

Law of Murder under Islamic Criminal Law: An Analysis

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Abstract

Islam considers murder to be the most heinous crime against a person. The blood of a human being is sacred in Islam. Prophet Muhammad (SAW) reportedly stated that the first act of Allah on the Day of Judgment would be to punish murderers by making them suffer the torment of Hell. Prophet Muhammad (SAW) at his last pilgrimage declared that the blood of human being, their property and prestige are as sacred as the city of Haram of Makkah and the day of Arafah. Undoubtedly the greatest crime known to mankind is murder. It has been punishable under all systems of law since early in the history of mankind and throughout the ages up to the present. This article explores the law of murder and its punishment under Islamic criminal law. It also examines the origin of punishment and way of proving of Islamic criminal law of murder.

Keywords: Islamic Criminal Law, Homicide, Punishment of Islamic Law, Retaliation, Blood-money.

1. Introduction:

According to the Holy Quran, murder is the most atrocious act in the society. As far as murder is concerned, the Holy Quran says that murdering a person is like murdering the whole of mankind. Al Quran states that,

“He who killed a human being without the latter being guilty of killing another or of spreading disorder in the land should be looked upon as if he killed all of mankind.”¹

Qatl or murder of a man by a man is no doubt the greatest crime of the society. It has been denounced in the Quran:

“And do not kill anyone which Allah has forbidden, except for a just cause. And whoever is killed (intentionally with hostility and oppression and not by mistake), We have given his heirs (wali) the authority to demand Qisas, (Law of Equality in punishment) or to forgive, or to take Diyat (blood money). But let him not exceed limits in the matter of taking life (i.e. he should not kill except the killer only); for he is helped (by the Law).”²

Furthermore, the Quran says that a person who commits such a grave offence, particularly against a Muslim, shall face the eternal punishment of Hell.³

The Quran provides for retaliation against the individual who commits a qisas crime, but also expresses a preference for forgiveness. The Quran says:

‘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 grants any reasonable demand, and compensates 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.’⁴

Just as this directive of Qisas has been given to us, it was given to the previous nations of the Prophets. While referring to the Old Testament, the Quran says:

‘We ordained therein for them: "Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal." But if any one remits the retaliation by way of charity, it is an act of atonement for himself. And if any fail to judge by (the light of) what Allah hath revealed, they are (No better than) wrong-doers.’⁵

Prophet Muhammad (SAW) has declared homicide (murder) as the greatest sin. He also said, “The greatest sins are to associate something or someone with Allah and to kill human beings.”⁶

In a Hadith Prophet Muhammad (SAW) said, “The Muslim who confesses that there is no God but Allah and Muhammad (SAW) is His (Allah’s) apostle, his taking of blood is not valid unless three situations arise: (a) when he intentionally kills another person (b) when he commits zina after marriage and (c) when he becomes apostate.”⁷

¹ Al Quran, (5:32).

² Al Quran, (17: 33).

³ Al Quran, (4: 93).

⁴ Al Quran, (2: 178).

⁵ Al Quran, (5: 45).

⁶ Abdur Rahman Doi, *Shariah: The Islamic Law*, 7th ed. (Malaysia: A.S Noordeen, 2007), p. 229.

⁷ Abu Bakar bin Ali Al- Jassas, *Ahkamul Quran*, part 1, Bengali translated by Maowlana Muhammad Abdur Rahim (Dhaka: khairun prokasoni, 1991), p. 298; Muhammad Faiz-ud-Din, *Quranic Penal Provisions vis-a-vis Penal Laws of Bangladesh*, *Rajshahi University Law Review*, (1998), p.100; S. El-Awa, *Punishment in Islamic law: A comparative study*, (Indianapolis:

2. Classification of Murder under Islamic Criminal Law (ICL)

According to the majority of the jurists homicide (murder) in Islamic criminal law is of five kinds, namely,

