

The Rulings of Homicide and Retribution (Qisas) in the Islamic Penal System: A Comparative Jurisprudential Study

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(Received 12 December 2025; Revised 20 January 2026, Accepted 02 February 2026; Available online 27 February 2026)

Abstract - Islamic Sharia is the final of the divine legislations; it is neither confined to a specific time nor restricted to a particular nation, but rather intended for all humankind, as Allah Almighty says: “And We have not sent you except to all mankind...” (Saba’ 34:28). In essence, Sharia is a divine law for humanity, and it is incumbent upon humankind to apply its rulings. God has granted this community distinguished jurists endowed with knowledge and piety who have devoted themselves to preserving the Sharia, deriving from its text’s fundamental principles and legal rulings that ensure the protection of human life from transgression and aggression. Hence, it has established laws and rulings that oblige the killer to face legitimate retribution (qisas) for his crime. The science of jurisprudence (fiqh) has thus been dedicated to legislating rulings for every aspect of human life. It has developed into various branches: acts of worship, which regulate the individual’s relationship with his Creator; transactions, which govern interpersonal relations through contracts and obligations; and hudud and diyat, which regulate society by imposing punishments on those who violate divine prohibitions. This reflects the precision, comprehensiveness, and distinctiveness of Islamic jurisprudence in establishing justice and ensuring a stable life free from violations against life and rights, alongside other related matters.

Keywords: The Holy Qur’an, Islamic Sharia, Islamic Schools of Law, Homicide, Retribution (Qisas), Punishment, Pardon, Diyat (Blood Money)

I. INTRODUCTION

All praise be to Allah, the Lord of the Worlds, and peace and blessings be upon the trustworthy Prophet Muhammad, his pure and virtuous Household, and his chosen Companions. Unjustified homicide is among the most detested crimes in the sight of Islamic Sharia, for it undermines the security of society and destroys its stability (Al Ansari, 1415 AH; Neghad, 2014). For this reason, Islam has devoted great attention to it and sternly warned against it, to the extent that it equates the killing of one innocent person with the killing of all humankind. As Allah the Exalted says: “Whoever kills a soul unless for a soul or for corruption in the land it is as if he had slain mankind entirely”.

Islamic Sharia, therefore, has established laws and regulations to ensure a stable and secure life and a peaceful society founded on the principles of safety and reassurance, where there is no room for transgression against lives or

rights (Abu al Barakat, 1201 AH; Nasirian & Tahami, 2019). It has legislated principles and rulings that preserve and protect souls from aggression. This reflects the precision, comprehensiveness, and pursuit of justice inherent in Islamic jurisprudence (Karimov et al., 2025; Karimizadeh & Abolghasemi, 2014).

Significance of the Topic

The scientific and practical importance of this topic lies in the fact that the human right to life is among the most sacred, far-reaching, and comprehensive of all rights. Sharia strictly prohibits any transgression against it by unjustly taking a life that Allah has made inviolable except by right. The great emphasis placed on the sanctity of human life confirms that the ultimate aim is to protect and preserve it from wrongful aggression, thereby ensuring security and stability for both the individual and society.

Reasons for Choosing the Topic

Unlawful killing is one of the gravest crimes and most heinous sins that cannot be forgiven. The troubling reality is that such crimes occur even within contemporary Muslim societies and have become widespread, as frequently seen across social media. Some parents kill their own children without mercy and at times the reverse occurs as well as cases among spouses and others. These crimes have led many to question the nature of divine punishment and retribution. For this reason, this topic has been chosen to study the rulings of homicide and qisas (retribution) in Islamic law, in order to clarify the Sharia-based judgment and the punishment prescribed for the crime of murder reflecting the justice of Islamic legislation.

Research Hypothesis

The sanctity of human life and the prohibition of unjustly taking it necessitate that punishment in Islam achieves justice while safeguarding moral virtue. The higher aim (maqсад) of Islamic law is the protection of ethical virtue that regulates human behavior. Thus, for retribution (qisas) to fulfill its purpose, it must deter people from committing crimes before they occur; if a crime is committed, it should prevent the offender from repeating it, and serve as a warning to others

who might contemplate such acts. Therefore, there must be equivalence between the act and the punishment that the killer be dealt with in the same manner as he acted in his crime.

Research Objectives

The study aims to elucidate the jurisprudential concepts of homicide as a form of transgression against one of the five essential necessities namely, the unlawful taking of a protected life and to demonstrate that Islamic legislation has not left any incident unaddressed, assigning a ruling even for the slightest injury.

Methodology

The study adopts a comparative approach by consulting original jurisprudential sources and reliable references, verifying the attribution of opinions to their authors, and comparing points of consensus and divergence among jurists. The preferred opinions are identified when evident. The historical development of juristic thought is also considered, beginning with the Imami (Shi'i) jurists, followed by the Hanafi, Maliki, Shafi'i, and finally Hanbali schools. This represents the extent of the researcher's effort, and success is granted only by Allah.

Research Structure

The study consists of an introduction, four main sections, a conclusion, and research findings, followed by a list of references and sources.

- The first section explains the key terms of the title and the types of homicide, divided into two subsections.
- The second section discusses the forms and applications of homicide according to jurists of the Islamic schools of law.
- The third section, comprising three subsections, clarifies the concept of qisas, its legal justifications, and the notion of pardon in retribution.
- The fourth and final section contains two subsections addressing the rulings of qisas in homicide, the valuation of diyat (blood money), and practical cases that encompass various rulings related to homicide and retribution.

In the conclusion, the researcher presents the main findings of the study results believed to possess academic value derived from thorough analysis and examination. To ensure the scholarly reliability of the study, the most authoritative and verified sources and references have been consulted. Allah is the ultimate source of success.

1.1 Section One Homicide: Its Concept, Punishments, and Types

Unlawful killing (qatl bi-ghayr haqq) is regarded in Islamic Sharia as one of the gravest major sins, for which Allah has promised the most severe punishment. To explain this matter, the present section is divided into two main parts, as follows:

1.2 Part One: The Concept of Homicide in Language and Legal Terminology

There is no doubt that the issue of homicide is among the jurisprudential matters to which Islamic law has given considerable attention, as it directly relates to the human right to life. To define the terms mentioned in the title, we must first examine the linguistic and juristic meanings of the term qatl (killing), as outlined below:

1.1.1 First: The Linguistic Meaning of "Killing"

To clarify the linguistic meaning of qatl, one must return to the classical Arabic lexicons.

Al-Jawhari defines qatl as taking a life, explaining that the expression zahaqat nafsuhu (زَهَقَتْ نَفْسَهُ) means "his soul departed," or "his life ended" (Al-Jawhari, 1407 AH). The term muzhiq denotes "the killer," while muzhaq refers to "the one killed." The root zahuq signifies "departing with difficulty," and izhaq al-nafs means "killing it."

Ibn Manẓūr writes: "Qatala-hu yaqtuluhu qatlan" "he killed him" as the standard expression for killing (Ibn Manẓūr, 1405 AH).

Similarly, qatl has been defined as "any act that results in the taking of life".

It is therefore clear that death (mawt) is a broader concept than killing, since killing represents only one of its causes, whereas natural death (hatf al-anf) refers to death without external intervention.

1.1.2 Second: The Juridical Definition of "Killing"

In the juristic terminology of the Imami (Shi'i) scholars, qatl is defined as the taking of a protected soul (Al-Shahid al-Thani, 1398 AH); (Al-Najafi, 1365 Sh). It applies to the act of causing the departure of the human soul from the body, as the soul is attached to and governs the body in all its functions.

As for the jurists of the other Islamic schools of law, they describe killing as causing the outflow of the soul. When defining intentional homicide (qatl 'amd), they say, "He strikes him until his soul flows out" (Al-Buhuti, 1418 AH).

