



Qisas and Diyat: A Critical and Analytical Study of Murder in Criminal and Islamic Law

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Abstract: *Islamic criminal law is not retroactive; it still views murder as a serious offense. Any law's efficacy is established by critical examination and legislation comparison. Philosophers who identify as individualists or collectivists support criminal law because it serves victims' rights and advances society's objectives. Diyat is financial recompense for lawful employment, whereas Qisas is a kind of retaliatory retribution. The only reason why someone should face legal consequences is if they have committed a crime. Punishment is meted out based on the merits of the criminal; justice is an aim in and of itself. According to this study, compared to secular criminal law, Islamic law takes homicide more seriously and provides heirs with more alternatives. Also, the study highlights the shortcomings of the criminal justice system and offers fixes for a trustworthy, equitable, and functional framework.*

Key Words: Criminal Law, Monetary Reparation, Qisas, Diyat, Collectivism, Individualism

Introduction

Qisas is a retributive penalty that grants the power to execute a convicted person for willful murder or harm. Bloodshed in retaliation or recurrence is referred to as qisas. A fair penalty must be given by Qisas to the perpetrator of a deliberate homicide or any other crime that involves serving or harming a body. (Wasti, 2008) On the other hand, diyat is the amount that the perpetrator must pay to the victim's successor as stipulated by law or Shariat. This blood money is a kind of monetary restitution that serves as a substitute for Qisas' punishment. It is a set penalty that can be applied to each person's rights. (Burney, 2018)

There is no essential distinction between Islamic and common law definitions of murder. The definition of murder in common law is the taking of a human life by another human being. (Awwā, 1982) Despite this, murder is classified under Islamic law into five categories: required, advised, allowed, prohibited, and illegal. It falls into two main categories under common law: legal and illegal. If any of the broad exclusions listed

in Chapter 16 of the Penal Code, 1860 apply to murder, then the crime is legal. According to Islamic law, "unlawful homicide" can be classified as (i) purposeful, (ii) quasi-intentional, or (iii) accidental. (Malik, 2002)

The Qisas and Diyat Act's provision of Diyat as payment for murder has developed into a potent tool used by criminals in Pakistan to carry out their murders and escape punishment. The drawback of Diyat as compensation is that it is used to give complete amnesty to convicted felons while also defeating the essential goal of punishment, giving offenders a haven that eventually undermines the criminal justice system. Common law crimes are considered to be against the public as a whole, not against an individual. (Peters, 2006) In contrast, Diyat offenders receive financial burdens as a form of pardon for their horrible acts, which create a negative impression on society and unintentionally encourage rich and habitual offenders. A horrible crime is murder. The Islamic penalty for it is Diyat and Qisas. Its application is guaranteed by the legislation in the form of the Qisas and Diyat Act of

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1997. (Maranlou, 2015) In Pakistan, the crime of murder is explained in detail. According to the Penal Code, murder is considered a crime against the state and is punishable by either life in prison or death. (Renteln, 2019)

A state creates laws and regulations to regulate the system to preserve the harmonious structure of society. The breakdown of society's ability to apply laws and regulations properly can result in the collapse of the whole political system. Therefore, any country should abide by such values for the welfare of its citizens and the advancement of its civilization. (Zia, 2018) These regulations are established by the higher authority and written into the state's laws. Law is essentially a set of regulations that the state creates and its institutions carry out to prevent chaos and safeguard the harmonious social structure. The same method is used by an Islamic state to rule a territory by predetermined rules known as Shariah, or Islamic law. Shariah Law lays out a set of guidelines that address every facet of daily living. It serves as guidance for people to coexist peacefully with the government and one another. (Ali, 2020)

Sources of Islamic law

The Quran and the Sunnah are the primary sources of law in Islam; the Ijma and Qiyas, which are founded on the reasoned analogies of Islamic jurists, are the subsidiary sources. The cornerstones of Islamic law within Muslim communities are the protection of life, religion, property, progeny or individual lineage, and individual intelligence within a community that people live in together. (Bari, 2020) We were born with the inherited right to live in dignity and tranquility, and we are the exclusive property of Allah. According to the established guidelines, anybody who infringes on another person's rights or tries to take any of their property is treated as a criminal. Under Shariah law, there are three primary categories of crime.

