**AKILA**

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**Legal system very different from ours**

**AKILA**

**Definition of AKILA:**

AKILA are those who pay the Diya of the unintentional homicide.

 AKILA pay one third of the Diya and more due to another one’s crime and the AKILA is a group of people who are relatives of the offender and due to that relation, they are committed to bear the consequences of his/her deed regarding paying Diya to the victim’s inheritors under specific conditions:

 **The linguistic definition of the AKILA:**

It is derived from “akel “(reason) meaning preservation, help and protection.

 It includes the males of the offender’s family of blood relationship and allegiance simultaneously as IBN KUDAMAH said,” AKILA are those who reason and reason here means Diya, named reason, as it helps to make the victim’s family reason what they say or it was named like that as they are prevented from harming the offender and mind is the reason thereof.

**First**: The Hanafi School: They define the AKILA that they are the people of the Diwan of the fighting people.

**Second**: The Maliki School: They define the AKILA as the people of the Diwan , if not Diwan then comes the blood family and next the Bayt al-mal “House of money” The definition of the House of money:” Bayt al-mal is an Arabic term that is translated as "House of money" or "House of Wealth." Historically, it was a financial institution responsible for the administration of taxes in Islamic states, particularly in the early Islamic Caliphate. It served as a royal treasury for the caliphs and sultans, managing personal finances and government expenditures. Further, it administered distributions of zakat revenues for public works. Modern Islamic economists [who?] deem the institutional framework appropriate for contemporary Islamic societies.”) <https://en.wikipedia.org/wiki/Bayt_al-mal>(

**Third**: The Shafi’I School: They define AKILA as those who guarantee and bear the Diya of the offender’s blood family or they are the offender’s inheritors regarding blood relationship and allegiance if they are adult males.

**Fourth**: The Hanbali School :They define AKILA as those who have reason like the male of the offender’s blood relationship and allegiance or they are those who pay one third of the Diya and more due to another one’s crime.

**Who have to pay Diya**

 Diya is a must upon his family from blood relationship, allegiance or unity whether they are direct or indirect relatives present or absent including the offender’s fathers, his sons and the people of the Diwan and they are defined by KASANI:

 They are fighting men provided they are free, adult and sane people and it is taken from their property provided he is originally free and the AKILA are his Diwan people if he is of the Diwan people.

 Averroes (IBN RUSD) says, ”Most Jumhur of jurisprudents and people of knowledge from Hejaz agree that the AKILA are the relatives from father’s side and they are the blood relationship other than the Diwan people.

**When the members are going to pay the Diya?**

The members of the AKILA are going to pay the Diay when the offender did one of these things:

1. Manslaughter “Unintentional killing”.
2. Injury short of death

**Jurisprudents divided AKILA into two parts:**

1-The Diwan people

2-The offender’s blood relationship

The people of the Diwan are the army whose names were recorded at the Diwan; that is the register/book where the soldiers’ names were recorded.

As for the offender’s blood relationship, they are his relatives from his father’s side like siblings, uncles and cousins.

 The AKILA share in the payment of the Diya. However, jurisprudents differed whether the offender and his sons are of the blood relationship in the AKILA , so Hanafi School said that they shae in the payment of the Diya.

While the Shafi’I School said that the offender’s ascendants and heirs do not come under blood relationship as to the payment of the Diya.

Whereas Imam Ahmed doctrine(Hanbali School)thinks that the offender’s ascendants and heirs are of the blood relationship except the offender’s children if she is a woman. From the above-mentioned, it is clear that:

 The offender’s ascendants and heirs share with the AKILA in the payment of the Diya and the AKILA is the blood relationship as there are strong prophetic traditions(Hadiths), as some of them are narrated in the Sahihain(Bukhari and Muslim) that prove the prophet’s decree upon the blood relationship to pay the Diya.

**Jurisprudents and Scholars agreed that:**

 The Diya of the unintentional homicide is born by the AKILA and there is no difference over thereof as Averroes (IBN RUSD) says, ” The Diya of the unintentional homicide is a duty upon the AKILA” as Allah said : {"...and none shall carry the burdens of another..."} and according to the Prophet’s saying to ABI RAMTHAH and his son:( "Verily, he is not taken to account for your deeds, and you are not taken to account for his deeds," narrate by ABU DAWOOD and ALISAEI.