From the above, it becomes evident that the outflow of the soul and the taking of the spirit convey the same meaning. The expressions ifadat al-nafs and izhaq al-ruh are synonymous, as both refer to the departure of the life-giving essence (ruh or nafs) from the body, resulting in the cessation of life. The linguistic root of both ifadah (outpouring) and

izhaq (departure) denotes the act of leaving or exiting. Thus, there is no substantial difference between the Imami jurists, who use *izhaq al-ruh*, and the jurists of other schools, who use *tafiḍ nafsuḥu* both expressions denote the same act of causing the soul to leave the body.

1.1.3 Third: Punishment

The concept of ‘*uqubah* (punishment) is neither new nor alien to human life. It is an inherent aspect of human existence, instituted by Allah since the creation of humankind, as illustrated in the story of Prophet Adam (peace be upon him). The principle of punishment is intimately tied to human survival, moral discipline, and the preservation of social stability.

This principle is clearly established in the Qur’anic verse:

“And there is for you in retribution (*qisas*) life, O people of understanding”.

This divine statement encapsulates the philosophy of retribution in Islam that the establishment of justice and lawful punishment preserves life, deters crime, and sustains the moral and social order of the community.

First: The Nature of Punishment in Linguistic Usage

In Arabic, ‘*uqubah* (punishment) is derived from ‘*iqab*, meaning retribution or requital. Al-Jawhari defines it as “I punished him (‘*aqabtuḥu*) for his sin”. Ibn Faris explains that the term is called ‘*uqubah* because it follows and comes after the offense—it is a response that succeeds the wrongdoing (Ibn Faris, 1404 AH).

Al-Raghib al-Asfahani states that ‘*uqubah* and *mu‘aqabah* denote torment or chastisement (Al-Raghib al-Isfahani, 1421 AH), as in the Qur’anic verse:

“And whoever retaliates with the like of that with which he was afflicted, and then is wronged, Allah will surely aid him”.

Hence, the linguistic sense of ‘*uqubah* implies a deferred consequence or penalty that befalls a person as a result of a wrongful act.

Second: The Juridical Definition of Punishment in Islamic Law

The term *hadd* (penal limit) linguistically means prevention. In jurisprudence, ‘*uqubah* refers to the penalty prescribed by the sacred Lawgiver (*al-shari‘al-muqaddas*) and made obligatory upon the transgressor who commits a specific sin, such as homicide or other grave offenses. The *hadd* thus represents a divinely determined punishment one whose measure has been set by revelation (Al-Sabzawari, 1413 AH); (Mughniyah, 1421 AH; Al-Ansari, 1415 AH).

It follows that punishment in Islamic law is a divinely sanctioned response applied to those who commit crimes whether it takes the form of *hadd* or *qisas* (retributive justice)

as explicitly determined by Sharia, or *ta‘zir* (discretionary punishment) as determined by the legitimate authority (*al-hakim al-shar‘i*). In all cases, punishment serves as a consequence and deterrent arising from the commission of wrongful acts.

1.2 Part Two: Types of Homicide

Jurists have differed regarding the classification of homicide in Islamic law. Some hold that it is divided into two categories, others into three, four, or even five. The main opinions are as follows:

1.2.1 First Classification: Three Types of Homicide

The Imami (Shi‘i) jurists divide homicide into three categories: intentional (‘*amd*), quasi-intentional (*shibh al-‘amd*), and pure mistake (Al-Tusi, 1387 AH; Al-Najafi, 1365 Sh).

This same view is adopted by Shafi‘i jurists (Al-Shirbini, 1377 AH).

- **Intentional Homicide (*al-qatl al-‘amd*)** It is defined as “the deliberate act of a sane, mature person to kill intentionally” (Ibn al-Barraj, 1406 AH; Al-Muhaqqiq al-Hilli, 1409 AH). The apparent meaning is that the perpetrator intends both the act and the killing, using an instrument that ordinarily causes death, such as stabbing with a knife, shooting, burning, throwing the victim from a height, or poisoning—acts which customarily lead to death. Imam al-Sadiq (peace be upon him) said: “Intentional killing is when a person deliberately strikes another with iron, a stone, or a stick, or pushes him with force this is all considered intentional killing.” (Al-Hurr al-‘Amili, 1403 AH)
- **Jurists agree that whoever beats another severely, causing death, is guilty of intentional homicide, even if he did not specifically intend to kill, because intentionally performing a lethal act constitutes intent to kill** (Al-Shahid al-Thani, 1398 AH; Ibn Qudamah, 993 AH).
- **Quasi-Intentional Homicide (*shibh al-‘amd*)** This occurs when a person deliberately commits an act not usually fatal but death results without an intention to kill, such as striking another for discipline or in jest, or through medical treatment that inadvertently causes death (Al-Najafi, 1365 Sh).
- **Pure Mistake (*khata’ mahḍ*)** This refers to cases where the act and intent are both unintentional, as when a person shoots at a bird but accidentally kills a human being (Al-Najafi, 1365 Sh). This is supported by the narration of Abu al-‘Abbas and Zurarah from Imam al-Sadiq (peace be upon him):

“Intentional killing is when one deliberately kills with something that normally causes death. Mistake (*khata’*) is when one strikes intentionally but not to kill, using something that does not normally cause death. And the undeniable

mistake is when one aims at something else and accidentally hits the victim.”

Al-Hurr al-‘Amili, 1403 AH.

Another sound narration from Abu al-‘Abbas states:

“I asked Imam al-Sadiq (peace be upon him): I throw something that is not usually lethal. He said: That is mistake. Then he took a small stone and threw it, saying: If you aim at a sheep and strike a man instead, this is the undeniable mistake; while intentional killing is when one uses something that is ordinarily lethal.”

1.2.2 Second Classification: The Hanafi View

Hanafi jurists classify homicide into four types:

- Pure intentional killing (‘amd mahd),
- Quasi-intentional killing,
- Pure mistake (khata’ mahd), and
- Killing that resembles mistake (ma kana fi ma’na al-khata’; Al-Kasani, 1409 AH).

Meanwhile, the author of Al-Hidayah adds a fifth type: indirect killing (bi-sabab)—that is, homicide resulting from indirect causation (Al-Sarakhsi, 1406 AH).

They stipulate that for intentional killing, the act must be committed upon a living human being, resulting in the removal of life. If the instrument used is typically lethal, such as a sword or firearm, the killing is deemed intentional according to Abu Hanifah.

They cite the Prophet’s (pbuh) saying:

“Every killing is by mistake except the one committed with a sword, and in every mistaken killing there is blood money (diyah).”

The rationale is that when a weapon or deadly instrument is used, the killing is by definition intentional, as illustrated by the Prophet’s example of the sword.

1.2.3 Third Classification: The Maliki View

Maliki jurists recognize only two types of homicide: intentional and mistaken. Sahnun relates from Ibn al-Qasim that Imam Malik denied the existence of quasi-intentional killing, saying: “It is either intentional or mistaken I know nothing called quasi-intentional.” They define intentional homicide as when the perpetrator deliberately strikes the victim intending to kill him whether with a gun, stone, or similar means. However, certain cases are exempt from qisas, such as when two men wrestle or play and one accidentally kills the other; in such cases, the blood money is due upon the offender’s family (‘aqilah). But if the act is deliberate and not in play, qisas applies (Ibn ‘Abd al-Barr, 1412 AH). From this, it may be concluded that Maliki jurists define intentional homicide as an act in which the perpetrator intends both the

action and its lethal result, whereas cases involving playfulness or non-lethal intent fall under quasi-intentional killing.

Preferred Opinion

The most accurate view is that homicide falls into three types, as held by the Imami jurists and those among the other schools who concur with them. This is because the authoritative textual evidence limits the legal rulings and punishments for homicide in Islamic law to these three categories.

