

Incorporating the Salient Principles of *Diyah* in Constructing a Workable No-Fault Compensation System for Medical Injuries

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Abstract: The prevailing trend amongst many jurisdictions around the globe has moved towards adopting amicable systems in compensating victims of medical injuries. One of the main systems which have been widely debated and scrutinised on is the no-fault compensation system. In adopting this system, victims of medical injuries no longer require to prove ‘fault’ and therefore, negligence on the part of the medical provider. The fact that these victims have suffered injuries after seeking medical treatment triggers the system to automatically disburse fix levels of fund to compensate for the losses that they have suffered. The no-fault compensation system is thus, motivated by the principle of ‘distributive justice’, which highlights the role of society and community’s responsibilities. The basic features of a no-fault compensation system for medical injuries are therefore comparatively similar to the system of *Diyah*, whether in terms of principles as well as in its operation. While many studies on legal theory treat the system of *Diyah* as part of punishment in the realm of criminal law, in reality, the system of *Diyah* acts as a method of economic empowerment enabling the setup of a multidimensional welfare system in caring for the disadvantaged in the community. These shared values and similarities in principles and operation will be able to facilitate the harmonization between the two systems in an effort towards designing an ideal no-fault compensation system for medical injuries, which not only adheres to the *Shariah*, but suitable to be implemented in various local and international circumstances. Nevertheless, contemporary interpretation would be required to ensure that the dynamics of this Islamic compensation system is appropriately embraced in the age of globalisation.

Key words: Compensation system • Medical Injuries • *Diyah* • No-fault • *Harmonization* • *Shari’ah*

INTRODUCTION

Compared to the fault-based system, the no-fault compensation system has been viewed by many as a feasible alternative in providing a fairer, speedier and adequate compensation for medically injured victims. The elimination of fault would provide easier access to compensation and injuries are compensated based on a predetermined schedule. This will eventually promote constancy, fairness as well as efficiency in terms of time and money. Nevertheless, the most challenging part is designing a workable model which is financially affordable, straightforward in operation and viable to be implemented in various local and international circumstances.

In designing an ideal model, it is pertinent that we take into consideration the Islamic perspective on such matter, as Islam provides comprehensive guidance for

mankind over their entire spectrum of life. The era of 21st century has witnessed an increasing number of Muslim majority countries breaking away from Western-induced secularization and embracing the rule of *Shariah* to be assimilated within the legal framework of their respective countries [1]. Efforts of Islamization and harmonization between the two legal systems are also being extensively made in order to ensure that Islamic law remained relevant and correspond to contemporary legal trends and issues [2]. It is thus significant for policymakers and scholars to study and analyse the fundamental Islamic principles in devising an alternative compensatory system for medical injuries.

This paper seeks to analyse the concept of compensation in Islamic law, particularly in relation to medical injuries and explore possible harmonization between the concept of *Diyah* and the principles of a no-fault compensation system for medical injuries.

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MATERIALS AND METHODS

Qualitative Research - Content Analysis

RESULTS AND DISCUSSION

Compensation in Islam: Compensation in Islam is a manifestation of justice and mercy from Allah. Islam emphasizes the importance of safeguarding the sanctity of human life, the rule against its violation and accordingly, the duty of reparation or compensation to victims of injury or their family as amelioration for their loss. Compensation in Islamic law is generally known as “*diyah*”, although terms like “*irsh*”, “*hukumah ‘adl*” and “*daman*” are also used to connote the act of compensation in Islam. *Diyah* in Islamic law is a form of financial compensation paid to the victim or heirs of the victim in cases of homicide, wounding and damage to property.

The liability to compensate in Islam arises when the unlawful act of the perpetrator causes actual damage to the victim. Unlike the law of torts which only allow compensation to the victim upon proof of fault, compensation in Islamic law is based upon the principle of indemnity against actual damage [3]. In other words, while liability in the law of tort is described as “fault liability”, Islam regards it as “damage liability”. The Islamic law of *diyah* centers on the materiality of the damage and thus, injuries of both intentional and accidental in nature are compensated.

Diyah responsibility arises primarily in cases of unintentional and quasi-intentional offences, as stipulated in the Holy Qur’an, An-Nisa’: 92;

“Never should a believer kill a believer; but (if it so happens) by mistake, (Compensation is due): If one (so) kills a believer, it is ordained that he should free a believing slave and pay compensation to the deceased’s family, unless they remit it freely.”

