

## The Reality, Provisions and Conditions of Aqilah

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**Abstract:** There have been many accidents which result in deaths due to motor accidents which is the majority or hunting or Jihad or other things that result in crime. Researchers find that a lot of people are unaware of the provisions of manslaughter and that the blood money is paid by Aqilah and this is something unknown to some people. Thus, I explained the reality of Aqilah and the important issues that may be hidden to many people. And here lies the importance of this research and also to know its provisions and conditions through the extrapolation of the views of the 4 schools and to analyse, discuss and clarify the points of agreement and disagreement between them. Moreover, it looked into the views of contemporary scholars to choose the provisions that fit the development of the current era. Through, the study researchers reached to some important results, most important of which if the offender has no Aqilah or he has but the Aqilah is unable to pay the blood money (diyyah) for him, it should be paid from the Baitulmal or its representative.

**Key word:** Aqilah, reality, provisions, conditions, manslaughter, Baitulmal

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### INTRODUCTION

#### Definition of aqilah according to the 4 schools of law

**Hanafis:** According to Hanafis, if the offender is of the people of diwan. The people of diwan are the people of flags and they are those whose name are written on the diwan if he is a fighter and he has diwan for fighting, his Aqilah are those in his diwan from the fighters and if he is a writer his Aqilah are those in the diwan of writers if they used the Aqilah for helping each other. Or it is the name for book where names of soldiers are written and their number and salaries. Some are of the opinion that the people of diwan means the diwan of same region; Syria is a region, Iraq is a region, Egypt is a region and the fighters of each region are the Aqilah of each other excluding others from the fighters of other region because each region is independent even if there were many groups. And another group is of the opinion that if there are many groups of soldiers in one region, then each group is the Aqilah of an individual among them who commits crime excluding individual from another group (ZailaI, 2000) then his Aqilah is the people of his diwan and if he has no diwan then his Aqilah is his tribe and if the tribe is not wide enough the closest tribe should be included on the order of closeness and if the offender is freed or maulamuwalah. He is a non-Arab Muslim who holds a contract of muwala with the Arab-Muslim for the

latter to be the Aqilah of the former if he commits crime and to inherit him if he dies without heir then his tribe is his master.

**Maalikus:** The Maalikus are of the opinion that the Aqilah of the offender are his cohorts who are his relatives from father's side, then his masters. They argue that people used Aqilah in the period of the Messenger of Allah (SAW) and the period of Abu Bakr when there was no diwan as the latter was only introduced in the period of Umar (Asbuhi, 1995).

**Shaafi'is:** According to Shaafi'is, Aqilah are relatives who inherit based on closeness or loyalty not father and sons.

**Hanbalis:** Based on Hanbali's view, Aqilah are close relatives and not others. Ibn Qudamah said: There is no dispute among scholars that Aqilah are the close relatives and others from brothers from the mother and other relatives and husband and all who are not close relatives are not Aqilah.

Thus, the definition of Aqilah is close relatives and all through whom assistance and sympathy could be achieved continuously. Close relatives (Asabah) is something established by hadith but whom assistance could be achieved through them is taken from the

meaning of Asabah and also the practice of Umar that he made the Aqilah of someone who does not have one on the people of his diwan but the majority of the scholars from Maalikis, Shaafi'is and Hanbal is disagreed with Hanafis' view for considering the people of diwan as part of Aqilah; the most correct view is the one for the majority of the scholars and Allah knows best.

**Aqilah that must pay blood money (diyyah) for manslaughter:** They are his close relatives through closeness and loyalty, the distant and close ones present and absent ones including the main leaders of the relatives who are the parents of the offender and his children whether the offender is a man or woman but some scholars have a dissenting view, such as Hanafis where they added the people of diwan where Kaasani said:

They are fighters from free, mature and sane men taken from their gifts; if he is a free person then his Aqilah are the people of his diwan if he is from the people of diwan and they are the fighters from free, mature and sane men taken from their gifts

Ibn Rushd said:

The majority of scholars of the people of Hijaz agreed that Aqilah are the close relatives from father's side and they are close relatives excluding the people of diwan

Imam Shafi'i said:

I do not know anyone who disagrees that Aqilah are the close relatives from father's side

