The Modern Interpretation of the
Diyat Formula for the Quantum of Damages:
The Case of Homicide and Personal Injuries

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Abstract
Diyat is an old concept evolving from the custom of blood revenge practiced during pre-Islamic Arabia. The Qu’rān authorizes diyat as a kind of retaliation for homicide in lieu of qisāṣ in which the victim’s family pardons the offender, while the Ḥadīth elaborate in detail upon the typology, characteristics and quantum for murder and various types of physical injury. In reality, pecuniary compensation is an ancient practice that predates the pre-Islamic era, and, furthermore, this divine principle shows that Islam recognizes the human practice. To ensure that its dynamic is embraced in the contemporary situation, the methods of payment, i.e., value in camels and dinar, need revisiting. This article contributes to the subject thereby adding to the literature concerning diyat by reinterpreting the mechanism of restoring the value of gold dinar as an exchange for modern implementation.

Keywords
Homicide; personal injury; diyat; damages

1. Introduction
When homicide occurs, justice is left to the remaining family members to be sought. How this justice is achieved depends on the systems available in a country. It takes a criminal justice system to try the culprit and, thereafter either sentenced him/her to life imprisonment or the death penalty. In some cases, the accused has been freed due to lack of evidence. The question is: does this provide justice to the family who has suffered pain or loss? Must they bring a case to court to exhibit loss and demand justice for

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themselves? Disputes about death have never been a haven for the victim’s family. Losing a family member is an unalterable fact, and facing litigation or seeking justice for the dead soul is perhaps the last thing on their minds compared to revenge or retaliation. Justice for someone’s loss requires proportionality in punishment—perhaps a life for a life—and while Islam allows compassion for the offender and encourages pardon to be given to the culprit, with pardon and compassion comes the duty to recompense the family. The pecuniary substitution is called *diyat*.

Islamic legal tradition treats *diyat* as a method of compensation, in lieu of *qisâṣ* if the requirement to perform *qisâṣ* is not fulfilled or if a pardon is agreed between the parties. Known as ‘blood money’ or compensation fixed for homicide and personal injuries, *diyat* is a generally accepted form of punishment that has existed throughout the centuries. It originates from pre-Islamic practice as an alternative for revenge; *diyat* gives a chance for the victim’s family to pardon the offender and accept a monetary form of compensation as a substitute for equal punishment. The *diyat* formulation has been widely accepted, thus saving a process of bargaining for values between the offender and the victim or family. Perhaps in the modern-day practice of punishment and sentencing, *diyat* has the potential, as an alternative, not only for imprisonment in a typical overcrowded cell but also as a means of facilitating out-of-court settlement through mediation. This is one avenue through which the offender and the victim or the heir can resolve the dispute concerning life, be it murder or death by wrongful action. They can forfeit their right to claim the life of the offender by accepting blood money from the offender, thus forgiving him/her.

Nowadays, the issue of pecuniary compensation is more relevant with non-criminal (civil) rather than criminal cases. Civil compensation is sought for civil offences involving personal injury and death as an after-effect of an intentional or unintentional mishap. Injuries relating to unintentional actions like traffic accidents, medical negligence, workplace injury and many more are not uncommon these days. Generally, claims for personal injuries are typically dealt with under the law of tort and the biggest tort is negligence. Intentional crimes, like murder, are dealt with

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by criminal law. The latter is generally the typical approach endorsed by the courts in many countries, including the United Kingdom and Malaysia. The role of the criminal court is to punish the offender, which is the role entrusted to the State. If victims seek compensation, this should be pursued by the victim in a private action in the civil courts. Public awareness to seek justice through compensation for their suffering at the hands of others is also increasing, resulting in the increasing cost of litigation and compensation. In reality, the present legal solution is unsatisfactory. The compensation system under the law of tort is not only adversarial in nature, but is also acknowledged as being cost-inefficient and time-consuming. The administrative cost is also high due to the nature of two of the essential criteria—fault and determination of damages—not having any proper guidelines. The quantum awarded after litigation is sometimes inadequate given the time consumed in waiting for the trial to conclude. The quantum of damages under the principles of diyat, arsh and hukūmah ʿadl (discussed later) serves as a workable solution to compensate the party wronged for their loss. In addition, it privatizes the settlement while the court is consulted for endorsement of agreement.

From another side of the spectrum, people ask how a precisely calculated ‘price tag’ can be put on personal injuries such as the loss of a leg or hearing impairment or even psychiatric illness? There are two answers. The first is that it cannot. Personal injuries, unlike damage to chattels, cannot be valued by reference to the reduction of market value or cost of repair of a damaged article. However, the law recognizes that claimants who have suffered personal injury should be compensated and that money is capable of becoming the medium of compensation. The second answer is that, while arithmetical precision is unattainable, reference can be made, in principle, to some sort of ‘working consensus’ on the appropriate level of compensation. This is what is being done in the insurance sector nowadays in which the morbidity and mortality rate rule is used for calculating the coverage for physical injuries. Under the law of tort, the technical aspects of multiplier and years of purchase are two other important factors for assessing the damages. Islamic law, however, has many relevant authorities stating fixed levels of compensation for different kinds of injury.

