

Qisās

(Making a thing equal [to another thing])

The Islamic Penal System with Special Reference to Killing

Imam A. M. Khattab

Imam quotes [in Arabic 2:178-179. The translation is:]
“O you who have attained to faith! Qisās (just retribution) is ordained for you in cases of killing: the free for the free, the slave for the slave, and the woman for the woman. And if something of his guilt is remitted to a guilty person by his brother, this remission shall be adhered to with fairness (*bil-ma‘ūf*) and restitution to his fellow-man shall be made in a goodly manner (*bi-ihsān*). This is an alleviation from your Sustainer, and an act of His grace. And for him who willfully transgresses the bounds of what is right, after the meaning of what constitutes “just retribution” has been made clear in the above ordinance, there is grievous suffering in store: for, in the law of just retribution, O you who are endowed with insight (يَا أُولِي الْأَبْصَارِ), there is life for you (وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ) so that you might remain conscious of God (لَعَلَّكُمْ تَتَّقُونَ).”

Hudood is that section of Islamic Law which, in contemporary language, is called the penal code. It is spelled out in the Qur’an very clearly. *Hudood* means “boundaries”. It

means there are specified boundaries that one should not cross. If you cross beyond a specified boundary, you are committing a crime.¹ In the system of *Hudood*, a crime has two parts: *Haqq Allah*² and *Haqq al ‘abd*.³ The first, the right of God, is non-negotiable, but the right of the human being is negotiable, and that is being referred to in the part of the verse which says, “And if something of his guilt is remitted to a guilty person by his brother, this remission shall be adhered to with fairness (*bil-ma‘ūf*) and restitution to his fellow-man shall be made in a goodly manner (*bi-ihsān*).” *Fa*,⁴ in Islam, even in the case of killing, there is room to avoid a counter-killing, if a ransom is acceptable and can be paid. Our problem today is that many “ulama”⁵ give fatwas prefacing them with “the Qur’an said”, while at Al-Azhar, students study the Qur’an for 15 years, and after graduation, the study of the Qur’an is still incomplete.

¹ In Islam crime is synonymous with sin

² The Right of God

³ The right of man

⁴ A connecting letter in Arabic language, that connects a previous idea with a following idea, and can be translated as “then” or “so” depending on the context

⁵ Scholars

“O you who believe, just retribution is ordained for you in cases of killing: the free for the free, and the slave for the slave, and the woman for the woman.” We read that verse in the Qur’an, and many people may understand it as a rule in Islam. If so, then what is the rule if a man kills a female? Or a free man kills a slave? Does that mean the law of just retribution, mentioned in the Qur’an, is not applicable to him? There are a lot of “mofassireen”⁶, nowadays, who write tafseers of their own, and who read such verses and explain them on their own, claiming that they know because they can read the Qur’an, and “that’s what the verse says”. But there is a hidden science behind that – the science of abrogation. This verse [2:178] is known in the science of abrogation as *ayat-ul-mansookhah hukman la tilawatun, yā’nī*, you read it, but you cannot act according to it. Why? Because there is another verse in the Qur’an, related to the same subject, revealed at a later date: the latter verse abrogates the rule of the first verse, although, in fact, *the verses are complementary and must be considered together, not separately. The Qur’anic verses are always to be considered in the context of the entire Qur’an.*

In America, when the Congress of the United States issues a new law, they declare that the particular law supersedes the law of, say, the year 1935. It means the law of 1935 is abolished, has no ruling at all, and the new law is the one which will be applied. The Qur’an is a law. Islam, as you know, started out weak, then reached its youth, then its maturity and, at every stage, Qur’an was revealed with certain laws and rules to guide the new Muslim society based on its level of maturity. For example, at the start of Islam, slavery was practiced. In addition, it was the practice of the Arabs, at that time, to kill the principal and most important male of a tribe in retaliation for the killing of someone from their respective tribes. If you killed a female from my tribe, I would kill the most important male of your tribe, if you killed a slave from my tribe, I would kill a chief and a free man from your tribe. Why? In their view, a man was more valuable and the woman was considered to have a lower status. When the Qur’an came, it treated this problem in two stages. This verse [2:178] was revealed to teach them equality, to acquaint the people with the new system, “a slave for a slave, free man for free man, female for female.” But with the advancement of the Muslim community, and after Islam was firmly established and the Muslim society reached its maturity, the Qur’an came with

another, more detailed and universal law, in Chapter Al-Ma’idah “. . . a soul for a soul. . .” in the meaning that there is no distinction between free man or slave, male or female; they are all equal. [Imam quotes Arabic verse. The English translation is:]

“And We ordained for them [*katabna* from *kutiba* = to prescribe/to make it a written law] in the Torah: A life for a life (*nafs*), and an eye for an eye, and a nose for a nose, and an ear for an ear, and a tooth for a tooth and a similar retribution for wounds; but he who shall forgo it out of charity will atone thereby for some of his past sins. . .” [5:45].

