



INTELLECT AND THE DISCOVERY OF THE JURISPRUDENTIAL CRITERIA

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ABSTRACT

Objective: an answer will be found to the question as to whether the human intellect, assuming having accepted the verdicts' being drawn on the causes, expediencies and depravities, is capable of comprehending these causes and criteria or not? Can intellect discover the expediencies and depravities as causes of the verdicts? In responding to the aforesaid question, there are two substantial perspectives: the first perspective claims that the human reason is incapable of understanding the causes and criteria of the jurisprudential criteria and it will surely go astray if it enters such a route; thus, it has to be warned of entering such an area. The second perspective holds that the aforesaid route is open to the intellect and that the intellect can perceive the causes and criteria of the verdicts in the form of affirmative particular proposition. Methods: the present study makes use of a documentary and analytical method through basing its deductions on the jurisprudential and fundamentalist texts. Findings: it is made clear through using scrutiny in the jurisprudents' words that the criteria are wholly accepted by the entire array of jurisprudents. Result: it is made clear in an investigation and exercising of care in the elders' words that the two aforementioned perspectives can be summed up in their titles and it can be stated that there is only one perspective regarding the issue and it is that intellect is capable of comprehending the causes and criteria of the whole verdicts as held by Shiite jurisprudents.

Keywords: *Expediencies and Depravities, Criteria, Discovery of The Causes, Jurisprudential Verdicts, In General, In Part.*

INTRODUCTION

Jurisprudential verdicts obedience of the real and essential expediencies and depravities has been proved in itself in such a manner that it can be stated that the verdicts' obedience of the causes, expediencies and depravities is enumerated amongst the sure and decisive issues in Imamiyyeh perspective and it is recounted as a well-known issue that is frequently seen in the jurisprudential and fundamentalist texts (Na'eini, 1997, v.3, p.59; Saheb Jawaher, 1983, v.22, p.344; Esfahani, no date, p.211; Hosseini Firuz Abadi, 1979, v.1, p.249; Imam Khomeini (PBUH), 2003, v.3, p.396; Akhund Khorasani, 1988, p.364; Shahid Motahary, no date, v.21, p.293).

In fact, the major premise, jurisprudential verdicts obey the causes, expediencies and depravities, is proved in regard of the obedience issue and it will be made clear that the issues that have been ruled and canonized by the God are based on the real expediencies and depravities. The minor premise indicting the acceptance of verdicts' obedience of the expediencies and depravities will be put forth in the context of the present study and an answer will be found as to whether intellect is capable of understanding these causes,

expediencies and depravities or not? And, whether the intellect can discover these expediencies and depravities as the underlying foundation of the verdicts?

There are two predominant perspectives regarding the perception of the virtue and indecency of things by intellect as it is for a great many of the discourse issues:

Adliyyeh Perspective: in this regard, Adliyyeh proposes the free-standing rationales and believes that the human intellect can vividly understand these issues without it being assisted by the guidance of the canonical ruler (Motahhary, 2012, p.20).

Asha'ereh Perspective: Asha'ereh believes that the human intellect needs the guidance of canonical rules as there is no rational virtue and indecency (Motahhary, 2012, p.20).

The importance of the discussion: the belief that the intellect is capable of perceiving the expediencies, depravities and the criteria of the verdicts will be bearing important fruits. The result of believing in the intellect's ability of understanding the causes and criteria of the jurisprudential verdicts is the opening of new venues to the exegete so as to generalize, narrow and even change a verdict through discovering the causes and criteria (Rabbani Golpayegani, 2011, 02/23).

The fruit can be efficient in solving a great many of the jurisprudential issues, especially those encountered in the Islamic Republic system of Iran as a relic of the late Imam (may Allah consecrate the sacred soil of his tomb) and as a vanguard of administrating the human community based on jurisprudence and jurisprudential exegesis and, in doing so, it has been able, during its short life, to solve a great many of the occurring issues in a logical and reasonable manner.

Statement of the Problem:

The issue that is going to be researched in the current article is that whether the human intellect has the ability of perceiving the criteria of the jurisprudential verdicts or not? Or, whether it will be prone to error in case of entering such a path? If yes, does it have to avoid doing so? Or, is it the case that the road is open to intellect and it can in part perceive the causes and criteria of the verdicts? The present article investigates and contemplates over the jurists' words to prove that the road is open to the intellect and it can comprehend the causes and criteria of the verdicts in the form of affirmative particular proposition.