- i) Qatl-i-amd (willful murder consisting of murderer's will, voluntary act, and use of mortal weapon)
- ii) Qatl-i-sibhi-amd (willful murder, but the instrument used is not considered to endanger life)
- iii) Qatl-i-khata (accidental murder)
- iv) Qatl-i- Jari majra al-Khata (equivalent to accidental or involuntary murder)
- v) Qatl-i-bit-tasabbur (indirect murder).¹

2.1. Qatl-i-amd (Intentional murder)

Qatl-i-amd (Intentional murder) is the deliberate killing of another with a lethal weapon or instrument such as club, a sharp stone, or fire. The jurists have stated that there are three basic conditions for intentional murder:

- (i) the victim must be a living human being;
- (ii) the victim must have died as a result of the action of the accused and
- (iii) the offender has willful intention of causing death of the victim.

2.1.1. Proof of Intentional Murder

The jurists concur that the offence of intentional murder must be proved either by the confession (Iqrar) of the offender or by the testimony of two adult male and reliable eye witnesses. The confession of the accused must be with his free consent without any coercion. The offender must be adult and sane. The confession must be before a competent court. The eye witness must be adult and sane as well as credible (adl) person. A credible witness is a witness who abstains himself from major sins and is not infamous in the society.² There is a controversy about the requirement of two male witnesses for proving murder. The rule of evidence which is practiced in some Muslim states and the rules laid down in some books for proving crimes punishable with qisas are not consistent with the injunction of Islam as laid down in the Quran and Sunnah. Such as according to some scholars³, 'to warrant a sentence of qisas positive testimony of two competent eye-witnesses of ascertained or apparent credit is needed. The testimony of women was also not admitted to prove a charge of willful homicide. In cases of homicide not willful, and in all other cases falling out of hadd or qisas, evidence of one man is treated equal to that of two women. No Muslim can be convicted capitally on the evidence of a non-Muslim. No circumstantial evidence is admitted but the knowledge of qadi is a valid basis for the judgment.' In contrast, it has been noted that as Islamic criminal justice system enshrined in the Holy Quran and authentic traditions (Hadith), the Islamic injunctions do not provide any specific standard or number of witnesses as a proof for the crimes punishable with qisas. In Islam, the testimony of the truth is the liability of each person of the Ummah (Muslim Community). The following verses clearly reflect that anyone who knows the truth of any kind, affecting the lives or interests of the other fellow beings, must firmly bear witness to the deed under all circumstances. According to the Holy Quran:

“And those who stand firm in their testimonies;”

“Such shall be the honoured ones in the Gardens (of Bliss)⁴.”

“O, ye who believe! stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from Justice. Be just: that is next to piety: and fear Allah. For Allah is well-acquainted with all that ye do.”⁵

So much importance is given to evidence for Allah only, even if that goes against one's own parents or relatives. Accordingly, Islam does not discriminate between men and women in this context. There are about five verses in the Quran that mention witnesses, without specifying male or female. There is only one verse in the Quran that says two female witnesses are equal to one male witness. This verse is Surah Baqara, chapter 2 verse 282. This is the longest verse in the Quran and deals with financial transactions. The seeming inequality of male and female witnesses in financial transactions in this verse is not due to any inequality of the sexes in Islam. It is only due to the different natures and roles of men and women in society as envisaged by Islam. Accordingly some scholars are of the opinion that the feminine attitude can also have an

American Trust Publications, 1982), p.78.

¹ Islamic Foundation Bangladesh, *Bidibaddha Islami Ain*, (Codified Statutory Islamic Laws), vol. 1 part.1, (Islamic Foundation Bangladesh, April 1995), at p.256.

² Prof. Dr. Anwarullah, *The Criminal Law of Islam*, 3rd ed (Malaysia: A.S Noordeen, 2008), p. 56.

³ M.P. Jain, *Outline of Indian Legal History*, 5th ed, (Nagpur: Wadhwa & Company, Reprint 1993), p 370; Joseph Schacht, *An Introduction to Islamic Law*, (Oxford: Clarendon Press, 1964), p. 193.

