

ORIGIN IN THE ESTIMATION OF BLOOD MONEY (DIYYAH)

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ABSTRACT

The issue of blood money (*diyyah*) has toppled the concern of both jurists and the judiciary because of its great importance in people's daily lives. Therefore, the aim of the study is to meet the urgent need for the study of blood money (*diyyah*) and the explanation of its practical applications in this day for its important role for protecting bloodshed, crime prevention and its impact on the stability of Muslims societies. And here lies the importance of the research to know the origin of blood money (*diyyah*) – in the estimation of blood money (*diyyah*), and also to achieve the amount of blood money (*diyyah*) because its aim is to search by extrapolating the views of the four Schools of thought in terms of ruling on blood money (*diyyah*) and to analyse and discuss the positions of agreement and disagreement among them; and also to look at the views of the contemporary jurists to choose the provisions that fit the developments of the current era. So, the subject of my research is divided into several parts in order to give a clear picture of blood money (*diyyah*). And through the research we found some results, including: estimating blood money (*diyyah*) in the current era on the basis of estimating the value of a camel at the time of the Prophet (saw) is the first section, and this is the process of our research, while other sections will come later, to determine the principle of *Aqilah* on the basis of cooperation is the second section, and the permissibility of the Islamic, cooperative and social insurance companies to represent *Aqilah* in the payment of blood money (*diyyah*) is the third section, and the equality of women to men in blood money (*diyyah*) related to soul and below is the final section.

Keywords: blood money (*diyyah*), estimation, origin, camel.

DEFINITION OF BLOOD MONEY (DIYYAH)

According to *Lisan al-Arab*, blood money (*diyyah*) is the right of the murdered person (Ibn Manzur, 1999, 15: 258). Sarakhsi said: '*diyyah*' is derived from 'ada'; because it is the money given to replace what is lost which is not money and that is soul, and also '*arsh*' which is given in the crimes besides murder, and also the necessary amount given in compensation in the rest of what is lost besides the mentioned ones; however, blood money (*diyyah*) is a special name given to soul replacement (Sarakhsi: 2001, 26: 105). Ibn Nujaim said: (This name has become famous for the soul replacement and not others which is '*arsh*') (Ibn Nujaim: 1997, 9: 89).

Its technical meaning: it is something that is given. It has been defined as "a certain amount of money to be paid by the *Aqilah* of the killer in case of killing by mistake, and on him (killer) in intentional killing; as a result of killing free and infallible human as a compensation for the killing". El-Sherbini El-Shafei said: "It is the compulsory money to be paid for a crime on a free person by killing or others". (El-Shafei: 1972, 1: 214).

ORIGINS OF BLOOD MONEY (DIYYAH)

Origins of Blood money (*diyyah*) in the four Schools of thought:

The jurists in the four Schools of thought unanimously agreed that camel is the origin in blood money (*diyyah*), and they differ in other than camel (gold and silver) to four statements, I will explain each statement separately with their evidence as follows:

First view: According to Abu Hanifah, Malikis and Shafi'i in the old opinion, the origins of blood money (*diyyah*) from money are three: Camel, gold and silver (Kasaani: 1986, 7: 1986). Their authority is as follows:

It was narrated from the Prophet (saw) in the book He wrote to Amr Ibn Hizam: that "the blood money (*diyyah*) in soul is hundred camels.... and for gold is one thousand dinars" (Nasa'i, 1986: 8: 57).

Second view: the origins of blood money (*diyyah*) are five: camel, gold, paper, cattle and sheep, and this is the saying of Umar, Ata, Tawoos and the seven jurists of Madina, and Thauri, and a view from the Hanbalis (Ibn Qudamah: 1986, 9: 507). Their authority is as follows:

Jabir Ibn Abdullah said: "The Prophet (saw) imposed blood money (*diyyah*) on camel, hundred camels; on cattle, hundred cows; on goat, two thousand goats; on ornament, two thousand ornaments; on food something I do not memories (Ibn Majah:1998, 4: 308).

