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Justice system of Islam in the form of Qisas, Diyat and Harabah for the protection of human dignity

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Justice System of Islam in the form of Qisas, Diyat and Harabah for the protection of human dignity

By Dr. Muhammad Zahid

ABSTRACT:

For peace in a society and to protect the lives and properties of all the individuals living in a society, it is necessary that there must be certain rules and regulations that govern the whole system of society. A guideline for each and every aspect of human life should be there. For this purpose Islamic law or Shariah law took origin to govern an Islamic state and for avoiding injustice and to preserve human dignity Shariah law prescribes different forms of

punishment which constitute the basic criminal justice system of Islam. These include Qisas, Diyat and Harabah. Thus, the Quran not only specifies principles of retaliation in the form of Qisas but also gives an option of monetary compensation (blood money Diyat) to the aggrieved family of the victim. The fear of the consequences in the form of punishments prescribed by the Shariah Law must be there in a person's mind before he commits a crime and this fear will abstain from violating human dignity by destroying his life and property.

Keywords: Qisas, Diyat, Harabah, Had and Tazeer

Introduction:

In order to maintain the system of universe there are certain rules and regulations which govern this system. Similarly to maintain the system of a society rules and regulations have been prescribed. Only a slight imbalance among the components of the society will lead to chaos and destruction of the whole system. Thus a nation and a society can achieve success only by following these principles. These principles established by the superior authority of a nation is called Law.¹

Law is a system of rules and regulations that are enforced through social institutions to govern behavior. An Islamic state is also governed by certain principles known as Islamic law or Shariah law which prescribes rules for each and every aspect of life. It is a guideline for how an individual should act in a society or how people or groups in a society should interact with each other. The objectives of shariah are to protect the five indispensables (al-daruriyyat

¹ Islamic encyclopedia definition of Law. Idara.e.Nahda Misria Egypt 1983

al-khamsa) which are the fundamental principles (kulliyat) which underlie the application of law in Muslim Society.² These are:

- i. The protection of Life.
- ii. The protection of religion.
- iii. The protection of off springs or an individual's lineage.
- iv. The protection of property.
- v. The protection of an individual's intellect.

Sources of Shariah law are:

1. Primary Sources:
 - i. Qura'an
 - ii. Sunna
2. Secondary Sources:
 - i. Ijma
 - ii. Qiyas

Every human being has the right to live a peaceful life with honour and dignity. A person cannot violate this dignity of another person by killing him or snatching things that are valuable to him. Crime has been divided into the following three types under Islamic law:

1. Had crimes
2. Tazir crimes
3. Qisas Crimes

Had Crimes:

² Al-Shatibi, Al-Muwafaqat, Dar.al.Fikar Beirut Labanon 1978, Vol. 3,pp.335 – 338

These are the most serious crimes that are punishable by a pre-established punishment found in Quran. Murder, Apostasy from Islam, Robbery, Adultery, Theft and Alcohol drinking are included in it.

Tazir Crimes: They are lesser in category. They can and do have minor felony equivalents not found in Quran so Islamic judges are free to punish the offender in almost any fashion.

Mohammed Salam Madkoar, who was the head of Islamic Law at the University of Cairo, makes the following observations:

"Tazir punishments vary according to the circumstances. They change from time to time and from place to place. They vary according to the gravity of the crime and the extent of the criminal disposition of the criminal himself. Tazir crimes are acts which are punished because the offender disobeys God's law and word. Tazir crimes can be punished if they harm the societal interest. Sharia Law places an emphasis on the societal or public interest. The assumption of the punishment is that a greater "evil" will be prevented in the future if you punish this offender now.

Historically Tazir crimes were not written down or codified. This gave each ruler great flexibility in what punishments the judge was able to dispense. The judge under Islamic Law is not bound by precedents, rules, or prior decisions as in common law. Judges are totally free to choose from any number of punishments that they think will help an individual offender. The only guiding principle for judges under Sharia Law is that they must answer to Allah and to the greater community of Muslims.

Some of the more common punishment for Tazir crimes are:

i. Counseling

- ii. Fines
- iii. Public or private censure
- iv. Family and clan pressure and support
- v. Seizure of property
- vi. Confinement in the home or place of detention
- vii. And flogging

The punishment in Shariah law are in the form of Qisas, Diya and Harabah, which are described in detail in the following paragraphs.