Had

These are serious sins with far-reaching consequences for society, and the Quran foretells their penalties. These consist of offenses like robbery, adultery, apostasy, murder, and consuming alcohol, among others. (Bari, 2020)

Tazir

Tazir offenses are less serious. Islamic jurists have the last say on how these crimes should be punished. Since the Quran does not contain its punishments, Islamic jurists are allowed to create rules about them. These

Penalties vary from place to place and fluctuate over time. (Parekh, 2020) Tazir crimes are deeds that have consequences because they violate God's precepts. Shariah prioritizes the community and public interest; hence punishment is only meted out when an individual is endangering the interests of other people. The primary goal of the penalty is to stop a worse wrong from occurring in the future. (James, 2012)

With man at the core of Allah's creation, human life is a priceless gift from the Almighty. Assuming that an offender views human life as worthless, killing one innocent person is equivalent to killing all of humanity. The Quran describes murder as a heinous crime. (Allah states in the Quran.) "QiSaS has been prescribed for you who believe in the case of slain individuals: the female for the female, the slave for the slave, and the freeman (who will be killed) for the freeman. However, if one is partially pardoned by one's brother, the latter has the option to fairly pursue the former (for blood money), and the former must politely pay the latter. That is a kindness and a relief from your Lord. Thus, anyone who violates it will ultimately face a harsh penalty."

Type of Punishments in Islam

In Islam, the forms of punishment include Qisas, Diyah, and Harabah.

Qisas

The Islamic phrase "qisas" implies "eye for eye," "retaliatory justice," or "retaliation in kind or revenge." How this punishment is administered conforms to the Islamic way of life. (Knowles, 2022) The Qisas right is accessible to the injured or deceased victim and their legal representatives in their lawsuit against the offending party. In Islamic law, retaliation is viewed as Qisas because it is considered an act of the same severity and form against the offender, resulting in damage that is equal to but not greater than the harm inflicted upon the victim. (Malekian, 2022)

There are two primary varieties of Qisas. One is retaliation for life for life, while the other is retaliation for internal organs. Offenses against human life fall under the first category, whereas offenses causing injury other than death fall under the second. Anderson claims that Arabs were born with the custom of exacting retribution. Arabs used to treat murder with killing until the Quran's words were revealed. (Maranlou, 2015) The sole distinction was that their retaliation was unrestricted and unreliant on the tribe's popularity, meaning they did not distinguish between the powerful and the weak. With the arrival of

Islam, the idea of Qisas—equitable retaliation—was brought into society. This idea stopped the Arab leaders from carrying on the slaughter that they used to do generation after generation. (Khan, [2004](#))

Diyat

The Arabic term "Diyat" implies "blood money" or "ransom." The notion of Diyah, or monetary recompense made by the guilty to the victim's relatives, was established by the Quran along with the institution of Qisas as a penalty. The Quran introduced the idea of Lex Talionis, which translates to "eye for eye" and "tooth for tooth," in the context of the Arabic practice of retaliation. (James, [2019](#)) The Quran mentions two different kinds of murder: purposeful murder and accidental murder. When someone commits purposeful murder, the Quran prescribes Qisas or Diyat as punishment, if the victim's legal representatives agree to forgo Qisas.

The Harabah

Harabah is the act of rebelling or waging war against the government. Islam describes it as the widespread corruption in the country and the murder of innocent people, which goes against their religious beliefs. The offense is of such a serious nature that it carries harsh penalties. (Malik, [2002](#))

Homicide and its Punishment in Criminal and Islamic Law

The illegal taking of another person's life, or homicide, is a serious crime that is covered under both Islamic and criminal law. These legal systems' differing approaches to homicide are a reflection of their respective cultural, historical, and theological viewpoints. Homicide is classified into different categories under criminal law according to the seriousness of the conduct and the perpetrator's intentions. (Knowles, [2022](#)) For example, manslaughter may be defined by a lack of premeditation or malice aforethought, but first-degree murder usually entails premeditation and deliberation.