⁴ Al Quran, (70:33 &35).

⁵ Al Quran, (5:8).

effect on the witness in a murder case. Due to her emotional condition she can get confused. Therefore, according to some jurists, even in cases of murder, two female witnesses are equivalent to one male witness. But in the Quran no discrimination has been made between female witness and male witness. The Quran says,

“Conceal not evidence; for whoever conceals it –

His heart is tainted with sin. And Allah knoweth all that ye do.”¹

“And cover not truth with falsehood, nor conceal

The Truth when ye know (what it is).”²

By the word “whoever” the Quran does not discriminate between men and women in giving evidence. Regarding women’s evidence of willful murder it has been referred here that the Islamic history witnessed the admissibility of the evidence of Hazrat Bibi Naila (RA), Hazrat Usman’s (RA) wife, who was the only eye-witness of her husband’s murder. According to Islamic injunctions, the only person whose evidence is not admissible is the one who launches a charge of adultery against chaste women and fails to produce four witnesses in support of his allegation, as ordained in verses 24:4 of Surah Al Nur. As per circumstantial evidence Islamic rule is that facts and circumstances may also be relied upon as a proof of murder. Circumstantial evidence will only be acted upon if it is of a conclusive nature. For instance, if a person is seen coming out from an unoccupied house in fear and anxiety with a knife covered with blood in his hand and in the house a dead body is found with its throat cut, these facts will be regarded as a proof that the person who was seen coming out murdered him.³ This instance seems to be conclusive. But it may or may not be regarded as conclusive proof as to the commission of death of the victim by the person who is seen coming out from an unoccupied house. It will be decided by the court.

The procedure of qasamah, (joint oath) again in the context of qisas, is a good example of circumstantial evidence being considered a justification for the swearing of oaths and inflicting qisas or exacting diyat.⁴ Qasamah is derived from qasam which literary means to take oath and in terms it means to repeat an oath 50 times by 50 persons or less of the place of the crime or the relatives of the victim in a case of murder wherein the offender is not known.⁵ Qasama was in practice in pre-Islamic period and it was retained in Islam to the extent of a case of a murder wherein a murdered person is found in a specific private locality and his murderer is not known at all. It is the opinion of the majority of the jurists. According to Imam Abu Hanifah, Qasama is proceeded to assert the innocence of an individual suspected to have killed a person. It shall only be practiced in a case when a murdered person found in a place which is either in the private ownership of any person or is considered to be in the exclusive use of certain residents of such locality and the offender is not known.⁶

Under Islamic criminal justice system, the proof of crime relating to qisas includes voluntary and true confession, ocular and circumstantial evidence.

2.1.2. Punishment of Intentional Murder

The punishment prescribed in the Quran for deliberate homicide is the killing of the culprit (Qisas) or the payment of blood money (diyat). Diyat is the only punishment for quasi-deliberate homicide. In cases of deliberate homicide diyat is due only when the nearest relatives of the victim do not insist on qisas against the culprit.⁷ Whenever the relatives insist upon the payment of diyat, it is to be in the value of one hundred camels, and the same diyat is due in all cases of quasi-deliberate homicide. Although diyat is originally fixed in terms of camels, it is almost universally admitted that it can be paid by an equivalent amount of money, either gold or silver, cows, sheep or garments.⁸ The Holy Quran says “And if anyone is slain wrongfully, we have given his heir authority (to demand qisas or to forgive): but let him not exceed limits in the matter of taking life.”⁹

The Holy Prophet (SAW) said, “The heir of the victim in a murder case has three options, namely:

- i. to take qisas from the convict,
- ii. to take diyat or blood money and

¹ Al Quran, (2:283).

