



## Scientific Analysis of Limits and Retribution (Hudud and Qisas) in Support of Human Dignity

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### **Abstract**

Hudud and Qisas, in the Islamic legal system, are types of punishments decreed to protect material and spiritual life and to preserve human dignity. Hudud encompasses specific, fixed offenses, such as stoning for adultery committed by a married person (Zina al-Muhsana), one hundred lashes for other cases of adultery, and the execution of the perpetrator in cases such as incestuous adultery, rape, adultery of a non-Muslim man with a Muslim woman, sodomy (Liwat), and waging war against God and society (Muharaba). This article provides a scientific analysis of it, stating that from Islam's perspective, the establishment of punishment originates from divine mercy; mercy necessitates that any behavior causing corruption be considered a crime. A criminal is like a diseased limb in the body of society; in some cases, the diseased limb needs to be amputated, and in others, surgery is required to preserve the health of the community. Therefore, punishment in Islam plays a therapeutic role. Qisas (retribution in kind) existed before Islam, but Islam transformed it from a state of unbridled chaos into a law; however, for intentional murder, the ruling is not solely Qisas, as pardon and reconciliation are also recommended. Throughout history, scholars have defended this law because the philosophy of Qisas pertains to the greatness and extraordinary value of the human right to life and aids truth and justice. The objection of human rights to the law of Qisas stems from their failure to comprehend the hidden secret within it. This is because the execution of justice through the implementation of Qisas guarantees the right to life, in which equality and justice are stipulated. Consequently, the punishments of Hudud and Qisas are prescribed to treat a society where criminality has reached a highly dangerous state, the veils of chastity have been torn, and the society is afflicted with such a severe illness that its cure through ordinary means is impossible, requiring a shock to the society, which can only be treated through the implementation of Hudud and Qisas.

**Keywords:** *Hudud; Qisas; Islamic Law; Human Dignity; Human Rights*

### **Introduction**

From the perspective of Islam, human values such as the value of religion, intellect, honor, life, and property are among the most important and valuable matters that have a direct connection with the

material and spiritual life of humankind. Protecting and safeguarding them is a primary and self-evident necessity for humanity. Therefore, any aggression against these five matters is considered a crime that necessitates punishment. To realize the material and spiritual objectives of humankind, an appropriate punishment has been stipulated for each, because disbelief, apostasy, murder, alcohol consumption, adultery, and aggression against the property of others are behaviors that are prohibited to preserve the aforementioned five essential interests—essentially to protect religion, life, intellect and human personality, the family unit, and individual ownership—and punishments titled Hudud have been established for those who transgress against them. In this article, using an analytical and descriptive method, we examine Hudud and Qisas and conclude that they not only do not conflict with human dignity but have been legislated to protect human dignity.

### **a) Hudud Punishments with an Approach to Supporting Human Dignity**

Hudud in Islamic jurisprudence has specific and defined cases; such as stoning (rajm) for adultery committed by a married person (Zina al-Muhsana), where if an assault is made on a woman's chastity and honor, the punishment for the aggressor in such crimes, which include adultery by a married person, incestuous adultery, rape, adultery of a non-Muslim man with a Muslim woman, sodomy (Liwat), and waging war against God and society (Muharaba), is death. This is because in the crime of adultery, an assault is made on human chastity and honor, and the perpetrator has violated human dignity and the sanctity of marital law. To preserve dignity and protect the purity of human lineage, Islam has prescribed the punishment of stoning for adultery by a married person, but for incestuous adultery, for the Muharib (one who wages war), and for the innate apostate (Murtad Fitri), it has prescribed the execution of the perpetrators.

By emphasizing individual and social dignity and honor, Islam has stipulated various mechanisms for preserving and safeguarding this valuable sanctum, including Hudud punishment, which is one of the effective mechanisms for moral immunity, and social order and security. The absence of this mechanism or its non-implementation causes disorder and moral decay in society.

Undoubtedly, the prohibition of the mentioned matters and the establishment of punishment originate from divine mercy; mercy necessitates that anything which secures the best interest (maslahah) of humankind be considered obligatory, and any behavior that causes corruption (mafsadah) be deemed forbidden. For example, regarding adultery, He says: "And do not approach unlawful sexual intercourse. Indeed, it is ever an abomination and an evil path." (Al-Isra, 17:32). This statement is God's guidance, meaning it explains the interests and corruptions and creates motivation for abstaining from this vile act. Regarding the punishment for this heinous act, the Quran says: "The [unmarried] woman or [unmarried] man found guilty of sexual intercourse - lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion of Allah, if you should believe in Allah and the Last Day." (An-Nur, 24:2). The stipulation of Hadd for committing this major crime is because this vile act plays an extraordinary role in the moral decline of society. Therefore, He did not suffice with merely stating its corruption but also prescribed a severe punishment for its perpetrator.

