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The Victim Compensation Scheme (*'Aqilah*) under Islamic Criminal Law and its Compatibility with the Criminal Justice System in Bangladesh: A Critical Study

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ABSTRACT

Crime prevention, control and correction of the offender are the prime concern of each and every legal system. Islamic legal system is not exception to those common attributes. Islamic criminal justice contains exceptional punishment in which accused has given punishment and victim has given compensation according to the desire of the victim's family member. Islamic legal system provides win win situation for both accused and victim. In comparison with common law system where a killer has been awarded death sentence if it is proven with reasonable doubt and victim's family has gained nothing but mental satisfaction. In this regard, family losses an earning hand and they would have no means to lead their live in coming days. Islam, however, prescribes alternative where one can get compensation and lead a better life with their family. In this article the researcher examines the detail about 'aqilah system of Islamic legal system and investigates the possibility to apply in our existing penal sanctions. The aim of this article is to explore the idea of victim compensation scheme clearly and address the law enforcement agencies to think about the scheme. It further aims to make understand a better crime control mechanism towards the learners of criminal justice arena. In this research, descriptive methodology is used to bring out the rational of the work. Further a literature review and analytical analysis of literature have been adopted for

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the completion of this report. Different books, articles, journals and websites have been consulted for the completion of this article.

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INTRODUCTION

Victim compensation scheme was a wonderful system of criminal justice observed by the Prophet Muhammad Pubh as a holy direction and the process continued through His successor in power. The system was not the innovation of Islam rather it was existed and exercised by the people of Arabia as a means of settling dispute. They exercised it in a wrong way; therefore, Islam reformed the system and prescribed for entire humanity as a method of prevention of crime and protection of society from insecurity and harm. Islam stated that every individual is responsible over a particular attribute and will be accountable and asked for due discharge of the duties thereto. Islam further advised that if anyone sees that an offence is taking place he must prevent by his hand, if he does not have such power the he must prevent the evil by his saying and if he does not have such power, he must make a plan to stop the offence. Establishment of peace in the society is the responsibility of its member as a whole. Every citizen will act together as a brotherhood in keeping the security of his own as well as others. Beside this scrutiny of the public, if any offence committed liable to retaliation or blood money and court conclude the case with compensation then Islam wants to undergo the punishment as well as correction of the accused by extending helping hand to pay the compensation amount to the victim. Islam wants to say that the offence somehow the result of our negligence in discharging our duty. In this article we have discuss in detail about the system of victim compensation scheme from per-Islamic Arabia to the present context of the world.

1. Definition of 'Aqilah

The word 'Aqilah has been derived from the root word *al-'aql* which literally means an act of withholding or restraining, synonymous to *al-man'a* and *al-hijr* (Ibn Manzur, 2000, Lane, 2012). In the context of '*diyat*' the word is 'Aqilah derive from the root word '*aqal*' plural of which is '*uqul* signifies the prayer of '*diyat*' (Ibn Manzur, 2000, Wehr, 1993). The term in the first sense denotes the 'Aqilah by paying compensation restrain the legal heirs of the victim from being oppressed and complaining (al-Buhuti, 1968, al-Zarqa, 1988). And they also restrain the blood from being spoiled by protecting the killer (Ibn Abidin, 1979, al-Shirbini, 2014, al-Ramli, 1938). In the second sense they are called 'Aqilah because in the pre-Islamic period people were used to take the camels as compensation for

killing to the courtyard of the next of kin of the victim by night and intern them there (al-Shawkani, 2012, al-Shirbini, 2014). Therefore, the party in question join together to contribute to the payment of '*diyat*' is called '*Aqilah* (Lane, 2012). '*Aqilah* in term of Islamic law mean agnatic male relatives of a person on his father's side, or an institution or organization from which he receives or expect to receive support or help (Anwarullah, 1997). According to Imam Malik, Imam Shafii and Imam Ahmad '*Aqilah* means the agnatic relatives of a person on father's side such as brothers, nephews, uncle, cousins. It does not include son, father, maternal relations, husbands and other relatives who are not paternal. But according to Imam Abu Hanifah '*Aqilah* means the institution or organization to which a person belongs and from which he receives or expect to receive help or support such as army, ministry, university, bank etc. (Anwarullah, 1997).

