



The Comparative Analysis on Liability of Relative Payer of Blood Money with Sunnite Jurisprudence from Perspective of Shiite Jurisprudence

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ABSTRACT

One of the noticeable topics in Islamic law is the subject of relative payer of blood money (عاقله) and his liability for payment of blood money or compensation of injury. Arabic term (عاقله) is derived from the root of (عقل) that denotes to hinder and obstruct and lexically it is said to the persons, who are undertaken to pay blood money for one of their relatives on behalf of them. These individuals are the paternal and maternal male relatives of the perpetrator according to their classification for inheritance in such a way that they will be equally pledged to pay blood money on behalf of the perpetrator. The liability of relative payer of blood money is neither a criminal liability nor a civil liability, but it is a responsibility caused by divine obligation. In other words, the legal essence of liability of relative payer of blood money (ضامن عاقله) is an imperative rule not positive rule. Namely, payment of blood money is a task for perpetrator of crime and s/he will be mainly responsible and liable for compensation of crime while the relative payer (عاقله) pay this compensation on behalf of the perpetrator and in the case of incapacity and disability of the relative payer in payment of blood money, the relative payer shall not be liable and the perpetrator of crime will be the real undertaker. The legal discourse of liability of relative payer (عاقله) for blood money is deemed as one of the controversial subjects, which have been preoccupied by lawyers and the law researchers for the most part. On the one hand, the crime that has been perpetrated against the murdered family should be typically compensated and on the other hand the other party should pay the blood money he has not aided to or shared in this perpetration.

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INTRODUCTION

Surely, since the day when humans perceived his/ her identity and shared with other humans of the same kind in social life s/he has always yielded to obedience from a group of life rules whether by prudence and or inevitably by coercion. Indeed, the human's characteristic in assuming of responsibility has enabled him/ her to meet and resolve the requirements and other wishes and accidents caused by social life by obedience and following of the human- related rules ad systems.

Humans are relatively dependent on each other in social life and any person is responsible versus his/ her other human of the same kind where some of them are mandatory in terms or religion and norms. A series of legal subjects was proposed in Penal Code after victory of Islamic Revolution, which was novel in our community out of which one is the subjects regarding the *liability of relative payer of blood money* (ضامن عاقله) that is responsible for payment of blood money in some cases.

However, this issue was not problematic before and after Islam during time of Holy Prophet and among the Arab people, it could not be enforced in modern communities. The historical background of term (عاقله) can be searched in pre- Islamic era at Age of Ignorance and it has been also verified by Islamic Prophet at early days of Islam. In past time, the liability was mainly assumed for the group of people and this responsibility was transferred from the perpetrator to members of his/ her family, tribes, and clan and accordingly the person had no independent character in the group and s/he has been only considered as a member in that group.

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Most of Islamic jurisprudents including Shiite and Sunnite have issued Fatwa about responsibility of the relative payer of perpetrator for payment of blood money in the case of simple fault crime (murder) and typically all of Islamic Jurisprudents have accepted the rule of liability of the relative payer (عاقله) against payment of blood money at Islamic early period.

But some of Islamic lawyers assume the liability of relative payer as improper in the present community, this was a proper action at early Islamic period and among the Arab tribes while it could be implemented in our society since there is no tribal system today. Given that the perpetrator's relatives, who are considered as the relative payers should be responsible for payment of blood money while they had no role in this practice and today this issue has been disputed and discussed among the jurisprudents and it practically encounters several problems in enforcement as well since this day there is no longer those tribal and nomadic communications and relations while at present the members of family are not aware of statuses of each other and their relations have been restricted to their family. Under such circumstances, payment of blood money for one perpetrator of their family by other relative (عاقله) is beyond of expectation and unperceivable.

The Islamic illuminated injunctions have been certainly legislated according to time and place requirements with respect to their comprehensiveness and if those conditions are changed. Those injunctions, which totally depend on these conditions (non- praying injunctions) so they may be changed with respect to time and place requirements in order to administer justice in the community.

In any case, it seems that the religious legislator has employed certain kind of physical and life injuries with theory of legal- judicial policy and long with supportive and guaranteed goals to allocate the responsibility to the persons, who had no intervention in occurrence of accident. Thus in this study, we only deal with comments from Shiite and Sunnite jurists about religious injunction of the relative payer of blood money and due to wide extent of subjects and plural ideas from each of Islamic jurists we avoid from their analysis.

Definition of term عاقله from jurists' perspective:

The Islamic jurists have proposed several definitions about we briefly explain about some of them:

In terminology, term عاقله is called to someone from the criminal perpetrator (manslaughter), who pays blood money for the murderer as his/ her authority or the heirs.

Khoori Shartooti implies: The word عاقله is feminine case of word عاقل and its plural forms are عقالات and عواقل. The term عاقله is deemed as perpetrator's agnate (عصبه). The term عصبه is the same as paternal relatives, who will pay the blood money of that perpetrator.

In terminology book of *Lesan Al- Arab* (لسان العرب): it is mentioned that the relative payer of blood money (عاقله) is the same as the agnate (عصبه) and also agnates refer to the patrilineal relatives, who are responsible for payment of blood money of the victim on behalf of the perpetrator of crime.

