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## Compensation under Islamic Law

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*In this article what means by compensation under Islamic law will be discussed, which is Diyyah is an Arabic word that means (blood-money). Diyyah is money paid to the victim's family or heirs as a result the victim was murdered. Under Islamic law, the diyyah is payable if the heirs of the victim ask for it instead of applying Qisas (retaliation). The niyyah is categorized into different forms and each of them has its way of payment, For example, the diyyah paid for intentional murder is different from the one paid for unintentional murder. Also, this article will come across to know that there is a difference between compensation under the law of contract and the law of tort as well because compensation under Islamic law can be said it is specified while in the case of contract must of the time is unspecified.*

**Keywords:** *compensation, Islamic law, diyyah.*

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### INTRODUCTION

Diyyah is an Arabic word that means blood money, however, if you want to know exactly mean of diyyah and the reason why diyyah should be paid first we should understand what mean by Qisas? Qisas means (retaliation), also Qisas means punishment by causing similar hurt to the same part of the body of the convict as he has caused to the victim. In pre-Islamic Arabia, the concept of revenge for homicide existed, but the revenge was taken not only

against the murderer but also his family, after the coming of Islamic law, changed to Qisas, which means it is only against murder. If the culprit is an heir he will be excluded from inheriting the deceased

Qisas Originates from the Holy Quran where it is stated as follows:

*“oh you who believe, the law of equality is prescribed to you in case of murder; the free for the free, the slave for the slave, the woman for the woman. But if any remission is made by the brother of the slain, then grant any reasonable demand and compensate him with handsome gratitude. This is a concession and mercy from your lord. After this whoever exceeds the limits shall be in a grave penalty.”<sup>1</sup>*

*(jj) “We ordained therein for them; life for life, eye for an eye, nose for nose, ear for ear, tooth for tooth, wounds equal to equal. But if anyone remits the way retaliation by way of charity, it is an act of atonement for himself. And if any fail to judge by the light of what Allah hath revealed, they are no better than wrongdoers.”<sup>2</sup>*

## **DIYYAH FOR INTENTIONAL MURDER**

An Intentional murder occurs when a culprit intentionally uses of weapon such as a gun, fires a sword on a person, and kills the person, that is to say, he has committed an intentional murder. Under Islamic law, if a person killed another intentionally he is to be punishable by Qisas (retaliation) but the heirs of the victim can forgive and seek compensation is Diyyah Mughallazah (exemplary blood money) which is equivalent to 100 determined high-quality camels.

The Holy Prophet (S A W) said:

*“Whoso kills intentionally shall be handed over to the relations of the killed? If they may kill; and if they like, they may take bloodwit, and that is 30 she-camels of 4 years old, 30 she-camels of 5 years old, 40 pregnant she-camels; and there is for them what compromise upon.”<sup>3</sup>*

i.e., 40 camels must be pregnant,<sup>130</sup> she-camels who entered their fourth year, and 30 she-camels who entered their fifth year.

When camels have become very dear, it was substituted with 1000 dinars of gold; 12, 000 dirhams of silver; 200 cows; 2000 sheep or goats; 200 suits of clothing, etc. for those who owned any of these things .<sup>4</sup>

- Diyyah Mughallazah is paid instead of retaliation in the following cases: <sup>5</sup>
- A culprit is exempted from retaliation.
- A murderer who kills an insane person or minor intentionally in self-defense
- Murder is not punishable with death which is manslaughter by an intentional act but without using a deadly weapon. Here, the payment of the heavier blood money is by the culprit's Akila( next of kin), but the culprit is to perform the kaffarah (60 days fasting) and exclude from inheriting the deceased if he is an heir.

## NIYYAH FOR UNINTENTIONAL MURDER

Unintentional murder arises as a result of a mistake, accident, or indirect way. It is not punishable with death but payment of blood money is applied i.e Diyyah muhakkaka (normal blood money).

In the Holy Quran: *“And whoso kills a believer by mistake, he should free a believing slave, and blood-money should be paid to his people unless they remit it as alms.”*<sup>6</sup>

In hadith, the prophet (S.A.W.) supported it, *“Behold! Verily the blood prince of (murder by) mistake is similar to intentional murder ...100 camels, 40 of them with young ones in their bellies.”*<sup>7</sup>

From the above, the Diyyah muhakkaka payable here is 100 camels which are

20 she-camels and 20 he camels which entered their second year,

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<sup>1</sup> Quran Chapter 2 Verse 178

<sup>2</sup> Quran Chapter 5 Verse 48

<sup>3</sup> Yahaya Yunusa Bambale *Crime and Punishment under Islamic Law* (2<sup>nd</sup> Edition, Malthouse press Limited 2003)

20 she-camels which entered their third year

20 she-camels which entered their fourth year,

20 she-camels which entered their fifth year.

It is equivalent to between 400 – 800 dinar of gold or 800 dirhams of silver, 200 cows, 2,000 sheep or goats.<sup>8</sup>

However, the difference between intentional murder and unintentional murder in form of diyyah is that 40 of the camels must be pregnant if it is intentional and all the camels are female while for unintentional diyyah 20 of them are male, and no one is pregnant.