For injuries or damage caused by intentional offences, *diyah* is prescribed as a peaceful alternative to *qisas*, for which the victim or his heirs may choose in place of retribution. This is stated in the Holy Qur’an, Al-Baqarah: 178;

“O ye who believe! The law of equality is prescribed to you in cases of murder: the free for the free, the slave for the slave, the woman for the woman. But if any remission is made by the brother of the slain,

then grant any reasonable demand and compensate him with handsome gratitude, this is a concession and a Mercy from your Lord. After this whoever exceeds the limits shall be in grave penalty.”

Nonetheless, although Islam recognizes the right of equal retribution, between retribution and compensation, the Qur’an clearly commends the latter. The victim who decides to forgo retribution in place of compensation are promised divine reward in the Hereafter, in which for a Muslim, is a far greater reward than any other [4]. This preference can be seen in the Holy Qur’an, Al-Ma’idah: 45;

“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 any one remits the retaliation by way of charity, it is an act of atonement for himself. And if any fail to judge by (the light of) what Allah hath revealed, they are (No better than) wrong-doers.”

The Concept and Characteristics of *Diyah*

Duty of Compensation in Islam Stems from the Prohibition to Violate Human Life: The liability to compensate victims of homicide and wounding in Islam stems from the prohibition to violate human life. Islam places great emphasis on the sanctity of human life and calls for preservation of life, regardless of race, gender, or religion. No one is entitled to take away such a life, except Allah, or by his divine will. The act of taking away valuable life in Islam is considered a grave offence and the Holy Qur’an, Al-Ma’idah: 32 equates such offence as the murder of the entire mankind;

“On that account: We ordained for the Children of Israel that if any one slew a person - unless it be for murder or for spreading mischief in the land - it would be as if he slew the whole people: and if any one saved a life, it would be as if he saved the life of the whole people. Then although there came to them Our messengers with clear signs, yet, even after that, many of them continued to commit excesses in the land.”

***Diyah* as an Instrument for Establishing Justice:** Compensation is one of the means where justice is manifested in Islam. Islam acknowledges the role of compensation in the administration of justice and recognizes its importance in maintaining social stability,

interdependence and equal dignity within the community [5]. Justice is the ultimate objective of compensatory duty in Islam, where it seeks to establish a righteous society so that human being can live prosperously in a climate of peace, justice and security [6]. This objective has been articulated by the Qur'an in many places, one of them is stated in Surah Al-Hadid: 25;

"We sent aforetime our messengers with Clear Signs and sent down with them the Book and the Balance (of Right and Wrong), that men may stand forth in justice."

The Concept of Equality in the Islamic Law of *Diyah*: The Islamic law of *Diyah* is an embodiment of the concept of equality in Islam. Unjustified killing or wounding of a member of the community by another member is regarded as a tilt in the scale of equality, which requires remedying to restore the equilibrium. In Islam, the protection of life is a given right to every human being regardless of race, wealth, ethnicity and social status. Islam demands that every member of the community are conceded with the right to equal treatment, as declared in the Holy Qur'an, Al-Baqarah: 279; "Deal not unjustly and ye shall not be dealt with unjustly."

Equality between human beings is an intrinsic quality of Islam and marks the differentiation between the Islamic practice of *Diyah* and the practice of blood money by the ancient civilization. During the times where the Pagan Arabs and other ancient civilization are very selective when it comes to valuing human life, the advent of Islam places human beings on equal footing where each lives are regarded as equal and deserves similar protection [7-8]. The differences of race, wealth, ethnicity and social status are irrelevant according to the Islamic appraisal and does not affect the true stature of a man in the sight of Allah, as mentioned in the Qur'an, Al-Hujurat:13;

"O mankind! We created you from a single (pair) of a male and a female and made you into nations and tribes, that ye may know each other (not that ye may despise (each other)). Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things)."

The Institution of Al-*Aqilah* and *Diwan*: the Role of the Community in the Islamic Compensatory System: Another unique feature of the Islamic compensatory system is that it invokes social responsibility in correcting

mistakes done by members of the community and highlights their role in compensating victims of homicide and injuries. In Islam, the responsibility to compensate victims of unintentional offences lies on the shoulder of the *'aqilah*, as a group of people responsible for the supervision and nurturing of the perpetrator's behaviour and thus, are accountable for his inadvertence [9].

