The Analytical Study of Possibility of Equality of Woman' Wergild by Regarding to Law Modification of Mandatory Insurance Law at 2008 about Automobile and Generalize it to other Issues

Reza Maleki and Ali Jahan Khah

Article history:
Received 12 December 2014
Accepted 28 January 2015
Available online 1 February 2015

Keywords:
Blood money, woman, half amount, penal code, compulsory insurance

ABSTRACT
Blood money, as a long-standing topic in Islamic discussion, has long been discussed so far. Jurisprudence experts have diverse discernment of evidences [Koran verses concerning blood money], believing that women’s blood money should be half of what to which men are entitled. This doctrine has already been criticized in different eras of law and jurisprudence history. However, by 2013 which legislator is explicit in all aspects of penal code, legislators have always tended to taken the doctrine of gender inequality on blood money into consideration. The Amendment to Compulsory Insurance Law 2008 marks the first practical step towards gender equality on blood money which was followed by Penal Code 2013 which affirms such equality in terms of blood money and prescribes, although not explicitly, that the difference of women’s blood money than men should be paid by Physical Damage Fund. It seems that it is high time gender equality was taken as an approach in practice. A refinement is evident in Iranian legislation’s approach towards women particularly in Penal Code which was enacted in 2013.

INTRODUCTION
Blood money (Diyya) is a rule that legislator sets to counterbalance negative effect of the crime. It has a double function: It is both ‘compensation’ and ‘punishment, so it needs a deep consideration. On the other side of the story, insurance laws have caused changes in the past laws among them is blood money law. It was formerly common that women’s blood money was determined half of men’s, but the Amendment to Compulsory Insurance changed this practice.

It is noteworthy that in the aforesaid amendment that was append to the insurance law in 2008 prescribes equality of blood money for men and women.

Such equality is contradictory to penal code, so it can be admitted that this law has a modern grounding.

Art. 560 of Islamic Penal Code, enacted in 2013, which is adopted from Imamieh Shiite Jurisprudence prescribes that women’s blood money is half of that to which men are entitled. This may initially seem a discrimination which is in breach of many international conventions on discrimination against women.

Iranian legislator has taken a proper measure to ensure gender equality in terms of blood money through appending an amendment to Compulsory Insurance Law for Civil Liability of vehicle owners on Oct. 08, 2008 making insurance companies pay equal compensation for women as men in driving accidents.

This paper intends to have a deep consideration into ‘equality’ of men and women blood money [an equality that the aforesaid law has recently established]. If the arguments advocating ‘inequality’ of men and women blood money proves weak, the opposite argument [that advocates equality] may prevail and so be generalized to other matters.

We, in this paper, seek to find an answer to the question ‘is it possible to generalize the argument favoring equality of women and men blood money which has recently been considered in auto accident insurance law to
other matters and criminal acts?’ this paper aims to consider this hypothesis that ‘blood money equality can be generalized to other matters and this is not in conflict with Islamic approach’.

This paper has been conducted using library method. Authentic sources have been used to gather data. Some data have also been extracted from international sources through internet.

Iranian legislator has defined ‘blood money’ in Islamic Penal code, enacted in 1989, within articles 15 and 294. Article 15 describes blood money as ‘a financial compensation that Islamic legislator prescribes for compensation of damage’. Here in this definition, if we accept that ‘prescribes’ means prescribing the amount of compensation, so blood money takes a particular meaning here, while if we accept that ‘prescribes’ stands for the whole rule of blood money itself, regardless of its details and formula, the term ‘blood money’ should be treated as a general rule.

Reasons of Jurisprudence Experts who Advocate Inequality of Blood Money:

Inequality of blood money is a concept that has its pros and cons among Islamic experts. From Islamic jurisprudence, those advocating the inequality outnumber the opponents. They base their arguments on citations [that have passed on to us from the early Islamic era] and some rational grounds.

Quran:

One of the leading Islamic experts advocates the inequality of women’s blood money with that of men referring to Qoranic sign which says ‘o believers killers are retaliated by killing: free for free, slaves for slaves and women for women’. He elaborates that based on this verse, women are not equal to men [19] His argument directs us to gender inequality on blood money.