That is called *qisās* in Islam. It means that the victim and the perpetrator have to be equalized in what has been done, but *the retribution is to be carried out by the authority, not the victim.*

“A life for a life” or the death penalty has been a subject of debate in the United States. Since the crime rate increased in the American society, there are voices now calling for the restoration of the death penalty, to work as a deterrent, whereas this penalty was imposed upon Muslims since the start of Islam, and there is no power on earth that will be able to change it. The rule is the rule of God and there is no authority above the authority of God to cancel it. And this Qur’anic verse not only addresses killing, but injuries as well. If someone, with predetermination, hit a person in the eye, and the person lost his eye, then the judgment against the perpetrator should be the same. If he made him lose a tooth, then the same thing should be done to him. If he wounded or bruised him in any way, he has to have a similar wound or bruise, as long as this was predetermined and with clear intention. This is the penal code in Islam and it is a must, an obligation, if Islam is to serve as a Constitution in our lives.

The Islamic penal system, applied at the time of the Prophet, resulted in conditions after which every human being yearns: safety and security. [Imam quotes:]

“...**وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ** . . . For, in the law of just retribution, O you who are endowed with insight, there is life for you.” And another Qur’anic verse says, “Let them, therefore, worship the Sustainer of this Temple,⁷ who has given them food against hunger, and made them safe from danger.”⁸ It means that when you follow this law, there is a safeguard for you in it, as a community, so that you might be

⁶ Qur’anic exegetes

⁷ The Ka’bah

⁸ 106:3-4

able to live in security.

Here, in America, Islam is considered as a very, very severe religion. When people read in the newspaper that in Saudi Arabia they cut off the hand of a thief, they consider this religion to be very severe. But, in fact, if we follow the penal system of America, we find that it has gone through stages. Initially, the idea was that a person would go to jail to be punished. Now, this notion has been discarded, and the person goes to jail for rehabilitation. This policy has proved to be a failure. Why? Because there are homeless people in the street who prefer to go to jail where they, at least, will find a very nice bed to sleep on, they will eat jam in the morning, chicken at noon and steak for dinner: things they will not find outside. They sleep with the sound of the TV, and they wake up to the sound of the radio in the morning – it's a fantastic life. So, as soon as a person finishes his term in jail and is released, he commits another crime so he can go back there.

When I was working in the jail – not as an inmate⁹ – and I used to see those kids finishing their jail term and coming back to the jail, I would ask them why they did that. They said, “This is our home; our friends are here; we have no friends outside. We have easy food here; everything we cannot afford outside is here, so what's the difference; we go to the gym, play football; there is no problem. Why should we live outside?” This proves the failure of the system. So, one day I went to the superintendent of the jail and asked him if I could please change my status from staff to inmate? Bewildered, he asked me why I would want to do this. I said, because I cannot afford, with the salary you are giving me, to eat food that the inmates are getting. You feed them eggs in the morning, steak at noon, and barbecued chicken at night, in the jail, and the kids are eating the chicken and I am looking at them wistfully because I cannot afford to buy chicken.

Nowadays, they jail a person who commits murder, and according to American statistics, every inmate in the jail costs the taxpayer \$20,000 a year. The jail population is getting larger and larger, and it is very easy to see why. They even have a hospital inside the jail. Doctors and nurses are serving them free of charge. I cannot even afford to buy medical insurance. The killers don't need insurance there; if the jail takes care of their health only, it is worthwhile to be in jail. With benefits such as these, the population has increased, and the jails are not

enough, so new jails are built. There is one under construction here, in Toledo, now. When someone is sentenced to death in this country, there is a *revolution* outside; people question, “How can you kill a soul?” It's a very big issue.

In the Qur'an, the verse prescribing the rendering of justice by taking a soul for a soul is followed by a very, very nice *ayah*.¹⁰ This *ayah*, if applied in America, will make this society the most secure society. It says “وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ : you are going to create life by killing the killer.” The Qur'anic verse imposes a penalty: to kill the person who kills another; however, it says, that by doing so, there is life in it for you. How is that? There appears to be a contradiction here. So what is the analysis? How can you create life by imposing the death penalty?