Ragheb Isfahani writes in the book of *Al-Mofradat* (المفردات) that: the term 'عاقله' means the word 'عقل', which denotes rejection and ask for holding back for example holding of the knee- band for the camel and for this reason when it is said 'I held back the victim' it means that I paid the blood money for the victim.

a) The Maleki jurisprudents:

If the perpetrator of murder is a member of the bureau then the given bureau should bear the burden of the crime of the perpetrator and if s/he is not a member of a certain organization so his/ her tribe and or clan should be the relative payer for his crime and blood money. Omar Ibn Khattab (Second Caliph) was the first ruler, who established the several governmental bureaus in Islamic government. The number of Muslims was too high at his time because of spreading Islam so he transferred the relative payer of blood money from tribe and clan of perpetrator to the given bureau.

b) Shafeyee jurisprudents:

The term 'عاقله' is the same as the agnates (عصبه), who are related to the perpetrator because of familial relationship or authority and except father, grandfather, child and grandchild, the other ones are not considered as agnates.

b) Hanafi jurisprudents:

The term 'عاقله' or relative payer of blood money is the same as agnates or paternal relatives of the perpetrator and they are considered as agnates not the members of governmental bureau.

d) Hanbali jurisprudents:

The 'عاقله' includes the perpetrator paternal relatives or agnates. Namely, 'عاقله' is a general concept and it comprises of the patrilineal relatives of someone, who committed crime (with observance of their hierarchical order) and they are the brothers and children of perpetrator at first order.

Then the children of his/ her grandfather are considered including the uncles and their children.

e) Shiite jurists:

The blood money is taken from the relative payer of the perpetrator in the case of simple fault crime and the agnates include the male relatives of the perpetrator of murder and nothing is taken from the wives and maternal brother and maternal uncles of the perpetrator since if the perpetrator is killed and his/ her blood money is taken, neither his/ her maternal brother nor maternal uncles do not deserve to receive blood money and for this reason they are not responsible for payment of blood money.

Types of relative payer of blood money 'عاقله' from jurists' view:

The jurists from five major Islamic branches assume certain persons as 'عاقله' but in Islamic Punishment Law only three of totally four types of 'عاقله' have been mentioned in such a way that in Article 307, it has been highlighted on *agnates* 'عصبه' and *undertaker by inheritance* 'ضمان جريره' and also the liability of *Muslims' Treasure* (بيت المال) has been implied and it has not been referred to *loyalty by virtue of emancipation* 'ولاء عتق' because it is not related to given subject:

a) Maleki Jurists:

The related parties to the relative payer of blood money are considered as four groups according to Maleki jurists: 1) members of bureau, 2) agnates, 3) freed slaves, and 4) Muslims' treasure.

Regarding the members of the governmental bureau, if the perpetrator is a member of military troop then this case is prior to the agnates. But if the bureau and troop include dispersed tribes then priority is subject to this fact that the perpetrator is considered as a member of bureau. Therefore if s/he (victim) is or is not a member of bureau while the perpetrator is not or is a member of bureau to pay blood money by the given bureau so the agnates of perpetrator will incur the blood money.

b) Hanafi jurists:

At Age of Ignorance, four items were considered as objects of mutual indemnity (compensation for crime) among Arab people including 1) relative's relationship, 2) authority, 3) treaty, and 4) right of joining up and reconciliation with enemy (ممالحة العدو); therefore, these four cases remained in Islamic era as well thereby the Muslims might inherit from each other and they were included in case of relative payer of blood money.

c) Sahfeyee jurists:

The Sahfeyee jurists assume the hierarchy of 'عاقله' in five items: 1) familiar relation, 2) authority, 3) portion (عدي), and 4) friendship (amity).

d) Hanbali jurists:

According to view of Hanbali jurists, hierarchy of 'عاقله' comprises of three objects: 1) familial relationship, 2) authority, and c) Muslims' treasure.

Therefore, it is inferred from the above-said statements that the items of treaty (حلف), portion (عدي), friendship (موالات), and member of bureau (اهل ديوان) are excluded from hierarchy of 'عاقله' but the cases of familiar relationship (قربان), authority (ولاء), and Muslims' treasure (بيت المال) can be certainly assumed as the orders for 'عاقله' with confidence.

e) Shiite jurists:

All of Shiite jurists unanimously agree in three orders of 'عاقله' hierarchy and they include 'Agnates (عصبه), liberated slave (معتق), and undertaker by inheritance (ضامن جريره)'. Similarly, the agnates firstly include paternal relatives and or the relatives of father so the maternal relatives such as brother of mother and maternal uncles are excluded from them.

The qualifications of crime according to jurists' view:

The crime is one of the important elements, which play significant role in determination of payment of blood money by the relative payer of blood money (عاقله). Now, it should be seen what kind of qualifications a crime should be included:

a) Hanafi jurists:

According to Hanafi jurists, qualifications of crime are as follows: 1) The relative payer of bloody money عاقله will not pay the blood money for intentional murder therefore he could pay blood money for the simple fault crime and quasi delict. 2) The relative payer of blood money (عاقله) may not pay for the slave and the given victim should be free person (male or female). 3) The relative payer may not pay for blood money to a crime that is proved by reconciliation and confession by the perpetrator so the blood money for the crime is proved by the *obvious evidence* (بينه). 4) The relative payer will not incur the described price of the blood money. 5) The crime should be related to human's life.

b) Shafeyee jurisprudents:

The Shafeyee jurisprudents consider the qualifications of crime as follows: 1) The crime should not be intentional but it should be by fault and the like. 2) The crime should not be proved by reconciliation but it should be proved based the obvious evidence. 3) If crime is proved by confession so the relative payer should ascertain it.

c) Hanbali jurisprudents:

Based on Hanbali jurisprudents, qualifications of crime are as follows: 1) It should be simple fault crime; 2) The crime should be proved by clear evidence; 3) The crime should be exerted on human's life; 4) The crime should occur on free person (not slave); and 5) The price of crime should be equal or greater than one third of blood money.