**The conditions of the AKILA:**

1-Maleness

2-Reaching the age of discretion

3-Financial capability

4-Freedom

5-Same religion

**Maleness**:

Hereby , it is concluded that women are not part of the AKILA.

Reason is based on loyalty and help, but woman is not part of the help people even if she is rich or very close to the offender.

ALKASANI said:

“Woman share with the AKILA in the Diya” , but they refuted ALTAHAWI’s saying and said that the killer shares in the Diya and inherits his parents and the boy is excluded from the AKILA.

 All jurisprudents excluded the woman from the AKILA except part of the Hanafi scholars, but the people of knowledge agree unanimously that she is not part of the help people and the prophet(Peace be upon him), in the agreed-upon Hadith decreed that the Diya is upon the blood relationship and did not include her thereof.

**Reaching the age of discretion:**

The boy and the insane are not part of the AKILA due to the following:

* They are not blamed for their crime, hereby they are not blamed for others’
* Reason is based on loyalty and help and the boy and the insane do not bear help

**Financial capability(Poor or rich):**

It means that the person should be rich or ,at least, financially average whereas the poor does not bear it as: the poor is not part of the sympathy people. Moreover, this is unbearable to the poor.

* Whereas the rich: has enough wealth to support him
* The poor has little, not enough , his income is limited and cannot pay Zakat(alms) for example.
* The average has the prescribed amount to support him

IBN ALMINTHER says:” Jurisprudents unanimously agree that the woman and the un-adult boy are not part of the AKILA and the poor is not liable.

**Freedom:**

The absence of freedom excludes the person from the AKILA even if he is the father or the son of the offender due to the following:

* He is not part of the sympathy or donation people as he has no money
* He is not part of the help and loyalty people
* This is an unbearable assignment

ALKASANI says:” The AKILA does not bear anything of the slave’s and his mother’s crime as the liable for the crime is he himself and he himself is not property of the AKILA and the guardian and the guardian is liable for the slave’s crime as if he were the AKILA”. ALDESOUKI said :”The AKILA does not bear the slave whether intentionally or by declaration. This condition is agreed by all scholars”.

**The same religion:**

It means the same religion between the offender and his AKILA, not between the offender and the victim for the following:

* There is no loyalty or help as long as the religion is different
* Based on juristic reasoning, as long as there is no inheritance among them, , so there is no AKILA among them.

 AKILA qualities are: maleness, non-poverty, freedom, reaching the age of discretion and having the same religion.

The ruler works hard to make them afford what they can ; starting from the closest : among parents , then brothers and uncles like inheritance.

If the closest people's money is enough , he does not exceed them , but if not enough , he includes others till the furthest degree is included according to inheritance.

 The preponderant opinion by jurisprudents and scholars that the amount taken from the AKILA is according to their money and they are not asked to pay more than they can afford as the AKILA bears the Diya based on help and relationship.

**Does the offender bear the Diya with the AKILA:**

 There was difference among jurisprudents about the offender: Will he bear anything of the Diya of the AKILA or does not bear anything as the texts of the AKILA is mentioned the AKILA while the offender is not. There are two main sayings:

The first saying is related to ABI HANIFAH and MALIK:

 The offender is required to pay part of the Diya as a member of the AKILA and the woman is included among the Diya in such case and they declined ALTAHAWIs's saying and said that the offender is included in the Diya at any case.

 "The offender pays off with the AKILA" , it was said by MALIK in the group and others, said by ABU HANIFAH and some of our scholars said that as an approval, not by juristic reasoning. The first opinion is based on the point that the AKILA pays as a sympathy and aid for him, so he is required to pay some.

The second saying :the opinion of Imam AHMED and SHAFI'I:

 He is not required to pay anything of the Diya based on the literal meaning of the previously mentioned agreed-upon Hadith of ABU HURAIRA(May Allah bless him): Prophet ,Peace be upon him, (decreed the Diya upon the woman's AKILA) it is agreed-upon and the literal meaning thereof is the decree of all the Diya upon the AKILA.