² Al Quran, (2:42),

³ Sir Abdur Rahim, *The Principles of Muhammadan Jurisprudence According to the Hanafi, Maliki, Shafi and Hanbali Schools*, reprint (Hyperion Press, Incorporated, 1911), p.381.

⁴ M. S. El-Awa, *supra note 7*, p.132.

⁵ Prof. Dr. Anwarullah, *supra note 9*, p.58.

⁶ *Ibid*, at p. 59. The detail discussion of the procedure of *qasama* has been omitted here. For detail see the reference mentioned here.

⁷ Joseph Schacht, *supra note 10*, p.177.

⁸ M. S. El-Awa, *supra note 7*, p.76.

⁹ Al Quran, (17: 33).

iii. to pardon him¹

Even if qisas is forgiven by the legal heirs the offender may also be punished with tazir if it is required in the interest of the public and the circumstances of the case and the Court has the authority to award punishment to the offender under tazir.²

So, the penalty for Qatl-i-amd (intentional murder) is qisas (retaliation) unless the heirs or representatives of the slain forgive or compound the offence. The murderer is also excluded from inheritance of the property of the slain if he or she is an heir.³ The Islamic criminal law conferred the right of qisas on the heirs of the victim. It is based on human nature as well as the interest of both individual and the community. It is the nature of every human being that he craves to retaliate in person the wrong done to him. Thus the Islamic criminal law first authorises the heir to retaliate the death of the victim and has thus left the offender within his reach and to his discretion. At the same time it has authorised the heir of the victim to pardon the offender in lieu of blood money or otherwise, this is the spirit which ensures maintenance of peace and tranquility between human groups.⁴

The punishment of death of intentional murder shall be executed when the heirs of the victim demand it. If the heirs of the victim are more than one, all must express this desire, and if one of them remits retaliation, it affects all and qisas becomes unenforceable and the offender shall be subjected to diyat to be paid to the other heirs if the one has pardoned him without anything and if he has pardoned him against diyat, he shall also be liable for his portion in the diyat. If one of them is minor, insane or absent, punishment shall be delayed until he becomes adult or sane or returns from journey and expresses his desire for retaliation of the offender. This is the view of Imam Shafie and Imam Ahmed. But according to Imam Abu Hanifah and Imam Malik in case an heir is minor or mad, the punishment should not be delayed and when the adult heirs demand it, it should be implemented forthwith. Thus the execution of the punishment of death is open to the heirs of the victim. There is a debate about the mode of execution of this punishment of death. The Hanafi and Hanbali schools hold that the culprit should be killed by the sword, whether or not he has killed his victim in this manner. The Maliki and Shafie School on the other hand, hold that the murderer should be put to death in the same manner in which he killed his victim. The first view assumes that the purpose of prescribing qisas as a punishment is solely to put the murderer to death for his crime; hence he should be executed in the easiest and most efficient way. The second view depends on an interpretation of the meaning of the word qisas as 'equality', accordingly, equality should be considered both in the taking of the culprits life and in the means by which it is taken.⁵ Retaliation for deliberate homicide is the punishment prescribed in the Quran and that it should be carried out in the manner that causes the least possible pain. One should not concern oneself with the jurists' views about such a subject. It is related that the Prophet (SAW) ordered the believers to improve the method of killing even for the slaughtering of animals; hence whatever quick, easy and efficient means of execution can be found be used.⁶

