cannot be given back, and the person cannot be brought back to life. Therefore, it is necessary that the punishment of "retribution of life" (execution) be carried out only in cases that are certain and where there is 100% certainty, and as the saying goes, "it is better for ten guilty persons to go free than for one innocent person to be punished." Of course, there is a similar principle called the "benefit of the doubt" in both Islamic criminal law and French criminal law, which means that doubt should be interpreted in favor of the defendant (Zar'at, 2014: 154).

Therefore, the criminal justice system also fully agrees that a killing resulting from a mistake in identifying the victim should not be considered an intentional homicide. Of course, it is undeniable that if someone intends to kill a person and the particular person is not important to them, and only killing a person is their objective, and they commit murder, it will be considered an intentional homicide. Concerning the issues of concern and the main question of this research, the answer is whether the individual killer's error and mistake in intentional homicide have any effect on the severity of the punishment and crime based on the type of person and personality.

Legal review of mistakes in murder and its types

As previously mentioned, the key element in criminal responsibility is the criminal's intention. If this intention is disturbed to the extent that the complete intention is damaged, the degree of responsibility will be reduced accordingly. Therefore, the failure to achieve complete intention will change the level of the perpetrator's responsibility. This title (failure to achieve complete intention) has been discussed in criminal law under the term "mistake," which includes cases such as a mistake in identifying the victim, a mistake in the target, a mistake in intention, and failure to achieve intention, which is referred to as coercion to murder in a specific interpretation (Najafi, 2014: 328). Regarding the mistake in

identifying the victim, according to the regulations (Article 206 of the Islamic Penal Code), if someone intends to harm another person or attacks them with a lethal act (without intent to kill) regardless of whether the lethal act is related to the person's actions (such as hitting them on the head with a club) or using a tool (such as stabbing them in the side with a knife) or due to the victim's special condition (such as illness, old age, and childhood), the main condition for intentional homicide is that the victim must be intended, whether it is a specific intention such as when A shoots at B to kill him, or it is indeterminate like when one student shoots towards the other students in a shooting class and kills one of them. Therefore, it can be said that the intention to target the victim is not questionable. The question is whether a mistake in identifying the victim has any effect on the level of the perpetrator's responsibility (whether the killing is intentional or unintentional) or not. For example, if someone enters another person's home intending to kill A and kills someone, thinking that they are A, but later it becomes clear that the victim was not A but someone else, named B, is this intentional homicide and subject to retribution or not? Many argue that such killing is not intentional, and their argument is based on three things: the well-known principle "ma waqa'a la mi yaqsud, wa ma qasad la mi waqa'" meaning that the killing of B, which has happened now, was not intended by the perpetrator, and the killing of A, which was intended, did not happen, and intentional homicide is also related to intent.

The Supreme Court's insistence ruling in a case where a person kidnapped a girl and kept her in a hideout for 24 hours and then released her. The girl was referred to a legal physician, and her medical certificate confirmed that she was healthy (Goldouzian, 2012: 85). The fatwas of the late Ayatollah Golpayegani and the esteemed leader. Ayatollah Golpayegani responded to the aforementioned question by stating, "In the above situation, it is not considered an intentional homicide, and Allah knows best." The esteemed leader also stated, "Applying the title of murder as subject to retribution, in this case, is not problematic, but the untruthfulness of intention is unlikely." Therefore, if the season of animosity can be settled through reconciliation, it is determined as such, otherwise, the killer must pay the blood money. As it is evident, the main reason in this regard is the disturbance of intention and the fatwa of two scholars, but according to legal principles, it must be said that homicide, in this case, is intentional because the main element in intentional homicide is the intended victim, meaning that the person who was killed was the intended target, but identifying their identity (name, last name, and other features) is not a key component of the homicide. (Faiz, 2012: 163)

"One example of a distorted will of the perpetrator is a mistake in the target. Sometimes the source of the mistake may not be

a misidentification of the situation and identity, but rather an error in the target or a mistake in the way the criminal act is carried out. For example, if A shoots towards B to kill them, but someone else gets hit and killed due to reasons such as lack of skill, arrow deviation, or the person dodging, is this murder intentional or unintentional?" The definition of murder resulting from a mistake in the target is when someone intends to murder a specific person and initiates the criminal act, but due to some mistake, ends up killing another person instead. For example, someone who has animosity towards person A intends to kill them and prepares a weapon, then ambushes them along their route to shoot and kill them. However, they become extremely anxious during the shooting and as a result, instead of targeting person A, they mistakenly target a passerby and end their life. Therefore, murder resulting from a mistake in the target means that the intended crime fails and another crime occurs due to the perpetrator's mistake. For example, someone who intends to murder a specific person but accidentally targets another person due to factors such as lack of skill in aiming. In this example, it is assumed that the arrow went astray and hit someone else by mistake. (Valedi, 2014: 184)