Ibn Qudamah said:

Aqilah are uncles and their children according to one of two narrations from Abu Abdullah and according to another narration, son, brothers and all close relatives are part of Aqilah

### CONDITIONS OF AQILAH

**First/male:** This condition excludes females, they are not part of Aqilah because of two reasons:

- The Prophet's (SAW) decision that the blood money (diyyah) is paid by close relatives Asabah and women are not close relatives
- Aqilah is built on assistance and sympathy which women are normally out of them even if she is rich or the closest relative of the offender

Kaasani said: The women are part of Aqilah in paying the blood money (diyyah) in this issue and rejected the opinion of Tahawi and they said the offender is included

in paying the blood money (diyyah) anyway and also included in al-Qasamah and blood money (diyyah); blind and a person punished for slander and infidel because they are the people of conservation and Allah knows best. He said in Mughni al-Muhtaj:

I do not know anyone who disagrees that women and children even if they are rich are not part of Aqilah and also a foolish

I said all scholars excluded women from Aqilah except some Hanafis and the best view is excluding women and Allah knows best as women are not part of people of assistance and because the Prophet (SAW) in a unanimous agreed hadith made payment of blood money (diyyah) on Asabah and did not include women among them.

**Second/maturity:** Children and insane are not part of Aqilah because of the following:

- They are not liable for the mistakes committed by them and not to be liable for the crime of others is even clearer
- The concept of Aqilah is built up of assistance and children and insane are excluded

**Third/richness:** The person should be rich or average and if he is poor then is not regarded as part of Aqilah because of the following:

- Poor person is not of the people of sympathy
- Including poor in the Aqilah is giving him something he cannot endure and is injustice on him
- The meaning of rich person is who possess nisab or more on efficiency
- The poor person is the one who owns something or less than enough or does not have nisab for Zakat
- The medium is the one who owns nisab or more than what is adequate for him

Ibn al-Munzir said: All those whom we memorise from scholars are unanimous that women and boy who has not attained the age of maturity are not part of Aqilah and they are also consensus that poor person is not required to pay anything. The statement ended may Allah have mercy on him. I said the requirement of richness is unanimous between the scholars.

**Fourth/freedom:** Slave is not included in Aqilah even if he is father or child to the offender because of three things:

- He is not of people of sympathy and donation because he has no money

- He is not of people of assistance and loyalty in reality
- Considering him as part of Aqilah is enduring him with something difficult on him

Kaasani said: Aqilah does not pay the blood money (diyyah) for the crime of slave, mudabbar and um al-walad because he (the offender) is the target as a result of the crime and he is not owned by the Aqilah and the master and because the master is asked for the crime of the slave is in place of the Aqilah. Dasuqi said:

Aqilah does not include slave, intentional killing and confession. His statement ended here, may Allah have mercy on him. I said the requirement of freedom is a condition unanimously agreed by the scholars

**Fifth/same religion:** This condition means same religion between the offender and his Aqilah and not between the offender and the victim because of 2 reasons:

- Because there is no sympathy and assistance with a different religion
- It is an analogy on al-mirath (Islamic law of inheritance) as there is no inheritance between them so Aqilah is also not applicable because Allah has not made a way for the infidels on the Muslims

He said in al-Mughni: In the characteristics of whom are covered by Aqilah they are 5: Male, lack of poverty, freedom, maturity and same religion.

Aqilah is called by its name because camels are gathered at the courtyard of the victim's parents and relatives which means its gathering is strengthened in order to submit to them and that is why blood money (diyyah) is called Aql and it is said otherwise.

#### **DIVISION OF BLOOD MONEY (DIYYAH) ON AQILAH**

The leader will try to divide the portion that each one in the family should pay from the blood money (diyyah), he will start with the closest, starting by father and children then brothers and their children then uncles and their children and so on just like al-mirath (inheritance).

If the closest families are rich there is no need to ask others besides them but if they are not the distant ones could be included until the most distant one is included based on al-mirath (inheritance).

Kaasani said: The amount borne by Aqilah from the blood money (diyyah) only 3 or 4 dirhams should be

collected from each one of them and not more than that and this is because they are giving the amount based on their link and donation to alleviate burden on the killer and thus, it is not permissible to thicken on them by asking more and it is also permissible to ask less if the number of Aqilah is more but if the number of Aqilah is less, then the nearest tribe to them should be included whether they are from the people of diwan.

