

**The impact of mistake in target and mistake in identity in intentional murder, in Iranian criminal law**Mohammad Hadi Keshavarz<sup>1\*</sup>, Isa Bani Naeime<sup>2</sup><sup>1</sup>Department of Laws, Persian Gulf International Branch, Islamic Azad University, Khorramshahr, Iran<sup>2</sup>Department of Laws, Abadan Branch, Islamic Azad University, Abadan, IranCorresponding Author: Mohammad Hadi Keshavarz<sup>1\*</sup>[hhosseini581@yahoo.com](mailto:hhosseini581@yahoo.com)

**Abstract:** “Mistake” literally means error, ignorance and unawareness, and legally means that the murderer targets the considered person, but due to some causes such as lack of skill or involuntary causes, his shot goes wrong and hits another one and kills him. Murder crime has various states of action that one of these states is “murder due to mistake” which is itself divided into two parts: “murder due to mistake in target”, and “murder due to mistake in identity”. Mistake in target and mistake in identity are the same in terms of ruling, but are slightly different in terms of subject. But generally, there are similarities between these two types of murder. The author aims to examine the dimensions and also analyze the new Islamic Penal Code and to use the viewpoints of jurists and jurisprudents regarding these two types of murder.

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**Key words:** murder, mistake, jurisprudence law, mistake in target, mistake in identity

**Introduction**

Crimes against people are among the important issues of specific criminal law that are divided into two parts of crimes against physical integrity and crimes against spiritual identity. In this regard, crimes against physical integrity (such as murder, mutilation, injuring, beating, abortion) are more important than crimes against spiritual identity (such as insult, defamation, accusing of adultery, lie propaganda). Among the crimes against physical integrity, the crime of murder is also the most important, because based on the definition, murder means depriving a living human from living, and thus, the crime of murder, deprives human being from the most valuable divine gift to him, which is his body and soul.

Therefore, in all legal systems of the world, the crime of murder has special importance. The crime of murder has various states of action, among which there are “murder due to mistake in target” and “murder due to mistake in identity”; and jurists and even jurisprudents has always had some disagreements regarding the basics, elements, conditions, and punishment of these two types of murder. Therefore, detailed examination of the specific issues related to each of these two types of murder will help us to understand the point.

**Review of related literature**

Regarding the literature including the theses, articles, and books written in relation to the subject of the present study, the following cases can be mentioned, among the studies that the author has had access to them:

1. Mir Mohammad Sadeghi, Hossein, Crimes against individuals, Miza Publications, first print, 2012.
2. Shambiyati, Hooshang, Specific criminal law, Jubin Publications, 6<sup>th</sup> Edition, 2012.
3. Sepahvand, Amir Khan, Crimes against individuals, Majd Publications, first print, 2012.

**Research questions and hypotheses****1. What is meant by mistake in identity?**

“Mistake in identity of a person” means that the murderer, knowingly and deliberately, acts to kill the victim, but after committing the murder, he finds that he has targeted and killed another person, thinking that he is the intended person.

**2. Whether mistake in identity of the victim causes it to be considered an intentional murder?**

According to the provisions of the former General Penal Code and judicial procedure, lack of skill and mistake in identity of the victim were considered as intentional murder and the criminal was prosecuted as an intentional murderer. But in the Islamic Penal Code of 1991, such murder is not considered an intentional murder. However, this issue has changed again in the new Islamic Penal Code of 2013, and the legislator has accepted the idea that the criminal would be prosecuted as an intentional murderer.

**3. What is mistake in target?**

It includes the case where a person, intending to kill a specific person, shoots him, but he makes a mistake in his targeting, and so the bullet, due to lack of skill, anxiety or other reason, hits another person

who is not the target of the criminal, and causes him to die.

#### **Research method**

This study is a library type. In line with this method, limited existing Persian and Arabic books and resources which are available in the form of books and translations, as well as articles from legal journals and quarterlies, and contents taken from Internet Network have been used.