Legal experts and criminal law professors have used various terms to refer to murder resulting from a mistake in the target, including murder resulting from an error in the person, murder resulting from mistaken targeting, murder resulting from a mistake regarding the person, murder resulting from an error in hitting, and murder resulting from a mistake in the shooting. (Nourbaha, 2013: 16) Some legal experts believe that using the term "mistake in the target" is not very desirable for this clause, as there is no such mistake in this clause at all. Rather, the subject of this clause is hitting someone who the perpetrator did not intend to commit the act against and cannot intentionally seek the resulting consequence. Therefore, perhaps the term "error in shooting" is more appropriate. In any case, it should be noted that the meaning of the error in shooting refers to a case where the accused of murder claims to have intended to kill a specific person and shot toward them, but made a mistake in targeting, and the arrow hit and killed someone else. (Sabahi, 2007: 496)

It is clear that there is a difference between this type of mistake and a mistake in identity, in that in the case of a mistake in identity, the intended victim was the killer's target, but in the case of a mistake in the target, the intended victim was not the actual victim. Some may argue that such an act was intentional and say that the perpetrator had the intention to kill and their action was lethal, so the two main elements of murder have been fulfilled. However, it is possible that we cannot hold the perpetrator responsible for intentional murder because although there was intent to kill and the action of shooting was lethal, the actual victim was not the intended one. However,

the two main elements of intentional murder are not limited to both intent to kill and a lethal act. As previously mentioned, one of the two elements (i.e. "cause of death") must be present, either intent to kill (even without a lethal act) or a lethal act (even without intent to kill). The second element of intentional murder is that the victim must be the intended target of the perpetrator. Therefore, it can be said that in this case and based on this theory, the aforementioned killing will not be considered intentional because the intended target of the perpetrator was person A, not the current victim. So the current victim is neither the intended target nor an indeterminate target (where a specific group of people is targeted without specifying an individual, so anyone hit by the arrow is considered the intended victim). Therefore, both jurisprudence, legal experts, and criminal laws have conflicting views on this matter, although the opinions of jurisprudence are close to each other. (Najafi, 2013: 59)

Regarding mistake in intention, it was said that this means that the perpetrator, despite fulfilling the elements of murder (i.e. intent to kill or a deliberate lethal act and the victim being the intended target), justifies committing this act in their mind, considering their action as legitimate and intentionally becoming a murderer. For example, someone who believes that any disrespect towards Prophet Muhammad (PBUH) is deserving of death and kills another person or someone who considers any insult to the honor of their family as deserving of death and murders another person or someone who, in their mind, justifiably kills an attacker in self-defense but later it is discovered that they were not being attacked. For instance, someone who quickly passes through a security [checkpoint](#) to deliver their urgent letter to the President but is mistakenly assumed to be a terrorist and is killed by the guards, and later it is revealed that they were innocent. In such cases, the perpetrator mistakenly believes that the victim deserves to die and later discovers that their belief was incorrect, making it a case of "semi-intentional" murder rather than intentional murder, which requires payment of blood money. Of course, in such cases where the mistake is discovered, the perpetrator is sentenced to pay blood money and the matter falls under the category of mistake in murder. However, if it is proven that the victim was innocent, the perpetrator will not be held responsible for any form of punishment, including retribution or blood money, as stated in the second provision of Article 295 of the Islamic Penal Code and confirmed by the opinions of jurisprudence. (Nouri, 2016: 49)

1. The concept of suspicion in Islamic and Iranian criminal law

To establish intentional crimes, the condition of "intent in action" or "general intent" must be met by the perpetrators (meaning their conscious intention to commit a criminal act).

Therefore, for example, a thief must have the "knowledge and awareness of the illegality of their act" (lack of ignorance of the law) and the "understanding of the nature of their criminal act" (lack of ignorance of the subject matter), and must intend and desire to commit the criminal act.