Third view: Blood money (*diyyah*) is taken from six sorts: camel, gold, silver, cattle, sheep and ornaments, and this is the opinion of Abu Yusuf from Hanafis (Kasaani: 1986, 7: 253) and an opinion from Imam Ahmad (Ibn Qudamah: 1986, 5: 213). Their authority is as follows:

It was narrated from Sha'abi from Ubaidah Salmani said: "Umar imposed *diyyah*: On gold, thousand dinars; on paper, ten thousand; on camel, hundred camels; on cattle, two hundred cows; on goats, two thousand goats; and on ornaments, two hundred ornaments" (Ibn Abi Shaibah, 1979, 9:127).

Fourth view: The origin of blood money (*diyyah*) is only camel, and this is the view of Imam Shafi'i in his new mazhab Shafei: 1972, 6:114) and Ibn al-Munzir (Mawardi: 1994, 19:50) and a view of Imam Ahmad and the apparent view of Kharqi from the Hanbalis (Ibn Qudamah: 1986, 9:508). Their authority is as follows:

1. Abdullah Ibn Umar narrated that the Messenger of Allah (saw) said: "In a person killed intentionally or by mistake by whip or stick, hundred camels shall be paid, forty amongst of which must be '*Khilfah*'" (Bayhaqi: 1931, 8:44).
2. And the Prophet (saw) differentiated between the blood money (*diyyah*) of intentional killing and killing by mistake and He hardens some and eased some, and this cannot be achieved in non-camel (Ibn Qudamah, 1986, 9:481). And because it is a replacement of destruction and a right of human, and it is specific as a replacement for money. In the absence of camel, the killer shall pay from majority of the camel types of the country, and if there are no camels in the country, then he shall be forced to bring from the nearest country to him, and if the camels are more expensive in the other country, there are two opinions:

First: Imam Shafi'i said in the old mazhab: The killer will then pay thousand dinars or twelfth thousand dirhams, based on the authority mentioned in the first view Shafei: 1972, 2:133).

Second: Imam Shafi'i said in the new mazhab: the camel shall be paid by all means and it will be by the value of the time when the delivery is necessary (Sarakhsi: 2001, 2:504).

Correct view

The more correct view is the fourth view which says that the origin in the estimation of blood money (*diyyah*) in the era of the Prophet (saw) and the companions is camel and unanimously agreed by the jurists on its origin, and they disagreed with others and that is because of the evidence of the owners of this view, and added to what was narrated by Ma'amar from Zuhri that he said: "The blood money (*diyyah*) in the period of the Messenger of Allah (saw) was hundred camels, and each camel ounces; and that is four thousand, and in the period of Umar, the camel became expensive and paper was made cheap and Umar made it two ounces; and that is eight thousand dirhams, and the price of camels continued to rise while paper was becoming cheaper until Umar made it twelfth thousand papers or thousand dinars and from cow two hundred cows, and from sheep two thousand sheep" (Bayhaqi, 1931, 8:77) and also the Prophet (saw) estimated blood money (*diyyah*) in the classification of crime with camel different character and age in many hadith and did not elaborate in other type besides it, and if gold or silver or others items are originally part of the estimate like camel, the *Shariah* would have explained the disparity in their estimate depending on the difference of the crime between intentional and semi-premeditated and mistake. All these evidence shows that the origin in the period of the Prophet (saw) and the Caliphs were camels; because of stability in its prices was clear because it was the basic money available and rolling in that environment, thus it became the basis for account and financial estimate values, while the other items were changing based on the change in camel prices both in rise and fall.

It should also be known that diversification in the estimation of blood money to the six classes was for a facility and easing for the people in the delivering of blood money (*diyyah*) in that period, and these types were neutral in value and finances so that the offender or his *Aqilah* would have option in paying the blood money (*diyyah*) with what is easy on them, and the *Shariah* did not specify any type.

But what is the origin to be relied on for blood money (*diyyah*) in this period, shall we rely on camel and its value as it was before, or rely on gold or silver or others?