It is also clear that the defining principle of homicide in general and of intentional killing in particular is that it occurs when the perpetrator intentionally strikes the victim with the intent to kill, using an instrument that commonly or even rarely causes death. If the necessary conditions are met, qisas (retribution) applies, ensuring that justice is served and blood is not shed without right.

Killing by Causation (al-Qatl bi-l-Tasabbub)

Homicide is not confined to direct killing (mubasharah) by the perpetrator; it may also occur through indirect causation (tasabbub), where the end result death is the same, and qisas is still applicable.

1. Linguistic Definition of “Causation” The verb tasabbaba means to seek a cause or means. A sabab (cause) is “anything by which one reaches something else” (Al-Jawhari, 1407 AH). Ibn Manzur defines sabab as “everything through which one attains another thing,” and adds: “Every means by which something else is attained is a cause (sabab)” (Ibn Manzur, 1405 AH).
2. Juridical Definition of “Causation” In jurisprudence, sabab is defined as “any apparent, ascertainable condition which serves as a basis for the establishment of a legal ruling, such that the existence of the ruling depends on it, and its absence negates the ruling.” The cause may be an act, such as the killing of a protected soul, which is particularly relevant to the subject of this study.

Al-Buhuti defines it as “that whose existence necessitates the existence of another thing, and whose absence necessitates its absence, by its very nature” (Al-Buhuti, 1418 AH).

It follows, therefore, that cause refers to anything that contributes to death, whether directly or indirectly, even if it does not itself constitute the immediate act of killing.

II. SECTION TWO: FORMS OF HOMICIDE AND THEIR APPLICATIONS ACCORDING TO THE JURISTS OF THE ISLAMIC SCHOOLS OF LAW

Intentional homicide (al-qatl al-‘amd) may occur through direct action, such as slaughtering, strangling, stabbing with a sword or knife, or any similar act that constitutes a direct

and immediate cause of death according to custom. In such cases, qisas (retribution) is due.

It may also occur through indirect causation, wherein the killer brings about death by means of a secondary cause. Jurists of the Imami (Shi'i) school have discussed several such cases, and jurists from other Islamic schools have addressed comparable instances that correspond to the Imami classifications, as follows:

2.1 First Form: Killing with a Sharp Instrument

This refers to when the perpetrator strikes the victim with a sharp instrument that is, an object that cuts or pierces the body. Such instruments are generally considered lethal or designed for killing, such as knives, swords, or firearms, as well as other weapons capable of penetrating or disintegrating bodily tissue.

The Imami jurists hold that if any of these instruments are used, the act constitutes intentional homicide, whether or not the killer explicitly intended death from the outset. Their reasoning is based on the divine statement: "...And whoever is killed wrongfully, We have given his heir authority [to demand retribution] ...".

Interpretation:

This verse affirms that when a person is killed unjustly and without right, Allah grants the heir (wali al-dam) of the victim the authority to demand qisas (retribution). Further evidence is found in the authentic narration of al-Faql ibn 'Abd al-Malik, from Imam al-Sadiq (peace be upon him), who said: "If a man strikes another with an iron instrument, that is intentional killing."

Al-Saduq, 1415 AH; Al-Burujirdi, 1399 AH

Sayyid al-Khu'i, commenting on this narration, notes: "It indicates that striking with iron normally results in death, and thus is classified as intentional homicide, even if the striker did not initially intend to kill." (Al-Khu'i, 1413 AH; Al-Muhaqqiq al-Ardabili, 1985). The jurists of the four Sunni schools of law agree with the Imami jurists that killing with a sharp instrument constitutes intentional homicide and warrants qisas (retribution), since all the legal elements of the crime are fulfilled. This consensus is affirmed in the works of: (Al-Sarakhsi, 1406 AH; Ibn 'Abd al-Barr, 1412 AH), and (Ibn Qudamah, 1985).

2.2 Second Form: Killing with a Heavy (Non-Sharp) Object

This refers to using an instrument that does not cut or pierce—such as a club or a stone. Imami jurists stipulate repetition and persistence when there is no prior intent to kill: if the assailant repeatedly and continuously strikes with a heavy object, intentional homicide is established by virtue of that repetition. If, however, the assailant intended to kill, the act constitutes intentional killing even without continued blows.

Al-Sayyid al-Sabzawari explains: if one keeps striking with an instrument until the victim dies; or strikes with such severity that the victim cannot physically bear it and dies; or the victim cannot tolerate the strike at all due to a particular condition and dies from the very first blow all of these are intentional homicide, for the intent to kill is deemed present by customary judgment. Conversely, if one hits with a light twig or tosses a small pebble and death accidentally occurs, qisas is not established (Al-Sabzawari, 1413 AH; Al-Tusi, 1387 AH).

The Maliki, Shafi'i, and Hanbali jurists concur with the Imami position that killing by a heavy object is intentional and entails qisas. Their evidence includes the verse: "...And whoever is killed wrongfully We have given his heir authority [to demand retribution] ...". Al-Muhaqqiq al-Ardabili comments that this establishes the heir's authority to exact qisas where killing occurs unjustly and without lawful cause (Al-Muhaqqiq al-Ardabili, 993 AH).

By contrast, Abu Hanifah classifies such killing as quasi-intentional and not subject to qisas (Al-Kasani, 1409 AH). He adduces the Prophet's (pbuh) statement: "Indeed, in intentional killing that is like mistake is the one killed by a whip, a stick, or a stone its ruling is one hundred camels [as blood money]." (Al-Nasa'i, 1385 AH). The point of inference is that the whip, stick, and stone are placed in the category of intentional-like mistake, which entails diyah rather than qisas.

2.3 Third Form: Killing by Strangulation

This consists in obstructing the victim's breath by any means hanging with a rope, choking with the hands or a cord, smothering with a pillow, or covering the mouth and nose. Among Imami jurists, strangulation is considered something that ordinarily causes death and therefore establishes intentional homicide.

Sayyid al-Khu'i states: if one strangles another with a rope and does not loosen it until he dies ... such cases and their likes fall under intentional killing. The criterion for intentional homicide is committing an act intended to kill or one that typically results in death, and this is met in all such scenarios.

Al-Sabzawari adds: if he strangles him with a rope and does not lift it until he dies ... or uses other means that lead to the same result, all of this is intentional homicide warranting qisas. It makes no difference whether death occurs immediately or after an interval so long as it is attributable to the act; strangulation remains a paradigm of intentional killing (Al-Sabzawari, 1413 AH; cf. al-Shahid al-Awwal, Al-Lum'ah al-Dimashqiyyah, §2348).

Shafi'i and Hanbali jurists differentiate: if the duration of strangulation is such that people normally die from it, it is intentional killing; if the duration is brief such that people do not normally die, it is quasi-intentional (Al-Nawawi, 1990; Ibn Qudamah, 1985).

Malikis deem strangulation intentional in all cases since they recognize only intentional and mistaken killing: Hanafis classify strangulation as quasi-intentional in all cases (Al-Kasani, 1409 AH; Al-Qadiri al-Hanafi, 1418 AH).

2.4 Fourth Form: Killing by Poison

If the perpetrator performs an act that ordinarily causes death for example, giving the victim poison to drink or feeding him a lethal substance and the victim dies as a result, this is intentional homicide warranting qisas (Al-Muhaqqiq al-Hilli, 1409 AH, provided the substance is of a kind that normally kills. Imami jurists distinguish the victim's knowledge or ignorance of the poison and whether the poison is ordinarily lethal.

The cases can be set out as follows:

- The poison ordinarily kills, and the eater knows this and is discerning: intentional killing is established, for the eater aided his own death.
- The poison ordinarily kills, and the victim, being discerning, consumes it unknowingly: intentional killing is established against the poisoner.
- The poison ordinarily kills, and the victim knows this but is a small, non-discerning child: intentional killing is established against the poisoner.
- The poison ordinarily kills, and the victim is a small, non-discerning child who does not know: intentional killing is likewise established against the poisoner.

