

# An Investigation of the Concept of Blood Money from the Islamic Jurists and Lawyers' Perspective

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**ABSTRACT---** *Blood money has long been prevailed among nations. It has also been used in pre-Islamic Arab society and comes to Islamic law in the same way as the theories of the sixth century AD. It isn't yet talked about nature of the Blood Money, however, historical studies show that human' physical and life damage and its compensation is highly considered from the first stages of human social life.*

*At the beginning, the human reaction to the life and physical damages had been only appeared in the form of personal revenge or mass killings. Before man's familiarity with the concept of ownership, this reaction seemed to be the only possible punishment, but the system of penalties substantially changed after man's familiarity with the concept of ownership and with the advance of trade and commerce. A new form of punishment was introduced to human. Study about the nature of the blood money has always been considered in various aspects, including conformity with the religious law.. All the laws in Iran have to be in complete agreement with the religious orders, according to the provisions of Article IV constitution. So all the legal and religious laws in Iran are considered as Islamic rules and laws. Blood Money is also corresponded with Islamic law. Accordingly in this article, blood money and its nature in Islamic, and Iranian law are being investigated and different views are being expressed.*

**Keywords---** Blood Money or Diye, Arsh, Jurisprudence, Law, Islamic Penal Code

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## 1. INTRODUCTION

Historical studies show that human' Physical and life damage and its compensation is highly considered from the first stages of human social life. At the beginning, the human reaction to the life and physical damages had been only appeared in the form of Personal revenge or mass killings. Before man's familiarity with the concept of ownership, this reaction seemed to be the only possible punishment (Arefi, Maskouni, 2003).

Gradually, instead of revenge, which led to kill people, a system was brought, which was based on financial return for the compensation payments. And Arab people, called this adopted financial return, "blood money". It was more pleasant and useful kind of compensation, then it has been determined according to Islamic law, which can be restricted into two basic and separated stages. The first stage is the optional stage of blood money. As its name implied, it is optional for both parties, criminal and victim. Either they can approve it or not. The victim or his family is allowed not to accept it and ask for revenge (Sarvestani and colleagues, 1997).

The next stage is the mandatory stage. Arab ignorance didn't accept this stage. For them, taking blood money was a sign of weakness of the victim tribe against the criminal tribe. So, for these communities the general rule in the optional stage was vengeance and revenge; taking blood money was considered as exceptional (Evaz, 1998).

To introduce the blood money, Jurists used different terminologies, which cannot exactly refer to the blood money, Such as Liability, reason, report and diye or blood money. They used these apparently unrelated terminologies because, for them, there are no differences between what is paid for killing someone and what is paid for damaging someone. So they called both of them as "blood money".

Since jurists have proposed similar definitions of blood money, paying attention to them is very effective in the conceptual understanding of the status blood money in jurisprudence. The word "Diye" means blood money, rooted in "Vadi", means "to steer" and "to exclude"; and its interpretation would be "the blood money and revenge of the victim have to be paid and excreted". In this paper, blood money and Diye are used interchangeably.

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Islamic Penal Code has defined blood money as a property or financial compensation given to a victim or his family due to a criminal action. (Penal Code, Article 448). The properties which are used for blood money are limited to six kinds. These properties included in detail in the Penal Code. However, the amount of which is determined in religion. Those properties or financial compensations paid for physical damage and amount of which are not determined in religious, are called “Arsh” (Penal Code , Article 449).

## **2. THE DEFINITION OF BLOOD MONEY FROM THE PERSPECTIVE OF JURISTS**

Islamic scholars have been the guardians of the law, throughout history. And have always sought to resolve the people’s problems. Jurists have different definitions for blood money. Each of these Jurists belongs to a certain religion, and gives a kind of definition which is compatible with their own religion. In this section, the definition of each religion is being reviewed briefly.

### **2.1. Shiite jurists**

Most of the Shiite jurists don’t give a definition for Blood money, and believes that there is no need to define it, maybe because the term is clear enough, and no forge is done regarding the term. (Sarvestani and colleagues, 1997). However, a number of Holy Shiite scholars have defined the term. Examples of which will be mentioned. Some Shiite scholars, such as Ahmad Edris Evaz defined blood money as a property or financial compensation has to be paid due to the physical damages. (Evaz, 1998).

Imam Khomeini stated that: blood money is a financial compensation has to be paid due to the physical damages, either its amount is determined by religious or not. Sometimes it is just refers to the determined one, and what is not determined is called “Arsh”. (Imam Khomeini, 1963).