'Aqilah in Islamic law refers to a group of persons shouldering the liability to pay *Diyah* and the majority of the *fuqaha* agree that *'aqilah* comprises of paternal relatives of the perpetrator, known as the *'asabah*. The scope of *'aqilah* was refined during the reign of Umar al-Khattab r.a. to suit the community's changing structure, where the constituents of *'aqilah* are shifted from *'asabah* to members of the same *diwan*, or the armed forces serving in the same district [8].

The institution of *al-'aqilah* is envisioned to be a system of social solidarity where members of the same tribe or community who shares a common interest would be injected with a sense of responsibility and mutual co-operation towards one another. In Islam, the community plays an essential part both in making sure that the victims are adequately compensated and the perpetrator is appropriately rehabilitated. Islam accentuates the role of the community as central to the administration of justice and they are collectively responsible for creating a just society [10], where good is enjoined and evil is eradicated, as mentioned in the Qur'an, Ali Imran: 104;

"Let there arise out of you a band of people inviting to all that is good, enjoining what is right and forbidding what is wrong: They are the ones to attain felicity."

The Workings of *Diyah* for Medical Injuries

***Diyah* for Medical Injury in Islam:** It is important in Islam that the sick and injured be cared for by the community, even when they did not seek for assistance. For that matter, Islam had provided a number of platforms for Muslim community to participate in assisting the sick and injured in Islam, financially or otherwise. This includes state-run financial institutions such as *zakat*, *baitulmal*, endowment fund and various other charitable organizations dedicated to provide financial aid for the needy within the community.

Diyah is one of the instruments used in providing financial assistance in the form of compensation for the medically injured in Islam. However, apart from aiming at granting the injured a recuperating sum, *Diyah* also

serves as an economic penance for deterring potential injurer from engaging in unsafe behaviour [9]. In achieving such ideals, Islam strikes a balance between the rights of victims of medical injuries to be compensated and the rights of the medical practitioners to be shielded from liabilities should they exercise due care and diligence in the treatment of their patients [11]. *Diyah*, in that sense, are only applicable for medical injuries which resulted from negligent or erroneous practice of the medical practitioners and as an alternative to *qisas* for injuries resulting from gross negligence or intentional transgression by the medical practitioner.

Establishing Liability of the Medical Practitioner: Islam expects that the highest standard of care is given in any task a Muslim undertakes, including those in the medical line. This has been clearly stated by the Prophet in his Hadith as reported by al-Bayhaqi; “Allah loves that whenever any of you does something, he should excel in it.” [12] Liability thus, arises if a medical practitioner falls short of the standard required from him and causes injury to another person. This general rule is illuminated in the hadith narrated from ‘Amr bin Shu’aib that the Messenger of Allah said; “Whoever gives medical treatment, with no prior knowledge of medicine, is responsible (for any harm done)” [13].

Recognizing the fact that medical treatment can often be complicated, the *fuqaha* are unanimous in holding that a medical practitioner shall not be liable for any undesirable consequence of the treatment as long as he is a competent practitioner performing his duty, for which he was authorized to, in the manner in accordance with the accepted medical practice [14-15]. This opinion finds basis in the Islamic dictum “*al-jawaz al-shar’iyunafi al-daman*” where liability shall not be attached to the consequence of performing a duty required by the *shara*’ [15].

Muslim *fuqaha*’ also distinguished between negligence and error or mistake (*tajawuz al-hadd*) in their classification of liability, although the line between them is not always discernible [15]. A negligent medical practitioner whose action falls short of the standard accepted practice and causes injury shall be liable for compensation, based on a report that *Umar r.a.* had imposed liability for compensation upon a doctor who had negligently cuts off the glans of a child during circumcision procedure [11]. However, if the medical practitioner had adhered to the accepted medical practice but still accidentally made an error or mistake and causes injury or harm to another person, then compensation is also due, but borne by the *‘aqilah* [16].

This is where the Islamic law of *Diyah* and tort differs. In Islam, liabilities are absolved from a person if it was an unintentional mistake on his part (The Holy Qur’an, Al-Ahzab: 5), but the absence of fault does not negate the right of the victims to be compensated. The law of *Diyah* thus, went further to compensate medical injuries which resulted from error, mistake and misadventure without invoking negligence [15]. From that point of view, the Islamic law has been successful in proving that it is possible to compensate victims of medical injury without finding fault and branding the doctor as negligent.

