

Role of Insurance in Place of Aqilah in Paying Blood Money Resulting from Accidents: An Analytical Study

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Abstract: Insurance is one of the most important contemporary issues emerging among Muslims because of its many concepts that a person needs to know. The legitimate, practical and applicable study of this concept to see if this issue which has preoccupied minds of the Muslims for >60 years through international and meetings is compatible with the purpose of Islamic law and its foundation. The issue of payment of blood money from the insurance companies is considered as one of the most important emerging jurisprudential issues at the present time as the custom now is for people to ask for compensation only from insurance companies, especially related to car accidents and the alternatives they have made through these councils when there is no Aqilah or Baitulmal for Muslims or the inability of the Aqilah itself to pay because of certain conditions or to what extent the Muslim community needs this kind of contracts. The study adopted inductive analytical approach to gather the views of scholars, researchers and their evidence and arguments on the subject and texts related to it and tried to analyse them with what suit the contemporary period and the purpose of Shariah. Furthermore, a practical and field approach was applied. The research found that there is a need for the insurance companies to stand in place of Aqilah in the payment of blood money and there should be no difference between diyyah (blood money) and compensation in terms of request and jurisdiction.

Key words: Insurance, Aqilah, blood money (diyyah), accidents, Islamic law

INTRODUCTION

Preface: The contract of insurance is relatively new in the whole world, it is more new in the Islamic world than in other parts of the world where the legal scholars stated that the history of the emergence of insurance contract in Europe dated back to the early 4th century but emerged in the Muslim countries long after that and probably the Muslims did not know it except 2 centuries ago through East-West connection and the exchange of trade between them and that is why we have no texts to provide whether or not it is permissible or forbidden from the Muslim Jurists and their writings.

The definition of insurance: Literally, insurance means firstly, opposite of betrayal which means stability of heart; secondly approval (Abdo, 2002). Thus, it means given tranquility, stillness of heart and removal of fear.

Technically, the expressions of the contemporary legal and Islamic scholars differed on its definition. One of the definitions of legal scholars is that it is a contract where the insurer undertakes to pay a sum of money to

the insured or compensation in case of accident or the occurrence of the specified risk in the contract and this is in consideration of financial payment made by the insured to the insurer.

This is the definition of the Egyptian Civil Law in Article 747 and has been taken by many Arab laws (Sulaimani, 1996). This definition highlights the elements of insurance and shows the relationship between the insurer and the insured is that of exchange and the benefits of the insurance is a consideration of the premiums paid by installments.

One of the definitions of contemporary Islamic scholars is the definition of Dr. Suleiman ibn Thunayan which says, it is the commitment of one party to another to pay a monetary compensation or to his nominee during the happening of probabilistic accident indicated in the contract in consideration of what he (insured) pays to him (insurer) from a sum of money (premiums) by installment or so (Al-Misry, 2001).

Types of insurance: Insurance is of different kinds with different considerations, First is divided in terms of the

form the Insurance Commission adopts in the management of the insurance process (Thunayan, 1993) into 3 types.

Commercial insurance (or insurance on a straight line) (or traditional): It is usually what is referred to when the word insurance is mentioned. The definition of Dr. Suleiman Ibn Thunayan of insurance has already been mentioned which is general and is originally applicable to commercial insurance. In this, the insurer is separate from the insured and will enter into contract with each of the insured separately and will compensate the damage that happens to the insured and if the contract expired and the damage did not materialize to the insured, the amount paid would be the right of the insurer and nothing for the insured (Thunayan, 1993).

Cooperative insurance (or interactive) (or subscription): The cooperative insurance in general is based on the idea that to distribute the harmful consequences of a particular incident on a group of individuals rather than leaving the one whom disaster befalls him to bear the consequences alone (Malham, 2003). This insurance has 2 forms.

First: Simple cooperative insurance (or direct interactive), this means the cooperation of group of people to avoid damage caused by a particular risk where all of them will pay a sum of money to compensate who is affected by the risk among them from the total of those contributions and if something remains it would be returned to them and if the premiums are not enough they would be taken from them.

Second: Compound cooperative insurance (or cross-advanced), it is originally simple cooperative insurance only that it is being administered by a company specialized based on agency and all the insured in this company would be the shareholders in this company and the General Assembly comprises of them, then the Board of Directors (Malham, 2003). The motive for this form of insurance is that simple cooperative insurance would have number of insured that know each other but if their number increases and the risks increase, they will be in need of independent administration to assume their affairs and it will be based on agency with a known payment and this is the insurance company.

