

Aqilahh عاقله in Islam: Meaning, Necessity and Rules

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Abstract

Human being is ambitious by nature and he wants that his each and every ambition may be accomplished as he desired. Allah has commanded in the Holy Quran: *ام للانسان ما تمنى* "Or is there for man whatever he wishes?"¹ It is not possible for human being to receive whatever he wanted to. Allah has ordained His commandments to human beings through His prophets and particularly through his Last Messenger Hazrat Muhammad (peace be upon him) to the entire world till dooms day. Human being is not perfect by nature so he is also not perfect in his desires and decisions. Human being has a priority in each decision in his favor. In such priorities, human being commits harm and cause loss to others to accomplish the desires and dreams to be true. By doing so, he commits such acts due to intention, negligence or unintentional acts which cause loss to others. Such acts, sometimes, amount to the loss of life of other person. The act done with full consciousness intention and preparation, then it is called *Amd* in Islamic jurisprudent and Shariah and other acts; done unintentional, are called *Khata* or *Bis-sabab* (unintentional act or by reasons of something else). In either cases; intentional or unintentional acts, the loss should be compensated. Islam has formulated such rules derived from the Holy Quran and Sunnah of the Holy Prophet (peace be upon him). In case of loss of life, limb or loss of effective activity of a limb or more (injuries to human body), the Shariah has ordained rules which include Qisas (retribution), Diyat(blood money) and AFW (forgiveness by victim or heirs of victim). These rules are exceptions to general rules and are blessings of Allah (SWT) as mentioned in the Holy Quran that : *O ye who believe! The law of equality is prescribed to you in cases 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 a mercy from your Lord. After this whoever exceeds the limits shall be in grave penalty*². It is because of the previous nations as Bani Israil (Jews) and Nasara (Christians) were not bestowed such remissions simultaneously in case of offence of injuries and murders. Bani Israil (Jews)

were ordered Qisas only but no Diyat or Afw whereas Nasara (Christians) were given permission of Afw only but no Qisas or Diyat. As compared to them Muslims were given three possibilities in case of loss of others so that the enmity and grudge may be settled down between parties amicably or by way of Qisas³. These rules have been proved to be a source of stability in the Muslim society. Qisas and Diyat laws introduced in Pakistani legal system and certain amendments were introduced in the penal and procedural laws and rules were framed for the said purpose. The Islamic concept of security to the human being is far lasting and is secured in each and every manner. Concept of Aqilahh is one of those securities provided in Islamic law. The loss of human being should not go vain in any manner whatsoever.

Keywords: Qatl, Diyat, Aqilah, Ahl-e-Deewan.

Introduction

Islam has settled the principles and rules regarding injuries to the human body including Qatal (murder) and all its kinds. The Islamic rules have been proved by passage of time that these rules are fruitful to stabilize the society and to maintain law and order situation in the Islamic society more better than that of other societies viz a viz Bani Israil (Jews) and Nasara (Christians), Hindu society and other religions and a theist societies. The Hadith of Holy Prophet SAW as narrated by Ibn-e- Abbas in Sahih Al Bukhari⁴ that in Bani Israil there was retribution law in case of murder and there was no law of Diyat in them so Allah ordained upon this Ummah Surah Baqarah verse-178, as quoted above. Hazrat Ibn-e-Abbas has also narrated that Afw means to accept Diyat in case of Qatl-e-Amd (intentional homicide) and **Itiba'a** means to accept compensation and to pay compensation in a reasonable, honourable manner and best way. After the above verse of Surah Al-Baqarah and other verse is there which says that: "And verily there is life for you in Qisas (retaliation), if you are Almighty fearers", i.e to prevent waywardness in the earth. The Qisas is ordained to provide a living society. Where the concept of Qisas is abolished; the criminal minds would not have been brought in full control by the state and its functionaries. Resultantly, the society would lead to anarchy and uncontrolled. Qisas is the only means to prevent the aggression in the society. Allama Sarakhsi has said⁵ that by commission of murder there occurs waywardness in the state, which shall give a setback to the society. The waywardness will prove to be the most grievous and deep effecting mischief in the society. We know that a criminal is breed of a crime. It is hard to stop criminals by stating them about the punishments hereinafter, there would be a little to stop committing crimes so it is necessary to prevent the crime by finishing the criminals (by way of death sentence as in Qisas cases) or to award such a severe punishment to criminals so that one may not be able to commit the crime again and repeat. Thus Allah SWT has ordained severe punishments of Qisas and Diyat to prevent *Qatl* and other like serious offences in the society.