And the killer is not required to pay anything of the Diya; like that said ALSHAFI'I and ABU Hanifa:

**The philosophy behind the AKILA’s bearing the Diya:**

 The philosophy is that the Diya in the offender’s money is great damage for him without unintentional sin, whereas an alternative has to be paid for the killed/victim, therefore the law-giver made those who are supposed to show loyalty and help towards him to assist him in that like paying expenses.

ALSARKHASI said:

It is a dusty upon the AKILA due to relationship in the sympathy.

But people are ignorant thereof and think that it is not a must upon the AKILA and Diya is taken from them as a favor and gift. This is against the right way.

**Assistance and loyalty:**

 The condition behind bearing the Diya is based on assistance in fighting and the jurisprudents were different under two opinions: A Muslim does not pay for the non-believer and the non-believer for the Muslim as Taakul is based on loyalty and assistance and the absence thereof is due to the difference in religion and doctrine.

 The difference in religion does not prevent Taakul if the league is united and there is relationship between the killer and the person with the other religion and as Akila is based on league.

 But the preponderant opinion is that the difference in religion prevent the Akila, so a Muslim does not pay for the non-believer and the non-believer for the Muslim due to lack of the assistance/victory.

 As for the Taakul of the People of the Scriptures , jurisprudents are different , but the Jumhur of the jurisprudents confirmed the preponderant opinion due to the presence of the People of the Scriptures and their relationship based on the saying that the base of the Akila for them is the league requires inheritance, consequently Taakul is present. But the preponderant opinion is that Taakul among the Jews and the Christians is not possible as there is not assistance or cooperation among them.

**Sanity and Adulthood:**

 Jurisprudents are different as to sanity and adulthood and the preponderant opinion stipulated reaching the age of discretion in the members of the Akila as the base of reason is cooperation, assistance and sympathy. The person who has not reached the age of discretion is not the one who ignored it. The Diya is necessary upon all the league and discrimination among the boys, lunatics , woman , the old, the children and the lunatics of the Akilah and women are not included with the unanimous consent of all the jurisprudence Imams and so are boys and lunatics.

**Financial capability:**

 Jurisprudents were different regarding that: the first opinion said that the poor does not require Akila and the second opinion thinks that the poor must bear with the Akila as he is one of the assistance/triumph people , but the preponderant opinion is that the poor is not included and does not share in bearing the burdens of the Diya as there is unanimous consent that he does not bear in the Akila regarding the Diya.

**Freedom:**

Freedom is a must to pay Diya from the Akila.

**Presence and absence:**

 Jurisprudents were different regarding presence and absence and their conditions, but the preponderant opinion is that the present and the absent share in the Akl(reason).

**Non-chronic and non-old age:**

 The chronic patient and the aged man share in the payment of the Diya with the Akila if the bearing qualities are available as they are the people of sympathy and assistance with money.

**Those who do not have akl(reason) in the Diyas:**

 As for those who do not have akl(reason) in the Diyas, scholars agreed upon the mentioned types ,although there is another opinion of some Hanifi scholars regarding the woman, but it is against the correct Hadiths, and they are:

1-Slaves

2-Those under the age of discretion: including the young and the insane

3-The poor

4-The female

5-Those with different religion of the offender

ALSHAFI’ said:

 I do not know a contrary opinion regarding the woman and the boy that they do not bear anything , even if they have money and , to me, the idiot.

 IBN ALMUNZIR said: All our scholars agree that the woman and the boy , who is not adult, do not help with the Akila and they agreed that the poor does not require anything and if it is necessary for the Akila to relieve the killer , it is not permissible to get it heavy upon that who did not commit the crime and imposing thereof upon the poor is a heavy burden upon him and assigning him impossible thing and we agreed that it is not allowed to assign anyone of the Akila anything that he cannot bear and assigning the poor some of it is a heavy burden upon him and may be the share upon him is all his money or more or nothing at all. However, the boy, the insane and the woman do not bear anything thereof as it means assistance and he is not one of the assistance people. The Hanifi scholars had a different opinion and included her in the Akila and their opinion is weak as it contradicts clear and correct Hadiths, but the insane lost the assignment part and the non-believer as never will Allah grant to the unbelievers a way (to helps) over the believers.