Social insurance (or general): Social insurance means the state or one of the public bodies carries for the benefit of a class of society against the dangers that they suffer which may lead to their permanent or temporary inability to gain, such as the risk of unemployment, sickness, work

injury and aging? This is mandatory which is financed by contributions paid by beneficiaries and employers and the state bears the biggest responsibility. Among this type are social insurance, health and pension insurance and other public insurance. It is a social work done by the state in order to secure the future of its citizens and stave off the impact of sudden incidents on them, it is a donation from the state and not a contract of exchange and that is why many writers did not differ on its permissibility because it is a contract of donation and cannot be affected by ignorance and trick. Among those that said of its permissibility is the 7th Conference of the Association of Muslim Scholars which was held in Cairo in 1392 and so on (Malham, 2003). Second is divided in terms of the risks insured or the nature of the interest that is intended to be protected into 3 types.

Money and property insurance (or damage): It means any insurance contract that is meant to protect money and property against dangers that might be exposed to it. This type is the most comprehensive type of insurance where all insurance of states, groups and individuals' property enters beneath it whether on land or sea or air (Thunayan, 1993).

Responsibility insurance (civil responsibility): It means all responsibilities that arise toward an individual or group to others as a result of false or negligent actions or damage or insult. This is insurance to risks that affect others because of the actions of the insured which aims to relinquish the responsibility of the insured towards those risks. That includes many types of partial insurance, such as motor insurance against civil liability, aircraft insurance, ships insurance, trains insurance and business and profession insurance which might damage others, such as engineers, doctors, pharmacists, contractors insurance, etc. (Thunayan, 1993).

People insurance: It means the insurance that a person aims to insure himself from the dangers that threaten his body, such as death, loss of parts of his body, aging, sickness, etc., from what may makes him unable to work (Thunayan, 1993). It is of many types and the most famous types are:

- Life insurance (Qara Dagi and Ali Mohieddin). The most important types of life insurance are:
 - Life insurance in case of survival to pay the insured amount of money by the insurer if he (the insured) lives to the time specified in the contract but if he dies before that time there is nothing to the insured and his heirs

- In the case of death; which is the opposite of the former; the insurer would not pay the amount of money until after the death of the insured before the time specified in the contract and the nominee under the contract would enjoy the benefits
- Mixed; which means the insurer will pay the benefits to the insured if he remained alive at the time specified and if he dies, the benefits would be paid to the designated beneficiary (Insurance contracts for Dr. Al-Farfur within the magazine of conference research). Second session, 2/574; insurance for Dr. Isa Abdu, p. 21; Legal study for Dr. Shanqeeti, 2/482; research in the jurisprudence of transactions for Dr Qara Dagi, p. 268
- Insurance against accidents
- Insurance against sickness
- Insurance against aging
- Researcher observe that there is overlap between the first and second definition of insurance and that is why the last 3 definitions were considered by some as types of commercial insurance based on the fact that they are mostly commercial (Al-Mallah, 2001)

When talking about the types of insurance, it should be noted that there is what is called (reinsurance) which means the insurance company that contracted with many people turns to a bigger insurance company to insure some parts of the risks that may befall them for fear of potential error in estimating the likelihood of risks and then the inability to compensate which may push the company to re-direct the insurance to bigger companies for their comfortability and that of the people insured (Thunayan, 1993).

Definition of blood money: Literally, diyyah (blood money) means given and taken of diyyah (Zubaidi and Al-Husseini, 1992). Technically, diyyah according to the majority of Hanafi scholars is an alternative to soul. Sarakhsi said:

It is what is paid not an alternative to wealth but to soul then he said: 'Arsh' is what is compulsorily paid for other things besides soul. But, diyyah is a special name for soul alternative

According to Imam Shafi'i, diyyah is used for both soul and others. And Mawardi is also of this opinion. Some followers of Shafi'i School of law have used diyyah for soul and Arsh for other offence if it is estimated. And this is the view of Maliki, Hanbali Schools of law and others.

We do not think there is any difference in using diyyah for offences other than soul except verbally only in the sense that everybody agrees that the Aqilah bears the payment in the offence or soul or others with conditions whether or not we call it diyyah or Arsh. Its difference only goes to name. Thus, diyyah is the estimated money that is compulsorily paid for offences to souls or others.

The Jurists are unanimous that it is not for the Aqilah to bear the diyyah if the killing is intentional and retribution fell with doubt or reconciliation. They differed in the diyyah of manslaughter.

The majority of scholars are of the opinion that Aqilah bears the responsibility of manslaughter. However, some Malikis, Zahiris and Imamiyyah disagreed and said that the diyyah is compulsory from the offender's money because he does not deserve leniency because of the intention to the crime and if the Aqilah bears this diyyah, the offender may dare to kill.