The Amount of *Diyah* for Medical Injury: To eliminate the injustices that occur due to self-regulated practice of *Diyah* during the pre-Islamic period, Islam had sent down detailed guidelines on the amount of *Diyah* payable for injuries which affect different parts of the body. This fixed amount of compensation are envisioned to promote equality and predictability, leaving no room for personal estimation that would otherwise vary from one person to another due to social differences [17].

The principle regarding the amount of *Diyah* for physical injuries is laid down by Prophet Muhammad through a letter written and sent to the elected Governor of *Yaman* at that time, *‘Amru ibn Hazm*. This letter, as narrated by *An-Nasa’i* stated as follows;

“Whoever kills a believer for no just reason is to be killed in return, unless the heirs of the victim agree to pardon him. For killing a person, the *Diyah* is one hundred camels. For the nose, if it is cut off completely, *Diyah* must be paid; for the tongue, *Diyah* must be paid; for the lips, *Diyah* must be paid; for the testicles, *Diyah* must be paid; for the ends, *Diyah* must be paid; for the backbone, *Diyah* must be paid; for the eyes, *Diyah* must be paid; for one leg, half the *Diyah* must be paid; for a blow to the head that reaches the brain, one-third of the *Diyah* must be paid; for a stab wound that penetrates deeply into the body, one-third of the *Diyah* must be paid; for a blow that breaks the bone, fifteen camels must be given; for every digit of the hands or feet, ten camels must be given; for a tooth five camels must be given; for an injury that exposes the bone, five camels must be given. A man may be killed in return for (killing) a woman and those who deal in gold must pay one thousand dinars.” [18].

From the authority of the above hadith, the value of one full *Diyah* in *Shariah* is calculated as equivalent to 100 camels or 1000 dinars. The possession of camels symbolizes one's wealth by the Arabs at that period of time. It can thus, be considered as a form of currency as it is significantly used as a medium of exchange in their transaction especially for those living in Mecca [19]. The above Hadith also recognizes the use of 1000 dinars as a substitute for 100 camels for those who used gold or silver as their medium of exchange.

Incorporating the Salient Features of *Diyah* in Constructing a Workable No-fault System for Medical Injury:

The prevailing trend amongst many jurisdictions around the globe has moved towards considering the adoption of no-fault system in compensating victims of medical injuries. An ideal no-fault compensation for medical injuries would be one that guarantees adequate compensation for all medically induced injuries without the hassle of proving fault, while improving doctor-patient relationship towards increasing the quality of the healthcare services at large. In achieving such ideals, policymakers of the scheme eliminate the fault element in compensation and provide a fixed level of pecuniary compensation to medically injured victims based on a predetermined schedule of injuries. With the elimination of fault, the burden of compensatory payment is distributed among those within the same profession by way of professional indemnity insurance, or alternatively by the community at large, by way of general levies.

Features of No-Fault System Which Finds Analogous Expression in the Islamic Law of *Diyah*:

The basic features of a no-fault compensation system for medical injuries are comparatively similar to the concept of *Diyah* in Islamic law. The growing acceptance amongst the western and the common law countries on the importance of compensation for the injured and how the community should partake in compensating them has brought them closer towards the Islamic law of *Diyah*. These shared values and similarities in principles should facilitate easier harmonization between the two legal systems in an effort to design an ideal no-fault compensation system which not only adheres to the *Shariah* law, but efficient in execution and suitable to be implemented in both local and international scenario.

Compensation Without Fault Ensures Fair Compensation to Victims of Medical Injury: Similar with the concept of *Diyah*, a no-fault compensation scheme emphasises on compensating victims of injury more than addressing

the issue of blame on the medical provider. In eliminating the requirement of fault as a criterion for the entitlement of compensation, a no-fault system seeks to widen the scope of compensation for victims of medical injury. The Islamic law of *Diyah* shares the same ideals where it centres on the materiality of the injury and compensates victims regardless of fault. This principle also mirrors the concept of equality inherent in Islamic law which brings the mankind together on equal footing as the descendants of Adam and the subjects of one God of the Universe.

Scheduled Compensation Ensures Consistency and Fairness:

Tort litigation is frequently dubbed by critics as "lawsuit lottery", due to its unpredictable and all-or-nothing approach. The determination of compensation on a case-to-case basis under indeterminate guidelines had brought about inconsistencies in the award of compensation, leading to unpredictable outcomes and unjust distribution of compensation to victims of medical injuries. A no-fault compensation system provides solution to this 'lottery problem' by awarding compensation according to a fixed benefits schedule. This ensures predictability and consistency in awarding compensation, as well as deterring victims from exaggerating their demand for compensation.