There are a few cases of homicide with amd (intentional murder) in which there is no retaliation such as the father or mother kills his own son; the ascendant kills his own descendant and the master kills his own slave or the slave of his descendant then the murderer is exempted from qisas but must pay the 'heavier' blood money. If there are several culprits and one is exempted from retaliation for this or any other reason, the others are exempted too, but all of them must pay the 'heavier' blood-money. The 'heavier' blood money must further be paid by him who kills an insane or a minor with 'amd' in self-defence' but according to Imam Abu Yusuf, and Imam Shafie, in this case diyat is not payable because the murderer has killed the deceased for self defence.⁷ There is a controversy about these points. The Hanafi, Shafie and Hanbali Schools hold that a father who kills his son is not liable to qisas, while the Maliki School hold an opposite view, according to which the father is liable to qisas for killing his son if homicide is proved. The first view relied upon a tradition reported by Ibn-e-Abbas reveals that Prophet Muhammad (SAW) uttered exemption to a father on the murder of his son but diyat must be paid.⁸ This hadith is weak⁹ and is not trustworthy, such a hadith cannot be used as evidence to prove or to refute any legal view. The argument of some scholars in support of this is based on the deduction of fiqh (juristic interpretation) that father being 'asl' (original) can eliminate its extension (Tauseeh) i.e. child but vice versa is not possible. According to some

¹ Prof. Dr. Anwarullah, *supra note 9*, p.72.

² *Ibid*, at p. 74.

³ Islamic Foundation Bangladesh, *Bidibaddha Islami Ain*, *supra note 8*, at p.257.

⁴ Prof. Dr. Anwarullah, *supra note 9*, p.72.

⁵ Abu Bakar bin Ali Al- Jassas, *supra note 7*, p.222.

⁶ M. S. El-Awa, *supra note 7*, p.72.

⁷ Imam Abu Bakar Ala-al-Din Kasani, *Bada'i al- Sana'i*, Translated by Dr. Abdul Rasool Qadri, Vol. VII, (Bairut: Darul kitab-al-Ilmiaah, 1968), p. 235. referred by [A Study Research Report on "Qisas and Deyat Law" by- National Commission on the Status of Women \(NCSW\) of Pakistan. Available at: www.ncsw.gov.pk/prodimages/pub/Report Qisas Deyat pdf.](#) [accessed on 10.12.2015].

⁸ Hadith no.1259 Jame Tirmizi, translated by Maulana Fazal Ahmed, Vol I, (Darul Ishaat,Karachi –Pakistan, 2007) p. 551.

⁹ Explanatory note, Sunan Ibn e Majah Sharif, ,translated by Imam Allama Nawab Waheed uz Zaman

Khan,Vol II, Mehtab Khan (regd), Lahore-Pakistan, page 442-443, referred by [A Study Research Report on "Qisas and Deyat Law" by- National Commission on the Status of Women \(NCSW\) of Pakistan. Available at: www.ncsw.gov.pk/prodimages/pub/Report Qisas Deyat pdf.](#) [accessed on 10.12.2015].

scholars, a father is a life giver hence the qisas of his life cannot be taken upon killing his children.¹ In this case the murderer may be punished under tazir. The Maliki view is supported by the general import of the Quranic verses, which do not distinguish one from another or one victim from another. Again this view is supported by all the contemporary writers concerning the subject, as it is in harmony with the Islamic legal principles of equality as applied in the law of qisas.²

2.2. Qatl-i-sibhi-amd (Quasi-intentional murder)

Qatl-i-sibhi-amd or quasi-intentional murder is the killing of an individual with an instrument which is not recognized as a lethal weapon and not considered to endanger life. Quasi-intentional murder consists of three elements:

- i. The offender must have the intention of causing bodily harm to the victim and has no intention of causing him death.
- ii. The weapon or act of the offender is not likely to cause death in ordinary course of nature and
- iii. The victim dies as a result of the act of the offender.³

If a person in order to cause hurt strikes another person with a stick or a small stone which generally does not cause death of a human being, but that person dies as a result of that act, the offender is said to have committed quasi-intentional murder. It is also necessary for incriminating a person for quasi-intentional murder that the victim is a protected person. Thus if a person with the intention of causing hurt strikes an unprotected person and he dies as a result of that, he will not be liable to quasi-intentional murder.