And we ordained therein for them: "Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal." But if anyone remits the retaliation by way of charity, it shall be for him an expiation. And whosoever does not judge by that which Allah has revealed, such are the Zalimun (polytheists and wrong-doers - of a lesser degree). Al Ma’dah:45.

However, a question arises here: ‘life for life’ does not convey the meaning of gender equality on blood money? So how it is possible that a qoranic verse prescribes two contradictory things?

He answered this question through the translation that he made of Qoran. ‘this equality that you claim Qoran has prescribes is indeed a rule that applies to killing more than one person in lieu of one victim.’ He said. ‘besides, Baghareh 178 has transformed the ‘equal for equal’ prescribing gender inequality on blood money. Although Maedeh is the last surah of Qoran, it is not considered to be the last prescription of Qoran because Baghareh surah has elaborated it as well’ [19].

Islamic Tradition:

It has been cited from Prophet Mohammad who once said that women’s blood money should be half of that of men. It has also been cited from Imam Ali who had stressed on that. This citation has been frequently narrated by many of his close followers such as Omar, Otman, Ibn Abbas, Ibn Omar and Zeid Bin Sabet that seems there had been a wide agreement on this rule by Muslims of early Islam era. Gender inequality advocating experts have also rational arguments to support their doctrine. They discus that since gender inequality has been prescribed in ‘heritage’ and ‘evidence-giving’, so it can direct us to think that such an inequality can be conceivable in blood money as well.

In the book Al Figh Ala Al-Mazaheb Al-Arbaeh’ it has been quoted from Prophet Mohammad that ‘women’s blood money should be half of that of men.

In the book ‘Al-Mogha’, Bin Ghodameh says that Prophet Mohammad declares that ‘women’s’ blood money is half of men’s blood money’ in his reply to Amr Bin Hazm’s letter. He denies the ideas of Bin Alah and Abubakr Asam who advocated gender equality on blood money, arguing that ‘when it comes to blood money of a believer (Muslim), they refer to Amr Bin Hazm’s letter to Prophet Mohammad, while they ignore that in the same letter, Prophet Mohammad declares that women’s blood money is half of men’s. The prescription on blood money is a general rule while they restrict its scope and instances. This is the mistake they make.

Majority of Islamic jurisprudence experts believe that a Muslim woman blood money is half of what which is paid to a Muslim man for blood money, regardless of the woman being under legal age or being killed intentionally or unintentionally. They further think that this is a widely accepted rule by Muslims living in early Islamic era to which many citations from Prophet Mohammad khan evidence.

Consensus:

Some of jurisprudents believe to collected and moveable consensus of opinion about inequality blood money for woman and man and said that collected consensus of opinion is according to frequency and superabundance of is as just texts [17]. Obligation to consensus for prove claim is failed according to bellow reasons:
First: Consensus is a valid reason between Sunni jurisprudents and doctrinaires not between Shia jurisprudents, that in this relation Sheikh Ansari saith: Sunni jurisprudents are establishers for title of consensus and consensus is valid just for them. [1]

Second: If we believe consensus is unanimity of prophet nation or Muslims, there are some of people in Shia and Sunni nation that are opposite with saying inequality blood money for woman and man. [1].

Third: If consensus of all Muslims verified, this consensus is a documentary consensus, i.e. preferred reason is cause for consensus and such consensus not valid. [1]

Forth: Some of jurisprudents doubted for such consensus; From them is Ardebili researcher saith: “so, was consensus” i.e. it has been assumed that a consensus verified according to saying to inequality. [16]

Esteheran and wise and comparison:

We return to half of woman blood money toward man and we see out of traditions and moveable reasons that jurisprudents established on this matter, what wise able and traditional reason presented for this order?

Reality, we can have two kinds justification for existing this difference between woman and man with seeing texts of some jurisprudents.

Being lower woman validity toward man:

According to texts of some great jurisprudents and interpretation that in principle woman have lesser validity in comparison with man and then validity for her witness of two women is equal with witness of a man or her inheritance is half of portion for man.