Study Background:

Although the issue is seen in the words of a great many of the jurists and it is widely discussed, it has been less frequently posited as an independent issue. As far as the author knows, the discussion in the abovementioned form is less popular and less extensive.

Perspectives of Sunnis in regard of Intellect's Ability in Understanding the Verdicts' Criteria:

Asha'ereh: based on their basics, this group of the Muslims does not know the verdicts as being obedient to the causes, expediencies and depravities. They base their reasoning on the intellectual and narrative proofs to prove their claim.

Intellectual Reason: the divine actions are not purposive. Stating that the divine actions are intentional is deemed as improbable and a vicious circle (Shalby, 1980, p.13).

The divine actions do not stem from purposes and intentions (Iji, 2004, v.8, p.202).

The God has not created the world for a specific purpose and goal and, more generally, whatever the good and the bad or the profit and the loss created has not been for a specific intention and purpose (Amedi, 1992, p.19). Asha'ereh's consideration of non-purposiveness of the divine actions is the issue that has been explicitly asserted and clearly insisted by the



distinct Asha'ereh figures. Having accepted the divine actions' lack of purposiveness, Asha'ereh denies the verdicts obedience of the causes, expediencies and depravities as well as their perception.

“The reason why intellect is not capable of distinguishing the good and the bad of the things is that, as assumed by Asha'ereh, the things and objects do not per se possess virtue and indecency. So, how can intellect perceive a nonexistent object to wit the goodness and badness of objects?” (Risuni, 1997, p.308).

Mo'tazilah states that it is necessary to realize that the actions by the eminent God are purposive because the God is wise. The summary of their reasoning is as stated in the following words: if the divine actions are not caused by intentions they are to be considered useless and the idea that the God might carry out something in vain is repudiated so the divine actions' purposefulness and determination become necessary and required. Also, if the divine actions are considered non-purposive, it is necessary for them not to occur because the motive and the intention of the actions are nonexistent if accepting the non-purposiveness of the verdicts (Shalby, 1980, p.98).

Matoridiyeh: it is a branch of Sunnism that states that all of the divine actions are caused by expediencies some of which are clear and apparent and some others are unclear and uncertain to the humans. Of course, their claim is not based on necessity as expressed by Asha'ereh rather they have chosen a stance in between (Ibid, p.97).

“Matoridiyeh and the just researchers who hold the same beliefs as them or Matoridiyeh agrees to them have come to accept the inherent virtue and indecency of the things but they do not consider the belief held by Mo'tazilah regarding the issue and do not accept that the canonical duties and verdicts have to be proved as ruled by intellect rather they know auditory proofs necessary for such a claim” (Risuni, 1997, p.315).

Shiite Jurisprudents' Perspectives regarding the Intellect's ability in Understanding the Verdicts' Criteria:

Perspective One: Denying the Perception of Verdicts' Criteria

Akhbari'ain is a branch of Shiism believing that the acceptance of the virtue and indecency of the things does not mean that they are comprehensible by the intellect. “Mozaffar's Usul Al-Fiqh” expresses Akhbari'ain's perspective as follows: “it has been attributed to Akhbari'ain by some (as understood from the appearance of their words) that they deny the idea that intellect is capable of perceiving such a virtue and indecency of the things” (Mozaffar, 1996, p.235).

The late Mozaffar orders the following sentence in response to Akhbari'ain: “any confession to the corroboration of the virtue and indecency has to have been formed through an understanding of them; setting aside the corroboration of the virtue and indecency from its perception is meaningless” (Ibid, 236).

Second Perspective: Lack of a Detailed Perception of the Verdicts' Criteria

Some Imamiyyeh jurisprudents have preliminarily based their reasoning on the idea that although the road is open to the intellect for the understanding of the virtue and indecency of some things, the human has no way for detailed understanding of the verdicts' criteria” (Alam Al-Hoda, 1997, v.1, p.435; Esfahani, 1953, v.3, p.325; Mozaffar, 1996, v.1, p.239; Allameh Helli, 1982, p.405 and Sheikh Ansari, 1995, v.1, p.21).