Majority of Malikis considered manslaughter as intentional killing in terms of bearing diyyah and it is from the money of the offender and rejected the hadith (the diyyah of killing by mistake and manslaughter is what was caused by whipping and stick) which was narrated by Abu Dawood and others and Abi Wabi said: This is not an authentic hadith. But, Zayla'i quoted Abu Al-Qattan said:

It is an authentic hadith from the narration of Abdullah bin Amr bin al-Aas and the differences that happened to it will not affect it. Reported by Ahmad, Shafi'i and Ishaq in their Masanid

Aqilah bears diyyah on condition that it has not been proved by reconciliation or confession but by evidence because confession is limited evidence on the confessor. The Aqilah bears diyyah on offences besides on soul if it exceeded half of one-tenth of the diyyah and it is estimated but if Arsh is estimated through just government Aqilah will not bear it.

Definition of Aqilah: Literally is taken from mind which means conservation, victory and strength (Ibrahim, 1972). Aqilah of a person his cohorts technically, relatives of the offender from males. Ibn Qudamah said:

(Aqilah is the one who bears aql (mind) and aql is diyyah and it is called so because it keeps the tongue of victim's guardian, it was said it is called Aqilah because they prevented from killing the offender and that is why some science are called aql because they prevent from advancing to detriment

There is a more comprehensive definition which is: Aqilah is relatives and all who assists and sympathizes continuously. Asabah is established by the reported hadiths but who assists is taken from the meaning of Asabah and also what came from practice of Umar bin Al-Khattab that he made the Ahl Diwan Aqilah of someone who does not have Aqilah.

THOSE RESPONSIBLE TO PAY DIYYAH FROM AQILAH

In murder: A free man, adult, rich from the Aqilah will pay diyyah (blood money). Thus, a minor, insane and woman do not pay diyyah. But, Ibn Abidin stated that they will pay if they are among the people of Diwan and started killing. And this is the view of Kasani. According to Hanafi and Maliki Schools of law, the killer is regarded as part of the Aqilah in payment of the blood money (diyyah). Jassas relied on what was reported that Omar bin Khattab may Allah be pleased with him said to Salamah bin Naim anyone who kills a Muslim thinking that he is a non-Muslim. There is diyyah on you and your people. Shafi'is and Hanbalis are of the opinion that the killer is not part of the Aqilah in payment of diyyah and the Shafi'is added on the pardon of origin and branches of the offender. The Aqilah of a person are the people of his Diwan if he is part of Diwan according to Hanafis and they are fighters from free, adult and sane and it is taken from their allowances. And if he has no Diwan his Aqilah is his tribe because they are normally his helpers. According to the majority of the jurists, the Aqilah of a person is his tribe because the Prophet (saw) decided that Aqilah from relatives to pay diyyah. The Hanafis answered by saying:

The companions agreed unanimously during the period of Omar bin khattab to make the payment of diyyah on the people of Diwan which indicates that they understood that the reason of the judgement in the period of the Prophet (saw) was based on assistance and when assistance was made on the people of Diwan in their period they made the payment of diyyah on it

The poor among the Aqilah is not required to pay anything according to some jurists. It was quoted from the Malikis that the rich pays what he can and the poor pays what he can, each one is required to pay based on his financial capacity (Ibn Jizzi, 2000), it is understood from their statements that the poor is not required to pay anything from diyyah.

Imam Shafi'i provided given half dinar per capita if he is rich and a quarter dinar if he is poor. Different views

were reported from Hanbali; in one view from Imam Ahmad the amount per capita is determined by the Governor like feeding and this means that the poor could be asked to pay certain amount because poverty does not prevent from payment of alimony but remains as debt and the same goes to diyyah. In another view, Imam Ahmad made it compulsory for the rich to pay half of the weight and on average a quarter of the weight. This means that the poor does not pay anything from the amount of the diyyah. It is clear that the latter is the strongest view because diyyah is assistance by money and the poor is not eligible for this assistance.