However, when material valuation planed and must plan blood money, valid and validity of woman not lower than man and we don’t account same price for woman that considering for man and we see jurisprudence more account fine as blood money than remedy interred damage because when don’t exist fixed blood money for interred cuts, we must payment mulct that mulct is difference between price for healthy and damaged substance. In all jurisprudences books even contemporary of them, for determining quantity of mulct said that: injured person or incomplete Plexiglas must evaluated in health position and in situation according to interred damage and payment difference between these two price as mulct to him. [14]

When accounted according to this method, many of people opinion to lower woman price and validity toward man and then her blood money is half of it for man. For example: we can point to saying owner of interpretation of Ghadir victory that about reasoning half of woman blood of money toward man say:

This matter exist because position of woman is more defective and lower of man and God saith: men are superior on women and benefits of woman are lesser that man, for example: she can’t have more than one husband. [15]

Being lower woman role in economic situation:

According to other Islamic experts, being half of woman blood of money toward man justified as blood of money is for remedy damages for interred damage to victim or his family and due more and effective role for man in economic life and with dying or damaging him, more loss inter to economic situation of his family, especially in Islam legal system he responsible for managing livelihood for family, so, his blood money must be more. This opinion not believe half of man blood money toward woman and be lesser woman blood money not lower woman valid but outcomes of loss man is more than woman, because this toll be remedy materially and payment as blood money for damage, this difference must considering. Lawful and legally order determine based on overcoming position and that position that the man is supplier family costs and has more effective role in economic and monetary position thus payable damage to him or his family as blood of money, determined more than woman.

Now, many of experts justified difference woman and man blood money and don’t account it against generosity and inherent valid for mankind and similarity mankind valid of him with man. For example: dead Seyed Mohammad Rashid Reza- owner of Almenar interpretation say that:

The wisdom be half woman blood money than man it is that loosened benefit with dead man is more than what loosened with dead woman, so, similar to heritage in blood money the woman share is half. [14].

Emamieh jurisprudents reasons to equality woman and man blood money:

Between emamieh jurisprudents, some of them believe to equality woman and man blood money in all mentioned items whether in murder or member maim.

Ardebily researcher not believe to force about half of woman blood money and some of coevals believe equality woman and man blood money and moreover opinion to equality in punishment and rely to absolute of interred reasons in blood money and not existence any reason that make bound them.

Between contemporary imitation references Ayatollah Sanei and Ayatollah Jenani believe woman and man blood money is equal. Ayatollah Makarem Shirazi believe that reason for inequality woman and man blood
money is economic matter not mankind difference and Ayatollah Mousavi Bojnourdi and Mohaghegh damad have opinion similar it.

Quran:
One of signs that point to blood money in Quran is: a man that kill other by mistake must free slave believer and payment what is obliged to his family i.e. owner of blood of victims heir.

Descent of dignity sign about mankind killed a person was Muslim with this think that he is unbeliever and Prophet ordered to payment blood money according to this sign. In this sign word blood money is absolutely and unknown and canon certificate payment blood money. We regulated on them that soul against soul, eye against eye, nose against nose,…punished.

The word somebody in sign is about man and woman and word believer is masculine but of prevailing consist of two genders unless be especial context on canonization order for women or men that it is not exist. Thus the sign due consisting toward woman and man can’t be a reason in benefit of believers to inequality woman and man blood money.

So, the most important reasons of opposite group about equality woman and man blood money searched between traditions and consensus and occasionally Estehsan and analogy funds.

Moreover mentioned signs and traditions in blood money matter and reasoning on equality blood money for man and woman and Muslim and unbeliever, there are many signs and traditions that totally insistence on peoples equality in humanities and personality and other humanities characters.

Quran know mankind as children for Adam and Havva and don’t put any difference between them. (Hojorat sura/sign13)

Hey! People we create you of a man and woman and put you sects and tribes to know each other.

Traditions:
The big prophet saith: hey people! Your God is unit, your father is unit, all of you are children of Adam and Adam is of soil, truly the most of you for God is virtuous of you, anyone of Arab person not privilege on non-arab person unless in virtuous. [5]
Persons are equaled similar to dents of comb. [13]
In other place the prophet saith:
Today all of people whether white and black or arab or non-arab was borned of Adam prophet, God create Adam of soil and the most of them for God in revival day is more obedient and virtuous. [5]

In result, if we attach traditions that determine blood money and its scope to these absolute and general reasons, with seeing inbounding and don’t allocated them we can vote to equality woman and man blood money.