The Third Perspective: The Possibility of Overall Perception of the Verdicts' Criteria (Mokhtar Theory)



Akhund Khorasani: in “Fawa’ed Al-Usul” under the heading “Advantage 13” under the title of “Fi Iqtiza’a Lil Madh wa Al-Zamm” tries in three pages to propose the existence of rational virtue and indecency of things and prove the following two propositions:

- A) Unlike Asha’ereh’s idea, some actions are virtuous and some others are indecent disregarding the canonical verdicts (Akhond Khorasani, 1986, p.124).
- B) Unlike what Akhbari’ain imagines, intellect is independently capable of discovering the virtue and indecency of things” (Ibid, p.127).

He continues with discussing the concomitance of intellect and canonical rules in 9 pages under “Advantage 14” (Ibid, pp.127-137) and defends concomitance axiom in absolute terms. The core of his speech (in this advantage) is that intellect perceives the virtue and indecency of actions and things.

Shahid Motahhary: intellect is a factor that unravels the basics of the verdicts (of course, not in every stance thereof rather in some of the cases). Intellect figures the verdicts’ criteria in some cases and discovers the reasons of verdicts (Shahid Motahhary, no date, v.21, p.300).

The axiomatic nature of intellect in this regard is to the extent that the jurisprudents and fundamentalists, as well, prove both the primary concomitance axiom, “whatever the verdict reached by religion is reached by intellect”, and the secondary concomitance axiom, thus intellect can obtain parts of causes, expediencies and depravities otherwise the concomitance axiom will be rendered meaningless. The concomitance axiom speaks in its essence of the idea that the intellect is capable of comprehending the verdicts’ criteria and causes” (Ibid, p.301).

Proofs Posited in Mokhtar Perspective: the first reason (obviousness and necessity)

Approving the inherent virtue and depravity of the actions and accepting the intellect’s ability in comprehending it in whole necessitates the overall power of the intellect in understanding the verdicts’ criteria. There is rational virtue and indecency because there is the knowledge of the goodness or the badness of such actions like cruelty and this is confirmed even by those having no faith in religion and canonical rules (Allameh Helli, 1992, p.303).

The overall perception of the virtue and indecency of an action is something evident and necessary that stems from conscience and this is accepted by the entire religions and even by the philosophers, Brahmanism and atheists. The virtue and indecency of the things appears in various ranks and in numerous cases. The intellect sometimes happen to understand the virtue of a thing in such a manner that it is not willing to leave it and it occasionally wills not to perform a thing for its being indecent. Intellect elaborates some of the verdicts the same way that the prophet explicates the appearance of the divine verdicts, orders and prohibitions (Mirzay-e-Qomi, 2009, v.3, p.9).

“Usul Al-Fiqh Mozaffar” has the following statements in response to Akhbari’ain: “any confession to the virtue and indecency of things and actions is based on the perception of the virtue and indecency; distinguishing the virtue and indecency verification from their perception is meaningless” (Mozaffar, 1996, v.2, p.236).

The Second Reason: denial of the overall perception of the criteria equals the denial of the confirmation of religion and prophecy

Although intellect is not capable of understanding all the expediencies and depravities and the verdicts’ criteria, the overall perception of the criteria in an affirmative particular proposition is contradictory to the necessity and obviousness because if the intellect is envisioned incapable of overall understanding of the criteria, it has to be also unable of confirming religion and



prophecy. That is because the approval of the prophecy is a general and secondary proposition of logical axiom of perceiving the graciousness necessity and the religion cannot be proved in its essence, leave alone its minutiae, with the denial of the intellect's perception of virtue and indecency of things and actions (Khou'ei, 1973, v.2, p.37).

The Third Reason: robustness of intellect's perception

There is no difference between the prophecy of the internal messenger (intellect) and apparent messenger (prophet) in reaching a verdict and conclusion of a verdict by the internal messenger is more robust than the apparent messenger in the majority of dubious cases for its being of a definitive nature (Ibid, p.38).

The Fourth Reason:

Denying the overall perception equals the denial of the concomitance between verdicts reached by intellect and verdicts specified in religion. All the individuals granting the concomitance of the intellect and religion have accepted the possibility of overall perception of the criteria. As put by Shahid Motahhary, the spirit of the concomitance axiom is that the intellect is capable of understanding the criteria and causes of verdicts (Motahhary, no date, v.21, p.301).