From a jurisprudential point of view, this is called a "doubtful ruling" (Shubha Hukmiyyah) which means that a general ruling is not clear to the perpetrator. In other words, for example, if the ruling on the prohibition of theft is not clear to the thief, then a doubtful ruling applies to someone who did not know or had doubts about this ruling. (Pourbafarani, 2009: 49) From a jurisprudential point of view, this is called "doubtful subject matter" (Shubha Mawdu'iyyah), which means that a general ruling is known to the perpetrator, but a specific aspect of it is in doubt. In other words, in doubtful subject matter, the perpetrator knows the ruling on a general issue but does not know or is unsure whether a particular matter is included in that ruling or not. Therefore, for example, if the ruling on the prohibition of drinking alcohol is known to someone, but they are uncertain whether a certain liquid in a glass is alcoholic or not and still drink it, doubtful subject matter applies to the perpetrator. (Sabahi, 2007: 36)

As it is clear, the cause of doubt (whether it be in ruling or subject matter) is sometimes "uncertainty and doubt" on the part of the perpetrator, and sometimes their "ignorance". Therefore, from a criminal law perspective, the cause of doubt is twofold: one is the "mistake" of the perpetrator in the ruling or subject matter of the criminal act, and the other is the "ignorance" of the perpetrator in the ruling or subject matter of the criminal act. (Gorgi, 1994: 18) Islamic criminal law has the well-known principle of "avoiding punishment due to doubts" (Tudra'u al-hudud bil-subunit) which is accepted by all Imami jurists and is known as the famous principle of "Dar'a". This principle is based on narrations from infallible Imams (AS) according to which, limits must be dropped due to the occurrence of doubt. The term "limits" mentioned in this principle covers any kind of punishment, not just the specific meaning of the word "Hadd". Therefore, when there is doubt or suspicion about the commission of a crime or the conditions for liability, even if it is just a conjecture, it is necessary to refrain from carrying out the punishment. Punishments should only be applied in cases where there is certainty and 100% knowledge about the commission of the crime and its conditions and the necessary attributes for the perpetrator's criminal responsibility. Therefore, as it is well-known, "it is better for ten guilty persons to escape than for one innocent person to suffer" and based on the famous opinion of Shia jurists, the Iranian legislator has titled the sixth section of the eleventh chapter of the second [book](#) of the Islamic Penal Code, which was ratified on May 20, 2013, as "the application of the Dar'a principle" and has dedicated two [articles](#) to it. According

to Article 120 of this law: "If the commission of a crime or some of its conditions or any of the conditions for criminal liability is doubted or uncertain, and no evidence is found to refute it, the crime or the mentioned condition shall not be established as applicable." This article uses the term "crime" in an absolute sense and does not restrict it. Therefore, the apparent interpretation is that it includes all crimes. (Najafi, 2013: 20)

One of the important reasons for the non-criminal responsibility of an ignorant and unaware person according to the verbal tradition of the infallible Imams (AS) is the famous Hadith of "Rafa'a". This Hadith is narrated from Prophet Muhammad (peace be upon him) who said: "Nine things have been lifted from my nation: mistakes, forgetfulness, what they are forced to do, what they do not know, what they cannot bear, what they are compelled to do, envy, ill-omened birds, and dwelling on whispering in creation until it is uttered by the tongue." In other words, my nation has been absolved of nine things: mistakes, forgetfulness, anything they are forced to do, anything they do not know, anything they cannot endure, anything they are compelled to do, envy, bad omens, and thinking about whispers in creation until it is spoken. In the legal systems of some countries such as Germany, Switzerland, Norway, Finland, and Sweden, the defense of "ignorance of the law" is also accepted in a few cases. However, in common law, ignorance of the law is not accepted as a valid defense under any circumstances, even if it is proven and the defendant had no fault or negligence in their ignorance. For example, in the case of "Billey" in 1800, the [English](#) courts convicted the defendant of committing a crime while he was on a sea voyage with a ship, and this act was recognized as a crime during that same sea voyage. This means that he was not only unaware of the criminality of his actions but also had no means to acquire knowledge about it.

2. Manslaughter resulting from the mistaken identity of the perpetrator with the intended victim

Sometimes, a person with criminal intent may mistakenly target and commit a crime against an innocent person, mistaking them for their intended victim. In this case, there is a difference regarding the limits and nature of the guarantee of life. Therefore, it can be said that there are two opinions about unintentional killing due to mistaken identity. Some legal experts consider this type of killing intentional, while others believe that it is not intentional. Supporters of the theory that unintentional killing due to mistaken identity is intentional believe that none of the jurists have considered specific intent necessary in the commission of intentional killing. This is because if someone intends to kill a person and the act results in the death of another person who was mistakenly targeted, from the perspective of jurists, the killing is intentional.

Therefore, it must be said that the intention to target the specific identity of the victim is not valid in establishing intentional killing, and in all cases where there is an actual intention to commit homicide, even if the intended target is not the person who was killed, the killing will be considered intentional, because ultimately, a respected and innocent life has been taken for no reason.