2. Views of the Jurists on *Aqilah*

As far as constitution of '*Aqilah* is concern Shafities and Hanbalies hold the views that the '*Aqilah* is comprised of *al-* '*asabah* or competent male agnates (al-Ramli, 1938, al-Buhuti, 1968, al-Shirbini, 2014, al-Shirazi, 1995, Ibn-Qudamah, 2013). According to Hanfities and al-Dasuqi from Maliki School it is comprised of the members of a battalion whose names are inscribed in a list or *ahl al-dewan* (Ibn Abidin, 1979, al-Marghinani, 2016, al-Kasani, 2010). They were applying '*Aqilah* only in case of unintentional homicide. However, alternatively they are '*asabah*' if there is no '*dewan*' or the contribution by them is not sufficient to pay full amount of '*diyat*' or the offender is not from them (Haneef, 2000). According to al-Ramli; '*during the time of ignorance the '*asabah* was extending their support to the offender by preventing the legal heirs from claiming their right to revenge, the Shari'ah changed this form of assistance in the form of contribution for liability by paying '*diyat*' and disposing their property. Thus, to require otherwise would amount to overruled the decision of the Prophet (al-Ramli, 1938).*

Al-Kasani in refuting this contention maintain that it does not run contrary to the practice of the prophet (p.u.b.h) if '*diyat*' is imposed upon '*aqilah*; because the underlying reason for legislating such rule was because of *tanasur* mutual assistance which was only procured from blood relations. When such collective help become dependent upon one's affiliation with *diwan* as Chaliph Umar recognized the '*aqilah* system in that way and this was approved by the companions without any report of dissenting view from among them, hence the '*aqilah* concept was called *Diwan* (al-Marghinani, 2016, al-Kasani, 2010, Nujaym, 1998). Al-Sarakhsi also express similar view in saying: during the time of ignorance the assistance was sought by way of kindredship (*al-qurabah*) then by virtue of *wila* (paternity), later on it was by way of one's affiliation to confederacy

(*halaf*), the Prophet (p.u.b.h) said it to be by virtue of one's blood relationship. But when Umar founded *Diwan* the same *tanasur* was provided by them (al-Sarakhsi, 1993).

According to Al-Jassas it is rational to require the members of *Diwan* to share the burden of financial liability among them since they are cooperating in defense of one another at the time of war; consequently, it is logical to assume that they should cooperate with one another in this way also (al-Jassas, 1994). In *Fatawa Khan* it is stated that if a person is a warrior registered in a registry of soldiers who derives their substances and allowances from the registry, their '*aqilah* is *Diwan*. In the case of a members belonging to a particular profession and the notion of '*tanasur*' is exists among them then their '*aqilah* is the people of their profession. In the case of non-existence of such '*tanasur*' the '*asabah* is their '*aqilah* (al-Farghani, n.d. ,Ibn Abidin, 1979).

3. Institution of '*Aqilah* in Pre-Islamic Arabia

This was the system that exists in the pre-Islamic Arabia, a prevalent institution of support based on the bond of tribal allegiance among the Arabs. The pre-Islamic tribes in Arabia used to support the killer by preventing the heirs of the deceased from seeking any kind of reparation and satisfaction. At that time a person of a particular tribe committed murder, the whole tribe especially its adult and sane male members were obliged to pay '*diyat*' irrespective of whether the offender killed the victim intentionally or unintentionally. It was based on the principle that the people of the family and tribe being in a position that to influence the actions of the offender should be reminded of their duty of keeping the offender and similar other persons under control and check their criminal activities (Anwarullah, 1997). A variation of *Diyat* was present in pre-Islamic Arabia, where it was paid in terms of goods or animals rather than cash. This was a symbol of collective responsibility on the relatives and supporters of the offenders which was a successful method in homogenous society of the Arabs. As a result, all the family members were always keeping awareness regarding the activities of each of its members.

4. Legitimization after Advent of Islam

Islam has reformed the concept and imposed the payment of '*diyat*' on *Aqilah* only in unintentional murder and quasi-intentional murder. The Prophet (p.b.u.h) changed this mode of unjust and negative support to one of the positive cooperation in bearing the burden of compensation to redeem the life of the victim. The system therefore, Islamized and approved by the Prophet (p.b.u.h) through his saying that; the Muslim from *Muhajirun* and *Ansar* are required to pay indemnity for the damages caused

by a member from their ‘Aqilah (al-Zayla’i, 2018). He also gave judgment in the well-known case when the two women of *Hudhadyl* fought one another and one of them threw a stone at the other and killed her. Thereupon, he ordered that the ‘*diyat*’ of the deceased be paid by the ‘Aqilah (male relatives from the father’s side of the assailant) (al-Sijistani, 2005, al-Zayla’i, 2018).