It is stated in the margins of the book “Sharh -e- Lamee”: blood money is a financial compensation given to the family of the killed victim. (Feiz, 1993)

It is stated in the book named “Civil Liability or Compensation” that the civil liability is a fine or financial compensation that Muslim legislator has made it obligatory in order to compensate the physical damages, if the crime is recognized as a deliberate or intentional crime. (Feiz, 1993)

### **2.2. Public jurists**

#### **2.2.1. Hanafi jurists**

Most of the Hanafi jurists define blood money as follow: the term “Diye” means blood money derived from “Ada”; and it is a property which is given due to compensate non financial damages, it is paid to compensate physical damages or killing someone.

Al- Mouseli, another Hanafi jurist, defined blood money as follow: Blood money means something which is paid. It is called blood money because the murder is the cause of such payment to the victim’s family. Hence, it just refers to compensation of a murder. Compensation of other kinds of damages is not called blood money. Philologists allocated the term to that specific meaning, i.e. blood money, and didn’t mean to over generalize it (Salehi, 1997). Other Hanafi jurists have defined the blood money as follow: Diye or Blood money is a financial compensation which is paid for a murder, and “Arsh” is a financial compensation which is paid for other kinds of physical damages (Salehi, 1997).

So, we can see that the religious scholars explicitly determined their view of the nature of blood money with differentiate between the compensation for murder and compensation for other kinds of physical damages, and accept that Diye or blood money is paid to murdered victim’s family in order to compensate the damage (Salehi, 1997).

#### **2.2.2. Shafi’i jurists**

These religious scholars have often followed a certain definition of blood money or Diye; as an instance, AL- Ansari believes that Diat is the plural form of Diye ot srefer dna the property or money which have to be paid due to murder or other physical damage (Evaz, 1998). Sheikh Abdoh, another Shafi’i jurist regarding the necessity of the blood money stated that: “In fact, blood money has to be paid in order to console and satisfy the murdered victim’s family and avoid hatred and enmity between the parties” (Abdoh, 1992, p.333)

Other Shafei scholars have described the blood money as follow: blood money is money which shall be obligatory due to a crime, either murder or physical damages (Evaz, 1998).

As it can be seen all Shafi’i jurists exactly offered the same definition for Diye as the Shiite jurists did.

### **2.2.3. Hanbali jurists**

Hanbali jurists, including Al- Bohouti has defined blood money or Diye with the following words: Diyat is the plural form of Diye refers to the money which is paid to victim or his family because of a crime. (Evaz, 1998).

In general, it can be said that these religious scholars have also defined Diye or blood money as the money to compensate what was lost because of a crime.

### **2.2.4. Maliki jurists**

Maliki religious scholars, against other Muslim scholars don't offer any definition for blood money, and called it just "reason" without giving any specific definition. Diye or blood money is called "reason" because it prohibits and prevents audacity and courage in bleeding. And one of the meanings of "reason" is prohibition. They believe that the one who pay the blood money is a wise person (Najafi, 1998).

In general, in Malikian religious books, issues related to blood money are discussed in the book *Ketab- Al – Oghoul*, means the book of reasons.

Al- Gharatbi, one of the most famous interpreters of this religion, in his book, *Total Jurisprudence of Quran*, stated that, or blood money is money which is paid to a murdered victim's family.

Ibn al-Arabi, one of Maliki jurists, compared the philosophy of the blood money and vengeance, and stated that blood money would be paid in order to compensate the damages, and vengeance would be done in order to deter people from committing such an act. He believes that, one who committed manslaughter needs moderateness and doesn't deserve vengeance (Ansari, 1945).

Thus, according to above said definitions it can be said that, for Maliki jurists, the meaning of blood money is the same as its literally meaning as is defined in the dictionary. So, Maliki jurists just as Islamic scholars of other religions, believes that blood money is not actually a punishment, it is just a compensation for damages of a criminal action.

### **2.3. Contemporary scholars**

We have briefly studied previous scholars' definition regarding blood money. Now, blood money is being investigated from contemporary jurists' perspective. Contemporary scholars' interpretation regarding blood money is slightly different from previous Islamic religious jurists' interpretation. These scholars themselves have various perspectives about blood money. Some of these definitions are as follows:

**2.3.1.** Imam Muhammad Abduh, defined the blood money as something which is given to a murdered family in order to compensate the criminal action, instead of the criminal action he commit (Abdoh, 1925).

**2.3.2.** Imam Muhammad Abohorreh says that blood money is a spiritual compensation not a superficial one, and explained that superficial compensation is killing a murder instead of his criminal action, or cutting parts of his body when he cut victims' body parts. But Spiritual compensation is blood money or Arsh (Evaz, 1998).