Requirements in the diyyah (blood money) of murder and expiation in car accidents:

- If the driver infringed, expiation is compulsory on him and diyyah is on his Aqilah: Infringement is to do something forbidden, such as sleeping while driving, exceeding the speed limit or the red signal not expert in driving, parking in a wrong place and someone who has weak sight
- If the driver is excessive, expiation is compulsory on him and diyyah is on his Aqilah. Being excessive means to neglect what he must do like someone who walked with a car with obsolete tires or a defect in the car brakes or steering wheel
- Everyone from the participants in the wrong must do expiation and the diyyah is on their Aqilah based on the wrong: Expiation is compulsory on each of them on each soul whether or not the rate of the crime is small or big, like an accident between 2 drivers where one was at a haste and another goes the opposite traffic way (Al-Manii, 2002)
- If the cause of the accident was pursuant to attempt for safety, there is no diyyah on his Aqilah on those that were killed and there is no expiation on him: Like someone that a car came to him and there is a hole on the middle of the road and the car falls inside and the accident occurred, the driver is not liable
- If the victim is at fault there is no expiation on other and there is no diyyah for him on the money of other and any destruction would be paid from his money and diyyah is on his Aqilah, such as a driver who follows the instructions and someone came from behind and hit him and the person who hit died or driver who hit a car in permitted parking place and he died or he died because his car fell into a hole which has a warning sign or a person who throws himself in front of a car while it is moving and it ran over him. In all these situations, the driver and the person who throws himself will be liable because they are at fault

- If the driver does not exceed and he is not negligent, there is no expiation on him on who was killed and no diyyah on the Aqilah of the driver for the heirs of the victim. Because he is not at fault and did not cause and even if he is the cause he will not be liable unless if he is negligent like the breakdown of a sound tire or malfunction that made the driver to lose control
- Originally, the person who involves directly in killing must do expiation and diyyah is on his Aqilah: Like one who runs over someone on the road or move his car and killed someone underneath it, the direct killer is liable even if he is not excessive and that is why Allah made the payment of diyyah compulsory on mistake murder, it was mentioned before that expiation is compulsory on adult and adolescent

WHO IS RESPONSIBLE TO PAY DIYYAH IF THERE IS NO AQILAH?

The majority of scholars are of the opinion that the Baitulmal bears the diyyah of a Muslim offender if he has no relatives or Diwan. It was stated in Garar al-Ahkam:

Anyone who has no Diwan or relatives, his Aqilah is Baitulmal based on the apparent narration and the fatwa is on this. According to one narration from Abu Hanifa, it is compulsory from the money of the offender

Imam Shafi'i stated that the Baitulmal bears the diyyah of offender if he has no relatives where he said:

Anyone from the non-Arab or who is found and has no relatives, the Muslims should be his Aqilah because of Islamic brotherhood and they will take his money if he dies

Sharbeni quoted the hadith of the Prophet (saw) in support of this: I am the inheritor to the one who has no inheritor; I become his Aqilah and I inherit him. Dardir said: Then, the Baitulmal if the offender is a Muslim. According to Hattab, the Baitulmal bears the diyyah if there is few number of Aqilah or if it is unable to bear the diyyah. According to Ibn Hazm, if the Aqilah is unable the diyyah is the responsibility of all Muslims from the share of debtors in the zakat and because they are debtors. The Hanbalis disagreed based on one of their views where they made it compulsory for the offender to pay the diyyah if he has no Aqilah Muslim or Dhimmi because Aqilah is based on relatives whether or not they inherit if there is an inheritor from non-relatives the diyyah would not be paid for him, the Baitummal will not bear diyyah on the pretext that he has no inheritor because there is no correlation between inheritance and bearing diyyah.

Lack of baitulmal: The scholars differed on the disappearance of the baitulmal, its instability or its inability to bear the diyyah. The majority of the scholars said in this situation the diyyah is compulsory on the offender as it is initially compulsory on him, the Aqilah only bears it because of help and support, hence if the Aqilah and baitulmal do not exist the responsibility of paying the diyyah is back on the offender and the blood of believer cannot be overlooked. According to some jurists, there is nothing on the offender because the diyyah is initially compulsory on the Aqilah.

RATIO OF WHAT THE AQILAH OR STATE BEARS FROM THE DIYYAH (BLOOD MONEY)

Responsibility of Aqilah: The scholars differed on the amount that every member of the Aqilah bears. The Hanafis said not >4 dirhams would be taken from every one. If the number of the Aqilah is less, the closer tribes would be combined with them whether they are from the people of Diwan or not. And the Shafi' is said quarter of dinar is compulsory on an average person and half of dinar for rich. The majority of scholars are of the opinion that what should be paid by individual should not be determined but that should be left to the discretion of the judge in distribution of the diyyah of Aqilah. Sharbeni said:

He does not know any text or narration that made the rich to pay half a dinar and average quarter of dinar but they only relied on sympathy. Achieving sympathy varies depending on time and place which should be left to the discretion of judgement

The state: If there is no Aqilah and the Baitulmal bears the diyyah, it has to bear it completely: That is 100 camels and value could be paid instead of camels or a thousand dinars of gold. If the diyyah has been established by a judge decision. But if there was reconciliation on the lesser amount what the Baitulmal should pay is the amount agreed upon between the offender and the heirs of the victim the nature and the amount (Zahra, 1998).