Punishment in Islam means delivering mercy to humans. Although the execution of punishment involves pain and suffering for the criminal, it is ultimately for his own and society's best interest. For this reason, the implementation of Hudud and Qisas is in line with preserving human dignity. In confirmation of this statement, Islamic sources point to the wisdom of Hudud, stating that establishing Hadd and executing justice is better than forty days and nights of rain falling on the earth and is a cause for reviving the land.

In a narration from the Messenger of God (PBUH), it is transmitted: "The benefit of establishing a Hadd is better than raining for forty days and nights." (Al-Kulayni, Furu al-Kafi, vol. 7, 1987, p. 174). Imam al-Kadhim, commenting on the interpretation of the blessed verse "He gives life to the earth after its death" (An-Nur, 24:19), said: "Reviving the earth is not by rainfall; rather, God raises men to revive

justice, and then the earth is revived by the revival of justice." (Al-Hur al-Amili, *Wasa'il al-Shia*, vol. 18, p. 308).

From the above narrations, it is understood that the execution of divine Hudud is of utmost importance, even if some Hadd punishments result in the criminal's loss of life. This is because the legislation of such punishment is a mercy for society and has a deterrent effect against other crimes. Some crimes are of a nature that they threaten the social life of humankind and the foundation of the family, which is the primary social unit; therefore, they must be severely prevented, and the execution of Hudud serves this very purpose.

One of the deadlocks of Western civilization is the decay of the family foundation, which has arisen due to sexual freedoms and the lack of preventive punishments. However, in Islam, to protect society and prevent it from becoming contaminated, punishments have been stipulated. Through their execution, the criminal, as a corrupt limb of society, must be separated from society, like a diseased limb that a surgeon amputates from a patient's body to prevent the spread of corruption and infection. An Islamic scholar has explained this point:

Without punishment, the germ of crime spreads to all, and society is led into corruption, and the thread of individual and social life disintegrates. If one Hadd from God's Hudud is carried out, a whole society is reformed. If the hands of four thieves are cut off in public, theft completely ceases. If four people addicted to immorality are lashed, immorality vanishes from society. This is like a cancerous gland that a doctor is compelled to remove to save a human being; this is mercy upon the patient and his preservation. (Khomeini, *Sahifeh-ye Imam*, 2003, vol. 8, p. 332).

Therefore, punishment in Islam plays a therapeutic role, just as treatment is not the same for all patients and requires the prescription of different medicines and therapies; the ailments of society also vary. Sometimes they are so severe that they necessitate difficult and arduous treatment.

### **1. The Punishment for Zina (Adultery/Fornication) with an Approach to Supporting Human Dignity**

The punishment for Zina is implemented in a society that believes these punishments are established by God for criminals, and considers their execution as a cause for preserving social order and in line with supporting human honor and dignity. However, in a society that does not believe in God and does not consider criminal laws to be from God, but rather establishes criminal laws based on secular culture and materialism, Islamic Hudud are perceived as harsh and in conflict with human rights. Whereas Islam has reacted with decisiveness to protect and safeguard the fundamental matters mentioned. For this reason, to safeguard the honor and dignity of humans, which is tarnished by Zina, it has not deemed it permissible to show mercy to its perpetrators. God has said not to show mercy in executing the Hadd punishment upon the male and female fornicators (An-Nur, 24:2). Such a decisive approach in executing the Hadd for Zina indicates that this crime is very grave because it causes loss of honor and the disintegration of the family foundation. However, in non-Islamic cultures, this act is only considered a crime in cases of rape. But illicit relationships, even in cases where the man and woman have spouses, are considered permissible based solely on consent. This is precisely why the moral system and family foundation in the Western world are unstable.