This article will first look at the original practice of diyat payment as a pre-Islamic norm. Next, the concept of diyat will be elaborated upon.

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Third, the quantum of *diyat* for different types of injury, by using the contemporary monetary approach, will be examined. An exploration of the Islamic principle and doctrine of *diyat* offers one promising avenue of enquiry in this regard for an alternative to taking the life of offenders and, simultaneously, will do justice for the victims of physical injuries.

2. **The *Jahiliyyah* Revenge Culture and the Emergence of *Diyat***

Punishment for criminal injuries was treated as a personal matter by the Arab people during the pre-Islamic era. The justice sought was akin to revenge and retaliation. Retribution is seen as an individual’s right, and what may have began as a personal issue soon became a familial or tribal matter. Tribalism and the obsession for their tribes are among the traits of the Bedouin-Arab. Following this attitude and lifestyle, they lived in disharmony, without any system of administration. This situation was attributed to the roughness of the desert, which meant that people placed a heavy reliance on their own tribes for survival. The dryness of the desert turned them into defensive creatures, particularly when conflict arose between tribes. When one of the tribe members was ‘disturbed’, the other would set to take revenge regardless of the truth or fact of the matter. War and dispute were likely to erupt and did not terminate easily because these people would not compromise with any peace talk or offer of amends. They were also keen to reject a legal solution through proper trial using evidence but would rather opt for revenge (*al-tha’r*). Every life lost would have to be paid for by taking the life of the alleged murderer, and there was no compromise whatsoever unless both were of the same tribe. Taking revenge was not only a familial obligation but also a necessity. Because losing one life was considered as a loss of dignity and honour, thus obsession with revenge was regarded as an obligation to avoid cowardice or impugning dignity.

The Bedouins during that time also believed that if the blood was not duly paid, the soul of the dead could not rest in peace and, subsequently, turned into an owl flying above the grave crying endlessly “quench my

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thirst, quench my thirst!" (Isqūni! Isqūni!). Only revenge could bring peace
to the dead. It is clear that taking vengeance, was not only for the purpose
of bringing peace to the dead, which was related to family honour and digni-

ty, but concerned the belief that unless and until the dead were put to rest
in peace, it would continuously disturb all the family members until revenge
was taken for their death. Therefore, for the sake of the peace, tranquillity
and safety of the living heirs, bloodshed must be accomplished. It was also
believed that the dead had made it an obligation of the living family not to
accept diyat, because it was compulsory for them to take revenge no matter
how long it took. This was what happened in a killing incident involving
Kulayb, which resulted in a forty-year war called Ḥarb al-Basus between the
tribes of Bakr and Taghlib.

The revenge procedure did not necessarily mean unconditional ‘blood
for blood’ literally, it also depended on the status of the blood. Shedding
one tribal leader’s blood must be paid for by similar superior blood of the
other. Similarly, if the blood belongs to a commoner, revenge cannot be
paid with royal blood, despite being the offender. Therefore, those looking
for vengeance (al-āhihi bi l-tha’r) must be particularly concerned with this
so-called policy so as to adhere to the practice at that time. Blood cannot
be exchanged with any sum of money or valued with camels (regarded as
property or capital at that time), but must only be paid in blood. It was a
norm during that era that a tribe who perceived themselves as superior
than others refused to accept diyat as compensation. Even though diyat
was seen as a quick solution to bury the hatchet, they would rather prolong
the enmity than take compensation.

Among the Bedouin-Arab, there were people who had the tendency to
discontinue the practice of revenge (qisāṣ or talio) against a bloodshed, and
opted for another solution. One of these alternative methods was by way
of qasāmah, which means taking an oath to establish innocence. The oath
has to be taken by fifty people of the same clan of the accused party for
murder, stating their non-involvement and total denial of the killing. The
first application of qasāmah during the Jahiliyyah period was during the

5 Jawwad ‘Ali, Ṭārikh al-‘Arab Qabl al-Islām, j. 6 (Iraq: Matba‘ah al-Majma‘ al-Ilmi,
1956) 341; M.J.L. Hardy, Blood Feuds and the Payment of Blood Money in the Middle East
6 ‘Ali, ibid.
7 Ibid., 342.
era of Abū Talib. With the advent of Islam, Prophet Muḥammad s.a.w retained this practice.\(^8\)