Quasi-intentional murder is proved either by the confession of the accused without coercion by the evidence of two adult, sane and reliable witnesses or any other authentic evidence which, in the opinion of the court, is sufficient to prove the guilt. Quasi-intentional murder can be pardoned by the heir of the victim with or without taking blood money.⁴

2.2.1. Punishment of Quasi-Intentional Murder

The punishment of quasi-intentional murder is diyat and tazir. It is based on a hadith of Prophet (SAW) who said, 'if a person kills another by throwing stone, by a whip or by a staff its diyat will be one hundred camels.' This hadith relates to the causing of death by such stone, whip or staff which would not be ordinarily sufficient to cause death and as such from the use of such weapon no conclusion of intentional murder can be drawn. The diyat payable in quasi intentional murder is heavy and will be paid to the heirs of the victim.⁵ Punishment for this offense is also of religious expiation (atonement through acts such as fasting, giving alms to the poor, the freeing of slaves). The offender may also be punished with tazir if it is required in the interest of the public and the circumstances of the case. Moreover, the slayer is prohibited from inheriting the victim's property if he or she is an heir.⁶

2.3. Qatl-i-Khata (Murder by mistake or accidental murder)

Qatl-i-khata or murder by mistake is the killing of a person without intention to cause death, or to cause harm to a person, causes death of such person either by mistake of intention or by mistake of act, for instance a person supposes another person to be wild beast, kills him or someone hits another person unluckily while shooting at a target so that he dies.⁷ Murder by mistake contains three elements;

- i. the offender must have no intention to cause death or harm to the victim
- ii. the offender must have committed to some fatal act and
- iii. the victim must have died as a result of the act of the offender.⁸

Murder by mistake is proved either by the confession of the accused with his free will without any coercion or by the evidence of two witnesses or by any other authentic evidence which is sufficient to prove the guilt.⁹

2.3.1. Punishment of Murder by Mistake

The punishment of murder by mistake is diyat. The Holy Quran says about accidental or unintentional murder that:

“Never should a believer kill a believer; but (if it so happens) by mistake, (compensation is due); If one (so) kills a believer, it is ordained that he should free a believing slave, and pay diyat to the deceased's family, unless they

¹ M. S. El-Awa, *supra note 7*, p.80.

² *Ibid* at p.81.

³ Prof. Dr. Anwarullah, *supra note 9*, p.63.

⁴ *Ibid*, at p. 64.

⁵ Prof. Dr. Anwarullah, *supra note 9*, p.65.

⁶ Muhammad Iqbal Siddiqui, *The Penal Law of Islam*, 1st ed, (Lahore: Kazi Publications, 1979), p.152, 153.

⁷ Islamic Foundation Bangladesh, *Bidibaddha Islami Ain*, *supra note 8*, at p. 259.

⁸ Prof. Dr. Anwarullah, *supra note 9*, p.65.

⁹ *Ibid*.

remit it freely. If the deceased belonged to a people at war with you and he was a believer, the freeing of a believing slave (is enough). If he belonged to a people with whom ye have a treaty of mutual alliance, diyat should be paid to his family, and a believing slave be freed. For those who find this beyond their means, (is prescribed) a fast for two months running: by way of repentance to Allah; for Allah hath all knowledge and all wisdom.”¹

So, the punishment for this offence is required to free a Muslim slave, or fast two months and pay blood money. The offender is also prohibited from inheriting property from the victim if he or she is an heir. As with all homicides, the victim's heirs have the discretion to pardon the killer.²

2.4. Qatl-i- Jari majra al-Khata (equivalent to mistake or accidental murder)

It is a murder in which the factor of deliberation is lacking in the action like murder by mistake. Qatl-i- Jari majra al-Khata is such kind of homicide by misadventure which has been extended to encompass killings resulting from unconscious acts, such as an individual who rolls over in his sleep and suffocates his spouse. This kind of homicide is also called Qatl-i-sibhi-khata (involuntary murder). The offender in such murder is not liable to intentional murder. Here the slayer is required to free a Muslim slave, or fast two months and pay blood money. The offender if he or she is an heir is also prohibited from inheriting property from the victim. As with all homicides, the victim's heirs have the discretion to pardon the killer.³ Imam Malik, Imam Shafie and Imam Ahmed include it in murder by mistake and do not consider it an independent kind of murder.