This type of killing is similar to someone intending to drink grape wine and mistakenly reaching for and drinking date wine, breaking the glass in the process. This mistake in the example does not make the legal limit invalid. Therefore, mistakes and errors in homicide and other cases are considered intentional. (Mirsa'edi, 2011: 201) The mistaken identity of the victim was not taken into account as a mitigating factor in criminal liability according to the old rulings of the Supreme Court of the country. Therefore, someone who intended to kill person A and shot an arrow at them, but after killing them, it became clear that the victim was not person A but person B, and the killer had mistakenly killed the wrong person, would be considered guilty of intentional homicide.

In the criminal laws of most European countries, homicide resulting from the mistaken identity of the victim is considered intentional. Even in England, unlike cases where there is a mistake in the identity of the victim, there is no need to use the theory of "transferred malice" to consider this type of crime intentional, and in fact, such a crime has been considered intentional based on general rules. (Eslami-Manesh, 2013: 32) Some legal experts believe that mistaken identity of the victim can be considered a case of quasi-intentional crime when the perpetrator mistakenly identifies and recognizes the identity of the intended victim and commits a crime against them, believing that the identified person is the intended target, but later it becomes clear that someone else who looks similar has been killed instead. In this case, although the perpetrator had the intention to commit the act against the intended victim and also had an intention for the resulting outcome, the crime committed will not be considered intentional.

However, during discussions that took place concurrently with the approval of the previous Islamic Penal Code in 1991 and the changes and amendments made to some of its articles regarding intentional homicide, it became clear that there was no unified view regarding "homicide resulting from mistaken identity of the victim" among legal experts and jurists of the Supreme Court of the country. The prevailing theory based on valid fatwas (issued by Grand Ayatollahs Golpayegani and Khamenei) at that time was that if a homicide occurs following the juristic rule of "ma qusid lam yaq' and ma waqa' lam yuqsad" (meaning what is intended does not occur, and what occurs is not intended), the intentionality of the act would be subject to doubt. Therefore, if the killer mistakenly believes that the victim is Zaid and kills them, but later it becomes clear

that they made an error and killed Amr instead of Zaid, the murder committed would not be considered intentional. (Karami, 2018: 28) The criminal justice system also agrees that homicide resulting from the mistaken identity of the victim should not be considered intentional. Of course, it is undeniable that if someone intends to kill a person and it does not matter who the specific target is, and killing a person is simply what they are after, and the act results in the death of a person, the act of murder will be considered intentional. It should be noted that some authors believe that in a case where the victim was not the intended target of the killer, with proof of the perpetrator's fault, the crime would be considered a quasi-intentional homicide, and therefore, under Article 616 of the Islamic Penal Code (Book Five "Punishments and Deterrent Punishments"), the perpetrator would be sentenced to one to three years in prison and payment of compensation if demanded by the victim's heirs as a result of their negligence. (Ardabili, 2007: 251)

In crimes that carry the punishment of hadd or qisas, individuals who are under the age of 18 but can understand the nature or sanctity of the crime committed, or in whom there is no doubt about their mental growth and maturity, will be punished accordingly like those who are over 18 years old. However, it should be noted that "all crimes committed by children and individuals under the age of 18 are dealt with in juvenile courts." (Article 304 of the Criminal Procedure Code approved on February 23, 2014) But in cases where a crime is committed by individuals under the age of 18, which requires the jurisdiction of the criminal court one or revolution court, if multiple judges are involved, the case will be heard and the defendant will enjoy all the privileges that are available in juvenile courts. (Article 315 of the Criminal Procedure Code - Amended on March 24, 2015, by the Judicial and Legal Commission of the Islamic Consultative Assembly)

The Effect of Error and Mistake on criminal liability

1. The effect of mistake in the crime of murder

There are various forms of committing the crime of murder, including "murder resulting from mistaken target" and "murder resulting from mistaken identity," which legal experts have always had differences of opinion about the elements, components, conditions, and punishments of these two types of murders.

Sometimes it happens that someone intends to kill a specific person and begins the execution of the crime, but for some reason makes a mistake and kills someone else instead. For example, out of enmity towards person A, someone plans to assassinate them by preparing a weapon and ambushing them on their path to shoot and kill them, but due to severe anxiety during the shooting, they end up targeting a passerby instead of person A and ending their life. Or, due to a lack of skill in

aiming, they mistakenly target someone else and as a result, the arrow misses the intended target and hits someone else, causing the victim's death. (Nourbakhsh, 2013: 75)

In addition to the possibility of mistaken identity, the occurrence of a mistake in identifying the victim is also possible, which criminal law experts have referred to with terms such as "murder resulting from an error in personal identity," "murder resulting from an error in the application," "murder resulting from an error in the application," "murder resulting from an error in the victim's identity," and "murder resulting from the killer's misidentification of the victim." (Elahi-Manesh, 2013: 36)

Article 294 of the Islamic Penal Code (approved in 2013) considers only murder resulting from the mistaken identity of the victim (even if the victim and the intended person are not covered by Article 302) as intentional murder and does not refer to mistakes in targeting.