*Diyat* emerged as a method of conflict resolution after receiving an impact from the economic system. At one stage, the importance of goods was apparently felt and the barter system became the normal practice of people for survival as well as business. From here, the society started to resolve conflicts among themselves through negotiation, particularly those relating to blood and life. Even so, some tribes considered *diyat* as a humiliation, disgrace or selling blood for it was seen as an offer to reduce tension between two fighting tribes. *Diyat* was alleged to be only applied by weak tribes or homicides involving people of different status like between a free man and a slave; the case where the slave family is not allowed to retaliate. There was one occasion where the offer for *diyat* was not accepted by the victim’s family. The event took place during the reign of Muʿawiyyah ibn Abī Sufyān where a man known as Huwait ibn Ḥashram killed one by the name of Ibn al-Qanbal. The Huwait tribe offered to pay seven *diyat* in order for them to forgive Huwait. However, they rejected the peace process by way of *diyat* and forgiveness and insisted on shedding Huwait’s blood. Huwait ibn Ḥashram was eventually murdered.\(^9\)

In addition, litigation and disagreement concerning the type of punishment can also happen, particularly when involving people of different status. In this case, the method of *diyat* is capable of solving the conflict because *qisās* cannot be implemented.\(^10\) Ibn ʿAbbas once narrated a litigation between two prominent Jewish tribes—Banī Quraizah and Banī ʿNaḍīr—during the Jahiliyyah era. Banī ʿNaḍīr was regarded as more honourable compared to Banī Quraizah, despite the fact that both were descendants of the Prophet Harun a.s.\(^11\) If a man from Banī Quraizah killed a ʿNaḍīr man who was said to be more respected, he would be


\(^{10}\) *Ibid.*

revenged. However, if a Nadīr killed anybody from the Quraizah, he would have to pay a diyat of 100 awsuq of dates (ca. 6,000 cupak).12

When the diyat payment took place, in the beginning, there was neither a fixed nor specific rate. The rate varied depending on the type and amount offered by the ‘āqilah of the perpetrator.13 Some would offer payment with dates and some opted for camels. It was normal to offer ten camels, but the offer would vary depending on the social status of a tribe. The higher the status, the more expensive the diyat would be. Furthermore, the stronger and reputable tribe would demand a higher amount of diyat from the weak one. In some districts, where a monarchy system was in place, there existed a system widely known as the royal diyat system (diyat al-mulūk) in which the rate for the royal family was fixed at 1,000 camels.14 However, the diyat for women and slaves would be half that required for a man or free person, respectively.15

3. Emergence of the Islamic Principle of Diyat

The coming of Islam caused an appreciable change to the Jahiliyyah practice of revenge, diyat, as well as the way people regarded each other in the context of homicidal crime and justice. The teaching of Islam brought together the notion of brotherhood among Muslims. This was explained in the Holy Qu’rān: “…and remember with gratitude Allah’s favour on you; for you were enemies and He joined your hearts in love, so that by His grace, you become brothers” (Sūrat Al-‘Imrān Q3:103).

The attitude of Islamic law towards homicide and bodily harm straddles the areas of tort and crime. Concerning crime, the Qu’rān clearly condemns it, and homicide is not to be intentionally committed. Even if it happens accidentally, the Qu’rān spells out explicit punishments, remedies and its effects. The most direct authority concerning the treatment of homicide by accident in the Qu’rān is in Sūrat al-Nisāʾ (Q4:92):

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12 The exchange rate is for one wasq equivalent to 60 sa’ (cupak). See Abu Dawud al-Sijistani, Sunān Abū-Dāwūd, j. 2 (Cairo: Matba‘ah Mustafa l-Babi l-Halabi wa Awladuh, 1983), 520.
13 Hilal, supra note 4, 14.
14 Jawwad ‘Ali, supra note 5, 592-293.
15 Ibid.
Never should a believer kill a believer, unless by accident. If one kills a believer by accident he should free a believing slave and deliver compensation to his family unless they forego it freely. If the deceased was of a people hostile to you, but a believer, then free a believing slave. If he was of a people with whom you have a treaty, compensation must be paid to his family and a believing slave be freed.

In homicide cases, justice is carried out when the murderer is sentenced equally through the principle of *qīṣāṣ*, as termed by the Holy Qu’rān in *Sūrat al-Baqarah* (Q2:178):16

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.

The word ‘murder’ here refers to intentional murder. *Mufassirin* interpreted that the phrase “free for the free, slave for the slave, woman for the woman” cannot be taken literally. The Qu’rān does not mandate the death penalty for unintentional murder; instead, it has been argued that the above must be understood as mandating full and proper compensation. Compensation, according to the above authority, works as a replacement or a substitute for life in an intentional case when pardon is granted by the victim’s family.