d) Maleki jurisprudents:

Regarding qualifications of crime, the Maleki jurisprudents mentioned the followings: 1) The crime should be committed by fault; 2) The crime should occur on free person (not slave); 3) The crime should be proved based on obvious evidence; and 4) The crime has not been proved by means of reconciliation.

e) Shiite jurisprudents:

But, Shiite jurisprudents have implied six conditions as the terms of crimes: 1) The crime should be perpetrated by fault; 2) If the crime was committed intentionally the murderer should not be available and no property remained from him/ her; 3) The crime should not be proved by confession and reconciliation but it should be proved by obvious evidence; 4) The crime has been committed unintentionally but it occurred on free person (not slave); 5) The crime has been not committed on the same perpetrator personally but it should be done on other person; and 6) The price of crime has not been lesser than compensation for *deep wound* (ديه موضحة).

Perpetrator's qualifications from jurisprudents' view:

One of the other items in determination of payment of blood money by relative payer that plays essential role is the murderer (perpetrator), who should possess certain qualifications:

a) Hanafi jurisprudents:

According to attitude of Hanafi jurisprudents, perpetrator's qualifications are as follows: 1) The perpetrator should be Muslim or under protection of Islamic territory; 2) The perpetrator should be free person; and 3) The perpetrator should be guilty.

b) Shafeyee jurisprudents:

Based on Shafeyee jurisprudents' view, the perpetrator should possess the following qualifications: 1) S/he should be Muslim; 2) s/he should be guilty; and 3) s/he should be a free person or slave.

c) Hanbali jurisprudents:

From perspective of Hanbali jurisprudents, the perpetrator should be qualified as follows: 1) Perpetrator should be guilty; 2) S/he should be Muslim or under the protection of Islamic territory; 3) Perpetrator should be a free person; 4) The murderer and victim should not be the same.

d) Maleki jurisprudents:

The Maleki jurisprudents assume the characteristics of the perpetrator as follows: 1) Perpetrator should be guilty; and 2) S/he should be Muslim.

e) Shiite jurisprudents:

But the Shiite jurisprudents have considered three main conditions for perpetrator: 1) S/he should be guilty; 2) Perpetrator should be Muslim; and 3) Perpetrator should be a free person.

Qualification of victim of crime according to attitude of jurisprudents:

One of the other intervening elements in payment of blood money by the relative payer of the criminal victim (murdered one) is that the victim of crime should possess some characteristics in order to assign the relative payer to pay for blood money:

a) Hanafi jurisprudents:

According to attitude of Hanafi jurisprudents the qualification for victim of the crime are as follows: 1) The victim should be Muslim or under protection of Islamic states; 2) It is not required that the victim to be sane or

mature (adult); 3) The protection from life of the victim should be compulsory; 4) The victim should be free person or slave; 5) The victim should be innocent in terms of shedding blood; in other words; the victim should not be apostate or sentenced to death.

b) Shafeyee jurisprudents:

Regarding the crime- stricken victim, the Shafeyee jurisprudents have declared: 1) The victim should be Muslim or lived under territory of the Islamic states; 2) It should be compulsory to protect from victim's life; and 3) Victim should be free person (male or female)

c) Hanbali jurisprudents:

From attitude of Hanbali jurisprudents regarding the crime- stricken victim, s/he should have the following qualifications: 1) The victim should be murdered by fault or quasi delict; 2) The protection from victim's blood should be compulsory; 3) The victim should be a free person and s/he should not be murdered because of poverty.

d) Maleki jurisprudents:

Based on attitude of Maleki jurisprudents, qualifications of the murdered victim are as follows: 1) The victim should be Muslim or under protection of Islamic territory; and 2) The murdered victim should be free person.

e) Shiite jurisprudents:

But the Shiite jurisprudents have declared three conditions for the killed victim in order to assign payment of blood money to the relative payer of perpetrator: 1) The victim should be killed by fault; 2) The victim should be a human not animal; 3) The protection from blood and life of the victim should be compulsory.

Analysis of qualification of the relative payer of blood money 'عاقله' according to attitude of jurisprudents:

The relative payer of blood money may be responsible for payment of it on behalf of perpetrator when he possesses certain characteristics in terms of personal dimensions and the other kinsmen of the perpetrator could not be assumed as qualified relative payer regardless of these characteristics so we deal with them:

a) Hanafi jurisprudents:

Based on attitude of Hanafi jurisprudents, the qualifications of perpetrator are as follows: 1) S/he should be Muslim; 2) S/he should be a free person; 3) S/he should be mature and adult; 5) S/he should be sane; 6) If the perpetrator is a member of governmental bureau at first place his/ her payer of blood money should be from members of the same bureau and if s/he is excluded from the bureau the payer of blood money will be appointed by the perpetrator; 7) The insane person, child, and woman can be assumed as relative payer if they are assumed as aid and abet for the murderer.

b) Shafeyee jurisprudents:

According to attitude of Shafeyee jurisprudents, the qualifications of relative payer of blood money are as follows: 1) He should be one of perpetrator's agnates; 2) S/he should be Muslim; 3) It should be male; 4) He shall be a free person; 5) He should be mature (adult); 6) He should be sane; 7) He should not be neural human and if it is so therefore his masculinity should be revealed and or it should become the masculine before the end of the current year.

c) Hanbali jurisprudents:

The Hanbali jurisprudents consider the qualifications of relative payer of blood money as follows: 1) Muslim; 2) as agnates of perpetrator; 3) Male; 4) A free person; 5) Sane; 6) mature (adult); 7) needless (not poor); and 8) not to be neutral person.

d) Maleki jurisprudents:

From perspective of Maleki jurisprudents, the qualification of the relative payer of blood money are follows: 1) It should be male not female; 2) He should be free person not slave; 3) He should be mature (adult) not child; 4) He should be sane not mad; 5) He should be present not absent; 6) He should be wealthy not poor; 7) The relative payer of blood money should have the same religion and live in the same city or residence (similar belief and the same locality).

e) *Shiite jurists:*

The Shiite jurists have considered eight characteristics for the relative payer of blood money including: 1) He should be one of agnates; 2) He should be Muslim; 3) He should be a free person; 4) Male; 5) maturity (adult); 6) Sanity; 7) Richness; 8) Someone other than perpetrator.

The comments of jurists about amount of payable blood money by the relative payer 'عاقله':

The relative payer 'عاقله' will not be responsible for any crime that perpetrator has committed by simple fault against the victim but there is certain limited amount for this purpose and we deal with it:

a) *Hanafi jurists:*

The payment blood money, which has been compulsory because of the essence of murder, may be against favor of the relative payer of blood money 'عاقله'. The relative payer will pay the blood money provided that its amount to be the same amount of the compensation for deep wound and greater and or it reaches to one third of the full blood money and surplus than this amount.

b) *Shafeyee jurists:*

If the crime was committed intentionally against life of victim and or by fault or quasi delict, payment of blood money will be compulsory for the relative payer. There are two comments about this matter if the relative payer pays blood money lesser than the price of life or not. *The classic comment:* The relative payer will incur payment of full compensation for blood money and not lesser value than this amount but this value will become mandatory to be settled by perpetrator's property. *The new comment:* The relative payer will be responsible for payment higher or lower than the price of compensation for crime and pay it.

c) *Hanbali jurists:*

The Hanbali jurists have considered the judgment for relative payer of blood money as indisputable matters (*admissa*) and argue that when the crime is committed on a free person and its amount to be the same size of one third of the full blood money the relative payer may incur it and pay for this price.

d) *Maleki jurists:*

According to view of Maleki jurists, whatever is committed without intention and will it is considered as crime by fault so the relative payer should be responsible for its payment. Thus, the relative payer will not incur the crime committed by fault unless its price is equal to third value of blood money and or greater.

e) *Shiite jurists:*

The relative payer will incur the *compensation for injury of the deep wound* ديه موضحه (a crime in which the body skin is torn and the bone is revealed) and higher than it and pay for this crime.

Analysis on non- payment of blood money by the relative payer:

We may sometimes encounter in some cases in which the relative payer could not afford to pay blood money for the given perpetrator and in this regard we analyze the comments from the jurists, one can refer to some of these reasons including: 1) Death of the relative payer before payment of blood money; 2) Insolvency of the relative payer in fulfillment of blood money; 3) Rejection of relative payer from incurrence of blood money; and 4) Lack of the relative payer for blood money.

a) *Hanafi jurists:*

The Hanafi jurists have not mentioned any comment about payment of blood money in the cases of death, insolvency, and rejection of the relative payer but they have only implied that if the perpetrator has no certain relative payer for blood money, this blood money will be paid from Muslims' treasure and or by the murderer.

b) *Shafeyee jurists:*

The Shafeyee jurists argue that if the perpetrator has no relative payer for blood money and or the existing payer is not adequate for payment of full amount of blood money then it is paid from Muslim's treasure on behalf of the perpetrator and if this property is not stored in Muslims' treasure or its sponsor oppressively rejects from its payment then there are two bases with respect to this point that 1) The blood money becomes primarily mandatory for the perpetrator and then the relative perpetrator pays it on behalf of the perpetrator; 2) Firstly and substantially payment of blood money becomes mandatory for the relative payer and in the absence of the relative payer whether agnates and liberated slave as well as Muslim's treasure, the perpetrator will pay it and in the first case the perpetrator shall be responsible for payment of blood money but in the second status the perpetrator will not be required for incurrence while there are many adherents among Shafeyee jurists in

the first assumption. If perpetrator dies at the middle of year his/ her blood money shall be paid from his/ her bequest.

c) Hanbali jurists:

If there is no relative payer for the perpetrator of crime by fault and or the given payer become incapacitated to pay the blood money, the blood money is paid from Muslim's treasure for blood money of perpetrator. According to statement of The Islamic Holy Prophet, "I am the heir for someone, who has no heir, and I receive inherited bequest from the given person or I pay the blood money for him/ her." An in the absence of Muslim's treasure and or lack of access to it and also in our time when the Muslims' treasure is not available for its original owners if someone is involved in crime by fault certainly s/he could not have access to Muslims' treasure. There are two comments and attitudes among Hanbali jurists:

- 1) At first place, payment of blood money becomes mandatory for the relative payer 'عاقله' and in the absence of relative payer and his insolvency and lack of access to Muslims' treasure, the blood money is paid in installments and if the problem is removed later namely the insolvency is converted into solvency, the blood money will be taken from the relative payer.
- 2) The payment of blood money will be mandatory for the perpetrator and then his/ her relative payer may pay it. But the first comment is further supported among Hanbali jurists. However, no one could extract the comments of all of jurists in a certain religion only by considering the comment of one jurist but thereby one could find typically their comments. For this reason, if payment of blood money is proved by means of legal clear evidence against the relative payer and they reject or dodge from this trend in this case they will be compelled to pay blood money whether by the experienced arbiters or the ruler.

d) Maleki jurists:

It is inferred about death of the relative payer before payment of the blood money that there are two comments among the Maleki jurists.