2.5. Qatl-i-bit-tasabbur (Murder by intermediate cause)

Qatl-i-bit-tasabbur is the death resulting from an independent cause—a wall collapses or an individual falls into an open well i.e. someone brings about the death of another person without doing anything directly against him, for instance a person digs a well in thoroughfare without any intention to cause death of someone and someone falls into it and dies therein. According to Imam Abu Hanifa the offender in this case will be liable to indirect murder and if the person who dies is a protected person, the penalty will be the payment of diyat by the accused. It creates liability to pay diyat as the person has done the work without care and caution.⁴ But other Imams do not consider it an independent kind of murder and include it in murder by mistake because the person who digs the well has no intention to cause death of the person who falls into it.

3. Historical Background of Qisas (Retaliation)

The Arabic word ‘Qisas’ is derived from the verb ‘qassa’ meaning ‘he cut’ or ‘he followed his track in pursuit’; it, therefore means retaliation by slaying for slaying, wounding for wounding and mutilating for mutilating.⁵ The Holy Quran has termed ‘Qisas,’ a ‘life’ for the humanity, as it is ordained that “in the law of equality there is (saving of) life to you, O, ye men of understanding; That ye may restrain yourselves.”⁶ Qisas means the infliction of injury on a culprit that is exactly equal to the injury that was inflicted on his victim. Qisas is not just infliction of equal punishment to the offender but it is meant to ensure justice.⁷

The law of Qisas can be understood after looking at the ancient customs of the Arabs prior to the advent of Islam. The Arabs were always prone to take revenge. If a member of a clan or tribe was killed by a member of another clan, the revenge was taken by killing any innocent person belonging to the enemy clan. The chain reaction that would start would not end for generations. There is a famous incident recorded in the books of history that an old man, on his death-bed asked all his sons to come by his side and thus admonished them: “I am dying but I have not taken revenge from certain tribes. If you want me to achieve peace after death, take revenge on my behalf.”⁸ Hostility was, therefore, a characteristic feature of the tribesmen of pre-Islamic Arabia. Friendly co-operation was a way of life only among the members of the same tribe.⁹ The main feature for this state of hostility was personal revenge for homicide. The obligation of vengeance (tha’r) for homicide or wounding was inbred in the Arabs’ very nature.¹⁰ In pre-Islamic Arabia the blood feud was, indeed, almost unrestricted in its scope, for the death of a tribesman at the hands of one of another tribe made any of the latter’s fellow tribesmen liable to be killed in revenge, and frequently tribal pride would only regard several victims as equivalent to one fellow tribesman. This, of course, usually provoked further retaliation and the consequent feud sometimes lasted for several years.¹¹

One of the most compelling reasons for the motive of revenge among Arab tribesmen was their belief that after the death of a murdered person a night-bird known as Ham would stand on the grave and cry, “I am thirsty, give me a drink.” This implied

¹ Al Quran, (4:92)

² Islamic Foundation Bangladesh, *Bidibaddha Islami Ain*, *supra note 8*, at p.253.

³ M. Cherif. Bassiouni, *The Islamic criminal justice system*. (New York: Oceana Publications, 1882), p. 203.

⁴ Joseph Schacht, *supra note 10*, p. 182.

⁵ Abdur Rahman Doi, *supra note 6*, p.232.

⁶ Al Quran, (2: 179).

⁷ M. S. El-Awa, *supra note 7*, p.69.

⁸ Abdur Rahman Doi, *supra note 6*, p.232.

⁹ M. S. El-Awa, *supra note 7*, p.70.

¹⁰ J. N. D. Anderson, Homicide in Islamic Law, *Bulletin of the School of Oriental and African Studies*, (1951), vol. 13, p.811.