As far as compensation for physical injuries is concerned, the principle is laid down by the Prophet Muḥammad s.a.w through ‘a letter’17 written and sent to ‘Amru ibn Hazm, the Governor of Yaman at that time, narrated by Al-Nasa’i as follows:18

And whoever kills a *muʾmin*, *qīṣāṣ* is due on him except if the *wali* of the murdered pardon him. And for a life, his *dīyat* is a hundred camels, and for a nose completely

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17 Even though it was a letter, it was quoted and mentioned by the majority of *fuqahāʾ* and appeared in many books of Ḥadīths under the topic of *dīyat*, as if there is a similarity in status with Ḥadīth *mutawātir* as mentioned by Amir Abdul Aziz, *Al-Fiqh al-Jinaʿī fī l-Islām* (Cairo: Darussalam, 1997) 177.

cut off, one diyat, and for a tongue, one diyat, for lips one diyat. For a penis cut off completely, one diyat and for two testicles, one diyat, backbone causes one diyat, two eyes (amount to) one diyat and for one leg half a diyat. If a slash reaches the head’s skin or penetrates to the brain, the diyat is one third, a cut through hollow places one third, a cut that disclose and fracture bone causing displacement to other bones is fifteen camels. And for every finger, ten camels. One tooth is five camels. For a bone-visible slash, five camels. And a man is killed for killing a woman and for those transacting with money, the diyat is a thousand dinar.

This Hadith is deemed to represent the most authoritative words of the Prophet concerning the matter of compensation for death and personal injuries. It is also worth mentioning that the Hadith acknowledges the practice of Arab people, particularly those living in Mecca, who used camels in their transaction. In fact, camels were also considered as ‘currency’ during those times because this animal was significantly used as a mode of exchange in certain areas in the Middle East. Therefore, anything used as a medium of exchange is technically money or currency. Moreover, this animal was also a symbolic measure of one’s wealth, a source of food and a means of transportation in the desert.

It is also worth noting that this is not the only source of Hadith that attributes the payment of diyat. In fact, there are many other ‘shorter’ Hadiths. However, this Hadith is considered to be the most comprehensive of all Hadiths, as it provides details concerning physical injuries and the regulated practice of diyat payment during that particular era.

Even though mainstream view of fuqahā’ that diyat is a form of punishment since it was discussed within the framework of ‘uqūbah (penalty), contemporary scholars like Awdah and Sayyid Sābiq view that it is not a punishment per se, but more precisely, a compensation in view of justice. This is because it is more of an invasion of private rather than public rights.19

4. Origin of One Hundred Camels as Mode of Payment

With respect to the origin of a hundred camels as a fixed rate for diyat, as mentioned in a Ḥadith, the impetus was said to be sparked by a problem facing the then leader of Banī Hasyim, i.e., Abdul Muttalib, who was also the grandfather of Prophet Muḥammad s.a.w. The incident took place

many years prior to the birth of the Prophet, when he had a dream. In that dream, he was directed to dig a zamzam well. He was alone and without support in defending himself. At that time, he swore that should God give him ten sons, he would slaughter one of them as a sacrifice. His dream subsequently came true and now he had to choose which son to sacrifice as he had sworn to do. He cast a vote that fell on the son named Abdullah. On his way to accomplish his mission to sacrifice this son, the people blocked his way and tried to prevent him from killing his own son. They suggested that Abdul Muttalib sacrifice ten camels in lieu of his son. However, thinking that he was obliged to fulfil his oath, he was determined to honour it by casting a vote once again. Unfortunately the vote again fell and continued to fall on Abdullah until the tenth vote was cast. He decided to cease voting, revoked his intention and instead replaced his son’s life with a hundred camels. From then on, the total amount of diyat among the Quraish has been fixed at one hundred camels. After the coming of Islam, Prophet Muhammad s.a.w. encouraged his followers to ‘bury the hatchet’ and accept diyat rather than take revenge against each other.20

It is also noted from the above-mentioned letter that the Prophet did not ignore the importance of currency. The Prophet mentioned that those conducting transactions by using currency like the dinar, should use it for paying diyat. It is understood from the Hadith that 100 camels is implied as being equivalent to 1,000 dinar. Owning 100 camels or 1,000 dinar at that time was a huge fortune that only tribal chieftains or wealthy businessman could afford. The following discussion seeks to find the current value of 1,000 dinar because money is the medium of exchange in the contemporary world and, therefore, its equivalent could be used to define the current value of diyat.