In valuable books for traditions, there are many traditions that can relied by persons that believe to equality for man and woman blood money, for example:
First tradition: jurisprudents for Emam Reza: self-blood money is thousand dinar or ten thousand or one hundred camels that everyone must payment based on his states. If is familiar with gold, thousand dinar and If is familiar with silver ten thousand dirham and If is familiar with camel, one-hundred camels.
Second traditions: the prophet in letter that wrote for Yamane citizens saith that: self blood of money for believer mankind is one hundred camels.

In these two traditions and other similar traditions, without any difference between woman and man, explained self blood of money scope that their information and public matters can be firm reason on equality woman and man blood of money.

In these two traditions and other similar traditions, without any difference between woman and man, explained self blood of money scope that their information and public matters can be firm reason on equality woman and man blood of money.

All of people know that therapy cost for broken foot for a woman is equal with for man.
All of people know that if a part of blood money planed for disability victim, woman in today society account useful and even housekeeper woman that due jurisprudence is rightful for like remuneration home
works (a matter that don’t jurisprudents justly and obliged with law) can and must achieve cost of self disability for bodily hurt of nasty lost and achieved amount must be equal with man.

Do Social security organization payments equal disability right or not?

Why in items that interred bodily hurt to woman, at least in civil liability, we must know woman blood money half of man?

Surely, foundation for reasoning social security organization in equal payment to woman and man is for inherent mankind generosity and moreover presence and equal woman performance in society. A woman that obey total self legal and lawful duties is permitted having job and in time reference to hospital, she pay cost equal with man therapy cost and having jurisprudents right on self possessions obliged to payment self therapy cost.

Although the time for changing Islamic criminal law with attention to statement of chief of recognizing policy is imminent at least about civil liability, without exit of jurisprudence standards that is so.

It seems that IRAN precedents after influence that remain in minorities with Muslims and with two verdicts prepare causes for enacting law bravely, this stage is pregnant for entrance to equality woman and man blood money deliberation.

Judicial system accepted that blood money with positive self characters such as accounting with rate of execution day, is free of relying to Islamic criminal law and reach to equality man and woman blood money without violation law and with creating passage road.

Now, we remember that historic talk and exploit of dead professor Nasser Katouzian that always repeated in close place of school and we had wish to see its proof that saw and it is:

We must learn to students at university and beginners, obey road of law and to olds and wise men scape road of law. Precedents in self ability domain run away of injustice law and ride to two justice wings and equity, fly skyward and rode execution unlawful law to lowest level of itself without destroying or long waiting for remedy it. Now, we must see then what say our sages and what do our legislators? Gender Equality on Blood Money and Amendment of Compulsory Insurance Law

It seems that this law has resolved the issue of equality or inequality on blood money at least in damages caused by vehicle accidents. Note 3 of this law states that ‘for the purpose of this law, ‘physical damage’ means any form of injury that causes the individual to be paralyze, unable (whether in whole or in part and permanently or temporarily). The blood money of a third person who may lose his/her life in the accident shall be subject to the provisions set out herein, and payment of relevant costs shall comply with this law unless the injured person is subject to any other particular laws’.

It is evident that legislator avoids getting through jurisprudence or law discussions on this matter and has attempted to make this law purely based on contractual commitments of insurance. This law is explicit in terms of its prescriptions on damage blood money, death blood money and medical treatment costs. However it is not explicit in terms of damages that lead to victim’s inability. In the latter case, there are two understandings possible: from one hand it can interpreted that legislator deems such a damage (that leads to victim’s inability) as a form of material damage that is incurred to the victim leading to his/her inability to work (whether in whole or in part or permanently or temporarily). This definition of damage is quite different from physical damage that is compensated by blood money. In fact, this definition covers the material damage that is a result of physical damage leaving the victim unable to work. Based on this understanding, the law covers a wide range of car accident damages and provides a firm support for the victim to ensure full compensation of the damage’.