It seems that non-religious societies, especially countries where sexual freedom is prevalent, need to consider Islamic punishment in order to safeguard human dignity and honor. This is because one of the objectives of Islamic punishment is the prevention of crime, and the execution of the Hadd for Zina is necessary for strengthening the family system. The lack of punishment for sexual crimes and the damages resulting from sexual freedoms are far greater than the implementation of its punishment. Islamic narrations point to the damages and adverse consequences of the crime of Zina, considering it a cause of

various types of corruption, such as murder, the disappearance of lineages, neglect of children's upbringing, and the squandering of inheritance. (Al-Hurr al-Amili, previous reference, p. 119)

Besides punishment, the Islamic religion has expressed other strategies for preventing the occurrence of Zina. One of these strategies is the instruction to marry (An-Nur, 24:33). In Islam, marriage is the only legitimate way to satisfy the sexual instinct. Certainly, marriage throughout human history has been considered a legitimate method and a good tradition for responding to the sexual instinct and procreation. On the other hand, Zina was considered vile and, due to its severe consequences, one of the major social crimes. In previous divine religions, Zina was prohibited, and the Jewish people considered it forbidden. The prohibition of this crime is also understood from the books of the Bible. (Mousavi Ardabili, *Fiqh al-Hudud wal-Tazirat*, vol. 4, 2006, p. 116).

In the Islamic religion, this crime has also been severely prohibited (Al-Isra, 17:32). This is because the crime of Zina entails very bad dangers and consequences. One of its consequences is that to the extent Zina increases in a society, the desire for marriage among the youth decreases accordingly. When the sexual instinct is satisfied through illegitimate means, young people do not easily undertake the burdens of marriage, providing maintenance, and the hardships of raising children. Unfortunately, this is the situation among today's youth.

In addition to the damages mentioned, the emergence of venereal diseases, and contagious diseases like AIDS, which are known as dangerous and fatal diseases and have increased in civilized countries even affecting poor countries, are consequences of sexual freedom and the lack of preventive punishment. The facilitation of other crimes such as murder, assault, theft, and the loss of chastity and modesty are other consequences of this crime.

Another very dangerous consequence is children born from illegitimate means. In countries with sexual freedom, such children are on the rise. This leads to the severing of the roots of affection that exist in the hearts of fathers and children, because in many cases the father of children born illegitimately is unknown. Furthermore, it creates destructive effects on human character and temperament.

The severe consequences of this grave crime do not only afflict the adulterous man and woman. Rather, it extends beyond them, harming society, affecting future generations, impacting their happiness and well-being, and even negatively affecting the economy, politics, and the defensive and military powers of that society. (Mousavi Ardabili, previous reference).

## **2. The Punishment for Qadhf (False Accusation of Unlawful Sexual Intercourse) with an Approach to Supporting Human Dignity**

If we look at the penal provisions of Islam through a dignity-oriented approach, it becomes clear that Islamic punishment is for honoring dignity and an effort to protect human honor and sanctity. For this reason, it pays attention to the character of individuals separately and has legislated rulings to protect their honor and reputation. Before addressing the Hadd punishment for Qadhf (false accusation), it is appropriate to mention the types of behaviors that are prohibited in Islamic law for the purpose of preserving human dignity. Behaviors such as backbiting (ghibah), false accusation (tuhmat), mocking, fault-finding, spying (tajassus), and tale-bearing (sukhriyah) are among the things whose commission harms a person's character and reputation. For this reason, the Noble Quran has prohibited their commission (Al-Hujurat, 49:11-12).

Human dignity in Islam is protected from all angles, to the extent that it does not permit "hijaa" (al-Jawhari, *Al-Sihah Taj al-Lughah*, vol. 6, 1990, p. 2533), meaning backbiting that causes him degradation and humiliation and contradicts his dignity and character. Therefore, in numerous instances, the sanctity of a person's blood, honor, and wealth are placed side by side (Kashif al-Ghita, *Ahkam al-Mutajir al-Muharramah*, 2002, p. 159), which indicates the value placed on preserving human dignity, not

permitting aggression against any of these matters. This means that to the same extent that life is valuable for a human, preserving their honor and reputation is equally valuable. The reason is that the Messenger of God (PBUH) said: 'God has forbidden the spilling of a Muslim's blood, their honor, and also having bad suspicions about them.' (Montazeri, *Dirasat fi Wilayat al-Faqih wa Fiqh al-Dawlah al-Islamiyah*, 1989, p. 541.) Placing honor alongside blood indicates that the value of a person's honor is equal to the value of their blood. Because anyone who falsely accuses a Muslim man or woman of committing Zina has, in reality, assaulted their human character and honor. Consequently, to prevent harm to a Muslim's reputation and standing, and to protect their human dignity and character, eighty lashes have been prescribed for someone who falsely accuses another of Zina (Qummi Ash'ari, *Al-Nawadir*, 1988, p. 147). Just as accusing someone of Zina ruins their character in the eyes of others, it also has very severe consequences. Apart from discrediting the man or woman in the eyes of their spouse, destroying mutual trust, and creating suspicion in both, a narration points to the reason for punishing this crime, stating that one of its dangerous consequences is the denial of lineage (*nafy al-walad*), which leads to the cutting off of lineage and the destruction of kinship (Al-Hurr al-Amili, *Wasa'il al-Shia*, 1989, p. 176).