Dasuqi said: The blood money (diyyah) is paid by Aqilah that means the blood money (diyyah) for the crime of the offender by killing or another organ is on his Aqilah if the blood money (diyyah) is, as much as one-third of the full blood money (diyyah) or more but if it is less than it is from his money just like matured person.

It is preferred from the views of the scholars that the amount taken from the Aqilah is based on their capacity they would only be asked what they can afford because the Aqilah bear the blood money (diyyah) based on assistance and kinship and Allah knows best.

#### **Does the offender pay the blood money (diyyah) together with the aqilah?**

There is a disagreement between the scholars on whether or not the offender will pay the blood money (diyyah) together with the Aqilah to 2 views. The reason is because the texts mention Aqilah but did not mention the offender. Following are the 2 views: The first view is the Hanafi School of Law and the famous view of Imam Malik, the offender must pay a portion of the blood money (diyyah) as one of the Aqilah. Kaasani said:

The women is included in the Aqilah in payment of blood money (diyyah) in this matter and rejected the view of Tahawi and they said the killer is included in the payment of blood money (diyyah) anyway

He said in Muntaqa: The offender pays the blood money (diyyah) together with the Aqilah; Imam Malik said this in Majmu'ah and others and this is the view of Abu Hanifah and some of our companions said the same based on ishtihsan and not by analogy. The rationale behind the first view is that Aqilah pay the blood money (diyyah) based on sympathy and help and thus the he (the offender) must pay some portion (Asbuhi, 1995).

The second view is of Imam Ahmad and Shafi'i where they say the offender must not pay a portion of the blood money (diyyah) and all shall be paid by Aqilah. Ibn Qudamah said: The offender must not pay a portion of the blood money (diyyah). And this is also the view of Shafi'i.

The correct view is that the offender must not bear any portion from the blood money (diyyah) together with the Aqilah based on the aforementioned hadith and Allah knows what is right.

**Can the blood money (diyyah) be taken from the offender if the aqilah is unable to pay?** Imam Nawawi said: Baitulmal pays the blood money (diyyah) of the offender who has no blood relatives or loyalty or he has poor relatives or they are unable to pay all, then the Baitulmal pays the remaining if the offender is a Muslim. Ibn Qudamah said: The offender who has no Aqilah, the blood money (diyyah) is paid by the Baitulmal and if he is unable he (the killer) shall not pay anything.

Statement on this issue revolves around 2 points; 1st: if someone has no Aqilah, must it be paid from the Baitulmal or not? There are two narrations. 1st of them, it is paid for him. And this is the view of Zuhri and Shafi'i because the Prophet (SAW) paid the blood money (diyyah) of the Ansari who was killed in Khaibar from the Baitulmal. It was narrated that a man was killed in the period of Umar and the killer was not known and Ali said to Umar: O AmirulMu'minin, the blood of a Muslim cannot be overlooked and he paid his blood money (diyyah) from the Baitulmal. And because the Muslims inherit someone who has no heirs and thus they also become his Aqilah if he has no one like his relatives and masters.

The second point that is not compulsory as Baitulmal is the right for women, boys, lunatics and poor who have no Aqilah and it is not permissible to use it otherwise and because the Aqilah shall be from the relatives and Baitulmal is not relatives. And for the Ansari killed in Khaibar, it was not compulsory as that was the dead of the Jewish and Baitulmal cannot be Aqilah for unbelievers under any circumstances but the Prophet (SAW) favours them. And their statement that the Muslims inherit him researchers say: Giving it to Baitulmal is not al-mirath (inheritance) but it is fai'un and that is why the money of someone who has no heirs from the dhimmis is taken to Baitulmal and the Muslims do not inherit it and Aqilah do not cover their if he has no relative and is compulsory on relatives even if they are not heirs and based on the 1st narration if he has no Aqilah, the blood money (diyyah) is wholly paid for him from Baitulmal and if he has Aqilah it do not pay all and the rest is taken to Baitulmal.