2. The influence of mistake on criminal liability in "Hadd"

According to the jurisprudential rule of "deterrence and prevention of punishments utilizing doubts," in cases where doubt arises, the punishment is limited. In our opinion, if a judgmental or substantive error (which are two examples of doubts) occurs in crimes and causes for punishments, due to the lack of the mental element, the commission of the crime is negated, and therefore, criminal responsibility does not apply. (Gorgi, 1994: 16)

In the second book of the Islamic Penal Code, the legislator has listed the reasons for punishment, which are limited in meaning, such as adultery, homosexuality, false accusations of adultery, prostitution, drinking alcoholic beverages, fighting against God, corruption on earth, theft (that meets certain conditions), and false accusation of adultery. The impact of doubts on the punishment has only been mentioned about three crimes: adultery, drinking alcoholic beverages, and theft (that meets certain conditions) in Articles 64, 65, Note 1 of Article 166, and paragraphs 5 and 6 of Article 198, which results in the dropping and prevention of punishment. (Karami, 2018: 32)

It would have been appropriate for the legislator to extend the rule of the error to other crimes that are limited in meaning (such as false accusations, homosexuality, false accusations of adultery, prostitution, fighting against God, and corruption on earth) for the following reasons: Some expressions by jurists such as "Tahrir al-Wasilah" by Imam Khomeini suggest that a judgmental or substantive error in all crimes that require punishment by "hadd" results in the dropping of punishment. This is stated in the second volume of the aforementioned book: "In theft and other crimes, which are subject to 'hadd,' if there is a doubt in the judgment or subject matter, it is

considered as elevated doubt, both in terms of judgment and substance..."

3. The effect of a mistake on criminal liability in retribution

The general rule of error and its extent is not mentioned in the crimes listed in the third book of the Islamic Penal Code, which concern "qisas" (retaliation), but substantive errors are addressed in Articles 206, 226, 271, and 295. Regarding Article 296, it should be noted that it relates to an error in targeting and purely accidental murder is considered as a mistake.

An act that results in a crime is only considered intentional if the perpetrator intends to commit the crime and is aware of the consequences of their actions. This is because by paying attention to the cause-and-effect relationship of their actions, they have essentially intended to commit the crime, just as intending the result is equivalent to intending the cause. (Sadeqi, 2016: 201)

Although the legislator has not explicitly stated the necessity of knowledge and awareness of the victim's status as a private individual or public official in paragraph b of Articles 206 and 271 of the Islamic Penal Code, it does not mean that it is unnecessary. With the above explanations, it can be understood that knowledge of the victim's status is presumed based on the expression "resulting in death."

In various cases, Imami jurists have emphasized the necessity of the offender's knowledge and awareness of the consequences of their actions, considering it a prerequisite for proving intent and establishing "qisas" (retaliation), since only if the offender pays attention to the status of the victim as a private individual or public official, their act is considered intentional, like the intention to commit murder. (Kho'i, 1988: 55) Therefore, in these cases, the appearance will be in favor of the principle of priority, because an act that is mostly and usually fatal does not involve ignorance, and the claim of ignorance and mistake will not be plausible unless there are strong reasons and evidence.

4. The effect of the killer's mistake on the person and personality of the victim

Murder resulting from the unintentional killing of the intended victim is discussed in such a way that someone intends to murder a specific person and initiates the criminal act but, due to some mistake, ends up killing another person instead. For example, someone who has enmity with person A intends to kill them, prepares a weapon, and lies in wait for them to pass by so they can shoot them and carry out the murder. However, during the shooting, they become extremely anxious and, as a result, instead of targeting person A, they accidentally target a passerby and end their life. Thus, murder resulting from the unintentional killing of the intended victim means failing to

commit the intended crime and committing another crime due to one's mistake. It could be similar to someone who intends to murder a specific person but, during the shooting, due to factors such as lack of skill in aiming, accidentally targets and kills another person. In this example, it is assumed that the shot missed its intended target and hit someone else. (Habibzadeh, 2005: 19)

Criminal law experts and professors have used various terms concerning murder resulting from the unintentional killing of the intended victim, including "murder resulting from an error in the person", "murder resulting from a mistake in targeting", "murder resulting from a mistake in the target", "murder resulting from a mistake regarding the person", "murder resulting from an error in hitting the target", and "murder resulting from an error in shooting". The discussion of murder resulting from the unintentional killing of the intended victim is stated in Article 296 of the Islamic