### **3. The Punishment for Lesbianism (Musahaqah) and Sodomy (Liwat) with an Approach to Supporting Human Dignity**

Musahaqah (lesbianism) is a moral vice which in jurisprudential terminology means a woman engaging in a sexual act with another woman, similar to Liwat (sodomy) which is a sexual act between men (Ibn Idris al-Hilli, *Al-Sara'ir*, vol. 3, 1990, p. 245). It is a form of moral deviation known today as homosexuality, where a human satisfies their sexual desires with a person of the same sex. In Western civilization, the act of homosexuality between women and between men is free; indeed, in some countries, marriage between women and between men has been legally declared and supported. This issue, apart from religious considerations, is contrary to human nature and innate disposition (*fitrah*). Only humans whose innate human nature has been corrupted in a society polluted with various types of sexual freedom consider homosexuality permissible and a natural right. Otherwise, the divine innate nature of humankind abhors such an act.

Islam, with a human approach based on the God-given innate nature of humans, has prohibited homosexuality and, to prevent inclination towards the same sex for sexual gratification, has prescribed a specific punishment, which according to narrations is equivalent to the punishment for Zina (adultery/fornication) (Al-Kulayni, *Al-Kafi*, vol. 7, 1987, p. 202). Apart from being contrary to human nature, homosexuality between women (Musahaqah) has adverse consequences for society. If it becomes widespread, the desire to marry men decreases proportionally, and women who should play the role of motherhood and fulfill their human duty in society will no longer have such a role.

Just as homosexuality is a crime and condemned among women, it is far more condemned among men, and its punishment is more severe. This is because homosexuality between men, termed Liwat, is among the worst moral crimes, incompatible with human nature. The act itself is an enmity towards humanity and a departure from God's natural tradition. The harms arising from this vile and immoral act are among the most dangerous harms to the individual and society, too numerous to count. Among the resulting harms are the aversion of youth from marriage and their unwillingness to accept the responsibility of starting a family. Another harm is the corruption of the family system, the consequence of which is a decline in human progeny. Furthermore, when homosexuality becomes widespread among men, their wives are deprived of sexual satisfaction from their husbands and are led into corruption (Mousavi Ardabili, *Fiqh al-Hudud wal-Tazirat*, vol. 2, 2006, p. 5). In addition to the mentioned individual and social harms, it causes transmissible diseases like AIDS, one of the primary factors for its spread being sexual freedoms, including Liwat. Therefore, the punishment for homosexuality is based on an approach to protect human nature and the family system. Islamic narrations point to the philosophy behind its prohibition, stating that God has forbidden Liwat because if it were permissible, men would

have no need for women, the result of which would be the extinction of human progeny (Al-Hurr al-Amili, *Wasa'il al-Shia*, vol. 20, pp. 332-333).

#### **4. The Punishment for Intoxicants (Masakirat) with an Approach to Supporting Human Dignity**

Based on one of the tenets of the human rights system, the foundation of human dignity is the power of thought, reasoning, freedom, and human free will. However, despite this, international human rights documents contain no prohibition on the consumption of intoxicants, which destroy the intellect and reduce a human to the level of a willless animal, for the protection of human reason. But Islam, while defending the individual and social freedoms of humans, has on the other hand prohibited all behaviors that harm human dignity and his spiritual character. Therefore, to protect the health of the intellectual faculty, it has prohibited the consumption of intoxicants and prescribed a punishment for it. The punishment for consuming Khamr (an alcoholic beverage) is eighty lashes. The reason for its legislation has also been explained. This is because a person who drinks Khamr becomes intoxicated and his power of intellect is stripped from him. This leads to delirious speech, slander, and false accusation against people, which are effects of intoxication. The punishment for the crime of false accusation and alleging Zina, especially against chaste women, is also eighty lashes (Siwuri al-Hilli, *Kanz al-Irfan fi Fiqh al-Quran*, Aqiqi Bakhshayeshi, vol. 2, p. 864).