5. The Islamic Gold Dinar

In order to identify the current value of dinar, as mentioned by the Prophet s.a.w, it is necessary to find out the weight as well as the price of gold. One gold dinar—after so many eras from the Byzantine rule to the great caliphs—was fixed at 4.25 grams of pure 22 carat gold (0.916) during the

20 As narrated by Anas bin Malik. See Abū-Dāwūd, Sunān Abū-Dāwūd, j. 2, Kitab al-diyat (1983) 523.
reign of the fifth Umayyad Caliph, Abdul Malik ibn Marwan (65-86 H)\textsuperscript{21} from the minted 4.55 grams. The silver coin was also reduced from 3.98 to 2.97 grams. These changes were consistent with the weight of 1 \textit{mithqāl}, which is the standard scale used to determine the quantum of \textit{zakāt} and other taxes. One \textit{mithqāl} is equivalent to “\textit{ithnān wa ‘ishrūn gīrātān illa ḥabbatān bi l-shamī}”, which is (more or less) 22 carat gold. In addition, it was also in line with the Meccan scale recognized by the Prophet s.a.w. and his Companions, as mentioned by Al-Baladhuri.\textsuperscript{22} The same was clearly noted in the \textit{Encyclopaedia of Islam}:\textsuperscript{23}

The weight standard of the early transitional dinar appears to have been the same as that of the Byzantine solidus i.e. approximately 4.55 grams. With Abdul Malik’s reform, however, the weight was reduced to 4.25 grams. The accuracy of this latter figure is attested not only by the weights of well-preserved dinars but by the evidence of Egyptian glass dinar and dinar fraction weights dating from the end of the first to the end of the second century A.H. The reduced standard of the post reform dinar resulted from a decision to re-define the \textit{mithqāl} (i.e. dinar) in convenient terms of 20 Syro-Arabian kirats of 0.2125 grams in place of such cumbersome terms as 21 3/7 kirats, or “22 kirats less a fraction”, etc., which had been employed by the Arabs in pre-Islamic times to express the weight of the \textit{mithqāl}.

Specifically, after that, all gold coins used as money during the Islamic empire were fixed at 4.25 grams of 22 carat gold (also known as 916 gold). For a silver dirham, the formula is one dirham equals 7/10 \textit{mithqāl} dinar, which is ca. 2.97 grams. The \textit{Encyclopaedia of Islam} explains the origin of the formula:\textsuperscript{24}

The corrected figure, allowing for loss of weight, is 2.97 grams, which conforms exactly with traditional theoretical figure based on the classical Arab formula which pronounced the weight of the dirham to be 7/10 that of the \textit{mithqāl} (dinar) i.e. \( 7/10 \times 4.25 = 2.97 \).

\textsuperscript{24} \textit{Ibid.}, s.v. “\textit{dirham}”, 319-320.
5.1. Determining The Current Value of One Full Diyat (1,000 Dinar)

To ascertain the value of the dinar, it is necessary to find out the current market value of gold. Taking Malaysia for example, the current price of gold is RM150.00 per gram (£30, as at August 2011).25 One dinar (4.25g) equals RM675 (£127). Therefore, the value of 1,000 dinar (4250g) can reach RM673,500.00 (£127,500.00). See Table 1 for details.

If we look at Table 1, it is clear that the value of one human life is so enormous and precious once we consider the rate according to the Islamic law of diyat. If the murderer wishes to be spared and the victim’s family resort to forgiveness—which is a noble act—then the amount will have to be paid in lieu of life.

5.2. Determining the Type of Physical Injury and the Amount of Diyat

Physical injury refers to injuries to the human body and limbs, which include total permanent disability and loss of limbs. There are four types of physical injury laid down by Muslim jurists, namely:

(a) Injury to face and head known as *shijāj*,
(b) bodily injury, either *ja’ifah* (which inflicts upon hollow columns like chest, abdomen, rib cage) and *gha’ir ja’ifah* (other than hollow columns),
(c) total loss of limb (*ibānah al-a’dā’ wa l-atrāf*),
(d) permanent disability (including paralysis).26

The details for the first category are as follows, as shown in Table 2 below.

<table>
<thead>
<tr>
<th>Diyat Rate</th>
<th>Exchange</th>
<th>Current price of 1000 Dinar</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,000 dinar</td>
<td>1 dinar = 4.25 g of 916 gold</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 g gold = RM150/£30</td>
<td></td>
</tr>
</tbody>
</table>
|            | 1 dinar/4.25 g = RM637.50/£127.50 | RM637,500/£127,500

25 RM is Ringgit Malaysia, the Malaysian denomination. The gold price is cited by the Wah Chan jewellery shop in Kuala Lumpur, 25 August 2011.