Yet there is another understanding of this law concerning inability. It seems that this law includes victim’s physical inability in bodily damage category (such as breaking, paralyzing or even death) which all are conceivably entitled to blood money compensation. Based on this understanding, it can be said that legislator intends to categorize ‘physical inability’ as a form of bodily damage that has a non-financial nature and that the legislator has no reference to the financial loss that is incurred due to physical damage and so it can be concluded that this law may not cover non-financial loss [4].

Legal Grounds of Gender Equality in Insurance Law:

Art. 4, Note 2 of the Amendment to Compulsory Insurance Law, enacted in 2008, states ‘insurance company shall compensate any loss incurred to victims, regardless of their gender and religion. Any further compensation which may be prescribed by judges falls within the scope of accident insurance.’ This is an innovative approach because it clearly discourages gender inequality. Article 550 of Islamic Penal Code, enacted in 2013, prescribes – under certain circumstances- that women blood money is half of what to which men are entitled. In Islamic texts and sources, reference has been made to non-Muslims blood money (those who follow official divine religions). However it is argued that insurance policy aims to provide an equal support for everybody in the society against losses that are incurred due to car accident. Since there is no inequality of payment to insurance company, no inequality should be in place concerning compensation of loss, and women as well as non-Muslims are entitled to have equal share with Muslim men in term of enjoying insurance support. There is yet another argument as to why insurance company should pay women’s blood
money equal to men while the person who has caused the damage is legally liable to pay half of the amount: the insurance is basically a contract which allows setting the amount of commitment beyond the limits that law has already prescribed. It is quite normal when this is favor of public interest. Besides, this approach [setting the amount of commitment beyond what law has prescribed] has supportive effect and no misuse by either party (insured person and insurance company) is not thinkable. From law perspective, it can be said that ‘any further compensation that may be determined by judges fall within the scope of accident insurance’.

(The latter part of the provisions set out in Note 2 of Ari. 4 in the aforesaid law) contains some notable points:

A. The provisions of Art. 554 of Islamic Penal Code, enacted in 2013 by Islamic Expediency Council, prescribes that non-Muslims blood money must essentially be equal to that of Muslim men because religion is not reasonable to affect liability of persons. So insurance company must treat non-Muslims as Muslims. in this case, accident insurance is not applied. Therefore, it can be discerned that the basis of this law lies in ‘civil liability’ not the accident itself. It may be claimed that such discernment is merely an interpretation that may be unmatched to the explicit text of law. To answer this claim, it can be argued that since religion equality on blood money is a governmental decision that Supreme leader of Iran agrees with, so it can be terminated at any time government deems such termination suit, in which case the civil liability of non-Muslim shall reasonably be deemed half of that of Muslims, as was common in the past. In such case, it must be ensured that ‘accident insurance’ does apply or not [i.e. whether non-Muslim subjects are entitled to ‘further compensation’ or not]. It seems that the Judiciary’s Advisory Comment No. 7/6257 dated Oct. 24, 2005 states that no difference is there between Harram months and non-Harram months when it comes to further compensation for non-Muslim subjects, and so further compensation must be provided under any circumstances. Art. 4 of Amendment to Compulsory Insurance Law affirms it by making some provisions under the title of ‘a non-Muslim subject’s blood money in Harram months’ [12].

B. In car accidents, blood money is a top priority of judgment process; an element that clarifies the extent to which damager is liable, for which no petition is required for demanding compensation. The judgment automatically requires insurance company to compensate the loss to victim. However, since ‘further compensation’ for women victims is not directly referred by courts, insurance companies may refrain from paying the further compensation. In this case, a petition is required by the victim against insurance company (as a civil case) indicating that such petition is of civil nature not penal (criminal) one. It is a disadvantage or our law, because the law could have resolved the issue of ‘further compensation’ automatically along with resolution of the issue of ‘blood money’ and avoid a further procedure. Advocates of this procedure may argue that courts, when considering the issue of blood money, take the Muslim men blood money as their basis for judgment, which can be interpreted in two ways: the amount of blood money is determined along with the amount of further compensation. This interpretation comes true when we take the amount which the judgment determines a blood money as the final resolution of the case. In this case, confusions arise: firstly, the accident blood money is originally a civil case and has nothing to do with criminal case. So court is not competent to make judgment for that. Secondly in car accidents criminal cases, judgment deals with tortious liability of the perpetrator concerning blood money which does not needs to a petition. So contractual liability of insurance company is not established merely by a criminal case. It is apparent that when court prescribes the blood money to be paid to women victims, perpetrator has no direct liability and insurance company carries no indirect liability. Any way, we need to wait for criminal courts and judicial procedures’ response to this matter [12].