In addition to the mentioned punishment, otherworldly punishment for it has also been mentioned in narrations. Imam al-Sadiq said: 'I will punish the one who drinks an intoxicant or gives it to a child who has not reached puberty by making him taste the hot water of Hell.' (Al-Kulayni, *Al-Kafi*, vol. 6, 1987, p. 397). The Messenger of God (PBUH) considered the sin of this crime equal to negligence and disrespect in prayer, resulting in deprivation from entering the Kawthar pool (Figh al-Rida, 1986, p. 101). Islam places a very high value on human dignity. It is even stated regarding applying kohl with an applicator made from an intoxicant and using it to apply kohl to one's eye: 'God will punish his eye with an applicator of Fire.' (Al-Saduq al-Qummi, *Man La Yahduruhu al-Faqih*, Ghaffari, vol. 5, 1989, p. 297). Islam, for the protection of the physical and spiritual health of humankind, pays special attention to what one eats and drinks. If water from a well is used for drinking and it becomes polluted by the pouring of intoxicating liquids, the ruling is to remove all the water from the well (Al-Tusi, *Al-Jamal wa al-Uqud fi al-Ibadat*, Wa'iz Zadeh Khorasani, 2008, p. 195). All the mentioned rulings regarding the consumption of intoxicants have a human-oriented approach, aimed at protecting the health of the human body and soul from contamination and the loss of the power of thought and reasoning.

#### **b) The Punishment of Qisas (Retribution) and Its Justifications**

##### **1. Preserving Human Dignity and Ensuring Social Life**

The law of Qisas (retribution) throughout history; before Islam, in Roman law, the laws of Hammurabi, and the law of Moses, existed as "an eye for an eye, an ear for an ear, a nose for a nose." Therefore, it can be said that Qisas in Islamic criminal jurisprudence is an affirmed ruling (*hukm imda'i*). However, since "Islam transformed the law of Qisas from a state of unbridledness into a codified law, it cannot be considered merely an affirmed ruling" (Khosro Shahi, *The Philosophy of Qisas from the Viewpoint of Islam*, 2001, p. 73).

The punishment of Qisas in Islam is not merely revenge against the criminal; rather, it aims to preserve the social order, prevent the occurrence of crime, and protect the interests of society by establishing the law of Qisas to deter potential criminals. Furthermore, the feeling of vengeance and the desire for satisfaction have always existed in humankind. If a murderer is not punished through the law of Qisas, the heirs of the victim might resort to more dangerous actions to seek revenge. But when the murderer is punished in front of them, they attain peace of mind and will not harbor resentment or grief. Additionally, Qisas in Islam ensures the individual and social life of humankind, which is examined from the perspective of the Quran and narrations.

## 2. Qisas (Retribution) Entails the Right to Life

In the Islamic perspective, life is a God-given right, and all human beings equally benefit from it. This is why the Holy Quran equates killing one person with killing all people, and giving life to one individual with granting life to all humankind (Al-Ma'idah, 5:32). Islam's approach to life is one that values it, considering it a divine trust in the hands of humans. In reality, humans are trustees of life, not absolute owners with an inherent right to it. Therefore, in this view, a human's authority over their own life is limited to what the trust-giver, God, has granted them. This is why life is not merely a right of individuals; they are also obligated to preserve it. Consequently, forfeiting the right to life is prohibited except within the framework of divine laws. For this reason, suicide is forbidden in Islam. And if others violate this right, they are dealt with according to the law of Qisas (retribution), and thus, Qisas has been legislated to defend the right to life. As stated by Amir al-Mu'minin: 'God has made Qisas obligatory for the protection of bloods' (Nahj al-Balagha, Maxim 252). Based on this, the punishment of Qisas leads to a reduction in murder.

Someone who assaults the life of an innocent human is a criminal, and those whose criminality, malice, and brutality are beyond doubt are not considered human; rather, according to the Quran, they are like animals, indeed baser: 'They are like livestock; rather, they are more astray. It is they who are the heedless' (Al-A'raf, 7:179). Certainly, the right to life for animals is not equal to the human right to life. Respecting the right to life of criminals leads to the trampling of the human right to life. Therefore, the absolute rejection of the punishment of Qisas, aside from being illogical for the sake of preserving the life of a murderer, seems irrational.