Depending on the jurisdiction and the particulars of the case, the penalty for homicide under criminal law might vary from incarceration to the death sentence. While some countries focus on rehabilitation and strive for long-term incarceration, others have adopted the "an eye for an eye" philosophy in the form of the death penalty. (Wasti, [2008](#))

The framework of Sharia, which is drawn from the Quran and the teachings of Prophet Muhammad

(peace be upon him), governs how homicide is dealt with under Islamic law. Different types of homicide are recognized by Islamic law, including purposeful killing (qatl 'amdi) and unintentional killing (qatl khata).

The verse "And do not kill the soul which Allah has forbidden, except by right" (Quran 17:33) expressly forbids taking the life of an innocent person. Islamic law provides a kind of justice and reparation called "Qisas," which enables the victim's family to pursue revenge against the offender. But as a substitute for Qisas, Islam also promotes forgiveness and the acceptance of recompense (diyah). Intention, premeditation, and the existence of mitigating circumstances are some of the considerations that determine how harsh a penalty will be in Islamic law. (Maranlou, [2015](#)) To avert injustices, the death penalty is only used as a last option and is subject to stringent procedural and evidentiary criteria.

It's crucial to remember that various nations and groups may have different interpretations and implementations of Islamic law. While some Islamic nations follow tougher interpretations, others have taken a more forgiving stance on punishment. Furthermore, Islamic and secular laws are frequently incorporated into modern legal systems in many Muslim-majority nations. (Malik, [2002](#)) The goals of the criminal and Islamic legal systems in dealing with homicide are deterrent and justice. While Islamic law stresses concepts like Qisas, forgiveness, and recompense as ways to achieve justice in situations of killing, criminal law uses a variety of sanctions, including the death sentence and imprisonment. Each legal system's guiding ideals and principles—which are influenced by historical, theological, and cultural contexts—are reflected in its attitude to punishment.

The effectiveness of QISAS and DIYAT as punishments in Islamic law

The views of Common Law and Islamic Law on the taking of human life are identical. They both view it as a heinous crime. There is a difference between the two in terms of penalizing the offenders. According to Islamic law, the victim's legal heirs have the option of choosing forgiveness, diyat (blood money), or qisas (just retribution). According to common law, the state has the right to punish offenders or, at its discretion, to forgive them. (Malik, [2002](#))

Objectives of Criminal Law

The administration's support of criminal law is a means to an end, not an end in and of itself. It is impossible to evaluate the virtues of criminal law or to justify the

penalties that are imposed beyond the fact that it is the criminal code of a given institution, nation, state, or religion. The efficacy and determination of criminal law are based on whether or not the legislation accomplishes the necessary aims and objectives of justice. When considering penalties from a conventional standpoint, there are two distinct perspectives to consider.

One uses diverse conceptions of punishment to reduce crime and protect society and its residents, while the other views punishment as a means to a goal in and of itself. The first point of view is that of collective philosophers, who place a greater emphasis on the objectives of society than on the interests of the individual. They contend that the primary purposes of criminal law are to safeguard society from further harm, to improve welfare, and to provide citizens with a sense of security. In these situations, the goal of punishment is to accomplish these goals. The second point of view is seen in the argument made by individualistic philosophers, whose methodology is founded on ethical ideas. In these cases, the goal of the punishment is to treat the offender as an individual rather than as a member of a group. Hegel and Kant, two German philosophers, have similar opinions. According to Kant, penalties are not only meted out by the government for the benefit of society as a whole but are also firmly enforced upon the offender as, in his view, justice is an end in itself, not a means to a goal.

Objectives of Punishments

The goals of punishment serve as a basis for understanding the nature of punishment and its effects on society. Many jurists concur that deterrence, prevention, reformation; restitution, expiation, and retribution are the goals of penalties. The first three theories of punishment aim to prevent further crimes from occurring in society. The purpose of the laws is to safeguard society from criminal activity. In contrast, the other three ideas regard punishment as a means of resolving a dispute through restitution, pardon, and retaliation. The death sentence is a preventative punishment that offers no opportunity for reform. (Khan, 2004) Other forms of mutilation may be seen as retaliation or a deterrent, but there are relatively few reformative or preventative benefits because the perpetrator may conduct more severe acts if forced to do so.