Gender Equality on Blood Money from Customs Perspective:

Compulsory Insurance Law undermines the traditional foundations of ‘blood money’ doctrine. Law community has long prescribed gender inequality on blood money; a tradition that was refined by the aforesaid law. It can be hopped that the justifications on which this law relies can spread and be generalized to other matters, particularly in penal code.

In this section, we deal with considering some economic aspects of bodily damage including lost income (as a result of inability to work), increased life expense, incurring medical and burial costs (when the victim dies of the accident).

Economic Elements:

Economic elements of bodily damage can be structured in the following categories:

Lost Income:

When a person’s is insured during an accident, his/her ability is heavily affected and his/her income is lost as a result of inability to resume business. So the person who has caused damage to the victim is liable to compensate such a loss.
Increased Life Expense:
Illness and bodily injuries conceivably need medical care and treatments to heal. So the victim is imposed to bear such costs in addition to normal expenses of life.

Medical Costs:
As was just mentioned, bodily injuries cause additional expense because an injury needs medical care and treatment to recover. Such a cost is added to normal life expense of victim.

Burial Cost:
When victim dies of the accident, some additional costs are imposed to his/her heirs including burial and funeral ceremonies (including but not limited to commute, food etc.). This is a liability on the part of damaging person to compensate such costs.

Emotional Elements:
Sometimes victim’s dignity and prestige may be affected due to the injury and illness that s/he suffers following the accident. In addition, such a person is deprived of pleasurable moments of life to which s/he is normally entitled [20].

Emotional Burden of Suffering:
The suffering that is imposed by an accident may put a full burden on victim emotionally. That is why ‘victim’ is applied to such a person who is affected by an accident. The suffering of an accident is by no means limited to physical and material aspects, but it undermines emotions and prestige as well. In some cases, the scars of accident may prevent the person from getting married forever. This is more common in women.

Law experts divide emotional damages into two categories. The second category includes those which are of psychological nature and affect the victim’s mood. This type of damage has scars that remains hidden and often neglected by others.

Emotional Burden of Losing Beauty:
The emotional burden of an accident is by no means limited to pains and illness and physical inabilities, but it affects other aspects of human existence. Losing normal beauty is a prime example. In some cases, victim may lose normal bodily control or lose part of bodily senses such as seeing, hearing, touching, tasting, sexual pleasure, speech, eating as well as the ability to have child.

As for the modality of assessing the emotional damage, there is two approaches: the first one holds that the aim should be recovering the victim and helping him/her back to normal situation. It means that all the damage incurred to victim must essentially be compensated and all the scars must be worn. The second one focuses on emotional scars that arise out of losing body organs and inability that follows. This approach is called ‘functional approach’ which attempts to wear all scars of the injury and helping the victim to recover in full. This approach is mainly preoccupied by material and discernable injuries not hidden and indiscernible ones. In some countries such a France, both approaches are common [18].

Women’s Role Developments in Society:
The introduction of husband and wife equality bill that was submitted to French Parliament carries the following sentences:

It was common in the past that wives were controlled by husbands when they agreed to their marriage. However, women in our modern world are more knowledgeable than they were formerly and have a deep insight into their conditions which enables them to enjoy broader rights including financial and non-financial independence from men. Therefore, they, no longer, have to be dependent to their husbands, instead they are entitled to be treated as equal to men” [9].

Given the function of women in society it is not conceivable to agree with the arguments of those who advocate gender inequality on blood money merely because women are not equal to men in terms of their presence in the society. This basis must be put aside by legislator when making laws for the whole society. Development of women’s role in society has been so apparent that Islamic Penal Code has admitted to this reality. Unhappily criminal legislator rely on the provisions that are set out in Note 1 of Art. 1210 of Iranian Civil Code in their judgment on juvenile offenses; i.e. they consider appearance of the juvenile to ensure if they are of legal age and capacity or not, although their original standard is to refer to the birth certificate and date of birth. In case of dispute and counterclaim by juveniles’ parents, judge relies on expert comment in ensuring the maturity.