It was further developed and reconstructed by ‘Umar as mentioned by *al-Zayla’i*: the ‘*diyah*’ was payable by the tribe of the offender at the prophet’s time. But when ‘Umar established the *Diwan* (Battalion Registry); ruled that the ‘*diyat*’ should be borne by members of the *Diwan* (al-Zayla’i, 2018, al-Kasani, 2010, Khan, n.d.). Confusion was raised regarding the decision pronounced by the Prophet and the practice of the Caliph Umar in his time in administering ‘*aqilah*. But the jurists have removed the confusion by their wisdom. This practice of Umar according to Hanfiyyah was not the departure from the decision of the Prophet rather reconstruction of ‘*aqilah* system for viable solution of the then time. Shafi’iyyah on the other hand argued that the practice of Umar does not have the force of abrogating the Sunnah and stress that this type of assistance is possible only from ‘*asabah* and not from any other, because they are related by bond of financial benefits to one another such as maintenance and inheritance (al-Sarakhsi, 1993). Al-Sarakhsi in response argued that we reiterated that the practice by ‘Umar was an act of reorganization and approval and not nullification of what was established by the prophet (p.b.u.h). He also argued that the members of *Diwan* are also tied with each other by bond of financial benefits (*al-‘ata*) that they receive from it (al-Sarakhsi, 1993, Ibn Abidin, 1979).

5. Persons or Institutions Covered Under ‘Aqilah

As we have mentioned earlier that the composition of ‘*aqilah* according to Hanabilah and Shafi’iyyah, male agnate blood relation of the offender while the Hanfiyyah hold that they are *ahl al-diwan* or alternatively the ‘*asabah*. Now it is necessary to expound their hierarchy according to the opinions of the Imams. ‘*Asabah* constitute the whole adult male, agnate relations of the killer according to Hanabilah, al-Shirbini of Shafi’iyyah and Hanfiyyah, (al-Buhuti, 1968, al-Shirbini, 2014, al-Shirazi, 1995, al-Kasani, 2010, al-Maqdisi, 2013) but with the exclusion of father, grandfather, son and grandson according to Shafi’iyyah (al-Shirazi 1995). Thus, according to first view the ‘*asabah* is constituted of the following kindreds as was known among the Arab Tribes (al-Dasuqi, 2002, al-Kharashi, 1997).

- i. ‘*Ashirah* (brothers)
- ii. *Fasilah* (the uncle’s son)
- iii. *Fakhdh* (grand-grand father’s son)

- iv. *'Atn* (the sons belonging to the 4th grand father)
- v. *'Amrah* (sons belonging to 12th grand father)
- vi. *Qabilah* (sons belonging to 13th grand father)
- vii. *Shu'ab* (sons belonging to 14th grand father)

But according to Shafi'iyyah the son and his son, the father and the grandfather are not included in this line of blood relation because the Prophet (p.b.u.h) in his decision in the case of the woman of *Hudhadyl* who killed another woman and subsequently died, did not include her son among her *'aqilah*. The reason being that if son and father are included among the *'aqilah*, it would be tantamount to imposing it on the offender since their property is one and the same, thus it would be burdensome on them (al-Shirazi 1995, al-Maqdisi, 2013). The Majority on the hand argued that there is another version of the report by *'Amr Ibn Shu'ayb* which states that the son was included among the *'aqilah*. This is reasonable because the son and father are put equal footing with the other *'asabah* like brother in respect of their share of *mirath* (inheritance) and *tanasur* (cooperation) to the offender (Ibn-Qudamah, 2013). Shafi'iyyah in response argued that the version of the *hadith* by the majority is disputed and the one related by *Abu Hurayrah* is more authentic (*hasan sahih*) to be relied upon. Moreover, the *hadith* of the prophet (p.b.u.h), "your son will not incriminate you, nor you incriminate him" (Ibn Majah, 1993) excludes the son and equally the father from being among the *'aqilah* (al-Nawawi, 1996). It is agreed that every *'asabah* would only be asked for contribution, if he is able, competent and of the same faith with the killer. Because of the concept of *munasara*, the help can be sought from such people only (al-Shirazi 1995, al-Buhuti, 1968, al-Shirbini, 2014).

Another aspect of *'aqilah* is the institutions where the offender is inscribed as described by Imam Abu Hanifah in this way that the *'Aqilah* means the institution or organization to which a person belongs and from which he receives or expect to receive help or support such as (i) Army, (ii) Ministry, (iii) Bank etc. This definition includes major department and organization of the government and non-government respectively to which a person would seek help or support for payment of *Diyat* incurred from any offence liable to *Diyat* through mistake and without intention. Army is an organization of the government that engaged and devoted in the activities to save the soil and sovereignty of the state, therefore, any person who enrolled as a soldier has a right to seek support from the authority in case of emergency like payment of *Diyat*. In this regard the government should arrange the fund earlier for this sort of additional payment for the defaulter. The sources of fund may be from small portion of the allowance of the army as a whole or it may be subsidies by the ministry of finance. The notion in this regard is those who are appointed in the department

responsible for keeping peace, security and sovereignty, their *'aqilah* would be that department where he is enrolled.