Sayyid al-Khu'i states: if one deliberately feeds another poisoned food that ordinarily kills, then if the eater knew the state of the food and was discerning yet chose to eat and died, he is deemed to have aided his own death and there is no qisas or diyah upon the feeder. But if the eater did not know, or was not discerning, and died, then qisas is due upon the feeder whether or not he intended to kill by it (Al-Khu'i, 1413 AH).

Apparently, a victim's ignorance of the poison is a prime example of intentional killing by causation. Imami jurists thus hold that administering a lethal poison entails qisas, regardless of explicit homicidal intent. Malikis similarly regard poisoning as intentional killing unless the victim knew (Ibn 'Abd al-Barr, 1412 AH). Shafi'is and Hanbalis differentiate based on whether the victim is discerning and whether the poison is ordinarily lethal (Ibn Qudamah, 1985). Hanafis generally do not treat it as intentional killing and instead impose ta'zir (Al-Kasani, 1409 AH).

Preferred view: the Imami position (and those who agree with it) that poisoning is intentional homicide warranting qisas, as it accords with the majority of jurists and reflects the reality of deliberateness.

2.5 Fifth Form: Drowning and Burning

Drowning (ighraq): casting a person into water river, sea, or the like where drowning ordinarily occurs, or casting him

with intent to kill such that, for example, a fish or shark consumes him before he reaches shore. Qisas is due, for throwing into the sea is customarily destructive, whether or not the victim is actually swallowed (Al-Muhaqqiq al-Hilli, 1409 AH).

Burning (ihraq): casting a person into fire, great or small. Imami jurists distinguish both cases based on the victim's ability to escape. Al-Sabzawari states: if he throws him into fire or into the sea and renders him unable to escape until he dies or prevents him from escaping then the killer is killed in retaliation. The upshot is that intentional homicide is established where the perpetrator disables or prevents escape; if the victim could escape and was not prevented, intentional killing is not established.

Imami jurists further state: if the victim could have saved himself but did not, the perpetrator is not deemed an intentional killer. Shafi'is and Hanbalis agree with this detail: it is intentional if escape is impossible; if escape is possible, the killer is not treated as fully intentional (Al-Bakri al-Dimyati, 1418 AH; Ibn Qudamah, 1985).

Hanafis consider burning intentional if it ordinarily kills; drowning, however, they treat as quasi-intentional. Al-Qadiri al-Hanafi writes: if he throws him from a mountain or a roof, or drowns him in water, or strangles him until he dies, this is quasi-intentional.

Malikis regard these acts as intentional killing whether or not escape was possible. Ibn 'Abd al-Barr summarizes Malik's view: if he kills with a stick, a stone, fire, or by drowning, he is killed in the same manner (Ibn 'Abd al-Barr, 1412 AH) Malik said: "He is killed as he killed".

2.6 Sixth Form: Perjured Testimony Leading to Execution

If a person testifies before a judge that someone apostatized, or committed adultery while muhsan, or the like, and the court carries out the capital sentence, and it is later established that the witnesses lied, then such testimony constitutes intentional homicide and qisas is taken from the perjured witness (al-Shahid al-Awwal, Al-Lum'ah al-Dimashqiyyah, §249).

If the judge knowingly issues an unjust death sentence while aware of the forgery, and directly causes the execution, he is considered an intentional killer without right. Likewise, if the wali al-dam executes the condemned person while knowing he is innocent, he is an intentional killer.

Al-Sabzawari states: intentional homicide encompasses both direct action (mubasharah) and indirect causation (tasabbub) by any destructive means, since the subject of intentionality is realized in both by customary judgment; hence the general evidences apply (Ibn Fahd al-Hilli, 1407 AH). He further cites the reliable report of Ibn Mahbub from Imam al-Sadiq ('a): in the case of four witnesses who testified that a muhsan man committed adultery, and after the man was executed one of them recanted if the recanter says "I erred," he is flogged

and must pay the diyah; if he says “I deliberately lied,” he is killed (Al-Hurr al-‘Amili, 1403 AH). Al-Sabzawari adds: if the heir (wali) knew the testimony was false yet proceeded to carry out qisas, qisas is taken from him and the false witnesses are disciplined (ta‘zir).

Jurists of the four Sunni schools concur with the Imami position that the false witness in such a case is an intentional killer (Ibn Qudamah, 1985). Abu Hanifah, however, holds that neither qisas applies to the witness nor to the judge or the wali al-dam (Al-Sarakhsi, 1406 AH).

Preferred view: the position of the majority that wherever the causal chain to death is realized with homicidal intent and death actually ensues, qisas is warranted.

2.6 Conclusion of the Section

With the exception of lawful combat in jihad for the sake of Allah, the Noble Qur’an treats unlawful killing as a grave, cardinal crime warranting the severest warning. It equates the killing of a single soul with killing all humankind:

“Whoever kills a soul unless for a soul or for corruption in the land it is as if he has slain mankind entirely.”

And He says:

“...Whoever kills a believer intentionally his recompense is Hell, abiding therein; Allah’s wrath is upon him, and He has cursed him and prepared for him a great punishment.”

In emphatic corroboration, the Sunnah warns with utmost severity. The Prophet (pbuh) said: “The destruction of the world is lighter upon Allah than the killing of a believer.” And from Abu ‘Abd Allah (‘a): “Whoever assists in killing a believer even with half a word will come on the Day of Resurrection with ‘Desperate of My Mercy’ written between his eyes.” (Al-Burujirdi, 1399 AH).

Because human blood is inviolable and sacrosanct, any unlawful assault upon it entails retribution; qisas is the penalty for blood, and punishment must correspond to the gravity of the crime. The detailed rules and gradations of this proportionality are clarified in the subsequent discussion, God willing.

III. SECTION THREE AL-QISAS: CONCEPT, SCRIPTURAL PROOFS, AND PARDON OF THE KILLER

The subject of qisas (retributive justice) is of great importance, for it reflects the Sharia’s concern with setting penalties that deter crimes among those who violate divine law. The nature of punishment varies according to the nature and type of the offense committed.

3.1 First Topic: Qisas in Language and Legal Usage; The Lawfulness of Qisas

Islam instituted the legislation of qisas, which is grounded in equivalence between the crime and its punishment. The

offenses to which qisas applies are primarily blood offenses homicide and the like.

1) Linguistic meaning:

Qisas denotes equivalence, i.e., punishing the offender in the same manner as he committed the offense. Ibn Faris notes that the roots qaf–sad indicate “following a trace,” from which qisas in bodily injuries is derived: the offender is made to suffer what he originally inflicted, as though his trace were followed back to him.

Qisas is also glossed as qudud (retaliation), meaning “a life for a life” or “a wound for a wound.” Al-iqtisas means the taking of qisas: “I exacted retaliation for so-and-so from so-and-so,” i.e., he was wounded as he had wounded, or he was killed in retaliation.

2) Juridical definition:

Classical Imami jurists define qisas by highlighting its cause: it is the enforcement of the effect of an injury killing, cutting, or wounding upon the perpetrator. Others state: it is “matching the crime with its like,” which may pertain to life or to limbs/wounds. Thus, qisas is the punishment of the crime by its equivalent in life and bodily injuries, in order to deter crime at its root.

In sum, qisas means enforcing upon the offender an equivalent consequence to the offense committed; in this context, it denotes retaliatory execution (al-quwd).

It appears that jurists of the Sunni schools generally did not offer a technical definition distinct from the linguistic sense; rather, they focused on the grounds that trigger qisas. Broadly, their conceptualization aligns with the linguistic meaning.

3.2 Second Topic: Proofs for the Lawfulness of Qisas

Jurists establish the lawfulness of qisas by appeal to the Qur’an, the Sunnah, and consensus.