**2.3.3.** Sheikh Ali Khafif defined blood money as money or property which is determined by Islamic Lawyer in order to compensate manslaughter or other physical damages, instead of the damage he cause or the blood he waste (Evaz, 1998).

In all contemporary scholars definition of blood money the term "Avaz" , means "instead of " is used for the first time, the previous scholars didn't use such term.

## **3. THE CONCEPT OF BLOOD MONEY FROM THE LAWYERS' PERSPECTIVE**

layers presented a variety of definition for blood money. Some of them rely on its juridical concept, and some of them define it in their own interpretation.

**3.1.** Dr. Ali Sagheh Abouheif define blood money as a what murder gives to a victim or his family instead of the blood he waste. (Ablu-Hanif, 1932)

In this definition there is no differences between what is paid for physical damages that Hanafi jurists call it Arsh; and what is paid for murder. Here, both of them are called blood money or Diye. In this definition the term "avaz" means "instead of" is also added, as contemporary scholars.

**3.2.** Abdul Qadir Awdoh defined blood money as the first choice to substitute retaliation and revenge. So, whenever retaliation, which is the main punishment, is being stopped for every reason, and the criminal isn't still forgiven, blood

money substitutes it. Retaliation or revenge is a punishment for premeditated murder, and blood money is a punishment for manslaughter (Sarvestani and colleagues, 1997).

**3.3.** Ahmad defined blood money as a substitute punishment and explained that, if the main punishment is not operable due to legal reasons, the substitute punishment replaces it. (Abduh, 1925).

**3.4.** Dr. Ali Ahmad Rashed defined blood money as money or property given to an injured victim or a murdered victim's family in order to satisfy them. (Abduh, 1925).

Based on the above definitions, we can see none of those definitions is in accordance with the requirements of a reasonable definition; a logical and a reasonable definition must be comprehensive enough.

The Holy Quran has defined blood money as a financial compensation for manslaughter. What is paid instead of premeditated murder is called "Ada" in Quran. As an instance, verses 177-178-179 of Surah Baqarah are about retaliation; in the verse 178, it is said that, what is paid for a forgiven retribution is called "Ada" not blood money. The amount of "Ada" can be the same as blood money, or can be less or more than that. (Sarvestani and colleagues, 1997).

#### **4. THE POSITION OF BLOOD MONEY IN ISLAMIC LAW**

The government which the Holy Prophet (PBUH) established when migrated to Medina, was the first government in the Arabian Peninsula which had a unified law.

The first law of that government was the famous Scriptures or Sahife, that Holy Prophet (PBUH) ordered to write it in the first year of the migration. The policy of Sahife was consistent with Qur'anic policy (Evaz, 1998).

It is worth mentioning that Sahife is the most important historical documents and the main sources of the provisions of blood money in Islamic law. Sahife forbade some of what Arab Ignorant did, Such as to avenge manslaughter, or to support a murder by his own tribe or other tribes. Killing of a believer in order to compensate killing an infidel was also forbidden in Sahife (Evaz, 1998).

Sharia Islam has based blood money on a particular system. In premeditated murder and intentional injuries, optional system of blood money has been chosen; and accept compulsive system of blood money in the manslaughter and unintentional injuries, and some intentional murders and injuries, under certain conditions. Islamic Sharia abolished social class as the criteria and rule to determine the type and amount of blood money. The amount of blood money is determined precisely and is placed it in three types. Diye for murdering, Diye for injuring, and Diye for damaging (Evaz, 1998).

In general, it can be said that, in Islamic law, blood money is the right of the victim, in case he is alive; and his family have the right to claim it, in the case the victim is dead. In addition, the murdered victims' debt would be paid and his eldest would be fulfilled by his blood money. In Arab Ignorant, blood money was distributed among the members of the tribe, and German sometimes gave it to the ruler or lord (Mirsaeedi, 1994).

Thus Islam, confirm and accurate the tradition of taking money from the criminal, which was more or less common among the ignorant Arabs. Before that, there were no specific criteria how to compensate the damages of each one of body parts; Islam determined the blood money for each parts of body in order to prevent exerting personal tastes and tribal traditions.

Blood money is one of the accepted provisions in Islam which was existed in Arab ignorance to some extent, and then confirmed and accepted by Islam. Thus, Islam accepted the tradition of paying blood money which was more or less common among Arab ignorance, then accurate and recorded the blood money by determining special rules for it.

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