Ministry is another significant part of the government but the question is which ministry would be responsible for *'aqilah* and how? Because in the present world no government could be found which have only one ministry? Generally, it would be the ministry of finance. Other ministries also become the *'aqilah* in their particular nature of the activity. But these ministries would not pay the amount of *Diyat* to the court directly rather it allocates the whole amount realized from the total income of the ministry to the ministry of finance. Educational institutions like schools, colleges and universities are also become the *'aqilah* for its students if they committed any offence mistakenly or unintentionally. Similarly, the banks or financial institutions are also become *'aqilah* for its consumer's mistake as a cooperation to establish a welfare society.

The murderer himself is exempted from paying the compensation according to the Shafi'iyyah and Maliki'yyah because he is excused by virtue of the error he has committed by reason of the Quranic *ayah*, "there is no liability for what you have erred in, (Al-Qur'an, 33:5)" and the hadith that "the accountability is lifted from to your act, if you committed by mistake (al-Sijistani, 2005)." Hanfiyyah, however, opined that the offender is included among the *'aqilah* because if he is to be exempted from liability for payment, his tribesman should be exempted at the place, since no one is obliged to bear the burden of another's liability by virtue of the Qua'anic and Sunnatic provisions too. Furthermore, the very purpose of extension of the liability of payment of *'Diyat* to the killer's clan or *'aqilah* is to reduce the burden on the offender. Therefore, he is not to be totally exempted for that matter (al-Sarakhsi, 1993, al-Jassas, 1994).

6. In Case of Non-Availability of 'Aqilah

There are two opinions in case of the offender who has no *'aqilah* or he is a destitute, or new converts or the number of his family members is so small that they cannot bear the burden of *Diyat*; first opinion is that the Government wills take the place of *'aqilah*. If there is no *'aqilah* at all or there is *'aqilah* but the persons concerned are penniless, then the *Diyat* will be paid by the Government from *Bayt al-Ma l*(Khafif, 1971, Ibn-Qudamah, 2013, Ibn Abidin, 1979). This is derived from the Hadith of the Prophet: I am the heirs of the one who has no wraith (inheritor) (al-Ramli, 1938) and his decision in awarding the *Diyat* for an *ansari* who was killed by the Jews (al-Nawawi, 1996, Ibn-Qudamah, 2013). It is also reported that a woman was killed during the congestion by the crowd, *Caliph* 'Umar upon the advice by 'Ali that, 'the blood does not go without recompense in Islam, awarded the *Diyat* from the public exchequer (al-Nawawi, 1996). It is also

reasonable that if a Muslim dies without any legal heirs, his estate would go to *Bayt al-Mal*. Similarly, if he has no *'asabah*, the state should bare the burden of his *Diyat*. If the number of the family members is small and cannot able to pay the whole *Diyat*, the balance will be paid by the government. This is the opinion of Imam Malik and Imam Shafii. The apparent position of the Hanfities and the Hanbalies is also the same (Anwarullah, 1997).

The second opinion is that *Diyat* will be recoverable from the assets or property of the offender, for in reality the offender alone is responsible for the payment of *Diyat*. The family bears the burden simply by way of helping him. If there is no family, the obligation of the payment of *Diyat* would revert to the origin. This opinion has been quoted by Imam Muhammad with reference to Imam Abu Hanifah. Some of the Hanbalies also subscribe to this opinion ('Audah, 1999, Oudah, 1999, al-Zuhayli, 2011).

7. Objectives of the Institution 'Aqilah

Behind each and every law and regulation of Islam there have certain rationale and the system of *'aqilah* is no exception to the general rule. There are some objectives behind the justification of this system are given bellow:

7.1. Removing the Unjust Practice of the Arabs

Islam recognizes most of the customary laws of the then society and accepts them in a reforming manner. It removes unjust portion of their practices and inconsistent belief and behavior to the basic principles of Shariah. Therefore, Islam removes all unjust practices regarding institution of *'aqilah* and permitted it for the *Ummah*. In further, Islam specified the burden of compensation to the victim and his family members in case of Intentional murder. Islam reforms in this point while in pre-Islamic era; liability gone to all adult, sane male members of the tribes, no matter the offender had intention or not which was an absolute injustice to the criminals. Furthermore, Islam wants to compensate for each and every death other than death caused by normal causes like death by diseased or any natural death.

7.2. Memorizing Accountability, The Family

Family is the most powerful unit of a society. Strength of family is the strength of society in terms of social contract according to social philosophers. In Islam, family is the most ancient and universal basic organization of human society, which has been guided by the divine knowledge through the prophets of Allah. All prophets also guide their

followers to establish a good family (Ali, et. al. 2014). Religion and family have been intimately related, which influences each one upon another (Hammudah, 1995). The family must build on the basis of Islamic ethical principles, which serves as a sacred institution that raises virtuous individual (Gulen, 2000). The objectives and functions of the family in Islam include the preservation and continuation of human race, protection of morals, psycho-emotional stability, socialization and value-orientation, social and economic security, widening the family horizons, and producing social cohesion in society, and motivation for effort and sacrifice (Ahmed, 1995).