The Islamic law of *Diyah* also shares the same concern, which is why the *Shariah* has laid out detailed guidelines on the amount of *Diyah* payable for injuries which affect different parts of the body. The *Shariah* has dealt extensively on the issue of quantum of *Diyah* payable for injuries as predictability and equality are among the main characteristics of the Islamic system of compensation and liability.

Collective Responsibility in No-fault Compensation as a Contemporary Application of the Concept of *Al-'Aqilah*:

Another distinct feature of a no-fault compensation scheme which finds analogous expression in the Islamic law of *Diyah* is its emphasis on collective responsibility in compensating for the medically injured in the society. For such purpose, a no-fault system would usually involve the establishment of a comprehensive national social welfare system or a social insurance scheme. Such scheme allows the community to partake in providing assistance to victims of medical injuries, by way of pooling contributions from other members of the community. Such approach is aimed at not only relieving the burden of the perpetrator, but also to ensure payment to the victim, should the perpetrator lacks or has no means of payment.

The concept of 'aqilah and diwan in the law of *Diyah* reflects this principle of collective responsibility in caring for the injured. It allows the devising of a system of collective liability, distributing the burden of compensation for an unintentional harm between members of the community engaging in a particular activity upon the principle of *munasarah*, or co-operation in difficulties [8, 20]. It is thus, appropriate that the modern-day concept of 'aqilah be reinterpreted as a system of collective liability which distributes the burden of compensation between members of the community engaging in a particular activity. Such opinion is shared by *Al-Qadi Khan*, a late *Hanafi* jurist, as quoted in Shah, S. S. (1999, p. 167);

“The raison d’etre in requiring the 'aqilah to bear the Diyah for a mistaken killing committed by their members was because they were bound by a bond of tansur. Thus, if a person was a warrior registered in a registry of soldiers who derived their subsistence and allowances from the registry (diwan), their 'aqilah was diwan. Thus, in the case of members belonging to a particular profession (Suna'ah) if the notion of tansur exists among them then their 'aqilah is the people of their profession.”[20]

Learning from the Experiences of Selected Muslim Countries: Originally a customary approach in resolving inter-tribal disputes, the concept of *diyah* can still be found assimilated within the legal framework of certain Middle Eastern countries especially those made up of traditional Arab tribal communities. Despite the globalization era of the modern world, tribalism remained relevant and influential in the construction of national identity and even in shaping the decision-making process in certain Arab countries, especially those in the Gulf region, such as Saudi Arabia, Jordan, Yemen and Libya [21]. Thus, the practice of *diyah* is still widely used in such countries as part of their customary practices, intertwined with the Shariah principles. Nonetheless, the practice of *diyah* in these countries enjoy their own distinct features as the vast geographical spread of societies and the differences in political scenarios, economic conditions and cultural norms play a part in the customization of such rule in suiting their national preferences.

Support from Political Authority Is a Significant Factor in Facilitating Easier Implementation of the Islamic Law of Diyah Within the Legal System: Apart from being

retained as a tribal customary practice, the implementation of *diyah* in the modern world is heavily influenced by a country's adherence to Islamic values and principles. Support from a country's political authority is a significant factor in allowing the implementation of Islamic law of *diyah* within the legal system. Countries such as Saudi Arabia, Kuwait, United Arab Emirates and Pakistan are examples of Muslim-dominated countries which uphold Islamic law as the supreme law of the land, thus, facilitating easier implementation of the Islamic law of *diyah* in their legal system [19].

In assimilating the concept of *diyah* within the respective countries' legal framework, refinements and customizations have to be made in making sure that such law works in harmony with the existing legal system and effectively so as to suit the local state of affairs. As such, closer examination of *diyah* practices in each countries reveals that they differ in its operation even though they share some similarities in principle and spirit [8] [19] [29].

Shifting the Focus to Compensating Victims of Injury:

Unlike the adversarial court system which focuses on fault of the medical provider, the focus of *Diyah* is compensating victims of injury. Ahmed Al Othali, a legal consultant in UAE mentioned in an interview that while compensation award in the West often depend upon how skilful the lawyer is, in UAE, “the importance of the lawyer is to show and clarify to the judge the extent of the damage” so that it can be appropriately compensated [22].