**The wisdom behind payment of blood money (diyyah) by Aqilah:** The wisdom is that blood money (diyyah) from the money of the wrongdoer without intentionally committing any sin and something must be imposed for the killed, thus the Shariah imposed on who are responsible for helping and assisting him to assist him in paying the blood money (diyyah) and it is like imposing feeding and freeing captive.

Sarakhsi said: We oblige payment of blood money (diyyah) on Aqilah based on relationship and sympathy

(Sarakhsi, 2001). But, people are unaware of it and think that it is not compulsory on Aqilah but blood money (diyyah) is collected from them based on favour and this is not correct.

**Those who have no Aqilah in blood money (diyyah):** The scholars are unanimous that the following have no Aqilah in blood money (diyyah) although, there is a view of some Hanafis in women but this contradicts authentic ahadeeth. They are as follows:

- Slave
- Immature and includes small and insane
- Poor
- Female
- Contrary to the religion of the offender

He said in Mughni al-Muhtaj: I do not know any dissenting view that women and boy do not bear anything in blood money (diyyah) even if they are rich, as well as foolish.

Ibn Qudamah said: Ibn al-Mundhir said that there is a consensus from all researchers memorise from among the scholars that a woman and a boy who is not matured are not among Aqilah and also a poor person must not pay anything and it became compulsory on Aqilah to soften the burden on the killer and thus it is not permissible to burden who has not committed any crime and making it compulsory on poor is hard on him and burdening him with what he cannot bear and because researchers agreed that no one is burdened from the Aqilah with what is heavy on him and requiring poor to bear a portion is a burden as may be all or most of his money is required or he may originally not have anything. And for boy, insane and woman they are not from Aqilah as it has the meaning of help and they are not among.

#### **WHERE AQILAH DO NOT BEAR BLOOD MONEY (DIYYAH)**

**Intentional:** Based on the majority view and is the correct. Ibn Rushd said: And the blood money (diyyah) of intentional killing, the majority are of the opinion that the Aqilah do not pay based on a narration from Ibn Abbas and no dissenting view from the companions that he said:

Aqilah do not bear blood money (diyyah) of intentional killing and confession, as well as reconciliation in the intentional killing

**Reconciliation:** The majority view is that Aqilah do not bear blood money (diyyah) in reconciliation and this is the correct view. Some Malikis are of the opinion that Aqilah bear blood money (diyyah) in reconciliation. Dasuqi said:

In reconciliation and what returns to it in the increase, there are 2 views: The most correct is that it is permissible if there is something fixed in the wound

Ibn Qudamah said:

Aqilah do not bear blood money (diyyah) of slave and in intentional killing, reconciliation, confession and what is below one-third

**Confession:** Sarakhsi said: if a man admitted to manslaughter or semi-premeditated killing, then the blood money (diyyah) shall be paid from his money deferred in 3 years because Aqilah do not bear what is compulsory based on confession (Sarakhsi, 2001).

Ibn Qudamah said: Aqilah do not bear blood money (diyyah) in confession that is where the offender confesses the commission of manslaughter or semi-premeditated one then he shall pay the blood money (diyyah) and not Aqilah and researchers do not know a dissenting view. This is a point of agreement between the scholars.

**Below one-third:** Dasuqi said: Aqilah do not bear blood money (diyyah) in less than one-third. This is a point of agreement between the scholars.

**Slave:** Kaasani said: Aqilah do not bear anything from the crime of slave, mudabbar, ummulwalad because he/she shall be the target for commission of the crime and he is not owned by Aqilah and the master and because the master is responsible for the crime of the slave is in place of Aqilah.

**Duration given to Aqilah to pay the blood money (diyyah):** The duration within which Aqilah may be able to pay blood money (diyyah) is 3 years and this is agreed between the scholars. Ibn Rushd said:

They agreed that the blood money (diyyah) manslaughter is deferred in 3 years (Ibn Rushd and Abu Al-Walid, 1975)

He said in Mughni al-Muhtaj: (and it is deferred for the Aqilah) Even if it is not judge's decision (the complete blood money (diyyah) of killing) with Islam, freedom and masculinity (3 years) at (the end of each year one-third) of the blood money (diyyah) (Shirazi and Abu Ishaq, 1996). As for being in each year one-third, its division is for 3 years.