It is evident that the punishment of Qisas shall be executed upon criminal himself/herself who has committed the offence of Qatl or as ordered by a competent court of law to award him Qisas (death sentence as Qisas). However, the punishment of Diyat, which is termed as blessing of Allah upon this Ummah, how it will be implemented, what shall be its nature and if Diyat is imposed, whether it shall be sufficient to prevent criminal from commission of

same offence in future and whether it shall be beneficial to the society? are the questions and other like questions shall be explored in this article.

Important terminology

Prior to go through details of the main topic, it is expedient to explore the most important terminologies of Qisas, Diyat and AAqilah.

QISAS

The word Qisas (قصاص) is derived from Qassa (قصّ) which literally means to follow something/someone⁶. The Holy Quran used the word (قُصِّ: سورة القصص-11) in story of prophet Moses which means to follow them on the side of river. The word Qisas technically means to take revenge from the criminal⁷. In Fiqh, it means to do with the criminal, as he has done with the victim. Allama Nasafi has defined Qisas as to cause death of one who caused death of victim and to amputate the organ of criminal who has amputated an organ of a victim. In the Mu'ajam Lughaatul Fuqahaa, Qisas is defined as "to equate in between punishment and crime"⁸.

DIYAT

The word Diyat is derived from Arabic root word (و-د-ى) the literal meaning of the word is to extinguish or to go out from something, vanish. Literally it means the fine of a crime. Diyat is said to be fine/cost in the technical meaning by the jurists. In case of Diyat of organs or limbs of the body of victim, it is called ارش ARSH⁹. In view of some scholars, the Arsh is also called Diyat of a part of body other than murder (qatl)¹⁰. However generally diyat is known as compensation in case of qatl and Arsh is compensation of injuries caused other than qatl. It is pertinent to mention here that the law set forth by the Holy Prophet SAW regarding Qatl, injuries, dismembering the organ or destroying an organ, were named as Diyat. Later on the scholars have given name of Diyat to compensation in murder offence and Arsh in other offences except murder i.e. organs loss or impairing an organ etc.

AAQILAH (عاقله)

The word AAqilah is derived from the root word Aqala (ع-ق-ل) which means to tie with or the people who bound the accused by payment of blood money. Technically AAqilah in Islamic Fiqh means that the people (kinsfolk) of criminal who used to bring the animals (camels) of blood money and tie them with rope near the house of heirs of the victim(s). However, some scholars have taken the meaning of AAqilah as to restraining thing or act (in the meaning of a tie). The payment, of Diyat Amount, restrains legal heirs of the deceased/victim from taking revenge or retribution of murder of victim¹¹. The word AAqilah and its concept encompass both meanings in it; as given above.

LEGALITY OF DIYAT IN ISLAM

As we know the sources of Islamic Law/sharia are based on Holy Quran, Sunna, Ijma of Ummah, Ijtihad, Qiyas and Istehsan. These sources are further divided into primary and secondary sources but such distinction is not our aim in this article. Hence we will discuss in short the legality of Diyat (مشروعة ديت) in view of these sources of Shariah. Diyat is ordained

from the basic principles of the Holy Quran, Hadith and Ijma of Ummah **اجماع امت**, the three basic sources of Islamic Law (Shariah).

Holy Quran

Allah SWT has commanded in the Holy Quran¹²: *“And never is it for a believer to kill a believer except by mistake. And whoever kills a believer by mistake-then the freeing of a believing slave and a compensation payment presented to the deceased’s family (is required) unless they give (up their right as) charity. But if the deceased was from a people at war with you and he was a believer- then only the freeing of a believing slave and if he was from a people with whom you have a treaty then a compensation payment presented to his family and the freeing of a believing slave. And who does not find one or cannot afford to by one, then instead a fast for two months consecutively, seeking acceptance of repentance from Allah and Allah is ever Knowing and Wise.”*

We have discussed the Hadith of Ibn-e-Abbas¹³ in context with explanation of verse 187 of Surah Al-Baqarah that if one brother shows his leniency thereby means to accept Diyat in case of Qatl e Amd.