Human life is valuable. Man is the ultimate centre of Allah's Creation. A person can protect his own life by respecting the lives of other human beings. A person has no right to end up his own life too as his life is a gift from Almighty Allah. Killing an innocent person is like killing the whole mankind since this shows he has no sympathy and respect at all in his heart and there is no value of human life in front of him. Thus murder is the greatest sin in Islam. Allah says in Qura'an:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ ۗ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَىٰ بِالْأُنثَىٰ ۗ فَمَنْ عَفَىٰ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبِعْهُ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ۗ ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ ۗ فَمَنْ أَعْتَدَىٰ بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ^ج

"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."³

وَ إِذْ قَتَلْتُمْ نَفْسًا فَادْرَأْتُمْ فِيهَا ۗ وَاللَّهُ مُخْرِجٌ مَّا كُنْتُمْ تَكْتُمُونَ^٤

"And recall when you killed a man and then began to remonstrate and cast the blame (of killing) upon one another even though Allah was determined to bring to light what you were hiding".⁴

لَقَدْ سَمِعَ اللَّهُ قَوْلَ الَّذِينَ قَالُوا إِنَّ اللَّهَ فَقِيرٌ وَنَحْنُ أَغْنِيَاءُ ۚ سَنَكْتُبُ مَا قَالُوا وَقَتْلَهُمُ الْأَنْبِيَاءَ بِغَيْرِ حَقٍّ
وَ نَقُولُ ذُوقُوا عَذَابَ الْحَرِيقِ^٥

"Allah has heard the saying of those who said: 'Allah is poor, and we are rich. We shall record what they have said, and the fact of their slaying the Prophets unjustly, and we shall say to them: Taste now the torment of the Fire'.⁵

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا
أَنْفُسَكُمْ ۗ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

"Believers! Do not devour one another's possessions wrongfully; rather than that, let there be trading by mutual consent. You shall not kill yourselves. Surely Allah is ever Compassionate to you".⁶

وَلَا تَقْتُلُوا أَوْلَادَكُمْ خَشْيَةَ إِمْلَاقٍ ۗ نَحْنُ نَرْزُقُهُمْ وَإِيَّاكُمْ ۗ إِنَّ قَتْلَهُمْ كَانَ خِطَاً كَبِيرًا

"Do not kill your children for fear of want. We will provide for them and for you. Surely killing them is a great sin."⁷

³ Al-Qura'an, Al-Baqara 2:178

⁴ Al-Qura'an, Al-Baqara 2:72

⁵ Al-Qura'an, Ali 'imran 3:181

⁶ Al-Qura'an, An-Nisa 4:29

⁷ Al-Qura'an, Al-Isra 17:31

The above mentioned Quranic verses clearly describe how valued and sacred human life is. Not only the Quran but Hadees also describes the same which is quite clear from the following sayings of the Holy Prophet (SAWW):

Narrated 'Abdullah: The Prophet said, *“The first cases to be decided among the people (on the Day of Resurrection) will be those of blood-shed.”*⁸

Narrated 'Abdullah bin 'Umar: *“One of the evil deeds with bad consequence from which there is no escape for the one who is involved in it is to kill someone unlawfully.”*⁹

Narrated Ibn 'Umar: Allah's Apostle said, *“A faithful believer remains at liberty regarding his religion unless he kills somebody unlawfully.”*¹⁰

Narrated 'Abdullah bin 'Umar: The Prophet said, *“After me (i.e. after my death), do not become disbelievers, by striking (cutting) the necks of one another.”*¹¹

If a person still continues committing such crimes Shariah law prescribes the following punishments:

QISAS:

Qisas is an Islamic term meaning *“retaliation in kind or revenge”*¹², “eye for eye” or retributive justice. Qisas Principle is available against the accused, to the victim or victim's heir when a Muslim is murdered, suffers bodily injury or property damage.¹³

⁸ Muslim ibn al-Hajjaj, Sahih Muslim, Dar al fikir Beirut Labanon 2002, kitab.ul.hadood hadees 4

⁹ Sahih Muslim kitab.ul.hadood hadees 3

¹⁰ Sahih Muslim kitab.ul.hadood hadees 2

¹¹ Sahih Muslim kitab.ul.hadood hadees 8

¹² Muhamed S.El.Awa, Punishment in Islamic Law, American trust publications 1993 & Shahid M. Shahidullah, Comparative Criminal Justice System: Global and Local perspectives pp.370-372.

¹³ Tahir Wasti, The Application of Islamic Criminal Law in Pakistan: Sharia in Practice, Brill Academic pp.12-13 2009

Qisas is enforced by a number of countries which apply Shariah law, particularly in Middle East. Relevant Provisions includes Sections 299(K), 302, 304, 306, 307, 313, 314, 334, 336, 337, and 338 of P.P.C. 1860.

