DĪA
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DĪA

DĪA (pl. *dīāt*), the prescribed blood money or wergild paid in compensation for a wrongful death or certain other physical injuries. The system of *dīa* is similar to other forms of compensation prevalent in Roman, Germanic, Anglo-Saxon, and other ancient legal systems (A. Diamond, pp. 144-58). Its inception, however, is in the system of private vengeance prevalent in pre-Islamic Arabia. Tribes in pre-Islamic Arabia would at times renounce their right to vengeance in return for compensation often in form of camels or young brides (Edris, p. 230). While maintaining the basic structure of pre-Islamic *dīa*, Islamic law modified the practice in significant respects by setting restrictions on the right to talion, and limiting *dīa* to specific types of goods (Anderson, pp. 811-12; ʿĀmelī, X, p. 308). There is a broad agreement on the basic theory of *dīa* among Islamic schools of law, which is usually discussed together with *qeṣāṣ*; but this field is marred with disagreements over details. The focus of this article is on the Shiʿite law.

i. In Shiʿite law.

ii. The revival of dīa in the Islamic Republic of Iran.

i. IN SHIʿITE LAW

There is broad agreement on the basic theory of *dīa* (often discussed together with *qeṣāṣ*), but disagreements are common over details. The focus here is on

the Jaʿfarī school of the Shiʿite law.

All schools agree that the *dīa* of a free male Muslim is 100 camels but disagree over whether *dīa* can be paid in other types of goods or in money. The Shiʿite school maintains that the full fixed *dīa* is of six primary types: 100 camels (of certain ages, depending on the offense), 200 cows, 1000 sheep, 100 two-piece garments, 1000 dinars in gold coinage, or 10,000 dirhams in silver coinage. The offender or the party bearing the financial liability chooses the type of *dīa*, but in case of intentional crimes a settlement has to be reached by both parties. A minority opinion argues that the choice of *dīa* should be determined according to the trade of the offender (e.g., a goldsmith would pay in gold coinage; ʿĀmelī, pp. 176, 184-86; Moḥaqqeq Ḥellī, p. 246; Ebn al-Barrāj, p. 357).

Dīa is an option in the case of deliberate (*ʿamd*) and quasi-deliberate (*šebh ʿamd*) crimes against persons. Unlike some Sunni schools, the Shiʿite school does not place much weight on the tools used in a crime as a means of distinguishing between deliberate and quasi-deliberate offenses. Rather, the emphasis is on whether the offender had a specific or general intent. In contemporary times deliberate homicide would be murder, while quasi-deliberate homicide would be manslaughter.

The Shiʿite school (as well as the Hanafites and Malikites) holds that in case of intentional homicide or injury the remedy is *qeṣās*á (punishment or talion); *dīa* is not a co-equal alternative. Consequently, if the heirs of a victim forgive the offender an automatic right to *dīa* does not arise. Nevertheless, *dīa* could be payable through a settlement (*ṣolh*á) in which the offender agrees to pay an amount that may be more or less than the specified *dīa* (Moṭahhar Ḥellī, p. 678). Schools that consider *dīa* to be a co-equal alternative to *qeṣāṣ* do not require that the offender consent to paying *dīa*; the choice is entirely that of the victim or the heirs (Zoḥaylī, pp. 286-88).

Dīa, however, might become the only legal recourse if certain legal deficiencies preclude the application of talion. For example, if talion cannot be enforced because strict equality is not achievable, the only option other than an outright pardon is the right to full or partial *dīa*. Accordingly, no talion is admitted in the case of fractured bones or if experts testify, in a case not involving murder, that talion is likely to endanger the life of the offender. Furthermore, a right to *dīa* is the only recourse if talion is not possible because of certain evidentiary deficiencies (ʿĀmelī, pp. 77-80; Moṭahhar Ḥelli, pp. 660, 678; Ebn al-Barrāj, pp. 474-75). *Dīa* is also the only legal remedy in the case of

accidental injuries. Whether a rule of strict liability or negligence applies to tort liability is a debated issue (ʿĀmelī, pp. 150, 154-55; Goadby, pp. 62-74).

Islamic law divides injuries, whether intentional or accidental, into four groups: 1. *Aṭrāf*, an injury that involves the total loss of an organ (18 specified organs); 2. *manāfeʿ*, an injury that involves the total loss of a physiological or intellectual function (7 functions); 3. *šejāj*, an injury to the face (8 types); and 4. *jorūh*á, injuries to the body. The full amount of *dīa* is due for a loss of an organ or function (the first two types). Therefore, a loss of both legs, for example, would elicit one full *dīa*. A proportional *dīa* is due for a partial loss. Hence a loss of one arm or leg would elicit half a *dīa*. A crippling of both legs would elicit two thirds of the *dīa*. Whether several full *dīa*s could be compounded for the loss of several organs or functions is a contested issue (Moḥaqqeq Ḥellī, pp. 235, 279; Ebn al-Barrāj, p. 475).