¹¹ *Ibid*, at p. 812.

that revenge should be taken in order to quench its thirst. As a consequence, revenge was taken not only against the culprit, but also against the culprit's tribesmen. This was the same with respect to the infliction of injury.¹

Diyat (blood money) was considered as a peaceful alternative to revenge. However, the amount of diyat varied according to the status of the murderer and his or her tribe. Among the Quraish the customary blood money was a hundred camels, although for the nobles it was one thousand. It was very common, on the other hand, for the blood money of some tribes to be half that of other tribes, a rule which was due largely to the difference in strength and prestige between one tribe and another.²

After Islam prevailed in Arabia the law of Qisas was introduced. As a consequence, just retaliation allowed only one life, that of the perpetrator of the crime only, to be taken for the life of the victim, or a fixed sum of money was determined as blood money. This was not to vary from tribe to tribe or due to the status of the victim. At this stage the Quranic law radically changed the legal incidents of homicide.³ There was a transition from the pre-Islamic custom of revenge (tha'r) to the Islamic law of Qisas. The distinction is illustrated by the change of terminology. Justice is now to be measured "in accordance with the moral standard of just and exact reparation for loss suffered."⁴ Moreover, the maxim "a life for a life" stems from the religious principle that all men are equal in the sight of God.⁵ It is noteworthy that Prof. Coulson here confirms the majority's views which claim equality among Muslims but not between them and non-Muslims. But according to the Hanafi School, equality in relation to this particular question based not on religion but on being a human being; hence qisas is to be implemented when a Muslim kills a non-Muslim, although the view of the majority does not allow qisas in this case but only the payment of diyat (blood money).⁶

The law of retaliation in murder cases is followed by the words "the free for the free, the slave for the slave and the woman for the woman," which have sometimes been misunderstood as meaning that if a free man has been murdered, a free man should be murdered in his place and so on. This is not true. A free man may be murdered by a slave or a woman. So, here the slave or the woman must be murdered but not any innocent free man. The word qisas requires that the murderer should be killed and not an innocent person. The words were meant to abolish an old Arab custom, for the Arabs before Islam used to insist upon the execution of others than the murderer when the person killed was of noble descent. So, it was made clear that whoever it might be, a free man or a slave or a woman, the murderer himself was to be slain.⁷

4. Conclusion

The above discussion has shown that the Islamic punishment for intentional murder is the execution of the murderer. Pardoning is possible if the closest relative of the murdered person accepts blood-money. However, if murder is unintentional, blood-money takes the place of the death sentence.

Allah, through the Holy Quran, shows us the right way that provides society with security: intentional murder is punished by killing the murderer. Although killing is a severe punishment, it is fair because murder itself is an even more severe action and such a punishment is necessary because without it more murders are encouraged. Islam simultaneously retains the punishment of death for murder but in some cases without depriving anyone of their right an exceptional form of punishment has also been created. This exceptional form is also based on profound wisdom; it is possible that the heirs of the murdered victim may be entirely dependent upon the person murdered for their subsistence. In such a situation capital punishment cannot fulfill a practical basic need of the family's welfare. Thus, for making provision of claiming ransom in lieu of capital punishment, Islam offers a practical choice to the aggrieved family. Basically, Islam structures a society which is founded on the spirit of true fraternity where the blood of a Muslim is unlawful upon another Muslim. What a beautiful teaching imbued with the love of Allah and humanity condoning purity of heart and mind and emphasising the fact that in Islam punishment is a forceful positive power of rectification and reformation for the sustenance of a pure God loving society.

¹ M. S. El-Awa, *supra note 7*, p.70.

² *Ibid.*

³ N.J. Coulson, *A History of Islamic Law*, (Edinburgh: Edinburgh University Press, 1964), p. 18.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ M. S. El-Awa, *supra note 7*, p.91.

⁷ Muhammad Faiz-ud-Din, *supra note 7*, p.101.