### **COMPENSATION PAYABLE FOR DIFFERENT INJURIES TO THE BODY**

If retaliation has not been taken Compensation is payable, because it is the Quran prescribed retaliation for injuries thus: *“We ordained therein for them, life for life, eye for an eye, nose for nose, ear for ear, tooth for tooth and wounds equal to equal.”*<sup>9</sup>

The Holy Prophet (S.A.W.) is also said to have ordered retaliation for injuries. The report is transmitted by Bukhari and Muslims: that a woman broke one tooth of an Ansari girl. When they reported to the Holy Prophet (S.A.W.) he ordered retaliation.<sup>10</sup>

The following are the compensation payable for the different injuries to the body of a person:

(a) 100 camels <sup>11</sup>

- When all teeth are removed.
- When the two eyes are removed destroyed.
- When the tongue is removed.
- When the whole nose is cut off.
- When two lips are removed.
- When the two hands or feet are removed.
- When there is an injury to the backbone.

- When the ears are removed, or hearing is impaired.
- When the two breasts of a woman are removed.
- When castrated by removing the two testicles or the penis.
- When the beard or hair of the head is removed.

(b)  $\frac{1}{2}$  blood money <sup>12</sup>

- When one leg is removed.
- When one hand is removed.
- When one eye is removed.

Under this when half of an organ is removed, that is to pay for  $\frac{1}{2}$  blood money.

(c)  $\frac{1}{3}$  blood money. <sup>13</sup>

- When there is a wound on the skin of the head.
- When there is a wound in the belly.
- When the eye-sight is gone but the eye is not removed or plucked out.

(d)  $\frac{1}{10}$  blood money. <sup>14</sup>

- When there is a loss of a finger or toe

(e)  $\frac{1}{20}$  blood money. <sup>15</sup>

- When a tooth is removed.
- Every wound which lays bare a bone “third-degree bone.”
- When miscarriage abortion is caused to a pregnant woman.

#### **WHY DIYYAH SHOULD BE PAID?**

- It is ordained by Allah (S.W.A.) in the Holy Quran.
- It is supposed by the prophet Muhammad (S.A.W.).
- It is substituted instead of applying Qisas.
- It discourages people from committing crime.

## **IS THERE ANY COUNTRY THAT THE APPLICATION OF DIYYAH STILL EXISTS?**

The answer is yes there are many Muslim countries where the application of diyyah still exists in their legal system, such countries are Saudi Arabia, Pakistan, United Arab Emirates, Iraq, Somalia, and Iran. Each state has its own way of payment of diyyah. Diyyah in Saudi Arabia the amount to pay is determined by judges, if the person kills someone is either intentionally or unintentionally the amount to pay is determined by the Sharia court. In Saudi, Diyyah is paid not only for murder is also paid for unnatural death, such as road accidents, fire, etc. but the amount paid to the heirs of the victim also defends his religion because the amount to pay a Muslim is not the same as the amount to pay non-Muslims. Jewish and Christians are to receive 50 percent of what a Muslim will receive as compensation. Diyyah in Pakistan is the same as in Saudi Arabia in the case of the amount to pay, it is also the judges who determined the amount to be paid as compensation. In Pakistan, the diyyah to pay for Muslim citizens, non-Muslim citizens, and foreigners is the same there is no difference. Iran, the family of the victim negotiates it directly with the offender. During the four (4) months of haram, namely Dhul Qida, Dhu al Hajji, Muharram, and Rajab wars and killings were forbidden in the Arabian peninsula, and later in the Muslim world, the blood money rates are increased by a third.

## **WHERE THE MURDER IS UNKNOWN**

Where the murder is unknown, Qasama -i.e collective responsibility applies. It happens in a situation where a dead body is found in a place, the inhabitants of the quarter however the people (owner of the house and his Akila) must swear 50 oaths that they have not killed him and do not know who has killed him, if they are not 50 of them, they must swear more than once. If they are imprisoned if they refuse to swear until they do so. If they do swear, they thereby become free from liability to Qisas, but must pay the blood money to Akila.<sup>16</sup>

## **CONCLUSION**

Compensation under Islamic law is ordained by Allah and supported by His messenger and this compensation is paid as a form of diyyah (blood money) to the heirs of the victim. The

heirs of the victim can forgive the culprit and it is allowed because Allah reveals in His Holy Book as follows:

*“And whoso kills a believer by mistake, he should free a believing slave and blood money should be paid to his people unless they remit it as alms.”<sup>17</sup>*

*Also, “Nor take life – which Allah has made sacred except for just cause. And if anyone is slain wrongfully, we have given his heir authority to demand Qisas or to forgive: but let him not exceed bounds in the matter of taking life; for he is helped by the law.”<sup>18</sup>*

Diyyah in the present day is not necessary to pay in form of giving the camels, you can give information of money, even the lifetime of the prophet diyyah is paid in form of Dinar, gold, etc. but it must be equivalent to the amount of one hundred camels (100) for example if you are to pay in for of money you should know the price of 100 camels and pay the exact amount. The question to ask what if the culprit does not have the money to pay? So school has the view that it is responsible for his family to gather the money and pay for the same happens to his family that they don't have, it is the government that should pay for him, and I too supported these ideas. Finally, my view is that every Muslim country should adopt the system of payment of Diyyah in their legal system because it will reduce the higher number of crimes that are being committed, people will be more careful in their relationships with others because of the fear if payment of diyyah.