Delay in payment of diyyah: The scholars are unanimous that diyyah is necessary and can be deferred in 3 years if the Aqilah bears it and if it would be paid from the offender's wealth of mistake killing and the crime has been established by confession and no other evidence. This has been taken from the judgment of Umar bin Khattab when the payment of diyyah was deferred in 3 years. Some scholars said the Imam may require the Aqilah to pay the diyyah instantly without delay, Dr. Khalid Jumaili quoted from Ibn Taimiyyah that he said:

The payment of the diyyah would not be deferred for the Aqilah if the Imam sees interest in doing that

The summary of this view is that the deferment is based on interest and mitigation; if the diyyah is on Aqilah or on the offender and he was poor then it would be deferred to be paid within 3 years. But, if the baitulmal bears the diyyah, the interest is to pay instantly because there is no harm for the Baitulmal to pay at once. And if the diyyah is on the offender and he is rich, the interest would be determined by the judge either to delay or to pay instantly.

CONCLUSION

It is compulsory that diyyah should not be less than the value which is required by the Shariah which is 4250 of gold because it is the amount of one thousand dinars of gold as stated in the hadith but if there was an agreement with those that stand in place of Aqilah that the value should be more than this there is nothing wrong to collect and use it. Especially, if the companies pay in accidents of non-Muslim countries higher value, then a Muslim must not be less than a non-Muslim in the value of compensation because Islam prevailed and not be prevailed over.

And the compensation taken is divided based on shares in the inheritance and to divide what is taken from the amount of diyyah or more but not to determine the amount of compensation depending on the number of heirs and the definition of Aqilah is agreed upon which is who stands in place of the killer in payment of the diyyah because of links between the Aqilah and the killer, it could be expanded to include ministries, unions, insurance companies and states, etc., to achieve the objective of Islam that no blood would be wasted where the basic shapes of the leagues and relation should not be repealed but to be expanded to cover what ensures the interest of payment of diyyah.

If this is the case, diyyah and the modern compensation cannot be combined together because diyyah itself is compensation. When diyyah becomes compulsory on the Aqilah or the offender and he is rich there is no doubt that it could be considered to be paid from Zakat but if the diyyah is on the offender and he is poor and he was sentenced by the judge, the offender becomes debtor and this can be paid from Zakat. Furthermore, a person can bear to pay money for others in order to avoid a particular sedition or corruption. In this situation, he can be assisted on what he borne from Zakat even if he is rich. Diyyah multiplies in multiple dead in mass accidents in order to preserve the rights of persons

and it is borne by Aqilah and Islamic Insurance Company but expiation is only to be borne by the person at fault but the right of Allah is based on forgiveness and because the cause of this accident is one not more.

RECOMMENDATIONS

The prevalent opinion of the contemporary scholars which has been established after a long legal, economic and Shariah study is that the insurance contract with all its types is not accepted by the Shariah because it includes three reasons that causes a contract to be void, namely usury with all its types, serious uncertainty and void conditions. Some scholars believe that the insurance contract is among the contemporary issues and the one which was mentioned in the question is one of them is temporarily permissible because of necessity until the establishment of Islamic insurance.

What I think and many others is that if insurance is by compulsory agreement which is required by the state before issuing license for car there is no sin because of the doubt involved as long as it is the state that imposed it by law and a person cannot get a license for car without it.

But, other than this which is optional insurance, I think that a Muslim should keep away from it because of the doubts involved and it is possible for the Muslim to take precautions to himself to be sparing on monthly or yearly basis what he supposed to pay the insurance company or more depending on his capacity. And to allocate it to repay what may likely happen in accident with taking caution and following all rules imposed by the laws related to traffic and means of safety from accidents and he can also collaborates with some that he trusts to work on cooperative insurance between them based on what we mentioned.

Moreover, the opinion that says this kind of insurance is permissible because of necessity can be taken; this view supports using this kind of insurance temporarily until the establishment of Islamic insurance; if this is the case and there are Islamic insurance companies in some Muslim countries, such as Islamic Arab Insurance Company which is based in Dubai UAE it is compulsory for a Muslim to join insurance in them, although there are still some doubts related to them and their conditions are still similar to that of commercial insurance but they have taken some steps to get rid of usury debt and some semblance of exploitation and this a step towards the Islamisation of insurance in totality and it is better and far away from doubts and others and he can also patronize with other national insurance companies and it is forbidden for a Muslim to resort to foreign companies. May Allah guide us to the right path and He knows best.

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