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AL-QISAS: THE PRINCIPLE OF LIFE FOR LIFE AND LIMB FOR LIMB IN ISLAMIC LAWNADA BALTO¹**ABSTRACT**

This paper analyses retaliation law (*Qisas*) and examines its history, aims, definitions and conditions, including how the commencement of Islam affected communal laws of revenge in the Arabian Peninsula societies, converting them into illicit norms and practices, and what amendments were required to regulate the justice system in relation to homicide cases. A brief history of these unlawful practices clarifies why intermediation became mandatory, and provides insight into the social, moral, legal and political obligations imposed on Muslims. The paper examines certain conditions prescribed in the *Quran*, which ensure the smooth delivery of justice in *Qisas* cases, and the objectives that were sought through *Qisas* law. This paper also discusses the admissibility of pardon in *Qisas* cases, and other practices alien to the Western justice system. The aims of *Qisas* law are analysed, both as rules of law and as a sacred phenomenon designed to uphold the supremacy of God.

Keywords: *Al-Qisas*, Revenge, Homicide, Intermediation, Pardon.

INTRODUCTION

In ancient Arab traditions, the involvement of the victim, his or her family, and the community in sentencing for crimes committed against them was minimal. The justice system was primarily comprised of decisions made by powerful tribe members, and included violent punishment inflicted on victims' families (Kariem, 1999). The inception of Islam in the Arabian Peninsula resulted in a restoration of the justice system and a destabilisation of this well-established and unlawful practice. Divine intervention in the form of *Qisas* law transformed society by reorganising the criminal justice system, increasing the direct involvement of all stakeholders, and denouncing all other illegal practices and customs (Kalf, 2008).

Muslims believe that God revealed *Qisas* law through the Holy *Quran* and *Sunna*, and that it was imposed to replace man-made rules and regulations (Henaiss, 2005). Divine law restricted old practices and introduced new norms that demanded the fulfilment of certain conditions and the ultimate application of justice. *Qisas* rejected unlawful punishment, favoured forgiving the accused over punishing them, dictated the terms and appropriate execution of punishments, and enlightened society as to how restitution could be divided between both parties (Al-Ashquer, 2002). *Qisas* law characterised punishments for homicide cases as inhumane and primitive, and tended to humanise both the perpetrator and the victim of the crime (Al-Sakeir, 2015). It enriched the criminal justice system with a refined mode of punishment designed to provide both retribution and absolution, to the extent that it soon superseded pre-Islamic laws (Shafey, 2003). Placing homicide cases into the *Qisas* category restored justice for victims and their families, requiring victims to instigate both prosecution and punishment to return justice to the hands of victims and their families (Jafer, 2008).

This fresh emphasis on the participation of victims in the sentencing process required the fulfilment of certain conditions that were primarily designed to encourage reconciliation and forgiveness, and to avoid corporal punishment (Al-Najar, 2008). Victims were expected to

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forgive culprits without demanding prosecution, or to request financial compensation (*Diya*). These predetermined conditions were an effort by Islam to seek other punishments and discourage corporal ones (Mansour, 1996). However, *Qisas* did not prohibit jurists or victims from imposing bodily harm on criminals. On the contrary, the law of exactitude is central to *Qisas* cases: ‘a limb for a limb’ justice requires that the punishment inflicted on the victim must be imposed on the perpetrator (Fahmi, 1995). Islamic justice is characterised by an emphasis on redemption through the noble act of forgiveness rather than punishment, and the evaluation of all relevant circumstances before deciding upon punishment (Al-Elwani, 2001).

THE HISTORY OF *AL-QISAS* PUNISHMENTS

Revenge was the pre-Islamic punishment for homicide. Pre-Islamic Arabia was filled with tribal hostility and aggression. Friendly cooperation was rare and only existed among members of the same tribe, and hostility was a compelling motive for revenge (Ouda, 1998). As a result, both the offender and the offender’s tribe could be subject to revenge, especially in cases of homicide. In ancient Arabia, it didn’t matter if the crime was committed by one offender alone; his or her whole tribe could undergo a chain reaction of revenge. Trivial “disputes could result in bloodshed, and it could take years to end such disputes” (Kariem, 1999, pp. 56-61). Tribe members associated such matters with their prestige and honour and would go to any extent to regain their social status (Ez-Aldien, 1996). Ultimately, these practices created an extremely violent atmosphere in which revenge was common between tribes and no consideration was given to peace or forgiveness (Kariem, 1999). However, ancient Arabs did consider peaceful alternatives in some cases, including blood money (*Diya*). The status of the perpetrator and his or her tribe defined the amount to be paid.