**What is not born by the Akila**

**1.Intentional killing**

 According to the Jumhur of Scholar’s saying and it is the correct one. Averroes (IBN RUSD) says, ”As for the Diya of the intentional killing, the Jumhur believe that it is not upon the Akila as it is narrated about Ibn Abbas- and there is no contradicting of the prophet’s companions for him- that he said: “ The Akila does not bear the intentional killing or confession of killing or conciliation of intentional killing.

2**. Reconciliation**

 The Jumhur of Scholars believe that the Akila does not bear the reconciliation and it is correct. Some Maliki Scholars believe that the Akila may bear in the reconciliation.

DESOUKI said : As for reconciliation for him and as the resulting increase thereof, there are two opinion: the most preponderant of which is the permissibility if there is something decreed upon the wound.

IBN KUDAMAH said,” The Akila does not bear the slave , the intentional killing, the reconciliation , the confession and what is less than on third.”

The preponderant opinion(Allah knows best) the opinion of the Jumhur of Hanafis, Shafi’is and Hanablah.

3-**Confession**:

 SARKHASI said: If a man confessed an unintentional or quasi-intentional killing, the Diya is upon him in his money for three years as the Akila does not reason what is necessary through confession.

Ibn Kudamah said: “ It does not bear confession; man confirms unintentional or quasi-intentional killing by himself , the Diya is imposed on him and not born by the Akila: we do not know difference thereof.

This is of unanimous consent among scholars.

**4-Below one third:**

 DESOUKI said :” The Akila does not bear what is under one third.

This is of unanimous consent among scholars.

**5. Slave**

ALKASANI says:” The AKILA does not bear anything of the slave’s and his mother’s crime as the liable for the crime is he himself and he himself is not property of the AKILA and the guardian and the guardian is liable for the slave’s crime as if he were the AKILA.”

This is of unanimous consent among scholars.

**The Period given for the Akila to pay the Diya:**

 The period of paying the Diya is within three years as per unanimous consent of all scholars.

Averroes (IBN RUSD) says, ”They agreed that the Diya of the unintentional killing is within three years.

**How payment is divided among the members of the Akila?**

The payment is divided “equally” between the members of the AKILA.

**Time of determining the Akila's conditions:**

 The jurisprudents were different thereof , but the preponderant opinion that the suitable time to achieve the qualities of the Akila is the time of determining the Akila to keep the stability of the judgement to adjust the time of considering the qualities and the conditions, so anyone- at the time of the judgment of the Diya – who has the complete conditions,he is committed to pay it off.

Jurisprudents have agreed that the Akila does not bear anything of the Diya that is hard or impossible as it is required to pay it off without crime, but as a type of sympathy to the offender, assisting him and relieving him , it is not acceptable to relieve him and harm it as if it is legal, the offender is the most appropriate person as he is the person who committed the crime.

**How the Akila pays the Diya:**

Freeing the point of dispute:

The jurisprudents agreed that the Akila pays the Diya , however they disagreed upon the method of payment thereof: should it be paid immediately or deferred. There are two schools:

Jurisprudents were different about paying it in two schools:

The First School: The AKILA pays the Diya immediately and this is the school of the Zahiri.

The Second School: The Diya is paid within three years and this is the school of the Jumhur.

The reasoning (the acceptable):

The AKILA bears the Diya as a sympathy , so it has to be relieved and one third is to paid at the end of the year. Imam ALKASANI said: it is taken from three gifts if the killer is of the Diwan people as they get a gift each year.

**There is no AKILA for the Muslim offender:**

**First:**

**Freeing the point of dispute:**

The Jumhur of the jurisprudents agreed that the Diya is a must in the unintentional and quasi-intentional killing upon the Akila of the offender and they differed about the entity which should bear it if the offender does not have Akila.