In a family both husband and wife are equally responsible to take care of their children, educated them in the manners and norms which produce good moral citizen for the betterment of humanity. The holy Quran gives the utmost duty to the people to save themselves and their family members from the atrocious hell fire (Al-Qura'n 66:20). The holy verse clearly indicates to the people including parents to protect their children from all sort of evil and prohibited acts. If they failed to do so the share of punishment should call upon the parents as well. This is one of the attributes of Aqilah system. The system tries to keep the family members aware in discharging their every day actions to each other. One becomes the supervisor of another and then it is hardly possible to commit any wrong or to violate any laws of the land. If any offence committed by some one mistakenly, the responsibility lies upon the family to save him from the punishment given by the court if his guilty is proved and take away from wrong to right. In doing so they (Aqilah) should take a share of financial punishment payable by the offender to the court of law. It is desired to make a peaceful ever monitoring environment where each and every one does their respective jobs towards the well fare of the society. A question may be arising in the mind that how can parents will be responsible for the offence of their son while criminal liability lies upon individual? The holy Quran also establish this principle that no one has burdened by the burden of another. The sense is that they will be responsible for sharing the burden of the offender (their son) in the form of aid and assistance not in the form of abettor or accomplice.

7.3. Establishing a Cooperative Society

The system of Aqilah aimed to create a cooperative society where every individual aid to other for doing good and prosperous acts. The holy Quran makes the people responsible to advice for good deeds and negation for evil actions (Al-Qura'n 22:41). By virtue of this Quranic spirit every one makes them an advisor and inspector of another to prevent all forms of offence weather serious or petty in nature. Cooperate in the good deeds and hinder

the evil is another direction of the holy Quran, which means every person of the society, has responsibility to cooperate each other in discharging their duties. The verse also implies that member of the society will not only advice to other but also provide effective assistance in doing good job known as '*amal al-salih*'. The holy Prophet (p.u.b.h) also directed to the Ummah for making themselves responsible in their respective position. He said that "All of you are guardians and responsible for your wards and the things under your care. The Imam (i.e., ruler) is the guardian of his subjects and is responsible for them and a man is the guardian of his family and is responsible for them. A woman is the guardian of her husband's house and is responsible for it. A servant is the guardian of his master's belongings and is responsible for them. But the successful performance of the responsibility is depending upon the peaceful cooperation of the subjects. For instance, if any of them commits any wrong before other, he should take him away from wrong to right and make him understand which is right and which is wrong. In a society where such cooperation is practiced by every one then there would be little a chance to commit offence frequently.

The *Aqilah* system accentuates the maintenance of open and warm relation to each and every one of the societies. In fact, this relation is titled as brotherhood because Islam declared that all believing man will be a brother other believing man which means one always love his brother and respect to his property, honor and dignity, and finally become a caring, sharing and cooperative to him. A brother will never be a spy to or extend his hand to grasps the property and honor of his brother. The sprite of brotherhood is the sprite of cooperation. In this connection we ca say that the increasing cooperation means increasing motivation and increasing motivation leads to a person becoming a modest man and abstain him from violation of the rules and regulations of the society.

7.4. Reducing the burden of the offender

Another objective of the '*aqilah* paradigm is to reduce the burden from financial punishment incurred upon the perpetrator. In many cases it might be found that the offender has no or little bit ability to pay all the amount of compensation sentenced by the court. This is an aid on humanitarian ground for the victim and also a regaining life according to the Quranic directions where it is stated that there is a life in retaliation. Reduction of burden has a psychological influence upon the mind of the victim and assists him to repentance and come back to the normal life. Diminution of burden also helps to the victim to maintain respect and honor towards the merit of divine law. Eventually, the aim of Islamic criminal law is being reflected in the system because Islam does not want to punish the offender rather reform the culprit and this reduction of burden is a vital way to become the offender free and lead a normal life within a very short time.

7.5. Establishing A Crime Free Society

The society where Prophet Muhammad Pubh sent down was a society of ignorance, superstitions were the spirit of their imperative activities, and ferociousness was the heart of their settlement of dispute. Lawlessness was also the main characteristic of the society. As a result of their violent behavior every individual was unsecured to the other irrespective of their age and sex. History observed that after 23 years uninterrupted social transformation from ignorance to the light of knowledge, Muhammad Pubh presented a society of brotherhood with minimal rate of crime. Ferociousness transforms into sagacity and aggressiveness into kindheartedness. Every citizen felt secure even at night to open the door while they were sleeping. This is the ultimate objective of Islamic law. It would not possible to free a society from all sort of crime but it is possible to control the rate of crime and Islam desired to achieve such control over the criminal activities.