The inception of Islam led to rapid social development and significant improvements regarding the legal position of individuals (Al-Elwani, 2001). Islam reorganised the Arab region to establish strong and stable roots for human interactions and relationships (Al-Malky, 2013). Islamic societies replaced the ancient tribal social order with the newly established Islamic legal system under the authority of God (Al-Alwiet, 2015). After Islam triumphed in Arabia, the area witnessed a drastic transition from the custom of revenge to *Qisas* law, under which injury could be inflicted on the perpetrator without reference to the tribal status of the murderer or victim (Kalf, 2008). Legal scholars, including Mohammed Fahmi, argue that *Sharia* law’s punishment for homicide (*Qisas*, or capital punishment) has a dual nature: as well as acting as a deterrent, it also benefits the victim in that punishment is imposed and compensation is provided (Shafey, 2003; Fahmi, 1995). This notion was also supported by ancient Arabs who believed that *Qisas* was an Islamic innovation which required the state to inflict punishment for homicide cases (Fahmi, 1995).

Islam gave decisive rights to all individuals, and crimes which nullified those rights resulted in retaliation (Al-Ashquer, 2002). Islam provided the option of either demanding punishment or pardoning culprits and claiming blood money. *Qisas* punishments are applied in cases of bodily harm or killing (Kalf, 2008). According to *Qisas* law, as defined by the *Quran* and *Sunna*, if someone killed another person, the victim’s family could demand that the culprit be killed, or forgive the culprit and settle for blood money (Abu-Rakiea, 2010). The victim’s family should decide the amount of blood money according to the nature of the crime (Jafer, 2008).

AIMS OF *AL-QISAS* PUNISHMENTS

Al-Qisas punishments are characterised by two common elements: imposing the same harm on defendants that they inflicted on victims, which discourages and limits crimes like homicide (Jaradat, 2012); and an emphasis on the process of establishing guilt, which protects the accused party and reduces the chance of unfair punishments (Fahmi, 1995). Islam

established the practice of waiving punishment in the presence of uncertainty and introduced the principle that the accused party should always enjoy the benefit of the doubt (Shafey, 2003). A strict procedure regarding the reporting of crime is stipulated, and punishments cannot be awarded unless reliable witnesses prove the crime in court (Hussny, 2006). *Al-Qisas* punishments are also designed to allow pardon, which is not considered in the modern legal systems. Pardon according to Islamic law may result in repentance (Fahmi, 1995).

Laws such as those regarding homicide drastically changed the concept of revenge that was common in the pre-Islamic era (Al-Katieb, 2009). Islam restricted the punishment to the accused person alone rather than including his or her family and tribe and introduced the concepts of *Diya* and the victim's right to pardon. These revisions were enacted to uphold the supremacy of God, justice, and peace (Al-Sadlan, 1997).

Since Islam stipulates equality between all members of society, it tends to diminish differentiation between rich and poor by awarding equal punishments (Al-Elwani, 2001). The Islamic legal system does not include pecuniary punishments; for example, it lacks the imposition of penalties or monetary fines, with the exception of *Diya* (Al-Katieb, 2009). However, blood money in Islam is fixed and can only be imposed if the injured party wishes to accept it (Shafey, 2003). Islam also discourages exaggeration in stipulating the amount of *Diya*, encourages a moderate *Diya* that is appropriate to the perpetrator's social status, and rejects the conversion of punishment into blood money until the victim or the victim's family approve this course of action (Karieb, 2012). The aim of *Qisas* is thus to give culprits a chance to redeem themselves, rather than to act as a licence to avoid punishment.

Any punishment in Islamic criminal law, including *Qisas* punishments, is prescribed in divine revelation by God and granted to Muslims by the prophet Muhammad. These punishments are thus considered to be sacred phenomena that serve the sacred purposes of restoring social justice, protecting religious interests, and providing protection for possessions and morals (Abdullah, 2006). Islamic criminal law determines the relationship between the members of Islamic societies, defines the connection between Muslims with their God, and defines the rule of law (Hussny, 2006).

Since *Qisas* punishments are prescribed in both the *Quran* and *Sunna*, they may be considered as the cornerstones of Islamic criminal law (Mentawi, 2015). The preventive function of these severe punishments, as they have been incorporated into the Islamic legal system, should be considered in a positive light. Islam does not advocate punishment unless it can serve as a deterrent (Al-Beisher, 2001). The *Quran* and *Sunna*, the main sources of Islamic law, provide stable, steady provisions for the Islamic legal system (Fahmi, 1995).