The reason for the difference:

1-The contradiction of the externals of the evidences

2-The difference in the Diya ; it is a required upon the offender or the Akila

**The schools of jurisprudents:**

 **The first school:** It is a must at the Muslim House of Money and this school is of the Jumhur of jurisprudents : Malikis, Shafi’is and the external of the narration to the Hanafis and the narration of the Hanbalis.

**The second school:** The Diya is a must for the offender’s money , not the House of Money and this is the school of Abi Hanifah and a narration of the Hanbalis.

**The third school:** The Diya is a must upon anyone of the same who does not have Akila(Imam Ibn Hazm attributed this point that the Diya is a must from the offender’s money as it is an alternative for a damage. The Akila bears as a way of assistance and relieving, so if there is no Akila , the matter is attributed to its origin and the offender pays from his own money. The House of Money has a right for the poor, the needy, the orphans, the women and others who do not bear the Diya.

It is not right to pay money in unnecessary matters related to them.

The Diya is for the Killed/Victim’s family whether the offender has Akila or not.

As for the Hadith of ABDULLAH BIN ABDULKRAHMAN ALANSARI, it is of several aspects:

a-The prophet’s giving the Diya from the House of Money was for reconciliation and to calm the victim’s family.

b-The use of the Hadith is out of the dispute point as that was the killed/victim of the Jews and the House of Money does not pay for the Jews.

Their evidence of the reasoning was researched that giving his money to the House of Money when there is no heirs is not inheritance , but a kind of donation. The House of Money has a right for the women, the boys and the lunatics.

**The preponderant opinion:**

The strength of their evidences from the Holy Quran , the Sunnah , the traditions and reasoning

**References:**

1. The Holy Quran
2. ANAS MUSTAFA HUSSAIN ATAA, The System of AKILA in Islamic Sharia, a published Master dissertation , the Jordanian University, 1990 G
3. AHMED ALRAZI ALGASSAS, The Ordinances of the Holy Quran,(deceased 370 H)Islamic Endowments , 1350H
4. SAYED QUOTOB , In the Shades of the Quran, The House of the Revival of the Arab Heritage(Dar Ihiaa Alturath Alarabi)- Beirut , version 7, 1391 H
5. MOHAMMED NASR ALDIN ALALBANI, Iirwa-Alghalil In The Authentication Of The Hadiths Of Manar Alsabeel , The Islamic Office, Version 1, 1399 H
6. MOHAMMED ZAKARIA ALKANDHLAWI –“The shortest paths to Imam Malik’s MUWATTAA”dar alfikr, Beirut , Version 3, 1394 H
7. ABDULLAH MOHAMMED BEN ISMAIL BEN IBRAHIM ALBUKHARI , the Sahih al-B
8. ukhari 1401 H- 1981 G, DAR ALFIKR for printing, publication and distribution.
9. MUSLIM BEN HAJJAJ ALHUSSAIN ALKUSHAIRI, autheticated by MOHAMMED FOUAD ABDULBAQI, SAHIH OF IMAM MUSLIM, The House of the Revival of the Arab Heritage(Dar Ihiaa Alturath Alarabi)- Beirut.
10. ALMDAWANAH(The blog) by ANAS BEN MALIK ALASBAHI, year of publication: 1415 h/ 1995 G, Version No:1, The House of the Scientific Books
11. The Enough Book to know the Meanngs of the words of the MINHAJ; explanation of SHEIKH MOHAMMED ALSHERBINI ALKHATEEB, to explain the content of the MINHAJ of ABI ZKARIA YAHIA BEN SHARAF ALNAWAWI, The House of the Revival of the Arab Heritage(Dar Ihiaa Alturath Alarabi)- Lebanon, 1377.
12. ALDESOUKI’S MARGINON THE BIG EXPLANATION by the Scholar SHAMS ALDIN MOHAMMED ARAFAH ALDESOUKI on the big explanation by ABI ALBARAKAT SIDI AHMED ALDEROUIR, in the margin thereof the aforesaid explanation with the reports by the authenticator SIDI SHEIKH MOHAMMED OLISH, DAR ALFIKR.