A specified partial *dīa* is prescribed in the case of *šejāj*. Most *jorūh*á injuries do not have a specified prescribed *dīa*. Rather, an assessment of the actual loss suffered (*ḥokūmat ʿadl*) is applied, determined by reference to the market value of a slave before and after a similar injury. In comparison to their Sunni counterparts, the province of *ḥokūmat ʿadl* is somewhat restricted in Shiʿite law. Shiʿite law specifies the *dīa*s of several *jorūḥ* that would be covered by *ḥokūmat ʿadl* in Sunni law.

Shiʿite sources state that the terms *arš* and *ḥokūmat ʿadl* are synonymous (Moṭahhar Ḥellī, p. 684; ʿĀmelī, p. 285). Both terms refer to injuries that do not have a specified *dīa*. Most Sunni sources state that *arš* refers to money payable for a bodily injury that has a specified partial *dīa*. Nevertheless, Shiʿite sources in actuality often use *ḥokūmat ʿadl* to refer to compensation for surplus or excess injuries. For instance, if a victim’s hand is severed above the wrist, he/she is entitled to *dīa* for the hand up to the wrist and to a *ḥokūmat ʿadl* for any loss above the wrist (*ḥokūma fī’l-zā’ed*; Ebn al-Barrāj, p. 373; Moṭahhar Ḥellī, p. 698).

There is much disagreement over the *dīa* of a Christian, Jew, or Zoroastrian (*ḏemmī*s). The majority opinion in the Jaʿfarī school maintains that it is 800 dirhams. The *dīa* of a slave is his market value, but it cannot exceed the *dīa* of a free person. The *dīa* for a partial loss is determined by referring to the proportional value if the loss had afflicted a free Muslim (Moḥaqeq Ḥellī, pp. 205, 247; Moṭahhar Ḥellī, pp. 683-84). There is some disagreement over the *dīa* of a woman. The majority view is that the *dīa* of a woman is half that of a man.

The Shiʿites (as well as the Malikites and Hanbalites) maintain that a woman's *dīa* is equal to that of a man until it reaches two-thirds of the value. This leads to peculiar results. For example, if a woman loses three fingers, she is entitled to thirty camels; but if she loses four fingers, she is now entitled to twenty camels (Ebn al-Barrāj, pp. 486-87; ʿĀmelī, p. 41).

A unique aspect of Shiʿite law of *dīa* is the *radd*, by which a part of the *dīa* is remitted if the victim or the heirs wish to exact talion from an offender with a higher *dīa* value. For example, if a man murders a woman her heirs are entitled to exact talion provided they remit half of the *dīa* to the heirs of the offender. This procedure receives wide application to permit the exaction of talion between people of unequal *dīas*. Other schools would permit talion without remitting the discrepancy in value.

The Jaʿfarī school adopted another unique position in prescribing several specific *dīa*s for each stage of fetal development (called *ḡora*). Other schools prescribe a single *dīa* for an unborn child but disagree as to which stage it becomes due. The Jaʿfarī school was also the only school that set specified *dīa*s for the mutilation of a corpse.

In deliberate and quasi-deliberate offenses a particularly heavy *dīa* (*dīa mōḡallaẓa*) is prescribed. The ages and sexes of the camels are varied so that the *dīa* will be of higher value. Additionally, the offender is personally liable for the *dīa*, which is payable in one year in the case of a deliberate offense and in two years in the case of a quasi-deliberate offense. Other schools hold that the offender is not personally liable for the *dīa* in a quasi-deliberate offense and prescribe different grace periods for the payment. In an accidental tort the *ʿāqela* of the offender is liable for the *dīa*, which is payable in three years unless the amount payable is one-third of the full *dīa* payable in one year (Moḥaqqeq Ḥellī, pp. 197, 245-46; Moṭahhar Ḥellī, pp. 679-80; ʿĀmelī, pp. 175-81).