The most important aims of *Al-Qisas* punishments are to correct criminal activity, prevent future crime, and enforce Islamic values (Jaradat, 2012). Punishment should therefore be considered as corrective measure which imposes criminal liability on culprits by depriving them of their freedoms and rights. Punishment can only be administered after the crime has been committed, or when it is predicted, if the crime is retaliatory (Karieb, 2012).

THE DEFINITION OF THE *AL-QISAS* PRINCIPLE

Qisas can be defined as a noble principle: the principle of life for life and limb for limb (Fahmi, 1995). This principle gives injured parties and their heirs the absolute right to impose the same injuries on offenders. It applies to all killings and certain kinds of serious wounds or damages (Kalf, 2008). Islam provides the family of the victims of murders or bodily injury a right to apply *Qisas* against the convicted party after a fair trial (Al-Fasy, 2012). For bodily injuries, *Qisas* allows victims and their families the right to execute the same type of injury suffered at the hands of the perpetrator, on the perpetrator themselves. For example, if a victim of a crime loses his or her eye during an attack, he or she can retaliate by inserting a sharp, red-hot needle into the attacker's eye once they have been found guilty (Karieb, 2012).

Qisas and *Diya* are prescribed punishments under Islamic law for murder and bodily injuries. The *Quran* and the *Sunna* dictate two specific conditions regarding *Qisas* for body parts and wounds, about which there is a consensus among notable Muslim scholars: the punishment must not result in injustice or transgression, and the body parts must be equivalent in both name and location. Retaliation must be accomplished by cutting off the same body part from the same specific joint. If there is no clear specification of the extent of the retaliatory injury required, retaliation cannot be granted (Kutb, About Islam, 2005). For example, if a perpetrator breaks someone's tooth, his or her tooth must be removed just as violently to fulfil the condition of *Qisas*. Amputating an offender's right arm does not fulfil the conditions of *Qisas* if the victim's left arm was amputated. Similarly, a ring finger cannot be amputated in retaliation for the amputation of a little finger. This condition applies to all body parts, including the hands, eyes, legs, and ears (Abu-Rakiea, 2010).

The rule of exactitude applies strictly here. If a victim accidentally inflicts more damage to the perpetrator, he or she is also in violation of the law, and therefore subject to punishment (Al-Fasy, 2012). The Ministry of Interior is responsible for the execution of *Al-Qisas* punishments. Because this rule of exactitude discourages the victim's retaliation, Islam introduced the concept of compensation. Offenders and victims can agree on blood money to settle their disputes instead (Al-Najar, 2008). *Qisas* punishments in cases of murder and bodily harm therefore range from inflicting the same injury to the payment of financial reparations (Al-Katieb, 2009).

Importantly, blood money varies in accordance with the nature of the crime. For example, more money is owed in cases of intentional murder than in those of manslaughter (Karieb, 2012). According to the Prophet Muhammad, "Whosoever kills a believer unjustly will suffer retaliation for what his hand has done unless the relatives of the murdered man consent otherwise. And therein it was: A man shall be killed for the murder of a woman. And therein it was: For the murder of a life, there is blood wit of 100 camels" (Abdullah, 2006, pp. 36-41).

CATEGORIES OF *AL-QISAS*

Qisas can be further divided into two broad categories: homicide and bodily harm. *Qisas* enables defendants to be liable for compensating victims and their families for wounds they have inflicted or murders they have committed in the form of *Diya* (Kalf, 2008), and enables victims and their families to inflict identical injuries on perpetrators (Peters, 2005, pp. 54-58). Islam gives equal rights to all Muslims, and this egalitarianism extends to the right of *Qisas*. With respect to physical harm, the *Quran* maintains, "Remember that the recompense of an injury is an injury the like thereof; but whoso forgives and thereby brings about an improvement, his reward is with Allah. Surely, He loves not the wrongdoers" [042:040]. According to the Islamic penal code, therefore, an equal requital is given to the injured person (Hub-Allah, 2005). Mohammed Al-Mashehadany criticises this requital as uncivilised and primitive (Al-Mashehadany, 2006), but others such as Mohammed Kutb argue that because divine guidance, human inclination, and nature remain the same, primitive rules do not necessarily require updating (Kutb, Implementation of Sharia, 1998). According to the *Quran*, individuals' rights to retribution transcend those of the state or community, and individuals can never take the law into their own hands. Islamic law also suggests that individuals try settlement first to avoid the irreversible procedure of trials and punishments, which involves time, effort, expense, and the interference of government (Jafer, 2008).