As we know the *Shariah* did not specify any type of money in paying blood money (*diyyah*), but it was estimated with different categories in order to ease hardship for someone who gets one type but did not get another type, and the reason for specifying camel was just to evaluate other types with its price, because of its circulation and availability in that environment between urban and rural areas, and stability in its value was more than others; but the camel became rare after people became more civilized and its price greatly increased and also sheep and cows and gold have become the most important commodity in an era of inflation of paper currencies to some extent affected by the global financial market in terms of price rise and its decline, and it is not possible for us to estimate blood money (*diyyah*) on the value of one hundred camels or the value of a thousand weight of gold in our time because it is very difficult for an ordinary person, and price of silver became low to a large degree and it does not play a role in the global market as it was in the past, and also ornaments; thus, to pay blood money (*diyyah*) with them would be as negligence in the right of victim and his family. Therefore, after this brief discussion we suggest that it should not be compulsory on us to rely on the six types as mentioned above and estimate them with their price in this period, and this is not what is intended in the *Shariah*, but what concerns us is to estimate financial value of these items in the period of the Prophet (saw) and the Caliphs regardless of its type and to make it as origin and essential in the estimation of blood money (*diyyah*) in our time and the ages to come so that we can estimate it with local currencies in different times and places.

Estimation of Blood money (*diyyah*) according to the four Schools of law

As mentioned in authentic hadith that blood money (*diyyah*) is estimated in six classes (camels, gold, paper, cow, sheep and ornaments). I will explain the amount of blood money (*diyyah*) based on these types by mentioning the views of jurists and their differences as follows:

a. Camels

The scholars differ on the descriptions of camels used to pay blood money (*diyyah*) in the three types of crime (intentional, semi-premeditated and mistake), I will explain the blood money of each type as follow:

1. Blood money (*diyyah*) for intentional killing

The scholars differ on the estimation of blood money (*diyyah*) of intentional killing in terms of the camel's age to four views:

First view: Blood money (*diyyah*) is compulsory in intentional killing by paying hundred camels from four types, namely: twenty five '*bint makhad*', twenty five '*bint laboon*', twenty five '*hiqqah*' and twenty five '*jiz'ah*' (Ibn Qudamah: 1986, 9:488). Their authority is as follow:

It was narrated by Imam Malik in Muwatta from Ibn Shihab that he used to say: "in the blood money (*diyyah*) of intentional killing if accepted twenty five '*bint makhad*', twenty five, *bint laboon*', twenty five '*hiqqah*' and twenty five '*jiz'ah*' (Malik: 2004, 5:1245).

Second view: The blood money (*diyyah*) is compulsory to be paid from three types, namely: thirty '*hiqqah*', thirty '*jiz'ah*', and forty '*Khilfah*' which carry babies in the womb (Ibn Majah: 1998, 3:274). Their authority is as follows:

1. Narrated from Amr Ibn Shu'aib from his father from his grandfather that the Prophet (saw) said: whoever is intentionally killed, choice is given to his people; if they want they kill the killer, and if they want they collect blood money (*diyyah*), which is: thirty '*hiqqah*', thirty '*jiz'ah*', and forty '*Khilfah*' (Ibn Majah: 1998, 2626, 3:274).

But Ibn Qudamah pointed out that the blood money (*diyyah*) of intentional killing according to Abu Hanifah is like the blood money (*diyyah*) of semi-premeditated killing as said by the owners of the first view (Ibn Qudamah: 1986, 9:488).

Discussion and choosing the best view

The authority of the owners of the first view that blood money (*diyyah*) in intentional killing is collected from four types, according to the researcher the second view is the best which says that blood money (*diyyah*) is compulsory from four types, namely: thirty '*hiqqah*', thirty '*jiz'ah*' and forty '*Khilfah*' which carry babies in their womb. And payment from three types in the blood money (*diyyah*) of intentional killing is more severe on the offender and suits his position for intentionally committing crime.