A) Evidence from the Noble Qur’an Qisas is mentioned in several verses, among them:

“And there is for you in retribution (qisas) life, O people of understanding, so that you may become God-wary.” Qisas deters killing; deterrence prevents bloodshed, and the absence of killing is life. As the Arabic maxim says, “Killing is the most deterrent of killing.” Thus, although qisas appears outwardly as taking life, in reality it preserves life. “And whoever is killed wrongfully We have certainly granted his heir authority; so let him not exceed limits in killing. Indeed, he is supported.” Granting “authority” to the heir (wali al-dam) means empowering him by law to seek qisas from the killer, or to accept diyah (blood money), or to pardon. He must not “exceed limits” by killing anyone other than the killer, or more than one person; he is supported by the law when acting within these bounds. “And if you punish, then punish with the like of that with which you were afflicted ...”

This verse obligates equivalence in retaliation and does not permit the victim or his heir to exceed what the offender did. “O you who believe! Prescribed for you is qisas in cases of killing: the free for the free, the slave for the slave, and the female for the female. But whoever is pardoned in any respect by his brother, then there should be a suitable follow-up and payment to him with good conduct.” That is, qisas equivalence is mandated in cases of homicide: to do to the killer what he did to the victim, matching the crime. The verse also affirms that qisas is the right of the heirs of the victim; if they wish, they may pardon and take diyah, or waive it altogether. After pardon and acceptance of diyah, neither side may then kill the offender. This verse lays down the general framework: qisas is not vengeance but a means to secure life in society. Without qisas, emboldened killers would endanger lives and homicide rates would rise; by the same token, qisas protects even the would be killer by powerfully deterring him from the crime. Thus, qisas preserves communal life, while diyah provides a merciful alternative conditioned by justice. Remarkably, the verse calls the killer the victim’s “brother,” indicating that homicide does not sever the broader bond of human fraternity.

B) Evidence from the Prophetic Sunnah Numerous reports explicitly or implicitly affirm the legitimacy of qisas. Among them: The Prophet (pbuh) said regarding a case: “O Anas, the Book of Allah [prescribes] qisas.” The parties then agreed to accept arsh (monetary compensation). The Prophet (pbuh) said: “Among the servants of Allah are those who, if they swear an oath, Allah fulfills it.” He (pbuh) said: “The most insolent against Allah is the one who kills a person other than his killer, and the one who strikes other than the one who struck him.” The implication is that killing the actual killer by the hand of the heir is lawful, whereas exceeding that is insolence. He (pbuh) said: “If the tribes of Rabi’ah and Muḍar were to unite in killing a Muslim, they would be retaliated for by him.” These traditions show the Sharia’s special care for safeguarding human blood and justify the legislation of qisas to prevent bloodshed.

C) Consensus (Ijma’) There is no disagreement among the Muslim community regarding the legitimacy of qisas. Jurists of all schools report the consensus of the ummah that qisas is prescribed by the Sharia. From the foregoing, it is evident that the lawfulness of qisas in Islam is firmly established by scriptural texts Qur’an and Sunnah and by the consensus of the jurists. Pardon of the Killer (Al ‘Afw ‘an al Qatil) The Islamic Sharia, while granting the wali al dam (heir of the victim) the right to retribution, also encourages pardon (‘afw) as a means of reducing evil, dispelling rancor and enmity, and purifying hearts. The discussion of this topic proceeds as follows: First Subtopic: The Linguistic and Juridical Meanings of Pardon

1. Linguistic Meaning

The word ‘afw (pardon) derives from ‘afa ya‘fu, meaning “to forgive.” furthermore: “Whenever one deserves punishment and is spared it, he has been pardoned” (Ibn Faris, 1404 AH).

Ibn Manzur defines ‘afw as “relinquishing a right while entitled to it, and abstaining from punishment even when able to exact it” (Ibn Manzur, 1405 AH).

2. Juridical Meaning

Jurists have offered various definitions of ‘afw depending on its legal effects:

Imami jurists define pardon as overlooking the offense and regarding the crime as if it never occurred. Complete pardon means total renunciation of all penalties—whether qisas or diyah. Partial pardon means renouncing qisas (while entitled to it) in exchange for diyah (Al Sadr, 1427 AH).

Hanafi and Maliki jurists define ‘afw as the gratuitous waiver of qisas. If qisas is relinquished in exchange for payment, it is termed sulh (reconciliation) (Al Sabzawari, 1413 AH; Al Sarakhsi, 1406 AH).

Malikis also stipulate that pardon applies to all forms of killing except qatl al ghilah (treacherous killing) that is, killing for money through deception, such as luring the victim into a hidden place to murder him (Al Hattab al Ra’ini, 1416 AH; Al Dusuqi, 1980). Malikis classify such homicide as hirabah (armed brigandage), whose perpetrator must be executed.

Other schools, however, treat qatl al ghilah as an ordinary case of homicide subject to the general laws of qisas (Al Sarakhsi, 1406 AH; Al Shafi’i, 1403 AH; Ibn Qudamah, 1985).

The preferred opinion adopted by most jurists is that hirabah (armed criminality) has its own specific rulings, while ‘afw aligns with the spirit of leniency and mercy characteristic of Islamic law. Shafi’i and Hanbali jurists hold that pardon may be granted either freely or in exchange for diyah, leaving the choice to the victim’s heir (Al Shafi’i, 1403 AH; Al Shirbini, 1377 AH; Al Buhuti, 1418 AH). In essence, ‘afw means relinquishing retribution, foregoing punishment, and abstaining from vengeance despite one’s power to exact it. Second Subtopic: The Legal Ruling of Pardon in Qisas The heirs of the slain person are encouraged (mustahabb) to pardon the killer. The wali al dam has three options when the killing was deliberate and unjust:

- To demand qisas (retribution).
- To pardon without compensation.
- To pardon with acceptance of diyah, in which case the killer’s consent is required.
- Pardon in all its forms is deemed a commendable and meritorious act.

Allah Almighty says: “But if any remission is made by his brother, then there should be a fair demand, and payment should be made with kindness.” (al Baqarah 2:178)

And He says: “But whoever remits it as charity, it is an expiation for him.”

That is, whoever relinquishes qisas purely for Allah’s sake, his pardon becomes a means of expiation, through which Allah forgives his sins (Al Muhaqqiq al Ardabili, 993 AH).

Allah also says: “But whoever pardons and makes reconciliation his reward is with Allah.”

This verse praises pardon and the avoidance of vengeance, promising a great reward so great that the recompense is attributed directly to Allah, signifying its magnitude (Al Muhaqqiq al Ardabili, 993 AH).

The Prophet (pbuh) was likewise reported never to have presided over a case of qisas without first urging pardon (Ibn Hanbal, 1979). He also said: “No servant pardons an injustice seeking thereby the face of Allah except that Allah raises him in honor.” And from Abu ‘Abd Allah (peace be upon him): the Messenger of Allah (pbuh) said: “Adopt pardon, for pardon increases a person only in honor. Therefore, pardon one another, and Allah will honor you.”

Al Hurr al ‘Amili, 1403 AH. These narrations clearly indicate the recommendation (istihbab) of pardon, for the Prophet’s encouragement of it entails moral commendation. The Sharia explicitly declares that pardon elevates ranks, expiates sins, and brings divine honor.

IV. SECTION FOUR: THE RULES OF RETALIATORY KILLING (QISAS AL QATL), THE AMOUNTS OF BLOOD MONEY (DIYAT), AND PRACTICAL EXAMPLES

This section addresses various rulings related to homicide, qisas, and blood money, along with practical applications, as follows:

4.1 First Topic: Rules of Retaliatory Killing and Amounts of Blood Money

This topic is divided into three sub sections in order to define blood money (diyah), establish its legal basis, and outline its types.