CONDITIONS NECESSARY FOR *AL-QISAS* PUNISHMENTS

The first and most important condition of *Qisas* punishments is that they only apply in cases of deliberate murder or wounding, and are not valid punishments for accidental killings or

injuries (Shafey, 2003), offenders in these cases are responsible for paying *Diya* (Karieb, 2012). Retribution only applies in intentional murder or injury because God says in the *Quran*, “O you who believe, retribution is prescribed for you in the case of murder” [2:175]. Another vital element of *Qisas* punishment is that the retaliation must be clear, and there must be enough evidence to support its execution on the perpetrator. In other words, if Muslim jurists cannot exactly determine the appropriate retaliation for injuries due to lack of evidence, *Qisas* cannot be executed (Abu-Rakiea, 2010).

One example of an injury case is that of 24-year-old Ali al-Khawahir, who allegedly stabbed his childhood friend and was punished under *Qisas*. The stabbing had occurred ten years previously during a heated dispute between the two, and al-Khawahir left his friend paralysed from the waist down. The *Sharia* law, which is imposed in Saudi Arabia, dictated that al-Khawahir’s punishment be based on the ‘eye-for-an-eye’ principle. However, there was the option of pardon if both parties agreed to legal compensation. The court sentenced al-Khawahir to pay one million riyals to the victim or be surgically paralysed. If al-Khawahir failed to provide financial compensation for his offense, he would be paralysed from the waist down for the rest of his life (Al-Essamy, 2014).

The second condition of *Qisas* punishments is that the rights of the victim must be fulfilled. The victim (or his or her family) has the freedom to decide whether a defendant should be punished. The judge hearing a case must therefore inquire of the victim (or his or her family) about their right to pardon the offender (Jafer, 2008). The *Quran* says, “if anyone waives the right to retaliation out of charity, it shall be an expiation for him” [5:45]. In this way, Islam encourages the victim to pardon the criminal by promising rewards in the afterlife. However, this infrequently occurs in contemporary Islamic legal proceedings. Pardon can be granted with or without financial compensation (Hussny, 2006).

The third condition of *Qisas* punishments is that the state or government must carry out the pronounced punishment. The victim (or his or her family) cannot take the law into their own hands and carry out the punishment themselves (Al-Elwani, 2001). The punishment should be implemented publicly by the Ministry of Interior.

CONCLUSION

This paper has thoroughly assessed the law, history, objectives, definitions, categories, and conditions of *Qisas*. It explains why it was necessary to formulate a justice system that combats social ills and extends justice to all stakeholders and demonstrates the necessity of divine intervention in regulating crimes and punishments to increase stability, promote peace within Islamic societies, provide justice, and halt the victimisation of individuals. *Qisas* eliminated unlawful practices and provided Muslims with just discourse (Al-Katieb, 2009). It is necessary to thoroughly define the law and the principle of retribution it codifies to form a better understanding of its characteristics, principles, and prescribed punishments (Al-Zehaily, 2013). This examination of *Qisas* further demonstrates that it is based on noble principles. Strictly applying the law of exactitude eliminates discrimination and transgression and encourages forgiveness and financial restitution.

These legal practices are still alien to many Western legal systems and often carry negative connotations, because the concept of blood money has been overlooked in Western discourse about restorative justice. However, Islam made blood money a fundamental part of *Qisas* law because it offers much-needed solutions to *Qisas* crimes (Fahmi, 1995). *Qisas* law is designed to comfort victims and their families rather than benefit guilty parties. A murder or injury can have severe repercussions for victims and their families. When they are given the choice to settle for money, it can save them significant trouble, and may encourage them to forgive the murderer (Al-Saqier, 2015). This emphasis on forgiveness encourages the promotion of equal rights and maintains a focus on promised rewards and advancement towards

an impartial and healthy society. *Qisas* law has immense potential to support Muslim morality and foster harmony within Muslim societies by eliminating disparities between the rich and the poor, the dominant and the weak, and the resourceful and the uncompetitive (Hussny, 2006).

This paper has also discussed the role of the judiciary and state in *Qisas* cases. While victims must instigate punishment for *Al-Qisas* crimes, judges and policy-makers must ensure that all of the necessary conditions are met and that the chosen punishments are carried out (Abu-Rakiea, 2010). The implementation of preferable or excessive punishments by victims or their families would certainly lead to unlawful activity; victims thus do not have the right to take the law into their own hands, and authorities must be responsible for penalising the accused in public (Kalf, 2008). This paper also provides an example that illustrates Saudi Arabian application of *Qisas* law, because Saudi Arabia is one of the few countries that strictly enforces *Sharia* law (Mentawi, 2015). There have been instances when victims have forgiven culprits, instances when they have settled cases by accepting financial compensation, and instances when victims' families have demanded that murderers be executed. In all three types of cases, the Kingdom ensures the provision of justice based on *Qisas* principles as defined in the *Quran* and *Sunna* (Al-Essamy, 2014).

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