It has been described extensively in Ahadees. For example, Sahih Bukhari states, Allah's Apostle said, "The blood of a Muslim who confesses that none has the right to be worshipped but Allah and that I am His Apostle, cannot be shed except in three cases: In Qisas for murder, a married person who commits illegal sexual intercourse and the one who reverts from Islam (apostate) and leaves the Muslims."¹⁴

Narrated Anas: The daughter of An-Nadr slapped a girl and broke her incisor tooth. They (the relatives of that girl), came to the Prophet and he gave the order of Qisas (equality in punishment).¹⁵

Narrated Anas bin Malik: A Jew crushed the head of a girl between two stones, and the girl was asked, "*Who has done that to you, so-and-so or so and so?*" (Some names were mentioned for her) till the name of that Jew was mentioned (whereupon she agreed). The Jew was brought to the Prophet P.B.U.H and he kept on questioning him till he confessed, whereupon his head was crushed with stones.¹⁶

However, in the history of Islam, many pre-modern Islamic scholars ruled that Qisas did not apply when the victim was a non-Muslim dhimmi and to non-Muslim slaves owned by a Muslim. The principle of Islam is available only when the victim is a Muslim but not to non-Muslims according to Islamic jurist literature except that of Hanafi.¹⁷

¹⁴ Muhammad ibn Ismail, Sahih al-Bukhari, Dar.al.fikar Beirut 1998, Vol. 9, 83:17

¹⁵ Sahih al-Bukhari, Vol. 9, 83:32

¹⁶ Sahih al-Bukhari, kitab ul Diyat, Vol. 9, 83:15

¹⁷ Majd Khadduri and Herbert J. Liebesny, law in the middle East: Origin and development of Islamic Law, 2nd edition, Law book exchange. pp 337 to 345 & Rudolph Peters and Peri Bearman (2014), the Ashgate Research

According to most variations of Sharia, neither Qisas nor Tazir applies if a Muslim parent or grandparent kills their child¹⁸, or grandchild, or if the murder victim is a spouse with whom one has surviving children. The culprit can be, however, subject to Diyya (financial compensation) which is payable to the surviving heirs of the victims.¹⁹

Scholars suggest that this exemption of parents and relatives from Qisas, and the treatment of homicide-related Qisas as a civil dispute that should be handled privately by victim's family under sharia doctrine, encourages honor crimes, particularly against females, as well as allows the murderer(s) to go unpunished.²⁰ This, state Devers and Bacon, is why many honor crimes are not reported to the police, nor handled in the public arena.²¹ Historically, Sharia did not stipulate any punishment against the accused when the victim is the child or the spouse of the murderer, but in modern times some Sharia-based Muslim countries have introduced laws that grant courts the discretion to impose imprisonment of the murderer.²² However, the victim's heirs have the right to waive Qisas, seek Diyat, or pardon the killer.

Companion to Islamic Law pp.169 to 170. & J. Norman D.Anderson (2007) Islamic Law in Africa, Routledge pp. 372 to 373. .SC Sircar, The Muhammadan Law, p. 276, at Google Books, pp. 276-278

¹⁸ Anver M. Emon (2012), Religious Pluralism and Islamic Law: Dhimmis and Others in the Empire of Law, Oxford University Press, ISBN 978-0199661633, pp. 237-250

¹⁹ Sara Hossain and Lynn Welchman (2005), 'Honour': Crimes, Paradigms and Violence Against Women, pp. 85-86

²⁰ Stephanie Palo (2008), A Charade of Change: Qisas and Diyat Ordinance Allows Honor Killings to Go Unpunished in Pakistan, UC Davis Journal Int'l Law & Policy, 15, pp. 93-99 & RA Ruane (2000), Murder in the Name of Honor: Violence Against Women in Jordan and Pakistan. Emory Int'l Law Review, 14, pp. 1523-1532 & Hannah Irfan (2008), Honor Related Violence Against Women in Pakistan, World Justice Forum, Vienna July 2-5, pp. 9-12.

²¹ Lindsey Devers and Sarah Bacon (2010), Interpreting Honor Crimes: The Institutional Disregard Towards Female Victims of Family Violence in the Middle East, International Journal of Criminology and Sociological Theory, Vol. 3, No. 1, June 2010, pp. 359-371

²² Sharbanoo Keshavarz (2006), Honor Killing in Iran: a Legal Point of View, Yearbook of Islamic & Middle East Law (2006-2007), Vol. 13, pp. 87-103

Qisas nor another punishment applies against anyone who kills a Muslim or non-Muslim for blaspheming (tashtimu, sabb al rasool) the Prophet or Islam.