The saying that it is deferred must be by judge's decision certainly this is not what is meant, as his ability in his words. The restriction with Aqilah takes out Baitulmal and the offender that is not what is meant, as

well as Qaffal and others expressed that if it is compulsory from Baitulmal it is deferred and the companions said that it is deferred on the offender when it becomes compulsory on him. This is the most correct and Allah knows best.

## **AQILAH IN THE CONTEMPORARY APPLICATION**

After this brief statement on Aqilah and what they bear from the blood money (diyyah) in quantity and quality according to the scholars of different schools of law, there is a need to raise the following question: Is it possible to apply the principle of Aqilah at the present time? The contemporary scholars differ in answering this question to various views some of them do not believe that principle of Aqilah should be applied in every time and place and they said that the principle was based on Arab custom at that time which was even famous before Islam and was considered as good morals among the tribes and whenever this kind of help is found between Muslims then Aqilah is found and if not blood money (diyyah) is paid from Baitulmal and in the absence of the latter, it is paid from the offender's money. Sheikh Shaltout said: It came in the sunnah that Aqilah are those who pay blood money (diyyah) or they are involved in it and this was in recognition of the Arab system necessitated by what was between the tribes of cooperation and help and not a legislation for all times and places, without regard to the circumstances and considerations (Shaltout, 2001). Ridwan Shafi'i Mutaafialso said: Aqilah do not apply to our time because of lack of help and that is specially for Arab who memorise their genealogy and thus, blood money (diyyah) shall be paid from Baitulmal if it exists and is organized but now no one exists but resembles the Ministry of Finance and based on that the thought that this ministry is the one mentioned in the Shariah books in relieved; the result then is that the killer is independent in paying compensation to the plaintiff in the civil right to all kinds of murder and this is the practice today. There is another group who say that principle of Aqilah is a public legislation which must be applied at all times and places and is not specially for Arab. Audah Muhammad Audah said: The correct view in our opinion is that the principle of Aqilah must be differentiated with the Shariah system for its organization; the principle itself which is for Aqilah to bear the blood money (diyyah) of manslaughter is a public legislation that is not specific for a particular time and place but is binding on Muslims at all times and period. But, the provisions specifying the terms and explanation of the requirements of Aqilah and payment of blood money (diyyah) by Aqilah are matters subject to ijihad taken

into consideration time and place (Audah, 2005). Some are of the view that Aqilah cannot perform the duty of Aqilah in the present time because family are broken and bonds of ties are decomposed among relatives and tribalism ceased and tribe consideration is no longer important more than the attention of a person for himself and Asaba is very rare today and even if it exists the number of its members is few and cannot bear the whole blood money (diyyah), Aqilah was existing because people memorized their lineage and relatives and belong to their tribes and origins but now there is nothing like this as is rare to find a person who knows his third grandfather and Baitulmal does not exist and its system has changed and thus, blood money (diyyah) is compulsory on the offender alone (Zuhaily, 1985).

It seems from the foregoing that the basis of Aqilah is help and no community or group without it even if causes and forms varied over time, some of which are based on unity of lineage, some based on unity of profession or occupation, some based on unity of belief, some based on unity of association or political party, thus help exists in each community and cannot be denied at all time or place or restricting to one custom only but its causes and application may change and vary based on time and place and the issue of determining and applying is due to the discretion of the leader and mujtahidin to determine what fits the conditions of the people in that time and place and Aqilah is not restricted to relatives or the people of diwan as it was in the Prophecy and caliphate era because the purpose of the Shariah provisions is to achieve its purposes and principles without committing to take a certain way in reaching it, especially if it is not appropriate to the circumstances of the era.

### CONCLUSION

In this study, the researcher sees to mention some of the bodies or entities that can act as Aqilah in the time without identifying or allocating them in that the attention of governments and mujtahidin would be drawn in order to apply the system of Aqilah on its basis in each country by legislation that suit the circumstances of individuals and society as follows: Asabaor clan in countries where help and cooperation are based on tribal system.

Cooperative, social and Islamic insurance companies which provide the payment of blood money (diyyah) between policyholders/participants; details are coming in the following discussion in sha Allah.