As for the '*athar*' narration of Imam Malik from Ibn Shihab, it was only found in Muwatta, and where there is a conflict between an authentic hadith and '*athar*' the former shall be preferred.

2. Blood money (*diyyah*) of semi-premeditated killing

Blood money (*diyyah*) of semi-premeditated killing is also severe, and the scholars differed in the age of camels that must be paid to two views as said in the blood money (*diyyah*) of intentional killing, I will mention them as follow:

First view: the blood money (*diyyah*) of semi-premeditated killing is the same with that of an intentional killing which is hundred camels, to be paid from three types, namely: thirty '*hiqqah*', thirty '*jiz'ah*' and forty '*Khilfah*' which carry babies in the womb (Zayla'i, 2000, 6). Their authority is as follows:

1. What was mentioned from the narration of Ibn Umar that the Messenger of Allah (saw) said: "In the dead of intentional killing and mistake... hundred camels shall be paid which is severe, among of which shall be forty '*Khilfah*' which carry babies in the womb". Imam Shafi'i said: "The sixty that are together with the forty '*Khilfah*' are thirty '*hiqqah*' and thirty '*jiz'ah*'" Shafei, 1972, 6:113).

Second view: Blood money (*diyyah*) in semi-premeditated killing shall be paid by hundred camels from four types just like intentional killing, and they are: twenty five '*bint makhad*', twenty five; *bint laboon*', twenty five '*hiqqah*' and twenty five '*jiz'ah*' (Ibn Nujaim: 1997, 8:373). Their authority is as follows:

The blood money (*diyyah*) in the period of the Messenger of Allah (saw) used to be hundred camels from four types: twenty five '*hiqqah*', twenty five '*bint makhad*'. It is known that it did not come for killing by mistake because in the latter it must be paid from five types; then it is known that what is meant is semi-premeditated killing (Sarakhshi: 2001, 26:).

Discussion and choosing the best view

The correct view is the second view because of the strength of their authority and because the semi-premeditated is severe from one side only, and that is from the age of the camels because the killer intended the action and resembles mistake, then payment from three types is more severe on the offender as in intentional killing, and where the offender did not intend the murder it looks like a mistake, the blood money (*diyyah*) is not compulsory on the offender as it is compulsory in the intentional killing according to majority of scholars, then it is eased from two angles: it is obligatory on the *Aqilah* and differed in three years, with this severity and easiness are taken into account together.

3. Blood money (*diyyah*) of killing by mistake

Blood money (*diyyah*) in killing by mistake is hundred camel, the scholars differ on their age to two views:

First view: Blood money of killing by mistake is paid from five types, namely: twenty '*bint makhad*', twenty '*ibn makhad*', twenty '*bint laboon*', twenty '*hiqqah*' and twenty '*jiz'ah*' (Sarakhsi: 2001, 26:135). The authority is as follow:

Ibn Mas'ood narrated from the Messenger of Allah (saw) that He said: "the blood money (*diyyah*) of killing by mistake is twenty '*hiqqah*', twenty '*jiz'ah*', twenty '*bint makhad*', twenty '*bint laboon*', and twenty '*bani makhad*' male' (Ibn Majah: 1998, 4:308).

Second view: Blood money (*diyyah*) in killing by mistake shall be paid from five types, namely: twenty '*bint makhad*', twenty '*bint laboon*', twenty '*ibn laboon*', twenty '*hiqqah*' and twenty '*jiz'ah*', and this is the view of Malikis and Shafi'is and they made it compulsory to pay with '*bani laboon*' instead of '*bani makhad*' (Mawardi: 1994: 12:224). Their authority is as follows:

Also what Abu Ubaidah narrated from Ibn Mas'ood: "Blood money of killing by mistake shall be paid from five types: twenty '*hiqqah*', twenty '*jiz'ah*', twenty '*bint makhad*', twenty '*bint laboon*' and twenty '*bani laboon*' male (Daaraqutni: 2004, 4: 223).