The Penal Code of Iran is as follows: "In cases where someone intends to shoot at a person, object, or animal, but their arrow hits an innocent person, their act is considered purely accidental." Therefore, it must be said that the issue raised in this article falls under the category of hypothetical situations, meaning that there has been an error in the person, and this issue is strongly disputed among jurists and legal experts. (Aghaeinia, 2013: 46)

Many legal experts consider Article 296 of the Islamic Penal Code as a "mistake in target", while some, based on the ambiguity of the article and their interpretation of its concept, argue that it is a "mistake in identity". However, it seems that most professors believe that Article 296 cannot be considered a "mistake in identity" in intentional murder cases.

Furthermore, to support this view, one could take another look at the wording of the article and argue that if the legislator intended to classify Article 296 as a "mistake in identity", then what is the need for mentioning "object and animal" after "person" who has been hit by the arrow? In other words, if the arrow hits an animal or an object, how can it be considered a crime and included in the category of purely accidental mistakes? (Feiz, 2012: 11)

Some legal experts believe that the use of the term "mistake in target" is not very desirable for this article, since there is no mistake involved in this article. Rather, what is covered by this article is the arrow hitting someone who was not intended to be the target and the perpetrator did not have the intention to commit a crime against them, and therefore cannot be held responsible for the resulting outcome. Therefore, the term "error in shooting" may be more appropriate.

Another group of legal experts, although considering the murder mentioned in Article 296 of the previous Islamic Penal Code passed on 27/6/1991 as purely accidental, criticized the wording of this article. They believed that the last part of this

article, which says "their act is considered purely accidental", seems to be inconsistent with the crime of purely accidental mistakes under Article 295 of the same law and its instances because the crime covered by Article 296 itself is essentially a purely accidental mistake, not something that can be categorized as such. (Karami, 2018: 128)

However, another group of authors did not accept the above arguments that the murder covered by Article 296 of the previous Islamic Penal Code passed on 27/6/1991 is considered purely accidental by the legislator, and therefore they considered it to be a purely accidental mistake both in terms of Sharia and legal aspects. This group argued that: firstly, in terms of semantics, "being considered" means being counted or taken into account, and therefore this meaning is not inconsistent with the fact that the crime covered by Article 296 of the mentioned law is different from other instances; secondly, unlike some other legal articles, the legislator did not use the terms "in the context of" or "as"; thirdly, the legislator's intention in most cases of legal articles using the phrase "being considered" has been nothing more than indicating that the act is essentially the intended crime, not something similar or in the category of it. The latter group's argument was more acceptable. (Mirmohammadsadeghi, 2015: 32)

The examination of whether murder resulting from a mistake in the target is purely accidental, intentional, or quasi-intentional, has been approached differently by legal systems in many countries, including France and Iran (although in the past). In these legal systems, if someone mistakenly kills person B instead of person A, they cannot be exempted from being charged with intentional murder.

In England, some legal experts like Professor Ashworth believe that it is better to follow the approach of countries such as Australia and South Africa and set aside the theory of "transferred malice" and instead convict the perpetrator of committing non-intentional crimes against the person who was hit and then starting an intentional crime against the intended person. This position has also been accepted in some European countries. For example, in Germany, a man who was driving a car saw his girlfriend on the street talking to another man. He stepped on the gas pedal and drove towards the man, but the man avoided him and the car hit the girl, killing her. The German court convicted the perpetrator of both "starting the murder of the man" and "committing non-intentional murder of the woman". (Norba, 2013: 4)

Before the Islamic Revolution, the Supreme Court of Iran followed the theory of the French court regarding murder resulting from a mistake in the target in various judgments it issued. In one of these judgments, it is stated that "if someone shoots an arrow at another person to kill them, but the arrow goes awry and hits someone else, causing their death, this single act, which is the result of a decision and related to a

thought and intention, is not generally considered as two crimes requiring two punishments, and the transferred intent in the sense that the perpetrator intended to kill one person but mistakenly killed another person, is considered as one crime, which is subject to Article 170 (intentional murder) of the Penal Code." (Judgment No. 1807-27/10/1937 and Judgment No. 1800-27/10/1937).