8. Contribution by the 'Aqilah

According to Imam Malik and Imam Abu Hanifah the offender shall include in his '*aqilah* as a member and shall be liable for the payment of his share in *diyat*. But according to Imam Shafii and Imam Ahmad, the offender is not liable for any portion of payment of *diyat* at all and the whole *diyat* will be paid by his '*aqilah* (Anwarullah, 1997). However, after the determination of the '*aqilah* the question of share that they may be contribute will arise. As regard the contribution of share by the '*aqilah* the jurists have differed on the amount to be contributed by each one of them. All of them agreed that they should not be overburdened and that payment must be made within the period of three years. The duration of three years is a judgment by 'Umar and it is alleged to duration of three years is a judgment by 'Umar and it is alleged to have received the consensus from the companions of the Prophet (*Ijma'al-asabah*) (al-Jassas, 1994, Ibn-Qudamah, 2013, al-Kasani, 2010, al-Shirazi, 1995). According to the dominant opinion of the Hanabilah and Maliki'yyah, the amount of the share has not been conclusively agreeing by the *Fuqaha*, therefore, it is left to the community to deal with it (al-Dasuqi, 2002).

The Shafi'iyyah and some of the Hanabilah argued that the well-to do must contribute half a *dinar* because it is minimum rate for *zakat*, and $\frac{1}{4}$ of *dinar* on the average people because it is the minimum rate for theft (al-Ramli, 1938, al-Buhuti, 1968, Ibn-Qudamah, 2013, al-Shirbini, 2014). According to Hanafi'iyyah since the 'Aqilahs sharing of the burden of *diyah* is an act of benevolence, they should not be overburden with any payment which exceeds 4 *dirhams* (al-Marghinani, 2016, Ibn Abidin, 1979, al-Sarakhsi, 1993, al-Kasani, 2010). Another opinion of the Shafi'iyyah that the amount of share for each of the '*aqilah* would be one and half *dinar* while

according to Hanafi'yyah it would be 9 or 12 *dirhams*. While according to Hanabilah and the amount of share born by each of the '*aqilah* is to be determined at the discretion of the Ruler provided it is an affordable amount. No number of an '*aqilah* shall not be made liable to pay more than 44.55 grams of silver or 6.35 grams of gold or their value in the prevailing currency as *diyat* annually. Where an '*aqilah* is made liable for the payment of *diyat*, the convict shall be deemed to be a member of such '*aqilah* and shall pay proportional share of the *diyat*. If a convict or his '*aqilah* liable for the payment of *diyat* fails to pay *diyat* or any part thereof within specified period, it shall be recovered with force from them (al-Kasani, 2010).

As regards the proposition of Shafi'yyah the number of '*aqilah* must be two thousand wealthy people in order to collect the one thousand *dinar* which is the required amount for ordinary *diyat* and they should be two thousand and six hundred people in order to collect more than thirteen hundred *diners* for heavier *diyat*. Similar problem arises in the proposal of Hanafi'yyah. According to Maliki'yyah the number of the wealthy people is minimum seven handcars and maximum one thousand people and this not the problem because this can be distributed among them according to their ability and in the event if they are not able then the other tribes are called for contribution. If it is necessary, the assistance from public treasury will be due (al-Kharashi, 1997, al-Dasuqi, 2002).

The majority of the jurists do not fix the minimum or a maximum number of '*aqilah* who are to contribute because their fixing the amount of share for each would involve a large number of people. Nevertheless, the Shafi'yyah proposed that if the number of '*asabah* is not large enough to collect that amount, then the closely related tribes is called for contribution, then the relatives from the mother's side is sought, the next step is to seek the help from public treasury and lastly the killer is required to pay from his own property (al-Shirazi, 1995, al-Nawawi, 1996, al-Ramli, 1938, al-Shirbini, 2014). Hanafi'yyah and Hanbalies predominantly agree on a similar solution except that they exclude the *dhaw al-arham* from the contribution in this way (Ibn Abidin, 1979, al-Buhuti, 1968, al-Kasani, 2010).