Trade unions and federations that are held between workers who are engaged in one profession and promise to help and cooperate between themselves; doctors have

union, engineers have union, accountants have union including workers in one side such as companies, factories, ministries, public bodies, etc. If the offender does not work such as sick, insane and boy; if he is under the guardianship of someone they should have the same Aqilah but if he has no guardian the blood money (diyyah) shall be paid by Baitulmal.

Political parties and associations that are formed between individuals such as political, social and cultural systems for the purposes of helping and cooperation between them in crisis and difficult circumstances are also included.

The establishment of special funds by the government or charity organizations to achieve solidarity in bearing blood money (diyyah) are also part. Abdul Qadeer Audah suggested that the state can bear blood money (diyyah) for someone who is unable to pay and that is by imposing tax specifically for that purpose and it can also impose a special tax on litigants for this purpose because if contemporary governments are committed to helping the poor and the unemployed, it is more preferred to compensate the heirs of the killed who are in distress. He added that European countries established a fund to compensate victims of crimes and the amount of its revenue are derived from fines prescribed by the governments and this is precisely what the Shariah means (Audah, 2005).

### RECOMMENDATIONS

Researchers concluded at the end of this study to many results and made some recommendations as follow:

**First:** The legality of blood money (diyyah) in killing by mistake, semi-premeditated and manslaughter if the relatives of the killed pardon the killer. Aqilah bear blood money (diyyah).

Aqilah are the relatives of a person through father, son and uncles just like al-mirath (inheritance). Aqilah bear blood money (diyyah) above one-third.

Aqilah do not bear blood money (diyyah) manslaughter, confession where the killer is a slave and where there was reconciliation. Woman, boy and poor are not part of Aqilah. Payment of blood money (diyyah) by Aqilah is deferred in 3 years.

The offender does not participate in paying the blood money (diyyah) together with the Aqilah. In the absence of Aqilah, the killer is relieved of paying the blood money (diyyah) if he is unable.

Ignorance of people with the provisions of Aqilah until they feel unease to request for blood money (diyyah) in manslaughter from the relatives of the killer. Payment of

blood money (diyyah) by Aqilah is in manslaughter or semi-premeditated killing but that of intentional killing is not borne by Aqilah but shall be paid by the offender and if the individuals from the Aqilah agree to help him there is nothing wrong.

As for expiation, it is compulsory on the offender which is freeing a believing slave and if he is unable then fast for 2 consecutive months which is mentioned in the saying of Allah (SWT): Never should a believer kill a believer but (if it so happens) by mistake (compensation is due): If one (so) kills a believer, it is ordained that he should free a believing slave and pay compensation to the deceased's family, unless they remit it freely. If the deceased belonged to a people at war with you and he was a believer, the freeing of a believing slave (is enough). If he belonged to a people with whom ye have treaty of mutual alliance, compensation should be paid to his family and a believing slave be freed. For those who find this beyond their means, (is prescribed) a fast for 2 months running by way of repentance to Allah for Allah hath all knowledge and all wisdom Nisa'i/92.

**Second:** Researchers recommend that the International Fiqh academy of various governments and Islamic states to include in the legislation provisions that blood money (diyyah) shall not be lost because it cannot be overlooked (and cannot be wasted) in Islam. On the relevant authorities to work in fostering a spirit of cooperation and interdependence in various members of the groups and communities that have a social bond. This is achieved by the following: Include in regulations and different organizations the responsibility of bearing blood money (diyyah).

The Islamic insurance companies in various countries around the muslim world should work on documents that cover accidents and paying blood money (diyyah) on concessional terms and appropriate premiums.

Initiative of Islamic countries to include Baitulmal (public treasury) in the responsibility of bearing blood money (diyyah) in the absence of Aqilah so as to achieve social purposes which shall be vested in Baitulmal including bearing blood money (diyyah) in addition to its economic role.

Inviting Muslim minorities in different regions of the world to establish organizations to achieve cooperation and social solidarity among themselves and to explicitly cover compensation on killing by accident based on the Islamic system and to send letters to governments, bodies, associations and social institutions to activate the work of the charity including Zakat and endowment, bequests and donations to contribute in bearing blood money (diyyah) resulting from manslaughter.

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