What is the difference between the discovery of the verdicts' causes in Shiite jurisprudence and the human norms in Sunni jurisprudence? There is an essential and important difference between the two and that is the idea that Imamiyyeh jurisprudence holds in regard of the discovery of the causes and criteria of the jurisprudential verdicts that the expediencies and depravities have to be discovered in a decisive and sure manner and by sure it is intended that there should be essentially no possibility of any otherwise issue therein and/or if there is a possibility of any contradictory issue it has to be so trivial that it can be disregarded by the intellectuals.

So, in discovering the causes of the verdicts, the jurist has to make sure that the securing of a certain expediency of a type or the repelling of a given depravity had been intended by the sacred canonical ruler in a decisive manner (Hakim, 2011, p.389).

But, in Sunni jurisprudence, the jurist is not required to reach a decisive and sure conclusion rather if he can suffice to the safeguarding of the expediency and/or the repelling of the depravity even if he becomes suspicious of having done so; but, from the Shiites' perspective, "referral to intellect for the discovery of the verdicts' bases and the expediencies and depravities constituting the origin of the verdict issuance is acceptable only in case that the logical perception is definitive" (Eslami, Reza, 2010, p.194).

Thus, from the Shiite perspective, the determination of a verdict based on expediency (in terms of human norms) is invalid if it is not based on decisive logical perceptions because it is a distinct example of acting based on suspicions the doing of which has been scorned in many of the AYAT and Narratives.

So, it has to be stated that there is a fundamental difference between Shiites' claim for the intellect's ability in discovering the causes and criteria of the verdicts and the Sunni's claim for human norms; in the meanwhile, Shiites are needless thereof for their having access to the words of the immaculate Imams (peace be upon them) but, quite conversely, Sunnis have no other way but to resort to such resources because the Shiite jurist has at hand a great many of narrative proofs with its access to a huge capital like the narrations by the immaculate



Imams (peace be upon them) but the Sunni jurist suffers from a frequency indigence in this regard.

Some Examples of Jurisprudents Believing in the Lack of Detailed Perception of Verdicts' Criteria:

The late Sayyed Morteza: having accepted the issue in essence, he states that “we do not know the details of the necessity and indecency of the things and actions” (Alam Al-Hoda, 1997, v.1, p.435).

The late Esfahani and his disciple, the late Mozaffar: the expediencies of the canonical verdicts have been expressed by the canonical ruler and these expediencies are the criteria and the bases of the verdicts but we cannot understand the criteria and the bases of the verdicts because they do not follow a specific scale, “they do not fall under a given criterion” (Esfahani, 1995, v.3, p.325).

The late Mozaffar, a disciple of the late Esfahani, adopts the same approach and states “therefore, there is no way for the intellect alone to comprehend the entire canonical criteria” (Mozaffar, 1996, p.239).

Allameh Helli: he, as well, believes that we cannot reach a detailed perception of the proofs and criteria of the verdicts because the verdicts are not known to the intellectuals and the expediencies as the causes of those verdicts are also unknown to the intellectuals; it is sometimes the case that a certain expediency and cause is envisaged advantageous by the God but we cannot understand the expedient aspect thereof” (Allameh Helli, 2000, p.405).

Sheikh Ansari: it has to be stated out of fairness that relying and leaning on intellect for the perception of the verdicts' basis leads to error in many of the cases even if the jurist is assured of what he has discovered and then he states that “there are many narrations pointing to this same issue such as ‘verily, the religion of the God cannot be perceived by intellects’, ‘verily, there is nothing farther to the religion of the God than the intellects of the people’ and the narration from Aban Ibn Taqlab regarding the difference in the atonement of men and women” (Sheikh Ansari, 1995, v.1, p.21).

To better clarify the issue and prove Mokhtar theory, words of the jurisprudential elders have been investigated below:

Investigation of Sayyed Morteza's words: the statement by Sayyed Morteza ordering that ‘we do not have the causes and criteria of the canonical verdicts at discretion’ is true. The third perspective also accepts this same saying and there is no one who believes that the causes and the criteria of the verdicts are available perceivable by the humans in the form of general affirmative proposition (in whole).