Definition of Blood Money

Diyah is the amount determined by the Lawgiver as compensation for an offense requiring liability (jinayah daminah). It applies both to the human life (nafs) and to bodily organs (atraf). When used without qualification, the term usually refers to the blood money for life; for injuries, the term arsh is used, and for cases with no fixed amount, hukumah applies (Ibn Fahd al Hilli, 1407 AH).

This discussion focuses on diyah al nafs (the blood money for homicide) as follows:

4.1.1 The Blood Money for Intentional Killing

If a Muslim man or anyone born upon the fitrah (Islamic nature) is killed deliberately, the diyah amounts to one

thousand gold dinars (approximately 3.5 kilograms and 29 grams of pure gold), or ten thousand silver dirhams, or one thousand sheep, or two hundred garments, or one hundred camels, or two hundred cattle. The choice among these six options belongs to the killer, not to the heir of the victim. The killer is granted one full year to pay, with no obligation for immediate payment, but it may not be delayed beyond one year unless the rightful recipient agrees (Ibn Fahd al Hilli, 1407 AH; Mughniyah, 1421 AH). There are several narrations from the Imams of Ahl al Bayt (peace be upon them) confirming these values. Ibn Mahbub narrated: “I heard Ibn Abi Layla say: During the pre-Islamic era, the diyah was one hundred camels, and the Messenger of Allah (pbuh) confirmed it. Then he prescribed for those with cattle two hundred cows, for those with sheep one thousand ewes, for those with gold one thousand dinars, for those with silver ten thousand dirhams, and for the people of Yemen two hundred garments.” (Al Hurr al ‘Amili, 1403 AH).

‘Abd al Rahman ibn al Hajjaj narrated: “I asked Aba ‘Abd Allah (peace be upon him) about what Ibn Abi Layla had reported, and he said: ‘Ali (peace be upon him) used to say: ‘The diyah is one thousand dinars; each dinar equals ten dirhams; ten thousand for the urban people; for the desert people, one hundred camels; for the rural folk, one hundred cows or one thousand sheep.’ (Al Kulayni, 1363 Sh).

Conclusion: These narrations indicate that the amount of diyah may vary according to local availability of assets, and the element of choice reflects Islam’s aim of ease and flexibility in fulfilling obligations.

4.1.2 Blood Money for Quasi Intentional and Accidental Killing

All three categories intentional, quasi-intentional, and accidental share the same six alternatives: camels, cattle, sheep, garments, dirhams, or dinars. Both intentional and quasi-intentional cases are paid from the killer’s own wealth (not by the ‘aqilah, the killer’s male relatives), and the choice among the six types belongs to the killer.

However, intentional and quasi-intentional killings differ in two respects:

The type (age) of camels, not their number that is, the distinction lies in quality, not quantity.

The time allowed for payment: The deliberate killer is granted one year, while the quasi-intentional killer is granted two years.

In contrast, accidental homicide differs as follows:

The age of the camels varies;

- The intentional killer pays from his own property, but in accidental killing, the ‘aqilah pays;
- The intentional killer pays within one year, while the ‘aqilah pays within three years;

- The right of choice belongs to the killer in intentional cases, and to the ‘aqilah in accidental cases (Mughniyah, 1421 AH).

In quasi intentional cases, the killer pays within two years from his own property, while in accidental cases, the ‘aqilah pays within three years. They also differ in the type of camels required, but in the case of cows, sheep, garments, silver, and gold, there is no difference in number or quality.

Imami jurists base these distinctions on the narration of ‘Abd Allah ibn Sinan, who reported:

“I heard Aba ‘Abd Allah (peace be upon him) say regarding quasi intentional killing such as killing with a whip, stick, or stone: its diyah is made severe: one hundred camels, forty of them pregnant (from thaniyah to bazil ‘am), thirty hiqqah, and thirty banat labun. As for accidental killing: thirty hiqqah, thirty banat labun ...” (Al Kulayni, 1363 Sh; Al Hurr al ‘Amili, 1403 AH).

The khilfah are pregnant she camels; bazil refers to a camel that has completed eight years and entered its ninth, when its tusk appears, signifying maturity (Al Turayhi, 1085 AH). The Hanafis agreed with the Imamis on the severity of the diyah, though they required all camels to be pregnant (Al Kasani, 1409 AH).

Similarly, Maliki, Shafi‘i, and Hanbali jurists concur that quasi-intentional killing carries an aggravated diyah when committed with a whip, stick, or similar means (Ibn Fahd al Hilli, 1407 AH; Al Kasani, 1409 AH; Al Nawawi, 1990).

4.1.3 Blood Money for Killings Committed During the Sacred Months and within the Sacred Precincts

According to the Imami jurists, if a person is killed deliberately during the four sacred months Rajab, Dhu al Qa‘dah, Dhu al Hijjah, and Muharram the killer must pay the diyah plus one third extra, as an aggravation for violating the sanctity of these holy months. The aggravation (taghliz) may arise either:

From the time of the offense if it occurs during one of the sacred months; or

From the place of the offense if it occurs within a sacred precinct (haram), such as the Sanctuary of Mecca, the Sanctuary of the Prophet, or any of the shrines of the Imams of Ahl al Bayt (peace be upon them) (Ibn Fahd al Hilli, 1407 AH).

The sacred precinct of Mecca is thus included among the hurum because both share the same sanctity, and the diyah is similarly aggravated.

Evidence includes the authentic report of Zurarah:

“I said to Aba ‘Abd Allah (peace be upon him): ‘A man killed in the sacred precinct?’ He said: ‘He owes the diyah and one

third more, and he must fast two consecutive months of the sacred months.’” (Al Hurr al ‘Amili, 1403 AH).

Likewise, Kulaib ibn Mu‘awiyah narrated: “I heard Aba ‘Abd Allah (peace be upon him) say: Whoever kills in a sacred month owes the diyah and one third.”

Some jurists of other schools also affirm the aggravation of diyah for killings committed during the sacred months or within the Meccan Sanctuary, though some restricted the aggravation to cases involving camels only, and others limited it to accidental killing (Al Shirbini, 1377 AH; Al Bakri al Dimiyati, 1418 AH; Al Shafi‘i al Saghir, 1085 AH).

4.2 Applied Rulings on Retaliatory Killing (Qisas al Qatl)

This topic presents selected rulings related to the crime of deliberate homicide in the form of practical scenarios:

4.2.1 Case One: When a Minor Kills

If a minor (sabi) or a mad person kills someone, qisas is not carried out against either of them, because they are not legally fit for punishment (Al Tusi, 1387 AH; Ibn al Barraji, 1406 AH).

The proof is the Prophetic hadith: “The pen is lifted from three: from the sleeper until he awakens; from the child until he reaches puberty; and from the insane until he regains sanity.” (Al Bayhaqi, 2020; Al Hurr al ‘Amili, 1403 AH).

Further support appears in the sound report of Muhammad b. Muslim from Abu ‘Abd Allah (‘a): “A minor’s intentional act and his mistake are one [in ruling].” (Al Hurr al ‘Amili, 1403 AH; Al Bayhaqi, 1201 AH).

There is no disagreement among the schools regarding the “lifting” hadith (Al Khu‘i, 1413 AH); Ibn Rushd, Bidayat al Mujtahid, 2:338; Al Nawawi, 1990; Ibn Qudamah, 1990).

The minor’s intentional act is treated as mistake, and its diyah is borne by the ‘aqilah (male agnates). From Abu Ja‘far, from his father (peace be upon them): ‘Ali (‘a) used to say, “The intentional act of minors is [ruled as] mistake, and its liability is upon the ‘aqilah.” (Al Bayhaqi, 1201 AH).

By contrast, if an adult kills a minor, the jurists of all schools agree that the adult is killed in retaliation (Al Khu‘i, 1413 AH; Al Kasani, 1409 AH; Al Nawawi, 1990). Hence, a deliberate adult killer of a child is executed, both by the general evidences of qisas and by cross madhhab consensus.