As According to Hadees:

Narrated Ali ibn AbuTalib: A Jewess used to abuse the Prophet and disparage him. A man strangled her till she died. The Apostle of Allah declared that no recompense was payable for her blood.²³

Waiver of Qisas

Following cases can be mentioned as far as waiver is concerned;

(i) In case of qatl-i-amd, an adult sane wali can waive his right of qisas at any time and without any compensation. However, right of qisas should not be waived when wali is government or when right of qisas vests in a minor or insane.

(ii) If a victim has more than one wali, any one of them can waive his right of qisas. However, wali, who does not waive right of qisas, should be entitled to his share of diyat.

(iii) If there are more than one victim, waiver of right of qisas by wali of one victim should not affect right of qisas of wali of other victim.

(iv) If there are more than one offenders, waiver of right of qisas against one offender should not affect right of qisas against other offenders.

Compounding of Qisas:

Following cases can be mentioned as far as compounding of qisas is concerned;

²³ Abu Dawud Sulayman ibn al-Ash'ath, Sunan Abu Dawood, 38:4349

(i) In case of qatl-i-amd, an adult sane wali can compound his right of qisas at any time on accepting badl-i-sulh. However, a female should not be given in marriage or otherwise in badl-i-sulh

(ii) When a wali is a minor or an insane, wali of such minor or insane wali can compound right of qisas on behalf of such minor or insane wali. However, value of badi-i-sulh should not be less than vale of Diyat.

(iii) When Government is wali, it can compound right of qisas. However, value of badi-i-sulh should not be less than value of diyat.

(iv) When badl-i-sulh has not been determined or is a property or a right value of which cannot be determined in terms of money under Shariah, right of qisas should be deemed to have been compounded and offender should be liable to diyat.

(v) Badl-i-sulh can be paid or can be given on demand or can be given on a deferred date according to agreement between offender and wali.

Diyat:

The Quran also allow aggrieved Muslim parties to receive monetary compensation (blood money diyya) instead of Qisas.²⁴ In Arabic language Diyat means “Ransom or blood money”.

Diyat under Pakistan Penal code, 1860, Section 299(e) says Diyat means the compensation specified in Section 323 payable to the heirs of the victim. It means that Diyat is some pecuniary value which is given in Section 323.

In the ancient Arab society Diyat was considered as blood money; a fine in the form of goods or animals to be paid by the killer or his family or his clan to family or clan of victim. In Islam Diyat is to be paid in the form of cash.

²⁴ Sunan Abu Dawood, 38:48

Relevant Provisions in Criminal Law/PPC includes Section 299(e), 323, 308, 312, 319, 320, 322, 338(c), 330, 331, of P.P.C. 1860.

Section 323 states as follows;

(i) The Court shall, subject to the injunctions of Islam as laid down in the Holy Quran and Sunnah and keeping in view the financial position of the convict and the heirs of the victim, fix the value of Diyat which shall not be less than the value of thirty thousand six hundred and thirty grams of silver.

(ii) For the purpose of sub-section (1) the Federal Government shall by notification in the official Gazette, declare the value of silver on the first day of July each year or on such date as it may deem fit, which shall be the value payable during a financial year.

Thus according to this section diyat is not to be less than the value of 30630 grams of silver. This amount shall be revised and declared every year through the official gazette issued on the 1st July by the Federal Government.

There is no specific amount of Diyat in Quran and hadees. According to Pakistan Penal Code, court fixes amount of diyat.

Here following four principles are important:

1. First principle is that court should fix amount of diyat according to Quranic injunctions.
2. Second principle is that court should not fix amount of diyat less the value of thirty thousand, six hundred and thirty grams of silver.
3. Third principle is that court should keep in view financial position of both the offender and heirs of victim to fix amount of diyat.

4. Fourth principle is that court can though enhance amount of diyat, yet it cannot reduce such amount according to Holy Quran and Sunnah.

Under Pakistan Penal Code, diyat should be disbursed among heirs of a victim according to their respective shares in inheritance. However, if an heir foregoes his/her share, diyat cannot be recovered to extend of his/her share. It has also been described in hadees. Narrated Abdullah ibn Amr ibn al-'As: The Prophet (peace be upon him) said: A believer will not be killed for an infidel. If anyone kills a man deliberately, he is to be handed over to the relatives of the one who has been killed. If they wish, they may kill, but if they wish, they may accept blood-wit.²⁵

Harabah:

Harābah (Arabic: حَرَابَة) is an Arabic word for “piracy”, or “unlawful warfare”. Harabah comes from the root hariba, which means “to become angry and enraged”. The noun harb (حَرْب, pl. hurub حُرُوب) means “war” and/or “enemy”.²⁶