The objection of human rights to the law of Qisas in Islam stems from the lack of awareness among the framers of human rights regarding the profoundly grand philosophy of Qisas, which is the extraordinary value it places on the human right to life and its aid to truth and justice, and this action is compatible with human standards. Of course, understanding this matter has its own specific condition, which is mentioned in the expression 'O men of understanding' (ulu al-albab). In the Holy Quran, labeeb is a special kind of human who: firstly, possesses a thinking mind, meaning he thinks rationally; secondly, is introspective; thirdly, seeks the truth; fourthly, is never deceived by outward beauties and does not exchange the best for the worst. Comprehending the justice-centric and dignity-oriented ruling of Qisas is possible for those who possess sound and complete intellect, and while intellect is necessary for understanding it, it is not sufficient. (Rashid Rida, Tafsir al-Manar, vol. 2, 1994, p. 132). And for this reason, the Holy Quran has stated the wisdom behind Qisas: 'There is life for you in Qisas, O men of understanding, that you may become righteous' (Al-Baqarah, 2:179). This rationality, the public interest governing the philosophy of Qisas, is a clear response to those who object to the ruling of Qisas.

Allamah Tabatabai writes: 'The aforementioned verse points to the wisdom behind the legislation of Qisas, dispels any misconception that might arise from the legislation of pardon and blood money (diyah), and also states the merit and benefit in pardon, which is the spreading of mercy and the motive of compassion, saying: Pardon is closer to piety' (Tabatabai, Tafsir al-Mizan, previous reference, p. 675). However, the execution of Qisas upon a murderer creates deterrence and fear in others. It is evident that the purpose of executing Qisas is not to resurrect the murdered person or to create another human being. Rather, the execution of Qisas is the best threat against criminals who intend to assault human lives, so that with the execution of Qisas, they abandon their criminal thoughts and no longer think of killing another human. (Jafari, Huquq-e Jahani-e Bashari, previous reference, p. 207). Therefore, Qisas guarantees life and causes criminals, for fear of being killed themselves, to refrain from killing others.

Many commentators consider the wisdom behind the rulings of Qisas to be the securing of life for the members of society. (Al-Razi, Al-Tafsir al-Kabir, vol. 5, 1991, p. 48). Therefore, Qisas in Islam is not a punishment for every killing. It is prescribed for punishing intentional murder and crimes against human limbs and organs, and it has specific conditions. The execution of retribution for a limb is upon the

request of the victim, the execution of the murderer is upon the request of the legal guardian of the blood, and also requires the permission of the religious judge. But if the heirs of the victim agree that the murderer pay blood money (diyah), diyah is taken from the murderer. And if the heirs of the victim pardon the murderer, he is set free, unless he has repeatedly committed murder to such an extent that the repetition reveals that killing is normal for the murderer. In this case, the murderer is dealt with according to other Islamic laws.

From Islam's perspective, Qisas is not the sole ruling for someone who has committed intentional murder. Rather, the ruling of Qisas for someone who kills is a serious threat, so that anyone who intends to commit intentional murder knows that they are destabilizing their own life.

Allamah Jafari poses a question, saying: Can we, to demonstrate the greatness and value of human life, decree a ruling more logical than this: to seriously prohibit the audacity to enter the forbidden zone of human life? So that no one can trespass into this forbidden zone and attempt to destroy the manifestation of God's greatness, which is life. On the other hand, committing intentional murder destabilizes the murderer's own life and places him in danger of destruction (Jafari, previous reference, p. 205).

### 3. The Fairness of Qisas (Retribution)

Proponents of the punishment of Qisas (execution) believe that the death penalty for certain crimes such as intentional murder and sexual assault is the fairest punishment. This is because the criminal loses the very thing of which he deprived his victim. Among the supporters of the death penalty is Plato, who, in defending capital punishment from a utilitarian perspective and for the deterrence of others, states: '... on the one hand, life holds nothing but loss for the murderer, and on the other hand, killing the murderer benefits others in two ways: one is "learning a lesson" from the murderer's fate, and the other is the purification of society from "corrupt elements." Therefore, he finds no alternative but to prescribe the death penalty for murderers.' (Plato, *The Laws*, Lofti, vol. 4, 2001, p. 2163).