#### **Mistake in person (or target)**

This type of mistake occurs when due to some factors such as error in targeting, wind, or straight-arming of the considered person, etc., the bullet or shot, instead of hitting the considered targeted person or animal or object, hits another person. In such cases, there is error in action and thus, the occurred murder or injury, regardless of whether the primary purpose of the actor had been to do a crime or to perform an allowed act such as hunting an animal or a murder leading to execution, must be considered absolute error.

According to Article 296 of Islamic Penal Code of 1991, "In cases where someone intends to shoot a person or an object or an animal and his shot strikes another innocent person, his act is considered absolute mistake."

#### **Definition of murder due to mistake in identity**

Regarding the crime of murder, in addition to the issue of mistake in person, murder due to mistake in identity of the victim is also of special importance; accordingly, it should be said that murder due to the criminal's mistake in identifying the victim person includes cases where the person accused of murder claims that he has intended to kill person A and he has shot him, but, due to certain conditions or circumstances, another person, that the murderer has thought to be person A, has been targeted and killed, and later it turns out that the victim had not been person A.

#### **Proponents of the idea of intentionality of murder due to mistake in identity**

A group of scholars believes that identifying and characterizing the victim is not among the elements of psychological dimension of intentional crimes, and it is enough that the criminal determines and mentions his goal. These proponents, does not consider the murderer's mistake in identifying the victim to prevent proving intentionality and executing retaliation; and they have strengthened their idea by saying that the murderer's supposition and assumption does not negate common application of intentional murder, because the characteristic dimension of the intention, has no interference with realization of the intentional action; this is like the case where the murderer knows that the victim is

Zeyd's son, but he assumes that Zeyd is a merchant, while Zeyd is a scientist.

Proponents of the idea of intentionality of murder due to a mistake in identity believe that none of the jurists has involved characterization in realization of intentional murder; because if someone intends to kill a human being and his intention is not belonged to a certain person, and his act is led to a murder, the mentioned murder is intentional from the jurists' point of view. Therefore, it should be said that the intention regarding characteristics of the victim is not taken into account in realization of intentionality, and in all cases where actually there has been an intention to kill a human being, even if that intention is belonged to a specific person and another person who has not been targeted is killed, the murder will be considered intentional.

The act of the murderer due to mistake in identity has all elements of the crime of murder; and as for commission of murder, it is enough that generally a human being is intended by the actor, so mistake in the instance does not change the description of the criminal act.

Therefore, it can be seen that mistake in the identity of the victim was ineffective according to old verdicts of the country's Supreme Court. Therefore, if someone intended to kill person A and shot him and killed him, but after the murder, it was found that the victim had not been person A, and the murderer has mistakenly killed person B instead of person A, he was considered to have committed an intentional murder. The Legal Department of the Judicial System also in the opinion number 1370/10/17-7/4659 has stated that:

#### **Conclusion**

Maybe it initially seems that considering such a subject in this discussion is a little unnecessary, but with careful examination, we find that the legislator has aimed to express some ambiguities that are not seen by many people. Although it is possible that the murderer has made a mistake regarding the identity of the victim, but except the cases where the legislator has not considered them intentional murder, all other cases are considered intentional murder. What is important is the act's being a murder, and thus, the murder is intentional. Essentially, execution is a punishment which is totally irreversible and irreparable. That is, when the life of a person is taken from him, it cannot be returned to him again, and the person cannot be revived. Therefore, it is appropriate that the punishment of retaliation (execution) will only be conducted in cases which are definite and certain, and cases where there is one hundred percent of knowledge; and in fact, as it is well-known, if ten criminals escape from punishment of justice, it is

better than that an innocent person is punished. As can be seen, there has been no misconception of true with the untrue in the mind of the criminal, but his error has led to not realization of the desired result.

Regarding the issue that whether in the intentional murder leading to retaliation, there is need for a certain person to exist or no...

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