5.1.1. Facial and Head Injuries (Shijāj)
Of all these injuries, the amount of compensation for the first five are fixed by Syarak, as will be shown in Table 3, whereas the others (less than muwaddihah) are left to the discretion of the judge under the principle of ḥukūmah.27

<table>
<thead>
<tr>
<th>Types of injury</th>
<th>Description</th>
<th>Total of Arsh</th>
<th>Current value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harisah or kharisah</td>
<td>Scratchmark without blood</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dāmiyah or damī‘ah</td>
<td>Bodily injury causing blood flow or not</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Badi‘ah</td>
<td>Skin tear</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mutalahimah</td>
<td>Penetrating wound</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Simhaq</td>
<td>Wound separated by thin skin between the wound and the bone</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Muwaddihah</td>
<td>Bone visible wound</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hashimah</td>
<td>Wound with broken bone</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Munaqqilah</td>
<td>Broken bone and displaced</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ma‘mūmah</td>
<td>Wound to skin of the head</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jā‘fah</td>
<td>Wound to hollow columns</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Damiyah/damighah</td>
<td>Bodily injury causing blood flow (damiah) or not (damighah)</td>
<td>1/3 diyat</td>
<td>RM212,500.00/£42,500.00</td>
</tr>
<tr>
<td>Hāshimah</td>
<td>Injury with broken bone</td>
<td>1/10 diyat (100 dinar)</td>
<td>RM63,750.00/£12,750.00</td>
</tr>
<tr>
<td>Munāqqilah</td>
<td>Broken bone that is displaced</td>
<td>15 camels</td>
<td>According to current market price</td>
</tr>
<tr>
<td>Muwaḍihah</td>
<td>Bone visible wound</td>
<td>1/20 diyat (50 dinar)</td>
<td>RM31,850.00/£6375.00</td>
</tr>
</tbody>
</table>

27 Ḥukūmah or ḥukūmah ‘adl means unfixed amount of compensation where it is left to the judge to fix it. For Ḥadīth used as references, see, e.g., Al-Shawkani, Nāyīl al-Awtār Sharh Muntāqa al-Abhār, Vol. 7 (Cairo: Maktabah Dār al-Turath, n.d.) 5.

28 Arsh is the term used for damages less than 1,000 dinar (one full diyat).
5.1.2. Permanent Disability/Loss of Limb and Senses

In general, *diyat* is imposed for the loss of functioning for any limbs or organs even though the defunct organs remain intact.\(^{29}\) For example, loss of vision and hearing senses or loss of taste and smell capacity, or to ejaculate, conceive and many more. The quantum of *diyat* for this kind of disability is similar to the loss of limbs, as shown in Table 4. This is because

<table>
<thead>
<tr>
<th>Loss of limbs</th>
<th>Quantum</th>
<th>Current value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nose(^{30})</td>
<td>1000 dinar</td>
<td>£127,500.00</td>
</tr>
<tr>
<td>Penis</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tongue(^{31})</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Backbone</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anus</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legs</td>
<td>1000 dinar</td>
<td>£127,500.00 (both)</td>
</tr>
<tr>
<td>Hands</td>
<td></td>
<td>£63,750.00 (one)</td>
</tr>
<tr>
<td>Eyes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ears</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Breast</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Buttock</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lips</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Labia</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eyebrow</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eyelid</td>
<td>1/4 <em>diyat</em> (250 dinar)</td>
<td>£31,875.00 (per lid)</td>
</tr>
<tr>
<td>Fingers (hands and feet)(^{32})</td>
<td>1/10 <em>diyat</em> (100 dinar)</td>
<td>£12,750.00 (per finger)</td>
</tr>
<tr>
<td>Teeth(^{33})</td>
<td>1/20 <em>diyat</em> or 5 camels (50 dinar)</td>
<td>£6375.00</td>
</tr>
<tr>
<td>Loss of Sight</td>
<td>1000 dinar</td>
<td>£127,500.00 (total blindness, total deaf, total impairment to senses)</td>
</tr>
<tr>
<td>Loss of Hearing</td>
<td></td>
<td>£63,750.00 (partial hearing loss, partial blindness, etc.)</td>
</tr>
<tr>
<td>Impairment of Taste, Smell</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Impotence/Loss Sexual Function/Damage to Reproductive System</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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\(^{29}\) *Awdah*, *supra* note 19, 4.


\(^{31}\) *Ibid*.


\(^{33}\) *Ibid.*, Ḥadīth No. 2651/1, 279.
the existence of disabled limbs is no different to not having it at all. Saidinā 'Umar r.a. once narrated that he imposed four diyāt (400 camels or 4,000 dinar) on a man who grievously hurt and battered another man causing him to lose his hearing, vision, or sexual or mental capacity.34

5.1.3. Damage Other than Physical Injury
In most cases like accidents, fire, theft and so on, victims usually suffer more than bodily injuries. In a motor accident, for example, the victim(s) have to cope with property loss, pecuniary loss (like cost of repair) and sometimes, losing their job and even psychological effects. As far as material damage is concerned, the party that causes direct damage will be liable to compensate the victim. This is based on a Ḥadīth narrated by Anas r.a. concerning an event involving the wives of the Prophet s.a.w. They brought in a pot containing some food for the Prophet and it was said that Aishah r.a. threw it away spilling all the food. The Prophet said:35 “food (must be replaced) with food and container with container”.