SUNNAH/HADITH

It is proved in the Sunnah that the Holy prophet (peace be upon him) has been pleased to issue rules of diyat and also made the companions to act upon such rules. It is reported that two women of Bani Huzail fought each other and one of them hit a stone to the other and thus caused her death alongwith her child in her womb (Janin). The matter was brought to the Holy prophet (peace be upon him). The prophet (Peace be upon him) has been pleased to order for the Janin, diyat is to give a white slave man or a white slave woman and for the woman’s diyat, the offenders family (aAqilah) shall bay the amount of diyat.¹⁴

Since the stone was not a weapon for commission of murder in normal course of nature and normally no one is murdered with a stone, hence the said murder was treated as Qatl-e-Khata and Diyat was ordered to be paid to the victim party.

In the cases other than murder, the Holy Prophet (peace be upon him) has once said regarding fine that, “thumb and little fingers are equal to each other in fines.” The Holy Prophet has been please to write to Hazrat Amar bin Hazm that diyat in case of qatl is 100 camels, if nose is cut from the root then 100 camels are given in diyat. The injury reaches to the brain, then 1/3rd of the diyat of qatal is paid and same is diyat for injuries which reaches inside belly. Diyat for an eye, arm, leg is 50 camels each above organ. 10 camels for each finger. Diyat for a tooth is five camels and diyat for an injury which exposes bones, is also five camels.¹⁵

From these Hadith we came to know that Qatl-e-Khata and injuries to organs, the Holy Prophet (peace be upon him) has fixed diyat amount. Such acts of the holy prophet has prove that diyat is also proved by Sunnah and is legal in shariah.

IJMA

After the period of Holy Prophet (peace be upon him), the four righteous caliphs, companions, Tabieen and then entire Ummah are consistent upon legality of diyat. There is no one who has refused the legality of diyat. Allama ibn al Munzir has also mentioned Ijma on legality of diyat.¹⁶

OFFENCE WHERE DIYAT IS APPLICABLE

As per shariah the following offence may attract diyat as payment compensation against the crime to be paid by offender to the victim party:

- a. Qatl (including all kinds)
- b. Amputation of any organ of body of human being (Itlaaf-e-Udw)
- c. Destruction, permanent impair of functioning of any organ of the body (Itlaaf-e-Salahiyat-e-udw).
- d. Injuries to human body.

In a Hadith it is report that Diyat of Qatl, amputation of nose from its root, amputation of the tongue, both lips (upper and lower), genital organ of male, impairing back-bone, both eyes, entails full diyat which is one hundred camels. Half of Diyat (50 camels) is imposed in amputation of one leg. The injury, which reaches the brain membrane, injury in abdomen entails 1/3 diyat. In case of fracture of bone of head or face 15 camels. Toes, thumbs and fingers of foot and hand each one bears 10 camels as diyat. Each teeth constitutes five camels as diyat. In case of exposing bones due to injury/hurt, five camels as diyat. In case a man murders a woman, then the man shall be executed in Qisas. Those who possess cash then they shall pay one thousand deenars¹⁷.

From above discussion we came to the conclusion that Diyat is applicable in case of Qatl-e-Khata, Qatl Shibh-e-Amd, those injuries of organs where Qisas is not enforceable, Qatl-e-Amd where victim agrees to accept Diyat due to compromise, those injuries where qisas is possible but the victim agrees to accept Diyat due to compromise.

Kinds of Murder (Qatl قتل)

There are different kinds of Qatl which entails different types of punishments. Most of the school of thought in Islamic law are of the view that there are three kinds of Qatl ie. Qatl-e-Amd, Qatl Shibh-e-Amd and Qatl-e-Khata. Some scholars in Hanafi School of Thought also mentions two more kinds of Qatl which are: Qatl Jari majra al-Khata (جاری مجرای الخطاء) and Qatl Bissabab (قتل بالسبب). In Maliki school there are only two kinds of qatl which are mentioned in the Holy Quran viz: Qatl-e-Amd and Qatl-e-Khata.