Although it is believed that confinement is a more effective form of prevention, it is incompatible with prompt retaliation. A comparative analysis of the relative relevance of several alternative purposes is necessary before making a final judgment regarding

any law. At that point, we can discuss a law's value and effectiveness. The inherent tension between the interests of real criminals and real victims is one of the key features of the criminal justice system. In that situation, the legislation needs to be designed with the rights of both victims and criminals equally in mind. The victim wants justice and security, while the criminal wants impunity. A philanthropic perspective grounded on a collectivist attitude in this situation would be unfair to the victims and might push us into anarchy, where people would take the law into their own hands and take action against the offenders. It is necessary to approach the conflicting interests of the perpetrators and the victims with wisdom and caution. (Malekian, 2022)

Objectives of Criminal Law in Islam

When putting a rule into reality, Islam maintains an emphasis on identifying the circumstances and circumstances as well as maintaining proportionate balance. Islam demands that the victim's and accused's positions, as well as the position of the society the crime occurred against, be taken into account while crafting laws regarding crimes. (Peters, 2006) Islam places a strong focus on using reason and intellectual argument to determine punishment. *Diyat* and *Qisas* legislation are also evaluated using this standard.

Determining the culpability of an offender is the first step in evaluating the efficacy of Common Law and Islamic Law. Reprimands are not used arbitrarily or in an ad hoc manner. Justice requires us to keep things in proportion, and law concentrates on an unbiased and open analysis of all the contributing elements to a crime as they are crucial elements for any jurist to consider when formulating his decision. When there is uncertainty about the facts, punishment is seen as an error, and it is thought that it is preferable to provide forgiveness rather than punishing someone innocent by mistake.

In such a scenario, each offense that is not shown to be true against the offender until there is a reasonable question about it leads to the assumption that the defendant is the court's favorite kid, and the verdict is rendered in his favor. The legal precept of "Presumption of Innocence," which is generally accepted as the fundamental component of a free and fair trial, is confirmed by these broad guidelines. (Malik, 2002)

Importance of Qisas and Diyat in Criminal Law

The *Qisas* and *Diyat* laws changed the way the criminal justice system was constructed about the murder

offense. Crimes were presumed to be crimes against the state under common law, but in Islamic law, they are presumed to be crimes against both the state and the individual. In this sense, the state's involvement was limited to ensuring the case's safe passage while the courts made their decision. Under Islamic law, the victim had the choice of punishment, but under Common law, the state had that authority. Islam gives victims the free choice to select between Qisas, Diyat, or Forgiveness. (Peters, [2006](#)) The victim or his legal representatives may voluntarily forfeit their right to punishment since it's a Muslim's conviction that God finds compassion to be admirable. Under common law, the punishment for culpable homicide that does not qualify as murder or accidental murder is restricted to a single sentence of imprisonment.

Islamic law suggests blood money as monetary recompense for the victims in cases of unintentional murder, but it does not free the criminal from the sentence of murder for culpable homicide that does not amount to murder based only on immediate, grave provocation. Common law is better aligned with the ideas of collective thinkers who are more focused on the purpose of society as a whole than on the individual. The collectivist approach is centered on the larger welfare of society as a whole and aims to stop crime from occurring via preventative and restorative methods. (Malekian, [2022](#)) On the other hand, Islamic law is founded on equality and prioritizes treating each person as an individual rather than as a commodity while delivering justice to victims in a morally just manner. Islamic law is more effective and efficient since it emphasizes both the individualist and collectivist approaches.