Immanuel Kant, looking at the implementation of punishment from the perspective of absolute justice, considers punishment a categorical imperative and believes that if justice vanishes from society, no value for human life remains in the world. For this reason, he deems only the principle of equality suitable for determining the type and degree of punishment. He says if you are to strike someone, strike yourself too; if you want to kill someone, consider yourself deserving of being killed. Hence, he considers someone who has violated the life of another deserving of execution, even if the execution causes humanity to be demeaned in the condemned person. (Kant, *The Philosophy of Right*, Sanei, 2001, pp. 192-194). Kant, although he considered execution demeaning, deemed it necessary for the sake of executing justice. When faced with preserving dignity on one hand and executing justice on the other, he prioritized the execution of justice over dignity. (Ibid.)

### 4. The Deterrence of Qisas

Creating fear in potential criminals and deterring others are among the objectives of punishment. Proponents of the death penalty consider this very point as a reason for its necessity, believing that life is the dearest and most beloved possession of every individual. Therefore, the fear of death is the greatest fear. The death penalty will have this effect on society: it will deter others from committing crime. Some experts, regarding the difference in the effect of this punishment and life imprisonment, have said: 'Life imprisonment may cause individual prevention, but it will not be effective in general prevention and setting an example for others.' (Mir Mohammad Sadeqi, previous reference, p. 381).

Some scholars in favor of the death penalty said: 'They accept the death penalty without any problem, provided its scope is limited to crimes such as murder or treason against the country.' (Pradel, *History of Penal Thoughts*, Najafi Abrandabadi, 2002, p. 59). While emphasizing the necessity of the



death penalty with limitations, they simultaneously criticized the application of harsh punishments and torture. However, a number of 18th-century writers, after rejecting the theory of the right to retribution, viewed punishment from a retributive perspective, considering the basis of punishment to be the deserved penalty for evil, and believed that the right to punish stems from the evil of the crime. Someone who has committed a crime has, in reality, willingly submitted to punishment. (Ibid., p. 32)

### **5. Supporting Society Through the Implementation of Execution.**

Others, from a philosophical and social perspective, have considered the right to punish and carry out execution necessary for the preservation and survival of society and the administration of justice. Saint Thomas says: "Man has the right to life and the enjoyment of liberty, which is a divine blessing. But these two rights are limited by the right to life of others and the observance of their liberty. And if he transgresses his limits, this right is taken from him, and the aggressor must face his punishment." (Ali Abadi, Criminal Law, vol. 2, 1973, p. 19).

In the view of Saint Thomas, the survival and life of society depend on the administration of justice, which is achieved through the execution of punishment. He believes that justice is established when the criminal is punished proportionally for the crime committed; the proportionate punishment for intentional murder is the execution of the murderer. Therefore, the murderer is executed, and other offenders should also be punished according to their committed crimes (Ibid.).

### ***Analysis and Evaluation***

In the view of this author, Qisas (retribution) is one of the three rulings concerning a murderer. The framers of human rights have only judged this specific ruling. However, they have unfortunately not paid attention to the other two rulings, namely pardon and reconciliation, which are provided for the murderer in Islamic criminal jurisprudence and contain immense wisdom. On the other hand, they have failed to note that one of the wisdoms of Qisas is to give peace of mind to the victims' heirs; if Qisas is not carried out, the pain, distress, and psychological harm inflicted upon them, if not compensated through this satisfaction, may cause mental and psychological disorders and lead to worse retaliatory actions. Therefore, in implementing Qisas, instead of ignoring the feeling of revenge, Islam has guided this feeling in the correct direction. Because, on one hand, it gives the victim the right to retribution, and on the other hand, it invites them to pardon, forgive, and reconcile: 'And if remission is made by the victim's kin, then grant any reasonable demand, and compensate with handsome gratitude' (Al-Baqarah, 2:178). Therefore, Qisas is not the sole ruling for the murderer that human rights object to. Rather, two other rulings are also prescribed for the murderer in Islam, which should be considered by human rights.

Another response to human rights is that they do not realize that by overlooking Qisas for the murderer, under the pretext of valuing life and protecting the human dignity of the murderer, they undermine the greatness and value of human life. This is because if the punishment is merely imprisoning the murderer, it creates the notion in people's minds that killing a human is equivalent to a few years in prison. And this law suggests that human life is not very important. But Qisas in Islam exists due to the importance of life. And in the case of pardon, it both resolves the distress of the victims' heirs and demonstrates the importance of human life in terms of its greatness and value.