4.2.2 Case Two: Many Kill One Person

If several people jointly kill a single victim, all of them are killed in retaliation. The heir (wali al dam) may either (a) kill them all after returning to them the excess over the one victim’s diyah so that each offender receives back the portion exceeding his share or (b) kill some of them, with the remaining offenders paying the value of their respective shares (Al Muhaqqiq al Hilli, 1409 AH).

Evidence permitting execution of the many for one includes:

The verse: “And whoever is killed wrongfully, We have certainly granted his heir authority [to demand retribution].”

The sound report of al Halabi from Abu ‘Abd Allah (‘a): regarding ten who together killed a man, “The choice is given to the best of the victim’s heirs: they may kill whomever they wish among them; then the heirs recover from the rest nine tenths of the diyah.” (Al Hurr al ‘Amili, 1403 AH).

The reliable report of al Faḍl b. Yasar from al Baqir (‘a): “If ten killed a man, the heirs may, if they wish, kill them all and pay nine diyahs; or choose one to kill, and the other nine each pay one tenth of the diyah to the heirs of the one executed. Thereafter, the ruler disciplines and imprisons them.” (Al Kulayni, 1363 Sh).

Hanafi, Maliki, Shafi‘i, and Hanbali jurists agree with the Imamis that a group is executed for one victim, whether the group is large or small (Al Kasani, 1409 AH; Al Nawawi, 1990; Ibn Qudamah, 1985). This is a matter of consensus and is textually grounded; qisas was legislated to protect blood without it, joint killing would become a loophole for shedding blood (Mughniyah, 1421 AH).

When One Person Kills Many

If one offender deliberately kills several victims, he is executed for all of them. If the killings occurred successively, each heir possesses an independent right to qisas. If the heirs convene and execute him either directly or through an agent they have collectively exhausted their rights, for they have only his single life as the object of retaliation.

If, however, one heir preempts and kills the offender first, the other heirs do not then become entitled to diyah, because the sole cause justifying retaliation was the killer’s life, which has now been taken. The supporting report is that of ‘Abd Allah b. Sinan from Abu ‘Abd Allah (‘a): “...No one incurs liability for more than his own life.” (Al Hurr al ‘Amili, 1403 AH), alongside other narrations to this effect.

The Sunni schools differ on the single killer of multiple victims:

Hanafis: The one is not executed for the many by accumulation; he is executed for one, and diyahs are due to the rest (Al Kasani, 1409 AH).

Shafi‘is and Hanbalis: If he killed them simultaneously (e.g., by demolishing a house on them), one victim is selected by lot for qisas, and the others’ heirs receive diyah (Al Nawawi, 1990; Al Buhuti, 1418 AH).

Malik: Only qisas is due for all of them collectively, and nothing further is owed (Ibid).

Preferred view: The position of the Imami and Maliki jurists that the heirs have only qisas from the killer based on explicit texts stating that “they have nothing against the offender

except his [own] life,” and on the consensus of most of their jurists. The evidences indicate that qisas is obligatory, and that diyah is not due except by amicable settlement (sulh).

Applied Rulings of Retaliatory Killing (Qisas al Qatl)

4.2.3 Case Three: When a Father Kills His Child

If a father kills his child deliberately, he is not executed in retaliation, but he must pay the diyah (blood money), seek forgiveness (‘udhr), and perform kaffarah (expiation). However, if the child kills the father, the child is executed in retaliation, and likewise, if a mother kills her child, she is executed, and qisas applies to her as well (Al Muhaqqiq al Hilli, 1409 AH; Al ‘Allamah al Hilli, 1368 AH).

The Imami jurists based this ruling on authentic narrations from the Imams of Ahl al Bayt (peace be upon them), including:

The narration of Humran from one of the two Imams (peace be upon them), who said:

“A father is not killed for his child; but a child is killed for his father if he kills him deliberately.”

Al Hurr al ‘Amili, 1403 AH.

This ruling also extends to:

The daughter killed by her father,

The paternal or maternal grandparents,

The siblings, uncles, aunts, and other close.

Moreover, the murderer does not inherit the person he killed if the killing was deliberate and unjust, whether the killer was the father or anyone else (Al ‘Allamah al Hilli, 1368 AH).

As in the narration of al ‘Ala’ ibn al Fuḍayl: Abu ‘Abd Allah (peace be upon him) said:

“A father is not killed for his child, but the child is killed for his father. A man does not inherit from another whom he has killed, even if it was accidental.” (Al Kulayni, 1363 Sh).

The Sunni schools agree with the Imami jurists that the father is not executed for his child, no matter how far the lineage extends upward, since “father” in this context encompasses all paternal ascendants (Al Kasani, 1409 AH; Al Nawawi, 1990; Ibn Qudamah, 1985).

Imam Malik, however, made an exception: if the father pins down his child and slaughters him, he is executed; but if he kills him by striking with a sword or stick, qisas is not carried out.

4.2.4 Case Four: When a Muslim Kills a Non Muslim

The Imami jurists stipulate equality in religion between the deliberate killer and the victim for qisas to apply. Thus, a

Muslim is not executed for killing a non Muslim, whether the victim is a dhimmi (protected non Muslim subject), a musta'man (temporary non Muslim resident), or a harbi (enemy combatant). However, the Muslim offender is disciplined (yu'azzar) and must pay the diyah of the dhimmi. If he habitually kills ahl al dhimmah, then qisas may be applied to him after compensating the difference between his diyah and that of the dhimmi (Al Muhaqqiq al Hilli, 1409 AH).

They base this on the Qur'anic verse:

"...And never will Allah grant to the disbelievers a way [of authority] over the believers."

And on several prophetic and Imamic traditions:

The Prophet (pbuh) said:

"A Muslim is not to be killed for a disbeliever." (Al Nasa'i, 1385 AH).

In the report of Isma'il ibn al Faḍl, from Imam Ja'far al Sadiq (peace be upon him):

"I asked Aba 'Abd Allah ('a): Does a Muslim suffer qisas for killing a dhimmi? He said: No unless he is accustomed to killing them, then he is killed [in retaliation]."

Al Kulayni, 1363 Sh; Al Hurr al 'Amili, 1403 AH.

This narration clearly concerns qisas, as the question explicitly asks about retribution for killing a dhimmi.

They also cite the consensus (ijma') of the Imami jurists (Ibn Zuhrah al Halabi, 1417 AH; Al Raghbi al Isfahani, 1421 AH).

Nevertheless, the Imami jurists unanimously affirm the prohibition of killing a dhimmi or a mu'ahad (treaty holder) without just cause they also rule that if a Muslim kills a dhimmi habitually and unjustly, he may be executed in retaliation after repaying the excess of his own diyah based on multiple reliable narrations, including those cited above.

The Sunni schools largely agree with the Imamis on this point:

Malikis, Shafi'i, and Hanbalis all hold that qisas is not applied when a Muslim kills a non Muslim, except when the killing is treacherous (ghilah), in which case retaliation is allowed (Al Shirbini, 1377 AH; Ibn Qudamah, 1985).

The Hanafis, however, hold that a Muslim may be executed for killing a dhimmi, but not for killing a musta'man or harbi (Al Kasani, 1409 AH).

V. PREFERRED VIEW

The position of the Imami jurists is the strongest: a Muslim is not executed for killing a non Muslim, but is disciplined and must pay the diyah. However, if he habitually kills non Muslims unjustly, he may be executed in retaliation after the difference in diyah is returned. This ruling aligns with both Qur'anic and Prophetic texts and the consensus of the jurists affirming the sanctity of human life under Islamic law. TABLE I shows the Comparative Application of Homicide and Qisas Rulings Among Islamic Schools of Law.