- 1) It has been absolutely implied that if the relative payer dies before payment of blood money, payment of that compensation will be divested from his incurrence.
- 2) They have mentioned some details based on which if the relative payer dies before coming the end of year, the payment of blood money will be divested from his incurrence but if he dies after coming the new year and end the previous year thus payment of blood money will not be waived so his heir should be responsible for this payment like a debt.

Likewise, payment of blood money will not be waived from incurrence by the relative payer because of failure and death and but in the case of failure the librated slave and case of Muslims' treasure will be added to it in order to avoid from wasting the blood money of the given victim and if the close relative of perpetrator reject to pay blood money the agent of remote relative of perpetrator will pay the blood money.

e) Shiite jurists:

The Shiite jurists assume the relative payer 'عاقله' as agnates, librated slave, and undertaker by inheritance, and Imam (PBUH). Thus, we analyze the condition to which the relative payer may encounter based on the attitude of Shiite jurists:

- 1) *Death of relative payer before payment of blood money:* If the relative payer dies at the middle of year payment of money will be waived from incurrence of him but if he dies after the end of current year, its payment is not divested from the incurrence of the late person but it is waived from his heirs. However, there is an exceptional statement among the comments based on which the payment of blood money will be waived absolutely.
- 2) *Failure of the relative payer from fulfillment of blood money:* If the relative payer becomes incapacitated to pay the blood money but the perpetrator has some property then the perpetrator should pay it and if s/he is poor the blood money will be paid from Muslims' treasure.
- 3) *Lack of relative payer:* If there is no relative payer the Imam becomes the relative payer for perpetrator.
- 4) *Rejection of relative payer from payment of blood money:* If it is impossible to receive blood money from the relative payer (failure or rejection of relative payer) for any reason the amount of blood money for the victim will be paid by Muslims' treasure and or disbursed by Imam.

Quality of payment of blood money by the relative payer based on attitude of jurists:

It was expressed to this point that the relative payer should pay for compensation of crime committed by default but how and with what quality? And After how many years could the relative payer disburse this blood money perfectly?

a) Hanafi jurisprudents:

If the crime is committed by fault or quasi delict of murder the final deadline for its payment will be maximally three years but if the crime was committed on limbs and organs of victim and amount of compensation for them reaches to two-third or a half of full value of blood money the maximum deadline for payment is two years and if this price reaches to one third of a full price of blood money it can be paid within one year.

b) Shafeyee jurisprudents:

The final deadline for payment of blood money and compensation will be one, three, and or six years according to comment of Shafeyee jurisprudents.

c) Hanbali jurisprudents:

If the amount of compensation is equal to full price of blood money the relative payer will be required to pay for it not later than three years and if this required value is two- third of a full price of blood money this deadline is two years and if one-third of a full price of blood money has been determined it shall be paid for one year while the lesser price than this amount shall not be incurred by the relative payer.

d) Maleki jurisprudents:

The quality of payment for blood money by the relative payer depends on the religious discerning of the ruler according to attitude of Maleki jurisprudents and it will be judged for the relative payer so that he could be able to pay it in order to avoid from creating problem and pain for the relative payer and the relative payer will pay the same amount for three or two or one year.

e) Shiite jurisprudents:

Based on attitude from Shiite jurisprudents, especially Sheikh Toosi in book of 'الميسوط' they believed that the relative payer shall pay the blood money if he is rich and or at average level of income but he is not required to pay blood money if he is poor.

a) Quality of payment of blood money or compensation by relative payer: According to view of Shiite jurisprudents, the relative payer will incur for payment of blood money if he is rich or at average level of income but he is not obliged to pay for blood money if he is poor.

b) Quality of installments of blood money: There are two views: 1) The amount of payment is ten carats (a half of dinar) for the rich person and five carats (a quarter dinar) for the poor one so they can agree on the accepted value as well. 2) Imam may divide and prorate the amount of blood money for the relative payer as Imam discerns and that value will be close to the appropriate and right amount.

c) The final deadline for payment of blood money: The relative payer will disburse the blood money (compensation) for three years and upon the start of any year one third of blood money will be received.

d) The principles of blood money: According to attitude of Shiite jurisprudents, six objects are the principles of blood money including one hundred camels, two hundred cows, one thousand dinars, ten thousand dirham, and or two hundred robes. If the relative payer pays each of these objects to heirs of the murdered victims it is adequate.

Jurisprudents' invocation regarding tolerance of the relative payer for payment of blood money:

The jurisprudents of five Islamic major denominations assume the philosophy of tolerance for blood money on incurrance by the relative payer with reference to several cases so we deal with them:

1) *Hanafi jurisprudents:* Quranic verses, Islamic traditions, and consensus

2) *Hanbali jurisprudents:* Islamic traditions and consensus

3) *Shafeyee jurisprudents:* Quranic verses, Islamic traditions, and consensus

4) *Maleki jurisprudents:* Quranic verses, Islamic traditions, and consensus

5) *Shiite jurisprudents:* a) Quranic verses (Anfal 8: 75; Nesa 4: 92), b) Islamic traditions (First narration in book of *Tahzib Al- Ahkam* belongs to Sheikh Toosi/ Second narration in book of *Al-Estebzar* belongs to Sheikh Toosi/ Third narration was extracted from book of *Vasayel Al- Shiite* from Sheikh Horr Ameli/ Fourth narration in mentioned in book of *Man-La-Yazor-Al-Faqih* belongs to Sheikh Sadoogh/ etc), c) Consensus (It is implied in book of *Jawaher Al- Kalam* belongs to Mohammad Hassan Najafi/ It is quoted from book of *Jame Al- Madarek* belongs to Seyed Ahmad Khansari/ It is excerpted from book of *Masalek Al- Afham* written by Second Martyr/ etc).