Critical and analytical study of murder in Criminal and Islamic Law

The study critically analyzes the Qisas and Diyat punishment under the Qisas and Diyat Act 1997 and life imprisonment as a punishment under the Pakistan Penal Code 1860. The criminal justice system in Pakistan is based on three major law statutes (Burney, [2018](#)): the Pakistan Penal Code, the Code of Criminal Procedure, and the Qanun-i-Shahadat Order. The Britishers introduced a new form of criminal justice system after they invaded the subcontinent, which was based on collectivist philosophy. Murder was considered a major wrong against the public and a crime against the state. The British leaders relinquished the system in the 19th century, introducing their codes of laws and procedures. (Knowles, [2022](#))

The new law introduced by the Britishers had ambiguities, as it empowered the state and head of the state to grant punishments or pardons, unlike the Islamic law, which empowers the legal heirs of the victim to ask for revenge, blood money, or grand pardon for the sake of God. In common law, the offender is caught and prosecuted against the state on behalf of the whole society, as it is assumed to be the custodian of the rights of others. The history of Islamic law for murder in Pakistan is not laid down by the constitutional assembly of Pakistan. The law related to Qisas and Diyat was debated in Federal Shariat Courts before becoming part of the Pakistan Penal Code and CRPC in 1997 through the Criminal Law Amendment Act, 1997. (Renteln, [2019](#))

Amendments in the Pakistan Panel Code related to Qisas and Diyat

The Pakistan Penal Code (PPC) introduced changes regarding murder and severe body injuries, allowing victims or legal heirs to forgive offenders for monetary compensation, such as blood money or forgiveness for free. (Maranlou, [2015](#)) This change divided the opinion of judges of the Supreme Court of Pakistan, who debated whether the prosecution and punishment of an offender were demolished if they were forgiven by the victim's legal heirs in case of murder or whether the punishment was forgiven while the prosecution continued.

The new law allows the family of the victim to enter into a compromise with the culprit under sections 309 and 310 of the PPC. In the former section, the victim can forgive the offender for the sake of Allah without giving Diyat, while in the latter section, the legal heirs can set free the offender after receiving monetary compensation in the form of blood money known as Diyat. (Malekian, [2022](#)) Qisas is a punishment of inflicting an equal amount of hurt to the same part of the body of the culprit or a death sentence for the murder. Judicial reviews on the application of Qisas and Diyat Law in Pakistan have been divided, with some judges arguing that the prosecution and punishment are abandoned if the offender is pardoned by the victim's legal heirs, while others argue that only the punishment is abandoned while the prosecution continues. (Maranlou, [2015](#))

Conclusion

After carefully examining every aspect of the legislation, it can be concluded that, in Pakistan, if someone is found to have killed someone on purpose

and there is proof of the crime, the accused will be held accountable and given the appropriate sentence. Threatening the victim's family with death is one way to utilize one's institutional, governmental, or other authority to get them to forgive them in the meantime. For the exchange of money, one can also ask for pardon. The criminal is not punished for his offense at that time if he receives a pardon. In these kinds of situations, it is easy to find a way out of a murder conviction. Under the new legislation of Pakistan, this is indeed the situation in the majority of cases (Khan, [2004](#)).

Qisas and Diyat can only be avoided in two situations. One is in a court of law under the Anti-Terrorism Law, where the offense is prosecuted as a crime against the state and there is minimal chance of a private settlement. A further instance is the prosecution of the perpetrator for mischief against the public under section 311 of the Pakistan Penal Code. But there hasn't been much usage of these two possibilities. Pakistan's Qisas and Diyat laws are insufficient. It

creates the appearance of a rule that allows society's wealthiest members to easily avoid taking responsibility for any offense.

Regardless of the lawmakers' intentions when they drafted the Qisas and Diyat laws, it is evident from their actual application that the nation has a dualistic legal system in which the wealthy may readily evade punishment while the impoverished face the full weight of the law. The irony that the law treats the rich and the underprivileged differently has become commonplace to us. Many Muslims in Pakistan think that although Qisas and Diyat legislation are Islamic principles intended for the greater welfare of society, they are delicate matters. (Bari, [2020](#)) That is accurate, but the ideals of fairness and fair play in law serve a larger purpose. Islamic law does more than only offer a framework for the wealthy and powerful to be free to act whatever they like. Because of this, it is seen to be an unfair law that encourages injustice. The legislation needs to be revised and put into effect in a way that prevents further exploitation. (Khan, [2004](#))

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