TABLE I COMPARATIVE APPLICATION OF HOMICIDE AND QISAS RULINGS AMONG ISLAMIC SCHOOLS OF LAW

Aspect	Imami (Shi'i)	Hanafi	Maliki	Shafi'i	Hanbali
Types of Homicide	Three: intentional ('amd), quasi intentional (shibh al 'amd), pure mistake (khata' mahd).	Four: intentional, quasi-intentional, mistake, and what resembles mistake. Some add indirect killing (bi sabab).	Two: intentional and mistake only. Denies "quasi-intentional."	Three: intentional, quasi-intentional, and mistake.	Three: intentional, quasi intentional, and mistake.
Definition of Intentional Killing	Killing a protected soul using an instrument that ordinarily causes death.	Intentional when killing occurs by an instrument that normally causes death (e.g., sword).	Intentional when both act and intent to kill are present.	Same as Imami: deliberate act with a lethal instrument.	Same as Imami: deliberate act with a lethal instrument.
Quasi Intentional Killing	Intentional act without intent to kill, using a non lethal object (e.g., stick).	Killing by a non lethal object (e.g., stick, whip). No qisas; diyah due.	Denied as a separate category.	Recognized; no qisas, diyah imposed.	Recognized; no qisas, diyah imposed.
Accidental Killing (Khata')	No intent to act or kill; diyah borne by 'aqilah.	Same; diyah by 'aqilah over three years.	Same; diyah by 'aqilah.	Same.	Same.
Instruments of Killing	Sharp tools → intentional; blunt tools → quasi-intentional unless repeated.	Sharp tools → intentional; blunt → quasi-intentional.	Sharp or blunt → intentional.	Sharp → intentional; blunt → quasi-intentional.	Sharp → intentional; blunt → quasi-intentional.
Poisoning	Intentional killing if poison normally causes death (qisas applies).	Quasi intentional, diyah only.	Intentional unless victim knowingly consumed.	Differentiates by victim's awareness; may be quasi intentional.	Same as Shafi'i.

Drowning / Burning	Intentional if victim prevented from escape; otherwise quasi intentional.	Drowning quasi intentional; burning intentional.	Always intentional.	Intentional if escape impossible.	Same as Shafi'i.
Perjured Testimony Causing Execution	False witnesses are subject to qisas.	No qisas on witness/judge/wali.	Qisas applies to false witnesses.	Qisas applies to false witnesses.	Qisas applies to false witnesses.
Father Killing Son	No qisas; diyah due; child executed if kills parent.	No qisas for father.	No qisas unless slaughtering act.	No qisas for father.	No qisas for father.
Muslim Killing Non Muslim	No qisas; only diyah and ta'zir. Qisas if habitual killer of dhimmis.	Qisas only for killing a dhimmi, not musta'man/harbi.	No qisas except in treacherous killing (ghilah).	Same as Maliki.	Same as Maliki.
Joint Killing (Multiple Killers)	All participants executed; heirs may choose some or all.	Same view; consensus.	Same view.	Same view.	Same view.
Single Killer of Multiple Victims	Executed once; heirs share right to qisas.	Executed for one; diyah owed for others.	Executed for all collectively.	Executed for one by lot; diyah to others.	Same as Shafi'i.
Blood Money (Diyah)	Six alternatives (camels, cattle, sheep, garments, silver, gold). Values vary by locality.	Same six; paid over one–three years.	Same; details differ by case.	Same.	Same.
Diyah in Sacred Months / Sanctuary	Diyah plus one third (taghliz).	Aggravation limited to camels.	Aggravated diyah applies.	Same.	Same.
Pardon ('Afw)	Mustahabb (recommended); wali may pardon freely or for diyah.	Gratuitous pardon only; for payment is sulh.	Pardon valid except in treacherous killing (ghilah).	Pardon allowed freely or for diyah.	Same as Shafi'i.

Source: Compiled by the author from primary jurisprudential texts including (al Najafi, 1365 Sh; al Kasani, 1409 AH), and (al Nawawi, 1990)

As shown in Fig. 1, there is almost complete convergence on the permissibility of qīṣāṣ in cases of joint killing, whereas the ruling on a Muslim who kills a non Muslim dhimmi remains highly contested.

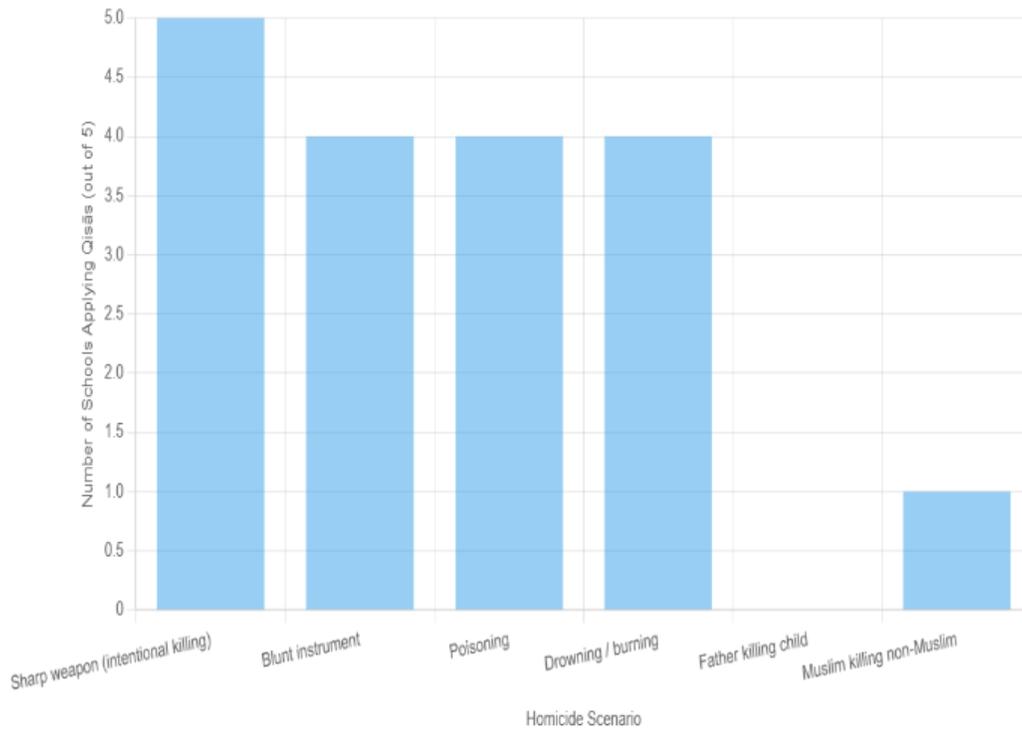


Fig. 1. Consensus on Qisas Rulings Among the Five Schools of Islamic Law

VI. CONCLUSION AND RESEARCH FINDINGS

The study of homicide and qisas within the Islamic penal system represents a foundational area of jurisprudence addressing one of humanity's most complex moral and legal issues the sanctity of life and justice in punishment. After a comprehensive scholarly examination, the following conclusions were reached:

Islamic Sharia is a complete, universal system, offering the most effective and balanced solutions to human problems. It harmonizes morality with legislation, combining ethical restraint with legal accountability to safeguard lives and rights.

Islamic jurisprudence is original and authentic, derived from the just principles of divine law. The rulings of the jurists of various schools provide a coherent framework for justice, fairness, and the protection of people and their rights.

A comparative study of the Islamic schools reveals that jurists agree far more than they differ, as their differences stem from interpretive methods and legal reasoning rather than from doctrinal conflict.

All schools concur that multiple offenders can be executed for a single homicide, as long as each actively participated in the act of killing.

The punishments prescribed by divine law whether hadd, qisas, or ta'zir are the cornerstone of crime prevention and the preservation of social order.

Finally, in qisas lies the life of society itself: though it may outwardly seem like taking life, in truth it preserves life individual and collective by deterring aggression and upholding justice.

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