After the Islamic Revolution in Iran, a group of authors and criminal law professors believed that killing resulting from a mistake in the target was intentional. This group argued that since intent is not a valid factor in achieving intentional murder, if the killer had a human intention, even if it belonged to a specific person, and another person who was not intended to be killed was killed, it would still be considered intentional murder. However, in any case, with the approval of Article 296 of the Islamic Penal Code in 1991, killing resulting from a mistake in the target was considered a pure error. This article is also in line with the views of many Islamic jurists. Similarly, Shahid Thani (died 1582 AD) writes about accidental killing in his book "al-Rawda al-Bahiya fi Sharh al-Lum'ah al-Dimashqiyya": "Pure error is when [the killer], for example, shoots at an animal and hits a human or throws [a weapon] at a particular person but it hits someone else; the criterion of pure error is that there is no intention to kill a human being [in the first example] or a specific person [in the second example]." (Mir Mohammad Sadeghi, 2011: 36)

Some legal experts considered amending article 296 of the previous Islamic Penal Code, which was approved on May 8th, 1991, necessary to eliminate ambiguities. Others believed that the only reason for the necessity of such an amendment was the sensitivity of the legislator to eliminate ambiguities from the example mentioned in section (a) of article 295 of the previous Islamic Penal Code, which was also approved on May 8th, 1991. The legislator intended to clearly state that no condition or restriction or quality in the initial target of the perpetrator, such as being a human or an object or an animal or mohaqoon al-dam or mahdour al-dam or not, will be effective in achieving pure error. Therefore, such sensitivity, which aimed to reduce cases of intentional murder subject to retaliation, was commendable and desirable criminal policy. In other words, since 1991, with the adoption of a new criminal policy, the Iranian legislator had practically reduced the identification of murder cases subject to retaliation. (Goldouzian, 2012:139)

conflict of interest

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Conclusion

When a person lacks self-awareness, they may make a judgmental mistake. There are two types of judgmental mistakes: those that result from ignorance of the law and those that result from misunderstanding the law. Ignorance does not exempt anyone from judgment, but in some crimes, the criminal code of Iran explicitly prevents the attribution and documentation of judgmental mistakes. This is particularly true for offenses such as drinking alcohol or committing adultery. However, a subjective mistake occurs when a person appears to be performing a lawful act but is mistaken in identifying the nature, qualities, and results of that act. For example, if someone intended to destroy a house and thought it was their property, but realized during or after the destruction that the house belonged to someone else, or if someone entrusted an item to another person to deliver to a third party, and the recipient of the trust places the item in their home without inspection or examination due to the trust they have in the owner of the trust, unaware that the item is among smuggled goods. If, according to custom, this level of trust is acceptable, it is called a subjective mistake. However, in some cases, a distinction must be made between subjective suspicion and ignorance because, in ignorance, there is no knowledge at all, while in suspicion, there are degrees of knowledge that bring it close to "doubt." Furthermore, from the perspective of Islamic criminal law, it is necessary to distinguish between culpable ignorance and excusable ignorance. Culpable ignorance means that an ignorant person has been in a situation where they could not obtain access to a judgment or knowledge of a judgment in any way; for example, living in a remote area without any connection to religious centers, where transportation is difficult or impossible. In the past, "ignorant" was compared to a "mountain-backed ignorant" who could not reach the city and the center of knowledge from behind the mountain to gain information. However, in the present time, when mass communication tools have connected the entire world, and the smallest incident that occurs is immediately broadcast to the world, there may be no excuse for excusable ignorance. However, culpable ignorance means that the person was capable of becoming aware of the judgment but, due to negligence and fault, did not seek knowledge of the judgment. Culpable ignorance only relieves responsibility if the person is completely ignorant. Therefore, an attentive person who is partially ignorant is not excused but rather responsible. Being attentive means that they are aware of their actions, but these actions may be criminal, and they can ask questions and seek knowledge. However, at the same time, they neglect to do so and take the initiative to commit the act without asking anyone,

and then it becomes apparent that they unknowingly committed a crime. Such a person cannot be excused. Error in the victim means that the killer intended to kill person A but, due to lack of skill, kills person B who is standing next to person A. The murder is objectively an error, but according to the views of jurists, it is considered quasi-intentional because the killer did not intend to kill person B and the result was entirely accidental. Therefore, the murder committed meets the criteria for objective error, but given that in cases of objective error, the responsible individual is usually obligated to pay blood money, in such cases where the killer has made a mistake, they should not be held responsible for intending to kill an innocent person. Instead, they should pay the blood money to the victim themselves. In cases of error in the victim, if the killer intended to kill a human or an animal that is considered of little value, but due to lack of skill, kills an innocent person, the murder committed will be an objective error. As for the issue of whether a specific person must be intended in cases of intentional murder to warrant retribution, there are different views among jurists. Some jurists such as Shahidain consider it necessary to intend to kill a specific person to qualify as intentional murder. Others have not mentioned intending a specific person in their definition of intentional murder and have only regarded the intent to kill, along with other conditions, as sufficient to warrant retribution. Based on the definition of intentional murder, the second view is more reasonable. It does not seem necessary to intend to kill a specific person even for retribution. What matters legally is preserving people's lives in society. The characteristic of being prominent or having high status should not change the nature of the issue. With this explanation, we will accompany the views of jurists who have divided their opinions on this issue between the legitimacy and illegitimacy of the basis of action. And in cases where the basis of action is illegitimate, we believe that the mistake made by the victim of a murder does not affect the criminal responsibility of the killer. Article 206 of the Islamic Penal Code, which is approaching the end of its trial validity, requires fundamental reforms. This article is based on the views of non-prominent jurists and is not consistent with legal logic. It is better to remove Note 2 of Article 259 of the Islamic Penal Code, as it opens up the possibility of abuse for murderers. Placing people's lives at the mercy of the beliefs and assumptions of society contradicts the philosophy of safeguarding souls.