Hence, this approach which is based on the provisions of Note 1 of Art 1210 of Civil Code and the definition that is stipulated by Art. 147 of Iranian Civil Code, enacted on 2013, on ‘maturity’ is legally baseless because Civil Code stipulates that the way to establish maturity is ‘physical appearance’ or ‘legal age’. It is
natural that a juvenile has maturity sings while in the criterion that has been set for establishing maturity some non-physical conditions have also been determined elsewhere by the Civil Code itself.

A look at the process of criminal laws development indicates that different communities have taken a flexible approach towards children and juvenile in criminal cases. Recent centuries has saw a stronger sense of responsibility in different legal systems towards juvenile criminal cases. Juvenile need to be differentiated from the adult because they must be provided with supportive, care and recovery services. This trend has been evolved for at least two centuries. This trend, in Iran, has also been accompanied by notable developments. In Zoroastrian faith, children under 15 years of age were never punished as adult were. Some hold that many Zoroastrian scholars believe the maturity age for punishment is 20 to 21 years.

In Islamic Sharia, legal age is considered to be the age that person gains full mental maturity and is able to take social and legal responsibilities. In our contemporary period, juvenile criminal offenses has drawn notable consensus in practice. In sum, it can be concluded that the legal grounding and d.

Law makers tend to take ‘mental maturity’ as basic standard for establishment of legal age for judgments because children under this age are immune from Qisas punishment (capital punishment). Art. 91 of Islamic Penal Code, enacted in 2013, prescribes that ‘crimes that are subject to Hadd or Qisas, if the perpetrator is under legal age (18 years of age) of is the person who has not understanding of the his perpetration or if he is not mentally matured, particular punishments must, proportionate with their conditions and age, be prescribed.

This article further stipulates that ‘judge can rely on medical comment, or any other method within the judge’s discretion, to establish perpetrator’s maturity’. This is a practical step towards saving children under 18 or girls aging 8 to 18 years from severe punishment.

Conclusion:

Just like other divine religions, Islamic Sharia puts a high value on social functions in addition to physical aspects of human life. Paying attention to society’s psychological health is a prime feature of Islamic Sharia that has frequently been cited by Qoranic verses including Nesa 124, Nal 97, Al Imran 195. A look into the content and theme of these Qoranic evidences persuades us that the basis of Islamic Sharia in determining blood money is far from being human value but their social functions, because blood money is a compensation and a means to recover a loss which has nothing to do with human dignity or value. This paper indicates that blood money has been a common practice in pre-Islamic era as well as a means to recover a loss and helping a victim back to normal situation. Islamic Sharia never differs humans in terms of dignity and human value because the original standard by which humans are differentiated from each other is their sense of God-fearing. Gender is by no means a criterion for human differentiation in Islamic Sharia.

Since Islamic rules are dynamic and can be refined over time, and given the fact that blood money is a social rule only for ensuring a loss are compensated, any modern development in society and genders’ functions can justify refinement of Shariat rules.

Legislation apparatus needs to keep pace with their society’s conditions and developments. Our modern time is a time when women take equal part with men in governmental and non-governmental positions. This improvement has faded the constraints and limitations that were formerly common on women. Legal systems must increasingly been impressed by such developments and recognize women’s improvement. Islamic Penal Code that was refined and ratified in 2013 marks this practical progress on gender equality on blood money. The former version of this code prescribed some inequalities in punishment of women than men while the new version dismisses it. In conclusion, it must be noted that it is not fair to attribute the attitudes and mistakes of Islamic legislator to Islamic Sharia and Shiite jurisprudence.

Blood money is a topic that its criminal aspect prevails over its civil case in Islamic Penal Code. On the other hand, much diverse discussion has been conducted on this issue and diverse opinions exist in these realms that prevent a widespread consensus in practice. In sum, it can be concluded that the legal grounding and approach that Compulsory Insurance Law, enacted in 2008, adopts can be generalized to other matters and punishments as well.

REFERENCES