9. Modes of Contribution by the '*Aqilah*

An important difference between the payment of *diyat* in deliberate (intentional) homicide and quasi-deliberate homicide is that in the former it is to be paid immediately after the case is closed by the court, while in the latter it is to be paid within three years (EI-Awa, 1982). According to the general view once the shares of the '*aqilah* are allotted, then at the end of each year each of them are bound to pay their share to the heir of the victim. This payment is to be made over three years in installments (Ibn-Qudamah, 2013). However, as to what is the time that marks the beginning of three

years; the Maliki'yyah and Hanafiyyah hold that it starts from the day when the judgment is awarded (al-Dasuqi, 2002). While the Hanabilah and Shafi'iyyah hold it begin from the very day of murdering the deceased which is the initial time in which the cause of action arose (Ibn-Qudamah, 2013, al-Nawawi, 1996, al-Shirazi, 1995). But the from the opinion of the jurists it is appeared that the view of Maliky and Hanafy are more appropriate because if the time is started from the day of which cause of action was arise, the three years time may be lapse in many cases in modern time because of the delay in criminal procedure. In many situations it is to be found that the criminal case has filed of a after a long time for different reasons. Therefore, it would be better to count the period of payment after the pronouncement of judgment of the court.

The contribution may be made at once after the judgment of the court if the '*aqilah*' are able to do so or it may be paid in other ways like monthly, half yearly installment whichever is easier for them. The jurists have silent regarding the alternative payment of the amount of *diyat* from the property of the offender as well as '*aqilah*' whether movable or immovable like giving land, apartment, ornament or any other valuable things which have the value correspond to the amount of *diyat*. The very objective of the system is to cooperation with the offender and help for the victim. In this regard if the payment of *diyat* is made by such an alternative way instead of money, the objective of the system would not be frustrated rather the victim may get his remedy speedily. Speedy disposal of the case, however, is one of the significant characteristics of the Islamic Legal system. Provided that the right of *diyat* is the sole right of the victim and therefore, their satisfaction is to be considered in case of alternative payment, if the victim has accepted the substitute, then only this payment may be made in case of one victim. If the victims are more than one the unanimous consent must be required for alternative ways of payment. The members of the victim's family have not come to the unanimous decision, and then the original way of payment would be executed.

10. Possibility of '*Aqilah*' today

The system of victim compensation scheme is compatible in our existing criminal justice system and if it is successfully administered side by side, the crime prevention policy of the country would be more effective and serviceable. Multilevel responsibility and accountability of different organizations from family to other professional institutions are imposing a strong control over the wrongful behavior of the citizen. Through this scheme, it would not be exaggerated to say that, the crime rate of the society will be decreased tremendously. It is not a miracle rather an evident in the history of the Prophetic state of Medina and his triumphant successors are the proof of the above unimaginable fact. The scheme which

badly practiced by the tribal or pagans' people as a custom of pre-Islamic Arabia, reformed and further presented by the Muhammad (PBUH) before the entire human being. Unbelievably this scheme has been adopted by some of the developed country such as Germany, Italy and Yugoslavia in the name of *mulct fund*. *Mulct* is a special fund for the purpose of compensating victim to the victim's family members. In this fund those fines are deposited which the court impose. Income from this fund is reserved for the payment of the mulct of those offenders' wise possession and asset are not sufficient to pay the mulct (Anwarullah, 1997). As a result of this system the crime rate of these countries is under their control and victim of the case will satisfy for getting compensation of their loss.

11. Possibility of 'Aqilah in Bangladesh

Existence criminal justice system of our country is the legacy of British and still we are upholding this old, ineffective and backdated law and system of criminal administration. System for establishing crime free society is now a myth. In order to administer the system in question ('*Aqilah* system) we have to understand our current structure of the local government. Current structure started from Ward, Union parishod, Upozila posrishod, and Zila parishod, Municipality or Powroshovha and City Corporation. Inhabitants of the country are living under this structure and they also obliged to keep their residence within one of these unite of the government. Beside the government structure there are lots of departments under different Ministries of Bangladesh. Huge numbers of semi government organizations are also serving the country's overall development. People of the country have been serving the nation as public servant holding different position of the said organizations. In addition, innumerable private organizations are contributing toward the development of the country. Hundreds of thousand people are doing their job for the achieving national economic goal. Giant numbers of people are also there who are functioning in our market as an independent entrepreneur. These people in most cases become a member of their own business society. Hundreds of thousands of societies are available in our country depending their business nature also fall under this system. Considering the above fact, a lot of non-government organizations are also functioning in the country where people are engaged in so many purposes. For instance, people are engaged in financial non-government organizations such as co-operative societies for monetary gain and welfare non-government organizations such as welfare club, foundation etc., for serving the society without any cost. Cultural organizations are also functioning and people joined to these organizations for recreation and upholding national cultural identity.