The system of Islam, in fact, is meant neither to be punishment, nor rehabilitation, but is meant to be preventive – a deterrent. Imagine when you know that, if you kill a person, you *will* be killed; then you will think twice because you are not ready to sacrifice your life. Imagine when you know that if you rob a bank, your hand will be cut; then, I am sure, no one will be ready to sacrifice his hand for whatever amount of money. So the penalty in Islam is meant to deter and prevent a person from committing a crime. And it has proved to be effective even where the system is not applied justly.

The only Muslim country which still applies some of the *Hudood* penalties is Saudi Arabia where they claim to be practicing Islam. But, in fact, if a high official steals \$10 million, he can escape this penalty, while a poor man who steals \$10 will have his hand cut off. The penalty is not applied equitably, according to Islam. It reminds me of the time when I was in Riyadh. I have a nephew who is a teacher in Riyadh,¹¹ and one day I asked him about the system, the prevailing conditions, and the way foreigners are treated in Saudi Arabia. He said they have an Egyptian joke in Saudi Arabia. Two people were involved in a car accident and called the Saudi police to decide who was at fault. So the police made it brief and, instead of coming to the scene, told them over the phone: “The fault is with the foreigner. Just tell the foreigner that he is the one at fault.” When told that both were foreigners, the police said, “Then the one who is at fault among them is the Egyptian!” When informed that both of them were Egyptian,

⁹ Imam states softly, with a mischievous expression. He worked as a prison guard for 18 months

¹⁰ Verse

¹¹ Imam, and hence, his nephew are Egyptian

the police said, “The teacher among them is at fault.” That is their system, and they claim they act according to Islam. When foreign people, especially Westerners, visit Saudi Arabia and they see and hear such things, and because they have heard, or read that the penal system applied in that country is based on Islam, they don’t mock the human beings behind that system, they mock Islam. They think that is Islam.

There was something very interesting on the news last night.¹² They said that a man from Detroit, who went to Saudi Arabia to operate the Patriot missiles, came back safe from there, and then got killed in the streets of Detroit.¹³ And, in his eulogy, Jesse Jackson stated that here, in the streets of America, we do not declare war against crime and killing with the same intensity as we declare war against Iraq in the Middle East. That’s what he said in his talk. This shows us that, in spite of all the shortcomings of the Muslim world, there still is a measure of security there. A person can walk in the streets after midnight with no fear. That is a *na’ima*¹⁴ from God.

In Islam the death penalty for a killer serves not only as a deterrent, but it helps to save lives, because, in the end, fewer people will be killed. He killed one and got killed for it. But, if you put him in jail for five years, then release him on parole and he kills a second, and third, and fourth, then you are losing too many lives. God, who created the human being, knows what will cure him of his disease, and what will straighten him, so He revealed the laws by which the human beings should live. But nowadays, in our free society here, you find that people are divided into two groups: a group which says there is no mercy in capital punishment: *how could you kill a human being?* And they forget that this person killed another human being, so he has to be killed for it; the other group – which is on the increase now – is calling for the restoration of the death penalty because killing has become a craze in the society. Every day we read about people being shot while they are just driving their cars in the street; shot for no reason; for fun; there is no motive. If such a person knew for sure that he *will* be killed, he would think twice before killing another person, and his death will be a lesson and a deterrent for the others. This will increase the security in the society. Then, to show that there is mercy, however, the Qur’anic verse says that

if the family of the victim would like to forgive the family of the killer, then, they can do that and accept a ransom, called *ad-diyah*, which is a certain amount of money. That shows the simplicity and tolerance of Islam.

The amount of the ransom will depend upon the time and the environment. The *diyyah* was 100 camels at the time of the Prophet. This reminds me how Kuwait showed its “Islamic face” at the time of the Gulf War. Soldiers from the Egyptian army went to Kuwait in the Gulf War and the agreement was that this army will stay on to keep security in the region. Twenty thousand Egyptian soldiers were killed while removing landmines. The Americans utilized the Egyptians to do that work, and to die. Then, as soon as Kuwait was “liberated”, as they say, the Kuwaitis ordered the Egyptian army to “go home”. When the Egyptians objected that this was not the agreement, the Kuwaitis replied: “We paid you for your work, and for those who were killed, we paid the *diyyah*. Now you performed your job, go home.” So that is the *diyyah*, which they are talking about, but the Qur’an put it in *different terms*: *if the family of the killed would like to forgive the other family, they can take from them a ransom, and the other family should pay it in a good way with an apology.* Kuwait paid the families of those who were killed \$20,000.00 each, and they declared proudly that they paid the *diyyah*. Twenty thousand dollars are of no value today. It was 100 camels at the time of the Prophet! There was no inflation at that time. Nowadays, the dollar has little value. But those Kuwaitis are “very strict” in their Islam; they want Islam as it was at the time of the Prophet.¹⁵