Why Aqilahh is burdened with payment of Diyat?

The basic principle in the law is that one person shall be responsible for an act/offence of another person. This principle is also laid down in Holy Quran: That whoever does any act, he shall be responsible for his act, no one takes load of (sins) of another¹⁸. In another verse the Holy Quran ordains, that every person is responsible for his own acts¹⁹. The common sense also demands such facts that one should be responsible for his acts and no other person shall be responsible for acts of others. Here the question arises that offence committed by someone and the burden is put on others (community/Aqilahh)? These question may be briefly replies as:

- 1- the murders/offender has not taken due diligence and caution in commission of such act, therefore, he is burdened with such punishment.
- 2- The Qisas is not ordained by Allah in such offences, then what about murder of the victim. Whether his blood gone vain? The answer to this question is No. The blood shall not go in vain as Allah has ordained Diyat for murder of victim. As the murder is heinous offence, hence

its punishment is also severe in nature, viz. one hundred camels in diyat.

3- Since the nature of punishment in Qatl-e-Khata is severe and one offender may not be able to pay such huge amount of one hundred camels, hence the same is divided upon Aqilah²⁰. One of the most important aspect in this issue for involving Aqilah for payment of Diyat, is that on one hand a severe punishment is imposed on offender of Qatal-e-Khata, which amounts to heavy fine, which he would not bear to pay and on the other hand it is only Qatl-e-Khata which otherwise is not an offence like Qatl-e-Amd.

4- Criminal negligence is such an act, which sometimes may cause a huge loss, hence, the community shall observe such acts of negligent activities of the members of the society to avoid such heavy loss and may also prevent disturbance in the society. In the old societies, the elders would have deep eye on the activities of members of community and to resolve such issues amicably to avoid disturbance. In cases where heavy costs/fines were imposed upon an individual, they would collectively fulfilled the obligation on behalf of the offenders to save the society. By doing so, they could achieve two fold benefits viz: the evil was done away with on one hand and two parties would avoid further quarrels between them and further damage would be avoided and on the other hand the offender party would be lessened in burden to pay huge amount of Diyat and the paying party would keep vigilant eye on the delinquent persons' irresponsible and negligent activities so that they may not repeat such acts²¹.

5- This type of act, Aqilah, was continued in Arab Society even prior to Islam. The Arab Tribes used to protect their tribesmen in such situations by payment of Diyat collectively. The amount of diyat used to change in the tribes prior to Islam base on the strength of tribe and its weakness. Arab used to recover Diyat from offender's family in general. In some situations, if the family of offender were unable to pay diyat then the circle was expended from family to tribe and to major tribal tree so that the payment of diyat is made easy.

6- There are different narrations regarding fixing of 100 camels as diyat amount during Arab period prior to Islam. A. Some say that in Arab tribes there was 100 camels fixed for payment of diyat. B. some others say that it was fixed by Abu Sayyarah. C. many people say that it was fixed at the time of Abdul Mutalif, the grandfather of prophet Muhammad (Peace be upon him).

When Islamic law was being implemented in Arab Society by Holy Prophet Muhammad (Peace be upon him), he has affirmed the same amount of payment of diyat. We came to know from above development on payment of diyat in case of Qatl-e-Khat and may conclude as under:

- a. The offender in qatl-e-Khata is not murderer as he had no intention to murder the victim.
- b. The offender of Qatl-e-Khata is responsible for his negligent act only.
- c. The life of the victim was protected and not required to be killed, hence amount of diyat was heavily fixed.
- d. To ease the offender for payment of heavy diyat, the same was distributed among Aqilah.
- e. To watch the negligent acts of individuals in a community, the Aqilah was made responsible.
- f. The good principle of payment of Diyat before Islam, is adopted by Islam, which

shows the justice system.

References

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- ⁵ Al-Mabsoot, part 26, page 59, Kitab Al-Diyaat by Shamsuddin Sarakhsi (d.480AH).
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- ¹³ Reference 4 ibid
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