Is the subject of the relative payer a constitutive judgment or confirmatory law?

Of those topics, which exist regarding the liability of the relative payer is that is the liability of the relative payer against payment of blood money assumed as a constitutive judgment or a confirmatory law?

a) *Hanafi jurisprudents:*

The Hanafi jurisprudents have not proposed any comment about constitutive or confirmatory nature of subject of the relative payer but the only issue that can be found in this regard is that the judgment of the relative payer of blood money has been suggested at time of Holy Prophet while it is silent in relation to the previous prophets.

b) *Shafeyee jurisprudents:*

It is inferred from the statements of Shafeyee jurisprudents that the judgment of the relative payer of blood money is considered as a confirmatory law since it has existed even before the Islamic period and the holy legislator has signed this judgment.

c) *Hanbali jurisprudents:*

Regarding this issue, the Hanbali jurisprudents have not presented any comments and they have only implied the changes exerted in Saudi Arabia during time of Holy Prophet concerning to this issue.

d) *Maleki jurisprudents:*

It can be quoted from books of Maleki jurisprudents (Books of *Al- Hashieyeh Al- Khorshi* and *Balaghah- Al- Salek*, and *Al- Navader* and *Al- Ziyadat*) that the subject of the relative payer 'عاقله' has been assumed as confirmatory law.

e) *Shiite jurisprudents:*

The people were living in several tribes in Arab Peninsula before the early Islamic period and at age of Islamic Holy Prophet and later and the history is an evidence for this purpose, particularly life in Medina city (formerly *Yasreb*) in which the one hundred twenty years quarrels and only *Beaas Battle* that was one of the wars among people of *Yasreb* city might embody the real status of people in that land. Similarly, Sheikh Horr Ameli has narrated that the blood money was stipulated one hundred camels before Islamic period and Islamic Holy Prophet has confirmed that judgment as well so it can infer clearly the confirmatory nature of subject of the relative payer of blood money.

Analysis on philosophy of the relative payer's tolerance to payment of blood money by perpetrator with respect to principle of personal nature of punishments according to attitude of jurisprudents:

Here this question may be raised that How can an irresponsible person be liable for the perpetrator and incur compensation for his/ her fault? The holy Quran expresses in Sura Anaam (6: 164) that: "...and no soul earns (evil) but against itself, and no bearer of burden shall bear the burden of another..." Similarly, in another point of Holy Quran it is implied: ""(Fater 35: 18) "And a burdened soul cannot bear the burden of another..."

a) *Hanafi jurisprudents:*

What it inferred from the comments of some Hanafi jurists such as Roshdani Maranani, Ahmad Ezzo Enayat, Seyed Mohammad Yasiri, Jalaleddin Soyooti, Mohammad Ibn Jarir Tabari, Mohammad Ibn Omar Zemakhshari, and Fakhr Razi, are as follows:

1) The principle of personal nature of punishments is purposed if the perpetrator is not guilty; 2) The narration from *Abi- Hanifeh* may express the fulfillment of compensation by the perpetrator personally in the absence of the relative payer not payment of blood money from Muslims' treasure that is exceptional case; 3) The payment of compensation by the relative payer is the well-known comment; 4) The requisite of payment of the blood money by the relative payer has been proved by the well-known Islamic traditions; and 5) The companions of Holy Prophets have done this judgment.

b) *Shafeyee jurisprudents:*

The attitudes of some prominent jurisprudents can be derived including *Abi-Jafar* in book of 'آياته الحكام شرح', *Mohyeddin Navavi* in book of 'المجموع شرح المذهب', *Mohammad Monzer Neishaburi* in book of 'الامتاع', *Hossein Ibn Masoud Baghavi* in book of 'شرح السنن' among them there are two theories:

1- Some jurists argue that the perpetrator shall incur payment of blood money and this assumption may verify the principle of personal nature of punishment. 2- Some other ones such as *Monzer* and *Baghavi* etc believe that payment of blood money is compulsory primarily to the relative payer so the majority of *Shafeyee* jurisprudents also believe in this doctrine and the related evidences confirm the latter theory including Islamic narratives and consensus. 3- Some of *Shafeyee* jurisprudents including *Zachariah Ansari* etc maintain that the philosophy of tolerance to payment of blood money has been based on a type of cooperation and contribution to the relatives.

c) *Hanbali jurisprudents:*

According to Hanbali jurisprudents including Majdeddin Harrani in book of 'المنتقى في الاحكام الشرعية', Sheikh Ebrahim in book of 'مثار السبيل في شرح الدليل', Movafagheddin Abdullah Ibn Ghodami Moghadasi in book of 'الكافي', and Mostafa Soyooti Rahibani in book of 'مطالب انلى النهى في شرح غاية المنتهى', Moslem Ghosheiri Neishaburi in book of 'صحيح مسلم', Abdul Karim Namleh in book 'شرح الروض المربع', Mohammad Nasereddin Al-Bati in book of 'المعتقد في فقه الامام الاحمد', and Suleiman Ibn Khalil Ghavaji Vahabi in book of 'ملتقى البحر' (footnote) it is inferred that this doubtful judgment has been responded along with Islamic tradition so that based on which the original judgment can be operable if there is no evidence for it. The philosophy of payment of blood money by the relative payer is in this point that the perpetrator was excused in committing the crime in order to not incur the heavy burden of payment for blood money. In fact s/he has an obligation that is to make atonement.