The proponents of the intellect's ability in discovering the verdicts' criteria state that intellect can achieve specific affirmative propositions of the jurisprudential verdicts' causes and criteria as it was also narrated from Shahid Motahhary (Shahid Motahhary, v.21, p.301), so there is no debate on this topic.

Investigation of the words by the late Esfahani (Qeravi) and the late Mozaffar: it becomes evident in an investigation of the words of these two elder jurist that they believe that there is no way for the intellect to understand the causes and the criteria of the jurisprudential verdicts in details because it does not follow a special criterion and scale.



First of all, nobody has accepted the detailed discovery of the causes and criteria of the verdicts by the intellect and those believing in intellect's competency of discovering and perceiving the criteria intend the overall discovery of them as it is explicitly asserted by them (Shahid Motahhary, v.21, p.301).

Secondly, it is not true that there is no criterion in discovering the causes and criteria of the jurisprudential verdicts by the intellect rather the canonical ruler considers in his devising and canonization of the verdicts certain intentions and objectives that are deemed as expedient by him for the servants. It is through considering these intentions that some examples of verdicts not expressed in the canon can be found (Rabbani Golpayegani, 2011, 03/01/).

The same way that the causality of the divine actions in respect to certain intentions has been proved in itself and certain jurisprudential elders have explicitly confirmed these intentions of the canonical ruler in his devising of the jurisprudential verdicts, including Shahid-e-Avval (Muhammad Ibn Makki Ameli: canon bases (its forging of the canonical verdicts) on certain expediencies that are either necessary or required and exigent or they are supplementary and complementary of the human life (Ameli (Shahid-e-Avval), 1979, v.1, p.218) and he orders elsewhere that the canonical ruler's intention is either safeguarding the interests of an obliged person or repelling harms from him and each of these is either pertinent to the worldly matters or related to the otherworldly issues so the canonical ruler's intentions in forging canonical verdicts is either of the foresaid four (Ameli (Shahid-e-Avval), Ibid, p.34).

Fazel Meqdad states in his book "Nazd Al-Qawa'ed Al-Fiqhiyyeh" that "because it is proved in discourse science that the God's actions are directed at certain intentions and it is improbable for these intentions to be directed at the God so it becomes necessary for the intentions to be the servants' expediencies and they either serve the securing of their interests or the repelling of harms from them and each of these interests and harms are either corporeal or ethereal so the canonical verdicts are either of the aforesaid four" (Helli (Fazel Meqdad), 1982, p.7).

Then, he orders that "one can even say that the entire array of the canonical verdicts serve the preservation of the canonization's fivefold intention, namely religion, life, properties, lineage and intellect" following which he exemplifies each (Ibid).

Investigation of Allameh Helli's words: Allameh Helli orders that the verdicts are per se hidden from the intellectuals and the expediencies that are envisioned as the causes and the criteria of those verdicts are also hidden from the intellectuals so we cannot perceive these criteria.

This is a clear-cut topic and we also accept such a statement but the issue is that can intellect never gain an insight over these criteria because the causes are hidden for us or are there no cases in which the intellect can perceive these criteria? It can be made surely clear in using a little scrutiny and care that it is not intended that the intellect can never understand these criteria because the justification of the bases and other discussions of the type would be rendered meaningless if it was so.

Investigation of Sheikh Ansari's words:

Several points have to be taken into account in the words of the late Sheikh Ansari:

Comment One: Sheikh's words are concrete and true if the intention in referring to intellect for the discovery of the criteria is to include the detailed criteria of the verdicts because it is only the immaculate Imams (peace be upon them) who are capable of discovering all the criteria of the verdicts but if the referral to intellect is for the sake of the discovery of the verdicts' criteria in whole the result would be being prone to many mistakes and the sheikh's words become



incorrect because if the intellect is considered incapable of an overall understanding of the criteria then the religion and the prophecy will be rendered unprovable in their essences (Khou'ei, 1973, v.2, p.37).