References

Aghayenia, Hossein. (2013). *Crimes against Persons*, Tehran, Mizan Publishing.
 Pourbafrani, Hassan. (2009). *Crimes against Persons*, Tehran, Jangal Publications.

Habibzadeh, Mohammad Jafar; Fakhremanab, Hossein. (2005). "Comparison of Justifying Factors of Crime and Exculpatory Factors of Criminal Responsibility". *Journal of Judiciary*, No. 54.
 Khoi, Sayyid Abul-Qasim. (2028). *Principles of Completion of the Path*, Volume One, Qom, Lotfi Publications.
 Rahami, Mohsen (2014) *Criminal Law Course Notes 1 "Crimes against Bodily Integrity of Individuals"*, the University of Tehran, Faculty of Law and Political Science, Bachelor's Degree.
 Zera'at, Abbas. (2014). *Brief Explanation of Islamic Penal Code passed in 2013*, Ghoghnoos Publications.
 Shahid Thani, Zain al-Din bin Ali bin Ahmad Ameli, known as Tahrir al-Rawdah fi Sharh al-Lum'ah, [translated](#) by: Seyyed Mehdi Dadmarzi, Qom: Taha Publications, Eighth Edition, 2005.
 Sadeghi, Mohammad Hadi. (2008). *Crimes against Persons*, Tehran, Mizan Publishing.
 Sabahi Mahmasani. (2007). *Philosophy of Legislation in Islam*, translated by Ismail and Mina Golestani, First Edition, Tehran, Khaneye Ketab.
 Faiz, Alireza (2012) *Comparison and Comparison in Islamic Criminal Law*, Tehran: Organization for Printing and Publishing of the Ministry of Culture and Islamic Guidance, Sixth Edition.
 Karami, Marzieh and Javad Baharvan, (2018) *Examining Homicide Resulting from Mistaken Identity in the 2013 Islamic Penal Code*, Second Regional Symposium on the Analysis of the 2013 Islamic Penal Code (Qisas Book), Maragheh, Islamic Azad University Maragheh Branch.
 Gorgi, Sayyid Abul-Qasim. (1994). *Legal Articles*, Volume Two, Tehran University Publications.
 Goldouzian, Iraj (2008) *Special Criminal Law "Crimes against Bodily Integrity, etc."*, Tehran: University of Tehran Publications, Eleventh Edition.
 Goldouzian, Iraj. (2012). *Special Criminal Law*, Volume One, First Edition, Tehran, University Jihad Press.
 Mirmohammad Sadeghi, Hossein. (2011). *Crimes against Persons*, Tehran, Mizan Publishing.
 Mirsaeedi, Seyyed Mansour. (2011). *Criminal Responsibility of Scope and Elements*, Tehran, Mizan Legal Foundation.
 Najafi, Mohammad Hassan. (2013). *Jawahir al-Kalam*, translated and explained by Akbar Naibzadeh, Volume One, Tehran, Kharazmi Publications.
 Nourbaha, Reza (2013) *Background of Public Criminal Law*, Tehran: Dadafarin Publishing, Eighth Edition.
 Nouri, Reza (2016) Article "What is the punishment for shooting resulting in homicide?", *Judiciary and Legal Journal*, Volume 4, Number 12.

Valaeeedi, Mohammad Saleh. (2014). Explanation of Required Elements of the Islamic Penal Code in Comparison with the Previous Law, Jangal Publications.

Valaeeedi, Mohammad Saleh (2002) Criminal Responsibility, Tehran: Amir Kabir Publications, Third Edition.

Elahi-Manesh, Mohammad Reza; Moradi Ojaghaz, Mohsen. (2013). Crimes against Persons, Tehran, Moj Publications.