d) *Maleki jurisprudents:*

The comments of Maleki jurists can be derived including as follows: Mohammad Ghortabi Al- Andalusia in book of 'شرح بداية المجتهد و نهاية المقتصد', Mohammad Madani Busav in book of 'مجموعه اعمال اهل مدينة', and Ghazi Abdul Vahab Baghdadi Maleki in book of 'عيون المجالس', Abdullah Ibn Ottoman Al-Shaye in book of 'اراه ابن', and Vahabeh Zofeili in book of 'الفقه المالكي الميسر' based on which many crimes may be committed by fault in human's life while requirement for payment of majority of them might be out of the capability of the perpetrator. Thus, divine wisdom has been purported the compensation for these crimes to be assigned to the relative payer of blood money in order to guard and contribute to the perpetrator, who was excused from his/ her crime but it is not the case that perpetrator is not compelled to observe anything but the murderer shall make atonement for his/ her crime.

e) *Shiite jurisprudents:*

It is inferred from the comments of Shiite jurists including Fazel Meghdad in book of 'تنقيح الرافع لمختصر', Fazel Lankarani in book of 'قواعد فقيه' (*Principles of jurisprudent*), Seyed Taghi Tabatabaei Qomi in book of 'مباني منهاج الصالحين' (*Fundamentals of way of righteous people*), Sheikh Javad Tabrizi in book 'منهاج الصالحين' (*Way of righteous people*), Martyr Morteza Motahari in book of 'Usury- bank- insurance' as well as Abbas Ali Heidari in book of 'A new exploration into Islamic jurisprudence' that they have mentioned some philosophies for payment of blood money by the relative payer for crime committed by fault:

1. As the philosophy of insurance is the mutual indemnity and proration the pressure of problems and accidents through further members of a group so that judgment of the relative payer includes this philosophy as well.
2. The second philosophy of this judgment is the liability against inheritance.
3. Payment of blood money by the relative payer 'عاقله' may also include a deterrent effect since the relatives know that they share in liability for payment of blood money they invite each other to caution.
4. The payment of blood money by the relative payer in murder by fault leads to maintenance of respect and avoiding from wasting of Muslims' blood since if the relative payer was not responsible for payment of blood money it was possible in many cases that the perpetrator could not pay the blood money and or s/he may flee and there is no access to him/ her so the blood and right of Muslim might be wasted.
5. Payment of blood money by the relative payer makes the persons to hinder each other from committing those measures, which may lead to occurrence of accidents.
6. Islam has address the psychological dimension of this action so that to correct psychologically the perpetrator and not to repeat the crime any more.
7. Payment of blood money by the relative payer leads to keeping the respect and prevention from wasting of Muslims' blood.
8. The philosophy of the relative payer is the bilateral indemnity and dividing the pressure caused by the unexpected problems and accidents. Therefore with respect to the aforesaid contents, it seems that the liability of the relative payer for blood money against the probable inheritance by perpetrator is the best choice for philosophy of tolerance of the relative payer.

13) Positive or imperative rule of the relative payer

The rules are classified generally into two types including positive rules and imperative rules:

a) *The positive rules:*

- 1) inclusion, 2) causality, 3) conditionality, 4) purity, 5) impurity, 6) conjugality, 7) ownership, and 8) totality

b) *Imperative rules:*

- 1) necessity, 2) preference, 3) forbidding, 4) dignity, and 5) permissibility

One of the questions that may be raised is that if the liability of the relative payer by the Shariat to pay blood money for the victim of crime is a type of imperative rules or positive rules. In other words, is the liability

of the relative payer only assumed as an imperative responsibility and he will be no longer liable for it and or is the judgment about this case considered as an imperative rule and obligation assigned to the relative payer?

In other words, is the relative payer only responsible for payment of blood money so that if rejected to payment and he is not indebted if he did not pay it or in addition to liability for fulfillment of blood money he will be also indebted if he did not pay the blood money?

Similar to this case, is the necessity for payment of alimony to parents and wife assumed as a positive rule or imperative rule?

For instance, the jurisprudents express about the wife that alimony of spouse is of this type of rule and if the husband does not pay alimony he is indebted and should pay it.

While concerning to parents, payment of alimony is considered as an imperative rule and if someone does not pay it will not be indebted.

In response to this issue, we should analyze the quality of attachment of payment of blood money to the relative payer. In book of 'التفتيح الرابع لمختصر الشرايع', Fazel Meghdad implies that if the payment of blood money becomes obligatory initially for the relative payer and he has no right to refer to the perpetrator in this regard or the perpetrator is primarily tasked with its payment is similar to this case that any person who is required to pay compensation for his/ her crime and if the relative payer paid it can refer to the perpetrator.

There are two comments about this issue among Shiite jurisprudents.

First comment was posited by author of book 'جواهر الكلام' and according to his opinion, this case is inferred as an imperative rule and if the relative payer pays this compensation he has any right to refer to perpetrator. But the second comment that is visible among Shiite jurists may comply with the ideas of Mohaghegh Helli in book of 'شرايع الاسلام', Allameh Helli in book of 'قواعد الاحكام', Fazel Hindi in book of 'كشف اللثام', Yahya Ibn Saeed Helli in book of 'الجامع الشرايع', Imam Khomeini in book of 'تحرير الوسيله', Eshtehardi in book of 'collection of fatwa from Ibn Joneid' where all of them states that primarily the blood money becomes obligatory for the relative payer (and then its payment) whether the murderer is wealthy or poor one and he has no right to refer to the perpetrator and the perpetrator is not shared (partner) in liability for the blood money that perpetrator has caused for it.