Comment Two: as for the Sheikh's basing of his reasons on narrations, a) it has to be pointed out regarding the narration 'verily, the religion of the God cannot be understood by the intellects' that the narration is originally as follows 'verily, the religion of God cannot be understood by imperfect intellects and invalid notions and vice scales' (Majlesi, 1982, v.2, p.303 and Ibn Babouyeh (Sheikh Saduq), 1974, v.1, p.324) which points to "invalid analogy". So, the narration can be used to say that the intellect cannot understand the (particular affirmative propositions) of the religion in details but the overall recognition of the religion (general affirmative propositions) can be perceived by intellect. There is another set of narrations in opposite to such narrations as 'verily, the religion of the God cannot be perceived by intellects' that introduce intellect as a divine proof as it has been ordered by Imam Kazem (PBUH) that "there are two proofs granted by the God to the mankind: one is the apparent proof (the prophets) and the other is the internal proof (intellect)" (Majlesi, 1982, v.1, p.137).

So, these two sets of narrations seem contradictory. The only way to sum up them is stating that each of these two sets of narrations take a special area of the intellect's perceptions into consideration; thus, it can be stated that the intellect is incapable of understanding some cases (as it is posited in the discussed narrations) and capable of understanding in some other cases and this latter understanding is the proof (as it is stated in the other narrations that intellect is a divine proof); b) in regard of the narration 'verily, there is nothing so far in the religion of the God as the people's intellect' as utilized by the late Sheikh Ansari in disallowing the intellect's entry of the discovery domain of the causes and bases of the verdicts, it can be stated that these narrations have been in the first place issued in interpreting the Holy Quran and the narration in its complete form is as follows "Lo! Jaber, there is a deep and internal aspect of the holy Quran and this internal aspect is per se consisted of deep and surface structures and the appearance of the Holy Quran is also made of an appearance; lo! Jaber, there is nothing farther than the men's intellects to the Holy Quran's interpretation" (Faiz Kashani, 1994, v.1, p.29).

The narration intends to say that the humans' intellect is incapable of reaching the internalities of the holy Quran but it cannot be discerned thereof whether the understanding of the verdict' criteria by the intellect is also improbable or not.

Secondly, the narration can incorporate the subject of the causes and criteria of the verdicts if one considers the surface of the narration and states that the narration has been expressed in absolute terms. It has to be mentioned that the narration has contradictory narrations that are the set of narrations thinking of intellect as a proof; c) the narration by Aban Ibn Taqlab: it is stated in the narration that Aban asked Imam (PBUH) about the atonement for cutting a woman's fingers. Imam (PBUH) announced that the atonement amount for cutting of three fingers is as for a man's. When a question was raised regarding the cutting of the fourth finger, Imam (PBUH) ordered that the atonement amounts to twenty camels and half the atonement paid for a man. Aban objects in exclamation that "praise be to the God, how is it that if three fingers are cut, the person is obliged to pay an atonement equal to the price of thirty camels but if there are four fingers cut, the atonement payment is reduced to twenty camels?" The late Sheikh Ansari lays his reasoning regarding the impermissibility of the intellect's entry into the domain of discovering the bases and causes of the verdicts on this



narration (Ibn Babouyeh, 1983, v.4, p.118). It has to be pointed out regarding the narration that Imam (PBUH) ordered Aban to wait, “Lo! Aban wait, the great apostle of the God (may Allah bestow him and his sacred progeny the best of His regards) has sentenced the same verdict; Lo! Aban, you have made a comparison and the religion will be destroyed, if tradition is compared” (Ibn Babouyeh, 1983, v.4, p.119). It becomes clear from this response by Imam (PBUH) that Aban has made an analogy and reached a suspicious verdict because according to the fact that there are differences in some cases of verdicts between man and woman such as the atonement case in which the money paid as atonement for a woman is half the atonement paid for a man and Aban is a pupil of Imam Sadeq (PBUH) and he is an individual well-aware of the jurisprudential verdicts, Aban Ibn Taqlab should have not been surprised since the case could have been a case of difference between men and women.

CONCLUSION

It was made clear in regard of the intellect’s ability in discovering the causes and criteria of the verdicts that there is indeed no more than one perspective and that is the intellect can understand the general criteria of the verdicts. Although it appears that there are two perspectives regarding the issue, they can be summed up by stating that the idea that the intellect is incapable of discovering the criteria points to the intellect’s incompetency of discerning the details of the verdicts’ criteria and that the idea that the intellect is capable of understanding the verdicts’ criteria point to its capability of comprehending the overall criteria of the verdicts thus both these perspectives have accepted the overall understanding of the verdicts’ criteria and this is considered favorable by them all. So, the intellect is capable of understanding the causes and criteria of the verdicts in general as held by Shiite jurists.



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