From above discussion researcher finds several key levels of the local government in which compensation scheme can be set up. These levels are

first of all tier of the local government as mentioned in the above from Word, Union *Parishad*, *Upozila Parishad*, *Zila Parishad*, Municipality or *Powroshovha* and City Corporation. Second level may be the large number of Government and semi-Government organizations and departments. Third scope is to introduce '*Aqilah*' scheme in non-government organizations whether registered or unregistered. All types of Public and private organizations may be the fourth categories of institution where this scheme can be installed. In addition, Public and private organizations include all secondary and higher secondary Schools, Colleges, Madrasa, and Universities across the country. Private organization covers all private industries, banking and non-banking financial institutions. All kinds of Cooperative societies whether social, cultural, commercial and all types of charitable organizations may have scope to open this scheme to protect their own people from committing crime and if committed will take part for giving a portion of compensation to the victim or victims of a given fact.

'*Aqilah*' system or victim compensation scheme would be adjusted in our country in two ways firstly; government can take total responsibility to pay the compensation to the victim as standardized by the law regarding crimes and amount of compensation thereto. Secondly; imposing responsibility on the organization where individual is working and where no such organization is found imposing obligation on the shoulder of the family and where no such family is found responsibility goes to the government. In the first instance desired prevention of crime might be at risk because individual accountability has been avoided here. Islam proposed for the second options where every individual and organization will bind to compensate for their own wrongful act done by any employee as well as wrongful act of the family member of his own.

For getting huge amount of money every person will pay a little amount of subscription to the place where he or she born such as tk10 is payable to the office at union Porishad for one person. Payable amount may vary for urban and rural area or on the economic standard of the place of birth. This payment will fix for a period after which one has no strength to commit crime. If this person completes the whole period and does not commit any offence then deposited amount would be return to the person with profit as like as provident fund in the government system for their servant. In this regard duty of payment primarily goes to the father. Father will deposit for every child until his or her puberty or until their marriage. This scheme will apply in other unit of the government in a standard manner and bearable for the public in general.

Secondly; responsibility goes to the organization where a person becomes an employee. This organization will cut a little amount of money from every individual for compensation found to compensate for wrongful act of

the employee. Organization covers all sort of public and private organization, all NGOs, social club, etc. As mentioned in the above, after the end of the tenure, if he or she have not done any offence then total deposits will return to the person and if he or she convicted for offence liable to compensate then the organization will take part to pay a portion of total compensation to the victim. Person who has no any current identity like internally displaced person (IDP) by reason of river erosion etc. or a particular group who has no social identity like us such as *Hizra* community will become under special arrangement of the government and responsibility with regard to criminal liability go to the government.

Government may enact a special law in this regard and create a substantive authority with the collaboration of judiciary to regulate the activity of the public and private departments and organizations in concern. This special authority will monitor the situation whether law has been performed or not, collection and expenditure of the fund whether it is used properly or misused. One thing pertinent to mention here is that this subscription will raise a giant fund of fifteen hundred million people of the country which definitely contribute a lot in the gross GDP of the country. Not only that this system will automatically bind each and every unit from family to the departments of the government to careful oversees upon the activities of its members. The organization, in which a person is an employee, will monitor during the period of his or her working hours in the organization and the local authority under which he is a resident will monitor rest of the hours of the day.

In Bangladesh we can adopt this healthy system of victim compensation in a secular manner as adopted some of the European countries mentioned in the above. They remove religious sprite and replace it as their own fundamental principles of the state. Primarily, we can adopt it in a secular manner and observe the situation as a whole. After observation of its effectivity in terms of satisfaction of the victim as well as reduction of crime rate, if it is found useful for our country then we can shift to the religious framework. We should talk about the system not about the religious sanction; therefore, system is our prime concern and peaceful social order is our desire irrespective of the system derived from any religion.

12. CONCLUDING REMARKS

Awarding punishment is a recompense for the crime. It is undesirable to treat a criminal lightly who threatens the security of society with danger. The criminal should receive his just recompense as long as he is pleased with taking the path of evil instead of the path of

righteousness. Islam seeks to protect society from the dangers of crime. It is common knowledge that if crimes are not countered with serious punishments, then society will be in grave danger. Islam seeks to make social stability and security widespread, making life in society secure and peaceful. Islam also seeks to reform the criminal. The Quran often makes mention of repentance in association with the crimes that it deals with, making it clear that the door to repentance is open whenever the criminal abandons his crime and behaves properly. It has made repentance a means of waiving a fixed punishment in some instances, like the punishment for highway robbery, fornication, qazaf etc. God says: "except for those who repent before you take hold of them. Then know that God is the Forgiving, the Merciful (Al- Qruan 5:34)." 'Aqilah system of Islam also provides a lot of opportunity for the victim as well as for the accused to start a new life. This scheme further obliged the citizen to remember their common obligation toward the society. As a citizen every individual has right to promote well deeds and prohibits every evil. At the end we can propose that extensive research should be made by the researcher and find the key points for adaptation of the system into our existing system.

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