A fair perspective is that Qisas is one of the most effective factors in preventing crimes against human life and limbs, and it secures humanitarian goals. This is because the punishment of Qisas is conditional upon the principle of equality and the administration of justice. And the law of Qisas in Islam is stated with a balance between compassion and severity. Although it appears harsh, it is for preserving social order, compassion, supporting the victim, and is the secret to individual and social life. On the other hand, pardoning and forgiving the criminal is presented in such a way that it introduces the murderer as 'your brother' to show that the heirs of the deceased are not enemies of the murderer but are

his brothers and can pardon him. Pardoning the murderer is compassion towards him and his family. From Islam's perspective, what violates the criminal's dignity is the commission of the crime, not the punishment. Consequently, the execution of Qisas upon a killer is because he violated the human dignity of the victim, and committing murder causes the violation of the criminal's own human dignity, and this action necessitates that Qisas be applied to him.

In the author's opinion, the objection of human rights to the law of Qisas, which they consider violent, stems from their failure to comprehend the hidden secret within this law. Qisas is different from killing. In Qisas, equality and justice are stipulated; the blood of an innocent person spilled on the ground is not cleansed with the blood of the murderer but is washed with the pure Kawthar of Qisas, which is the water of life. The administration of justice through Qisas guarantees the right to life. Furthermore, the death penalty and the physical elimination of the criminal are like surgery and amputating a diseased limb from the body. As stated by Amir al-Mu'minin, 'The last resort and treatment is cauterization' (Nahj al-Balagha, Sermon 168). If Qisas is violence, then the work of a doctor who surgically removes a diseased limb from a patient's body should also be considered violence, even though, according to medical law, no one accuses the doctor of violence, hard-heartedness, or cruelty. If a doctor acts to remove this diseased limb from the patient's body to keep the other body parts healthy, this action of the doctor is a mercy for the patient, not violence. (Khomeini, Sahifeh-ye Nur, previous reference, vol. 8, p. 321). Therefore, for an offender who is like a diseased limb of society, there is no solution except to surgically remove this diseased limb to preserve the interests of society and social health, which is done by executing Qisas upon the offender. And this action, meaning Qisas for the offender, is mercy, not violence, and is a humanitarian action, not inhumane.

In other words, the punishment of Qisas is a beneficence and grace from God for all human society, likened to the strictness of a father in disciplining his child or the efforts of a doctor to treat a patient. A point that must be considered is that showing compassion towards a person who tramples divine laws and value norms is contrary to true compassion. The criminal act of the offender harms both his own dignity and that of the crime victim. Therefore, punishment must be applied to him. And applying punishment is itself mercy. He receives divine mercy precisely when punishment is applied to him. Because, based on the universal divine law, no mercy is attained without hardship. (Al-Siwasī, Sharh Fath al-Qadīr, n.d., p. 112). and attaining the Hereafter requires enduring this hardship. (Al-Sadeqi, Al-Forqan fi Tafsir al-Quran, vol. 18, n.d., p. 21.) Therefore, in Islamic criminal jurisprudence, what violates human dignity is sin and criminality, not the punishment which has been prescribed to save him and others from downfall and corruption.

## Results

The results obtained from the examination of Hudud and Qisas punishments are as follows:

1. The prescription of severe punishments under the title of Hudud is for treating a society where criminality has reached such a dangerous state that the veils of chastity are torn, and crimes are committed to such an extent that, in the case of Zina (unlawful sexual intercourse), four just male witnesses observe its occurrence. Certainly, such a society is afflicted with an illness so severe that its cure through ordinary means is impossible, and it requires a shock to the system.
2. Qisas is executed in cases of intentional murder where innocent blood has been shed; the murderer has trampled upon his own human dignity and has also violated the dignity of another human. Therefore, there is no dignity for the criminal murderer, which is why it must be carried out upon him.

3. The Hadd for the consumer of intoxicants has been stipulated because the power of intellect and human personality, which is the basis of human dignity, has been violated, necessitating severe punishment and treatment.
4. The Hadd for theft, with its specific conditions, aimed at protecting property and social security, is applicable in a society where the security of individuals' property has been violated.
5. In general, these punishments have been prescribed by One who has complete knowledge and mastery over all individual and social, material and spiritual dimensions of humanity, and who has established the Divine Hudud based on the interests of the individual and society to eliminate corruption and cure the society's illness. Therefore, the implementation of Hudud is in line with supporting human dignity. Each of these Hudud was examined separately, and it became clear that not only is the implementation of Hudud punishments not contrary to human dignity, but their execution is for the preservation and protection of human dignity.

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