If we draw inspiration from this concrete event, the said ruling applies if it involves a similar or replaceable thing (mithiyyah), if nothing is similar in the market, then an estimated value should be provided for the damaged item (qimiyyah).36 As far as out-of-pocket expenses are concerned, such as medical treatment or the cost of repairs, the calculation is based on the actual cost incurred by the victims. The liable parties will have to pay for the sum as stipulated by the victims. Muhammad and Al-Shaybani argued that even though the medical treatment was only for pain (mujarrad al-‘alam), it will also be incurred by the liable party on the basis of ḥukūmah ʿadl.37

5.1.4. Non-material Injury (ḍarar ma’nawī)
Ḍarar ma’nawī, as it is known, refers to abstract kinds of injury, which are unseen, untraced, but felt and suffered by the victims. These include

34 See, for details, Al-Shawkani, supra note 18, 63.
35 Al-Tirmidhī, Sunān Tirmidhī, j. 3, 631; Abū Dāwūd, Sunān Abū Dāwūd, Kitab al-Buyu’, j. 3, 826.
nervous shock, pain and suffering, loss of amenities of life, \textit{darar mustaqbal}, such as loss of future earnings, loss of expectation of life and earning capacity. Mainstream traditional \textit{fuqaha'\textquotesingle} are of the view that this kind of \textquote{injury} is non-claimable because of its nature: invisible to the naked eye and, therefore, cannot be estimated in monetary terms. However, contemporary scholars view that these types of injury should also be weighed by the court should there be evidence adduced before them. Al-Zuhaylî concurred because according to him, the word \textit{darar} has a very wide meaning, which is not limited to physical injuries with scar per se. He extended the meaning of the word \textit{darar} to include those inflictions of aggression towards property, body, dignity and also feeling.\textsuperscript{38} It is permissible based on the concept of \textit{ta'zir}, in which a judge is allowed to use his discretion and judicial consideration prior to deciding whether a remedy to a certain injury is reasonable or not. This is also the opinion of previous scholars like Abû Yusuf (of Ḥanafi sect), Ibn Ṭaymiyyah and Ibn Qayyim (Hanbali sect).\textsuperscript{39} In addition to \textit{ta'zir}, a legal maxim, that is: \textit{al-'ādah muḥakkamah},\textsuperscript{40} which means \textquote{customs can also be considered (as ḥukm)}, is also reliable. The word \textquote{custom} here refers to court practice under the existing tort system. As far as nervous shock is concerned, it was narrated that Saīdinā ʿUmar r.a. once called for a pregnant woman. She was terribly shocked and feared for her safety to the extent that she had a miscarriage before coming to see ʿUmar. The foetus died and it was agreed that ʿUmar should pay \textit{ghurrah} (compensation for causing abortion) for the dead foetus. The Companions (ṣahābah) finally agreed that had he not called for her, she would have not experienced such a tragic incident. It was decided that the \textit{āqilah} of ʿUmar was the party to pay the \textit{ghurrah} because of the nature of the incident (the unpredicted/accidental).\textsuperscript{41}


\textsuperscript{39} Ibid., 25.

\textsuperscript{40} Ahmad Muhammad al-Zarqa, \textit{Sharb al-Qawa‘id al-Fiqhiyyah} (Damascus: Dār al-Qalam, 1989) 219.

\textsuperscript{41} See further discussion in Al-Shirazi, \textit{Al-Muhaddab fi Fiqh al-Shaft‘i}, j. 2 (Cairo: Dār Iḥya‘ al-Kutub al-‘Arabiyyah, 1940) 192; Al-Mawardi, \textit{Al-Aḥkām al-ṣulṭaniyyah wa l-Wilāyat al-Diniyyah} (Kuwait: Dār Ibn Qutaybah, 1989) 330. However, in today’s practice, to determine whether any kind of mental effect amounts to psychiatric illness, American Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) (4th edn., 1994) and International Classification of Diseases and Related Health Problems (ICD-10) (10th edn.) are used. See http://www.psychiatry.org/practice/dsm/DSM_IV/index.html. See also \textquote{What is \textquote{P.T.S.D.}} di http://www.ptsd.org.uk/what_is_ptsd.htm (5/3/11).
It appears clear that the Islamic principle provides basic guidelines dealing with the quantum of compensation. The question is, to what extent is it implemented by Muslim countries around the world. The section below discusses contemporary legislation regarding diyat regulation in some Muslim-dominated countries.

