



## Research Paper

### Reappraisal of Legal Compensation (Diyah) for Breaking Clavicle Bone Based on Criticizing and Amending Article 656 of Islamic Penal Code

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HTTPS: 10.22034/MFU.2023.139574.1326

Received: July, 21, 2023

Accepted: November, 1, 2023

Available online: November, 16, 2023



#### Abstract

A broken clavicle, if treated with defect, is compensated for a certain amount of money based on Article 656 of the Islamic Penal Code. According to this article, if both collarbones are broken and treated with defect, its compensation is equal to compensation for a full human (full *diyah*). If only a clavicle bone is broken and it is treated with the defect, its compensation is equal to the half *diyah* of a full human. The origin of the aforementioned legislation is based on one of two opinions in jurisprudence. A group of Imami jurists do not agree with the certain compensation incumbent in the first presumption, but they believe that a broken clavicle, if treated with defect, must be remitted to the state (*hukūma*). A study of both groups' opinions shows that their proponents cited different arguments to prove their views. Using the descriptive-analytical method, this research studies and criticizes the opinions, in addition to mentioning their evidence. The research results in criticism of part of Article 656 of the Islamic Penal Code, as the acceptance of a certain compensation for a broken clavicle, if treated with defect, has many fundamental and jurisprudential problems, while in case of remitting to the state, the ruling would be far from any criticism, and so it is accepted by many Imami jurists.

#### Keywords:

compensation (*diya*), state, fracture, clavicle, defect.

Zargaryan, T. (2024). Reappraisal of Legal Compensation (Diyah) for Breaking Clavicle Bone Based on Criticizing and Amending Article 656 of Islamic Penal Code. *Comparative Studies on the Schools of Jurisprudence and its Principles*, 7(2), 1-20.

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## Extended Abstract

### 1- Introduction

When the clavicle bone is broken, the amount of blood money will be different depending on the quality of the clavicle fracture. The quality of clavicle fracture generally is divided into two types: incurable fracture and curable fracture. Many Imāmī jurists do not have a serious difference of opinion regarding the ruling on the payment of incurable clavicle fracture. The legislator of the Book of Islamic Penalties, in a part of Article 656, following the majority of Imāmī jurists, has dealt with the legalization of payment for clavicle fracture in case it is incurable which is divided into two types of treatment without defect and treatment with defect. Although some Imāmī jurists have different opinions on the amount of payment for breaking the clavicle in the assumption of treatment without defect, the majority have a consensus on the amount of payment for the mentioned crime on the clavicle; The penal lawmaker, in part of the Article 656 of Islamic Penal Code, following the majority of Imāmī jurists, has dealt with the legislation of payment for clavicle fracture in the assumption of treatment without defect. This research approves the legalization of the two mentioned crimes on the clavicle; However, the legalization of payment for clavicle fracture in the assumption of treatment with defect is criticized here; for the legislator has stipulated in a part of Article 656 of Islamic Penal Code: "Breaking any of the clavicle bones, if it is treated with defects, causes half of the full blood money". According to this article, whenever both clavicle bones are broken and then are treated with defect, the blood money required for a life will be equal to the full payment of a human being. Although this legislation originated from the perspective of Imāmī jurists, it is not the only view among them. They have serious differences of opinion about the

amount of blood money for clavicle fracture in the assumption of treatment with defect; A group, contrary to the previous view, considers the payment of the crime in question as a fixed (destined) payment. They don't believe in the fixed payment in clavicle fracture in the assumption of treatment with defects, but they consider referring to the State as the solution to the problem. The research carried out in the sayings and arguments of the jurists of both groups, shows a serious criticism of the view of the necessity of the fixed payment in such a crime, for this opinion in the discussed situation faces many fundamental and jurisprudential problems. In contrast, the view that considers the reference sentence of the crime to be the government, not only does not face any fundamental or jurisprudential problems but also is approved by many Imāmī jurists.

This research tries to deal with the conflicting opinions by presenting the views and arguments of both groups and then criticizing the view of the necessity of fixed blood money in the crime in question. Normally, that part of Article 656 of Islamic Penal Code that deals with this crime would be criticized and an amendment will be proposed as well.

### 2- Method

The data in the article has been collected through the library and documentary methods.

### 3- Result

Presenting all views and proof, this research tries to declare that the acceptance of the fixed blood money for clavicle fracture in the assumption of treatment with defect has various jurisprudential and principle problems. In contrast, the view of referring to the government for the mentioned crime is far



from any criticism and is selected and approved by this research.

#### **4- Conclusion**

The verdict of clavicle bone fracture in the assumption of treatment with defect is referred to the government and not the fixed blood money.

#### **5- Funding**

This article has no funding support.

#### **6- Authors' contribution**

Taha Zargarian, an Assistant Professor at the Department of Law, Faculty of Humanities, University of Ayatollah Boroujerdi, Boroujerd, Iran is the corresponding author and the sole author of the article.

#### **7- Conflict of Interest**

The author declares no conflict of interest.