In Islamic context literally means “waging war against society” and in Islamic jurisprudence it is referred to act such as killing non-combatants (the residents and wayfarer), assassinations, setting fire or poisoning water wells. Crimes “so serious and repugnant” that their perpetrators were “not to be given quarter or sanctuary anywhere.”²⁷

Highway robbery, rape and terrorism are included in it. One who commits harabah is Mohareb or moharebeh. Examples of Harabah are highway robbery (traditionally understood as robbery with violence or grand larceny, unlike

²⁵ Imam Malik, Muwatta Dar.ul.fikar Beirut 2006, 43:7

²⁶ Sunan Abu Dawud 39:4491

²⁷ Crane, Robert D., "Hirabah versus Jihad", IFRI.org (Islamic Research Foundation International, Inc., 2006

theft which has a different punishment), rape, and terrorism.²⁸ One who commits harabah would be a mohareb or moharebeh.

Al-Dasuqi, for example, a Maliki jurist, held that if a person forced a woman to have sex, his actions would be deemed committing haraba. In addition, the Maliki judge Ibn 'Arabi, relates a story in which a group was attacked and a woman in their party raped. Responding to the argument that the crime did not constitute haraba because no money was taken and no weapons used, Ibn 'Arabi replied indignantly that "harabah with the private parts" is much worse than haraba involving the taking of money, and that anyone would rather be subjected to the latter than the former.²⁹

Ibn Abbas reported that Allah's Apostle (May peace be upon him) said to Ma'iz b. Malik: Is it true what has reached me about you? He said: What has reached you about me? He said: It has reached me that you have committed (adultery) with the slave-girl of so and so? He said: Yes. He (the narrator) said: He testified four times. He (the Holy Prophet) then made pronouncement about him and he was stoned (to death).³⁰

'Ubada b. as-Samit reported: Allah's Messenger (May peace be upon him) as saying: Receive (teaching) from me, receive (teaching) from me. Allah has ordained a way for those (women). When an unmarried male commits adultery with an unmarried female (they should receive) one hundred lashes and banishment for one year. And in case of married male committing adultery with a married female, they shall receive one hundred lashes and be stoned to death.³¹

²⁸ Abou El Fadl, Khaled, *The great Theft: Wrestling Islam from the extremists* by Khaled Abou El Fadl, Harper San Francisco, 2005, p.242

²⁹ Medieval Zahiri Jurist IBN HAZM (An 384-456/994-1064 CE), more fully Abu Muhammad 'Ali ibn Ahmad ibn Sa'id ibn Hazm; Muslim theologian and man of letters. Born in Cordova to a rich and influential family, Ibn Hazm received a distinguished education in religious sciences, literature, and poetry

³⁰ Webb, Gisella - *Windows of Faith: Muslim Women Scholar-Activists in North America* p.130

³¹ Sahih Muslim, kitab.ul.hadood, hadees: 4201

Regarding punishment of Harabah we will quote the following Quranic verse.

إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ۚ ذَٰلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ³²

“Those who wage war against Allah and His Messenger, and go about the earth spreading mischief -indeed their recompense is that they either be done to death, or be crucified, or have their hands and feet cut off from the opposite sides or be banished from the land. Such shall be their degradation in this world; and a mighty chastisement lies in store for them in the World to Come.”³²

“Most classical [Islamic] jurists” held that the penalty for moharebeh was crucifixion, cross-amputation (amputation of right hand and left foot) or being banished from the earth.”³³

Conclusion:

A judge can give any of these punishments depending on the severity of the crime and condition of the criminal:

Taqtil (تقتيل): execution that serves a severe warning to others, e.g. stoning

Taslib (تصليب): crucifixion) Amputating limbs from opposite sides

Nafi (نفي): exile

The benefits of this Justice system of Islam are:

1. People will have a fear of these punishments and thus they will abstain from destroying the property and life of another individual.

³² Al-Qura'an, Al-Maieda, 5:33

³³ Muhammad Taqi Usmani - The Islamization of Laws in Pakistan: The Case of Hudud Ordinances

2. This will help in the development of peace in the society and chaos can be avoided.

3. Those involved in murder, apostasy from Islam and adultery can be punished according to the pre-established punishments prescribed by Islam, such people have no right to live in a Muslim society as they are a continuous threat to people living around them.

4. No one will have the courage to violate the human dignity by killing another individual keeping in mind the consequences they will have to face and thus the precious human life can be protected.

5. Years long disputes among the families of the victim and the accused can be avoided if justice is provided to the victim's family by punishing the accused according to Shariah law.