Therefore, this is a positive rule in relation to this judgment.

Inclusion of this rule to all times or specifying it to certain era:

It was clarified from the previous subjects that the relative payer will be responsible for payment of blood money to the victim of murder committed by fault by perpetrator. But this question may be still raised that: Is the above rule only specified to a certain time and period and or is the same in all of periods?

To receive answer to this question it was necessary to explore the former issues and comments, views, and votes from the jurisprudents in various Islamic denominations. But whereas we did not find any content regarding this issue in jurisprudential sources of Sunnites and also most of Shiite jurists have not also proposed and analyzed this subject and only some of the contemporary jurists in Iran have briefly referred to this issue thus we explore the response given to this question according to their attitude in this section.

In the book of 'الكافي', Koleini has narrated from Imam Sadegh (PBUH), who expresses The Holy Prophet Mohammad Ibn Abdullah was appointed by God and brought Quran and the given Sunna so what is deemed as permissible (حلال) will be permissible up to doomsday and what it mentioned as forbidden (حرام) will be prohibitory until resurrection day.

Similarly, it has been quoted from book of 'An introduction to Islamic law' that According to God's governance, Islam is an eternal religion and prolongation of time will not annul each of its rules.

Likewise, in response to a request for fatwa about liability of relative payer for blood money, Mazaheri writes: The judgment for the relative payer is one of the Islamic primary rules and it will not be changed up to resurrection day and while this rule was issued by God it is also an imperative rule so violence from this rule is forbidden.

Thus, the rules regarding the relative payer are one of the divine injunctions and it will be continued by the doomsday and prolongation of time and change of place has no effect on it.

Conclusion:

The Islamic jurisprudents agreed unanimously on some cases regarding the rules of relative payer as it described as follows:

- a) All of them believe that the relative payer will pay blood money for murder crime and injury by fault.
- b) Timed deadline for payment of blood money and compensation
- c) The relative payer will pay the compensation for the crime that has been proved by clear evidence not by reconciliation and confession.
- d) The Islamic jurists agreed unanimously about hierarchy for the relative payer in terms of familiar relationship, authority, and Muslims' treasure (Imam).

The existing difference among Sunnite and Shiite jurists about the rules of the relative payer for blood money includes as follows:

- a) One of such differences is related to inclusion the *liability of undertaker by inheritance* (ضامن جريره) in subject of relative payer for blood money that the Shiite jurisprudents assume it exclusively as the hierarchy of the relative payer while the Sunnites do not accept it.
- b) Shiite and Shafeyee jurisprudents (jointly) differ from other denominations of Islamic religion (Maleki, Hanafi, and Hanbali) regarding original inclusion of the relative payer in government bureau so that they declare if the original member of bureau is not one of the agnates he could not be assumed as the relative payer but jurists in other Islamic denominations consider him as the relative paper.
- c) Third dispute is related to the quantity of blood money for non- Muslim victim. As a result, Hanafi jurisprudents express that the blood money for non- Muslim victim (resident and non- resident non- Muslim in Islamic territory) is the same as Muslim's blood money due to equality of bloods and lives so the quantity of blood money is not different from each other. But Shafeyee jurists suppose the blood money of non – muslim (Christian, resident and non- resident Muslim) as one third of blood money for Muslim and also Maleki jurists assume blood money of non-Muslim as a half of Muslim's while Shiite jurists consider eight hundred dirham as blood money for non- Muslim victim.
- d) Shiite and Hanafi jurisprudents argue that the relative payer will pay compensation for crime by fault if it reaches to rate of *compensation for the deep injury* (ديه موضحه) but Hanbali and Hanafi jurists imply that this quantity should reach to one third of full amount of compensation and Shafeyee jurists believe that this value should reach to two- third of full compensation.
- e) Shiite jurists maintain that the perpetrator of crime by fault will not share with the relative payer in payment of blood money or compensation but the other Islamic jurists express that the perpetrator can be one of the relative payers of blood money.
- f) Regarding this issue that payment of blood money or compensation is aggravated in *Sacred Months* (اشهر حرام) or not, the Islamic jurists are in dispute so that the Maleki and Hanafi jurists imply the amount of blood money and compensation is not increased during Sacred Months while Shafeyee and Shiite jurists believe the blood money for murder and compensation of injury of limbs are both aggravated.
- g) Shiite jurists express that the relative payer will pay blood money for simple fault murder but the other jurists argue that the relative payer should pay for both crime by fault and quasi delict crime.

One of the defects, which can be attributed to system of relative payer of blood money, is the quality of its execution and the existing problems in this regard since this could not be typically executed in today social structure.

It seems that as the legal rules for apostasy have not been codified in the legal codes at Islamic Republic of Iran; it was better as well not to imply the rules of relative payer of compensation within the Islamic law about the compensation for injuries and punishments and or to propose them with more perfect quality since the community has been no longer ready to accept these rules.

Thus, it is suggested that codification of rules of relative payer for blood money and compensation is not only adequate as law but it is deemed as requirements, which should be discussed and explored within interviews and conversations in mass media within the framework of surviving Islamic school and it necessitates holding panel discussions and seminars and at last international Islamic conferences to describe and define the legal system of relative payer for blood money and compensation.

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