Special Committees for Case Investigation and Determination of Diyah:

In Saudi Arabia for instance, instead of making the affected parties as adversaries in the court of law, the authorities has set up special regulatory committees to investigate cases of medical injuries and determine whether there was a mistake or shortfall or negligence by the doctor. The committee will then decide on the appropriate awards of *Diyah* to be awarded to the medically-injured victims according to the types and extent of the injury [23]. The setting up of these committees in various administrative levels of Saudi Arabia's healthcare hierarchy allows easier access for patients to channel their complaints for any medical error or any injury suffered as a consequence thereto [24]. Even when no claim is made by the victims or their relatives, these committees have the power to take up cases which have been raised by the Attorney General [24].

These committees, usually made up of individuals from the medical and legal professions and are also given the authority to administer punitive measures against doctors who are found to be negligent in their duty, which

can be in the form of shouldering the responsibility for payment of *Diyah* or disciplinary actions such as suspension, warning or the revoking of their medical license [25]. The court only delivers verdict which has been agreed upon by these committees and hear appeals made by the parties should there be any dissatisfaction with the committees' decision [23].

The delegation of investigation tasks to these committees would hasten the progression of cases thus, reduce the lengthy time and high cost usually associated to tort litigation process, although there are several suggestions that the number of committees should be increased to further accelerate such cases [24]. Investigation done by the committees made up with experts in the area of dispute would also reduce confrontational element between parties and allow for a more precise and defined analysis of errors, which can be utilized for developing a more efficient system of risk management.

Fixed Amount of *Diyah* under Predetermined Schedule:

Unlike the tort or fault based system where the amount of compensation is calculated under indeterminate guidelines, the award of *Diyah* are calculated based on a predetermined schedule. This ensures stability and predictability in awarding damages. In ensuring the payment of *Diyah* for victims of medical injuries and at the same time protecting medical practitioners against overwhelming financial liability for their mistakes, a compulsory medical insurance for doctors has been designed to insure against all medical errors in an effort to lessen the burden of the medical practitioners [24, 26-27].

It is important to mention that while the amount of *diyah* payable is fixed according to the nature of injury, it also varies from one country to another and may be established in a number of different ways [8, 19, 28]. This amount can also be subjected to a statutory maximum and minimum, according to the respective countries' legislation which will take into consideration the economic power of the respective country, assessed against the gravity of damage done [19].

CONCLUSION

The institution of *Diyah* is an important mechanism of establishing justice in Islam. While many studies on legal theory treat this institution as part of punishment in the realm of criminal law, in reality the concept of *Diyah* is widely used not just as a simple compensatory

mechanism, but also as a method of economic empowerment which enables the setup of a multidimensional welfare system in caring for the disadvantaged in the community.

Further examination of the concept of *Diyah* reveals that the concept of compensation for medical injury in Islam which demonstrates closer resemblance to a no-fault compensation system rather than the long standing tort or fault-based system. Many aspects of a no-fault system find its equivalent manifestation in the Islamic law of compensation and thus, proves that constructing a *Shariah*-compliant no-fault compensation system for victims of medical injury is indeed possible. From another point of view, such finding goes to show that the law of *Diyah* remained relevant to be applied throughout different time frames and across all geographies. It can thus, provide a workable solution to compensate victims of medical injuries, with the ultimate view of achieving justice for all mankind.

Nonetheless, there is a need to reform and revitalize the *Shariah* law in order to meet the present day demands. The assimilation of the principle of *Diyah* into the modern day compensation system requires re-interpretation and refinements of the traditional *Shariah* principles, taking into consideration the respective countries' customs, economic status and social standings [29]. For example, the computation of the quantum for *Diyah* requires new *ijtihad* as the advancement of medical technology could render assistance in describing injuries in a more precise way as well as providing a more thorough assessment for functional disability resulting from the injuries [30].

In exercising this *ijtihad*, one cannot say with certainty that any figure put forward in valuing human life is wrong unless the fallacies are clear [8]. As long as such *ijtihad* is made in the best of knowledge and experience, taking into consideration the *maslahah* of the society at large, the reward shall come from Allah swt, even when the *ijtihad* turns out to be wrong [31]. In his commentary of the differences in the value of *Diyah* during the reign of *Umar ibn al-Khattab* and *Muawiya ibn Abi Sufyan*, *Said ibn al-Musayyab* is reported to have said;

“The blood-money is less in the judgement of Umar ibn al-Khattab and more in the judgement of Muawiya. Had it been me, I would have made it two camels for each molar. That is the fair blood-money and everyone who strives with ijtihad is rewarded.” [32]

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