“This remission shall be adhered to with fairness (*bil-ma’rūf*) . . .” *Bil-ma’rūf* means the common law: the rules as understood and approved by the Muslim community; a common law agreed upon by the community that establishes what is right and what is wrong. In the science of sociology, or psychology, this is called *al-qiyam* or the values. For example, when a man wears an earring we don’t like that. Why? It is detested by the community; it’s not acceptable to the community. When a man lets his hair grow very long and ties it in a nice, beautiful, blonde ponytail, we look upon him with scorn. Why? Because according to the common law, as it

¹² Channel 11 News

¹³ Imam is referring to a soldier from Detroit who went on active duty in Saudi Arabia at the time of the Gulf War – 1991

¹⁴ Bounty

¹⁵ Especially when paying the *diyyah*. But, today, a well-trained camel in the Middle East costs \$5000.00. An ordinary camel which is not the best, yet, not the pits, costs \$850.00. Therefore, \$20,000.00 *will only fetch 4 to 23 camels*.

prevails among the Muslims, it is not acceptable. So there is a Qur'anic law and a common law among the Muslims which is supposed to be applied in the community. In this country, homosexuality is approved in the name of "freedom", and there are some Muslims, also, who chant the slogan of freedom: they will not embrace homosexuality, I am sure of that, but they will accept a man to wear an earring, or a necklace with *Ayat-ul-Kursi*¹⁶ at the end of it, because they claim they are in a free country.

The common law of Islam is to be applied even in the area of ad-diyah. It means that the ransom is to be estimated according to the common law in the community, and according to the time and the locality. But, until this moment, in Saudi Arabia, the diyyah consists of 100 camels – the same as 1400 years ago. Imagine. And, in Kuwait, today, they estimate the diyyah at \$20,000.00: that is the value of a soul, according to them. If we apply that law here, in America, it will be several million dollars. In this country, if someone is killed accidentally by your car, or if Dr. Amjad Hussain¹⁷ kills someone by mistake during an operation, then he has to pay for that, and that is why we have car insurance and malpractice insurance. [Imam quotes Arabic verse. The English translation is:]

"Paying up the legal reparation, or ad-diyah imposed upon the guilty person, to his fellow-man shall be made in a goodly manner (*bi-ihṣān*)."

He should pay it in a good way with an apology. It is the grace and mercy of God that the life of the killer can be spared, if the victim's family will accept a ransom. This is for a first offense; anyone committing a second offense is assured that "his will be a painful doom" – *فَلَهُ عَذَابٌ أَلِيمٌ*. [Imam quotes:]

وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ
تَتَّقُونَ

For, in the law of just retribution, *O you who are endowed with insight*, there is life for you so that you might remain conscious of God."

See the language of the Qur'an *يَا أُولِي الْأَلْبَابِ*: *O you who have reason, O you people who have brains*. So the Qur'an is saying: *O man, O you who have a brain, think, and utilize your brain if you would like to restrain yourself* because, if you follow the law of God, in the law of *qisās* there is life and security for you.

You cannot go out walking after dark in a little city like Toledo, what about New York and Los Angeles and those big cities? There is no security. If just a little verse like this is applied here, in this country, it will become secure and safe.

Who is supposed to do the job of implementing the law of *qisās*? It is the *authority*; it is the justice system of the country that is supposed to do that job. It is not open to just anyone, so that if someone kills my brother, I'll go and kill him, or go and kill all his family. It does not mean that tribes or individuals can start taking the law into their own hands. No. That will be chaos. The implementation of this law is the duty of those who are in authority, to implement the Qur'an as a constitution and as a law. And here I would like to put in perspective for you how the Qur'an views the crime of killing when it narrates the story of Abel and Cain. [Imam quotes Arabic verse. The English translation is:]

"Because of this [referring to the first murder committed on earth] did We ordain to the children of Israel that if anyone slays a human being – unless it be in punishment for murder or for spreading corruption on earth – it shall be as though he had slain all mankind; whereas, if anyone saves a life, it shall be as though he had saved the lives of all mankind. . . ." ¹⁸

¹⁶ Verses of the Qur'an. This is incongruous because, in Islam, men are prohibited to wear any jewelry with the sole exception of a wedding band

¹⁷ A thoracic surgeon in the community

¹⁸ 5:35