Although existing in various forms in several ancient legal systems (Drew, p. 185; Diamond, p. 158), the *ʿāqela* grew out of the tribal organization of pre-Islamic Arabia, where the tribe of the offender was responsible for any blood money incurred by the offender. There is much disagreement in Islamic law on what constitutes the *ʿāqela* of a person and on the extent of its liability. In Shiʿite law the majority view is that the *ʿāqela* of a person are the male relatives from the father's side. This includes brothers, uncles, and cousins but not sons or fathers. The *ʿāqela* cannot be held liable for any deliberate or

quasi-deliberate offense or for any amount of money due by settlement or admission. They are only responsible for an amount that exceeds one-twentieth of the *dīa*. There are differences of opinion over how the money is to be apportioned among the members of the *ʿāqela* and as to whether the public treasury (*bayt al-māl*) or the offender becomes liable if the *ʿāqela* cannot pay. The *ʿāqela* of *ḏemmī*s is the public treasury because, according to Shiʿite sources, they pay poll tax (*jezya*; Ebn al-Barrāj, pp. 357, 503-05; Moṭahhar Ḥellī, pp. 732-39; ʿĀmelī, pp. 308-15; Moḥaqeq Ḥellī, pp. 289-91).

The public treasury is also responsible for the *dīa* of a person found killed in a public place such as a public road or mosque. However, if the deceased is found with evidence of wrongdoing in a locality or on private property, resort is made to *qasāma*, which is similar to the ancient legal procedure of compurgation. The residents of the area are asked to take fifty oaths that they neither killed the deceased nor know who the killer is. According to Shiʿite law and the majority of Sunni schools, if there is a *lawaṯ* (independent evidence of wrong doing such as known hostility or any material evidence), then the locality or the *ʿāqela* of the owner of the property is responsible for the *dīa*. If there is no *lawaṯ*, then taking the oaths shields the suspects from liability and the public treasury pays the *dīa* (Ebn al-Barrāj, pp. 500, 513; Moḥaqqeq Ḥellī, pp. 222-25; ʿĀmelī, pp. 72-5).

The laws of *dīa*, to various degrees, are partially in force in several Middle Eastern countries such as Persia, Saudi Arabia, Yemen, the United Arab Emirates, Oman, and Sudan. However, the *dīa* practices of these countries are intermingled with customary practices and modern criminal law concepts. Certain practices such as *ʿāqela* and *qasāma* for the most part have fallen out of use. Furthermore, the tribes of Sinai, Sudan, and Somalia apply *dīa* laws derived from customary practices rather than *šarīʿa* principles.

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ii. THE REVIVAL OF *DĪA* IN THE ISLAMIC REPUBLIC OF IRAN

The abolishment of the secular penal code (Qānūn-e jazāʾ), which had been adopted from the French code since the 1906-11 Constitutional revolution, and the establishment of *dīāt, ḥodūd, qeṣāṣ*, and *taʿzīrāt*, the four pillars of Islamic penal law, has constituted the main agenda of the Islamic Republic of Iran for reconstruction of the Judicial system since its inception in 1357 Š./1979 (see JUDICIAL SYSTEM). Thus, on 24 Āḏar 1361 Š./15 December 1982, the Islamic

penal law of blood money (Qānūn-e mojāzāt-e eslāmī-e dīāt), comprising 210 articles, was ratified by the Majles (for the text see Waṭanī, pp. 236-85). It was a codified and revised version of a chapter on *dīāt* in Ayatollah Khomeini's *Taḥrīr al-wasīla* (3rd ed., Beirut, 1401/1981, II, pp. 553-607). The law of *dīāt* had been enforced until 7 Āḏar 1370 Š./28 November 1991 when the Discretionary Council (Šūrā-ye maṣlaḥat-e neẓām) approved the new Islamic Penal Law (Qānūn-e mojāzāt-e eslāmī), comprising *ḥodūd, qeṣāṣ, dīāt,* and *taʿzīrāt,* that had been ratified in July 1991 by the Majles (for the text see Qorbānī, pp. 406-779). The fourth book of the law (arts. 294-496) is on *dīāt*. Article 294 defines *dīa* as a property to be given to a victim of crime or to his/her guardian (*walī*) or blood warden (*walī-e dam*) in compensation for his/her life or bodily injuries and defects. Article 295 defines three major subjects of *dīa*: non-deliberate crime (*ḵaṭāʾ-e maḥz*µ); quasi-deliberate crime (*šebh-e ʿamd*ʿamdqeṣāsá. The *dīa* of the life of a male Muslim (art. 297) includes one of the following options: either 100 healthy camel, or 200 healthy cows, or 1,000 healthy sheep, or 200 of new Yemeni cotton garments (*ḥolla*), or 1,000 dinar (gold coin), or 10,000 dirham (silver coin). The *dīa* of the life of a female Muslim is one-half of that of a male Muslim. In the case of bodily injuries the *dīa* of Muslim male and female is equal up to the ceiling of one-third of the full amount of the *dīa* of a male Muslim; but when it exceeds the one-third ceiling, the *dīa* of female is one-half of that of the male. Articles 302-496 provide detailed rulings on personal responsibilities in various actions that are subject of *dīa* as well as the *dīa* of bodily injuries of various organs.

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