6. Overview of the Contemporary Application of the Diyat Principle in Some Muslim Countries

The practice of diyat as a formula for compensation is very much related to the custom, history and background of the countries that succeed in its implementation. Since diyat was the tribal custom in the past, customary law continues to enjoy various degrees of autonomy alongside Shari‘ah, especially in the tribal areas in the Middle Eastern countries.\(^{42}\) In these countries, it is typical to see how the customary law is actually intertwined with the Shari‘ah principles. Abdul Haleem, writing in 2003, explains that in traditional Arab society nowadays such as in the Gulf for instance, the system still functions and the tribe as a whole pays the diyat. In Saudi Arabia, wealthy princes pay the diyat on behalf of culprits that do not have the means.\(^ {43}\) He went on to say that: “even after the victim’s family has accepted compensation or freely pardons the culprit, courts still have power under Shari‘ah to impose a fitting punishment, by way of ta‘zīr on the culprit for having offended against the law. Courts in Saudi Arabia now impose a prison sentence of up to five years as ta‘zīr.”\(^ {44}\)

The support from a country’s legal system is the main contributing factor, which gives leeway concerning the implementation of Islamic law. Countries in the Middle East, such as Saudi Arabia, Kuwait, United Arab Emirates and Pakistan in Asia are examples of Muslim-dominated countries in which Islamic law is the supreme law of the land, thus, facilitating the implementation of Islamic law in toto.\(^ {45}\) Many instances of statutory


\(^ {45}\) For example Islam is declared as the religion of Pakistan under the Pakistan Constitution, Article 2 (see http://www.mofa.gov.pk/Publications/constitution.pdf (12/9/2011), while in Saudi Arabia, Article 1 of the Constitution provides that: The Kingdom of Saudi
application have taken place in Muslim countries. In Pakistan for example, the offences of *qisāṣ* and *diyat* have been incorporated into the Pakistan Penal Code 1860 (through the latest amendment) and put under the “offences affecting the human body”. It is a statute applied to Muslims and non-Muslims alike. In a murder incident of three youth by the police in Islamabad, Pakistan, the provincial government acting as the ‘āqīlah of the policemen agreed to pay Rs100,000 each to the families of the deceased and Rs30,000 to the injured.46 In Sudan, by virtue of the Criminal Act 1991, Section 42(1) states that compensation ought to be paid by camels or its value. In Kuwait, it is provided under Kuwaiti Civil Code 1980 that the value of *diyat* is KD10,000, whilst the value of *diyat* for physical injuries is also provided under Article 254.47 Under Jordanian law, the standard value of *diyat* is 333 dinar, as clearly stated under the Moslem Courts Jurisdiction Act 1952. In Palestine, Section 43(2) of the Criminal Code Ordinance provides that the standard *diyat* rate is 100 pounds.48

When the lawmakers decide on the rate, the formula used will depend entirely on the economic power of a country, looking at the use of either dinar or dirham. Some countries re-evaluate the rate of the *diyat*. In Saudi Arabia, after thirty years of fixing the *diyat* rate at SR110,000 for semi-intentional and SR100,000 for unintentional murder—the last one was in 1980—the Government is making a new move to re-evaluate these figures “in the wake of huge rises in camel prices in Saudi Arabia and other Gulf countries”.49 In terms of application, it was reported that an Indonesian maid was accidentally shot by a nine year-old child in Jeddah. The child’s family paid SR50,000 *diyat* to the family of the deceased.50 This was made

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Arabia is a sovereign Arab Islamic state with Islam as its religion; Qu’rān and the Sunnah of His Prophet are its constitution, Arabic is its language and Riyadh is its capital.

46 “SC grants Sindh govt time in Diyat case”, see http://www.dailytimes.com.pk/default.asp?page=2010%5C06%5C06%5C (21/7/10).

47 For more discussion on the statutory application, see W.M. Ballantyne, Commercial Law in the Arab Middle East: The Gulf States (London: Lloyds of London Press Ltd., 1986), 82-98.


50 “Penyerahan Uang Diyat Bagi TKI yang Meninggal Dunia di Arab Saudi” (Giving Away *Diyat* to the Indonesian Worker Who Died in Saudi Arabia) see http://www.depli.go.id/Pages/PressRelease.aspx?IDP=962&1=id (21/07/10).
successful by way of facilitation involving the Indonesian Ministry of Foreign Affairs.

7. Conclusion

The role of *diyat* as a method of compensation in contemporary Muslim society should be highlighted since the existing literature is more than adequate in showing its significance. This article makes a contribution to this under explored subject in order to add to the *diyat* literature by re-interpreting the mechanism and value of gold dinar as an exchange for modern day implementation. It tries to answer this question: If someone kills somebody today, how much would be the value of life that he or she has to pay if the victim’s family pardons him. The *diyat* formulation shows that personal injury including physical, mental and psychological harm occasioned by an offence, can be compensated. However, for practical application, it is deemed necessary to consider the means and power of the offender. If the approach is victim-based, perhaps the government should be entrusted with the payment mechanism by establishing an agency to assist the plight of the victim.