Discussion and choosing the correct view

It seems to the researcher to choose the view of Malikis and Shafi'is as the most correct view

a. God

The scholars are unanimous in estimating blood money (*diyyah*) from gold that it is a thousand dinars, which is twenty weight of gold (Kasaani: 1986, 7:254).

b. Silver

The scholars of the Schools of thought differ in the estimation of blood money (*diyyah*) to two views:

First view: The estimate of blood money (*diyyah*) from silver is twenty thousand dirhams, and this is the majority view (Ibn Qudamah: 1986, 8:298).

Second view: It is ten thousand dirhams, and this is the view of the Hanafis (Sarakhsi: 2001, 26: 139).

Apparently, different narrations is due to the difference in the number and weight only, while in terms of value ten thousand dirhams and twelfth thousand dirhams are the same because dirhams in the period of the Messenger of Allah (saw) were three weights: weight of ten, weight of six, and weight of five; and the estimate of ten thousand dirhams is considered from the middle weight, that is the weight of six; and the weight of blood money (*diyyah*) with twelfth thousand is based on the weight six; then there is no difference in value but the difference is only in weight and number, and the reason is due to the exchange rate of the dinar and this difference is immaterial in the estimation of blood money (*diyyah*), and Allah knows best (Mawardi: 1994, 279).

a. Cow

The Hanafis and Hanbalis estimated the amount of blood money (*diyyah*) with two thousand cows Bayhaqi, 1931, 6:18).

b. Sheep

The Hanafis and Hanbalis estimated the amount of blood money (*diyyah*) from sheep with two thousand goats.

c. Ornaments

The estimate of blood money (*diyyah*) according to the Hanafis is two hundred ornaments, each ornament in wrapper and robe Bayhaqi, 1931, 6:19).

The types that estimate was based on are six and the estimate in all are equal and neutral in value and finances as stated in the hadith narrated from the Prophet (saw) that He used to estimate the five types excluding camel based on camel, and if it became expensive, the estimate becomes more expensive, and if it became cheap then the estimate also becomes cheaper, and that is also the practice of Umar; and this shows the equal value in them.

And it appears to us from the foregoing that the estimation of blood money (*diyyah*) in the five types excluding camel is fixed, and its amount did not differ between intentional, semi-premeditated and mistake in the narrations and Fiqh books, and this is because these estimations are due to the origin in the obligation of paying blood money (*diyyah*) in killing by mistake.

CONCLUSION

Results

Blood money (*diyyah*) is the compulsory money religiously estimated by killing or others

- Blood money (*diyyah*) is paid from six types: (Camel, gold, silver, cow, sheep and ornaments) and is for the convenience of people in the payment, but it is not the intention of the *Shariah* to restrict the payment to a particular type among the six types, but today it is more important to estimate blood money (*diyyah*) on the estimate of the six types for the fulfillments of the needs in the period of the Prophet (saw) and after Him and to be taken as origin in the estimation of blood money (*diyyah*) by estimating with local currencies in different times and places.
- A camel in the period of the Prophet (saw) was sufficient to feed hundred persons daily, and one hundred camels were sufficient to feed ten thousand people, and based on this, blood money (*diyyah*) is estimated based on feeding ten thousand people from the middle of what people are being fed, and the estimate is renewed when living cost and value of food varies greatly.

Recommendations

- Blood money (*diyyah*) is one of the most important jurisprudential issues that cannot be covered in one research, and that is why the researcher recommends further research in this topic, especially its practical applications in various communities.
- On the relevant authorities to enact laws of estimating blood money (*diyyah*) based on the financial value of camel taking into account the interest of the offender and his *Aqilah* who help him, and also the interest of the victim and his family who have suffered damage.
- Among the good attributes advocated by Islam are cooperation and collaboration on righteousness, and that is the aim of principle of *Aqilah*; thus, the researcher recommends to governments and charity organizations to allocate funds for the payment of blood money for who is unable to pay to protect shedding blood and to avoid remaining of the offender in prison for long time, and it is permissible to pay blood money (*diyyah*) from the share of debtors in alms (Zakat).

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