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Political and constitutional aspect of Raymond Davis case in Islamic perspective of Qisas and Diyat Law

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ABSTRACT:

Islam is the religion of peace as per its will and spirit it spreads peace throughout the world. As it is mentioned in the holy book Quran:

"مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا"¹

This spirit of peace and will reflects in every field of life. Islam imposes different types of Hudood (Punishments) to ensure peace. Allah Almighty called Qisas as life itself, as Allah directed us in holy Quran.² وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ

The importance of Qisas is very much clear in Islam as it is mentioned in above verse. Pakistan is also an Islamic country as its base is on Islamic Ideology so Qisas and Diyat law is part of our judiciary. Similarly, an incident took place that an US intelligence person Raymond Davis killed two people in Lahore. If this case is seen in the context of Shariah, many aspects of it come to the fore. From a Shariah point of view, Shariah has declared qisas as life- Shari'a prescribes severe punishments for crimes against the sovereignty of the state. According to Sharia law and the constitution of Pakistan, Raymond Davis crimes are of this nature. According to Sharia, he is punished for qisas and blatant violation of the Constitution of Pakistan.

Keywords: Raymond Davis, Qisas and Diyat Law, constitutional aspect.

Background History of the Raymond David Case:

"According to public accounts, on January 27, 2011, on a congested street in Lahore, Davis shot and killed two apparent robbers who had been following him on a motorbike. When one attacker got off the motorcycle and approached Davis' car with his gun drawn, Davis reportedly took his Glock pistol and shot through the car windshield, shattering the glass and hitting the man numerous times. As the accomplice tried to flee, Davis allegedly got out of his car and likewise shot him several times. Both men died on the spot"³. "An SUV, while rushing to Davis' aid, reportedly accidentally hit and killed a passing Pakistani motorcyclist"⁴. "The driver then fled the scene"⁵. "Davis was arrested nearby; his car allegedly containing a camera, a phone tracker, and ammunition"⁶. "Compounding public anger, the despairing wife of one of the victims committed suicide and instantly became a martyr for anti-American groups inside Pakistan"⁷. "Because Davis was such an object of hatred, Pakistan took extensive precautions to protect Davis while he was detained. He was placed in a special cell that was detached from the normal barracks and set up for high-profile and high-value prisoners. His guards were kept unarmed for fear they might kill him, and a ring of paramilitary troops were posted outside the jail to protect against any mob assault"⁸. "As observed by The Economist, anti-Americanism was

spiraling out of control, with the Davis case becoming a stroke of luck for Pakistan's main military intelligence body, the Inter-Services Intelligence (ISI)"⁹. "The ISI allegedly suspected that American agents were working independently in Lahore and Karachi tracking al-Qaeda, Taliban, and other militants"¹⁰. "Hence, The Economist further asserted, the ISI took advantage of the Davis situation by leaking prejudicial information, such as that Davis had fired twelve bullets at his assailants, including shots fired into the back of one victim"¹¹.

Shariah provide guidance for everyone and every field of life, as Quran claim that the solution of every problem is available in Quran. In this context, an attempt is being made to cover the teachings of the Qur'an.

Types of penalties in Sharia law

Sharia divided penalties into three kinds which are as follows:

1. Qisas:
2. Hudud:
3. Ta'zir: ‘

Hudud are serious crimes, while crimes under Tazir are consider minor crimes. Shariah has classified each category of the crimes under Hudud and Ta'zir as the details of each category is given below.

Qisas:

The law of qisas is eye for eye and life for life, as well as intentional bodily harm. Islam prescribes severe punishments for such crimes, which are given by the law of qisas, as the details are given in below table:

S. No	Qisas Types	Category
1	Intentional or planned murder	first-degree
2	Quasi-intentional murder	second-degree
3	Unintended murder	Manslaughter
4	Intentional grievance	Battery
5	Semi-intentional/unintentional injury	

Quran is clearly mentioned the forms of Qisas and the punishment for the planned murders is the death. As Allah directed in the Quran: "Believers, just retribution is prescribed for you in cases of killing: a free man for a free man, a slave for a slave, and a female for a female. If something [of his guilt] is remitted to a person by his brother, this shall be pursued with fairness, and restitution to his fellow-man shall be made in a goodly manner. This is an alleviation from your Lord, and an act of His grace. He who transgresses thereafter shall face grievous suffering. There is life for you, men of understanding, in this law of just retribution, so that you may remain God-fearing".¹² As per qisas law the crime of Davis was a planned murder and also the crime was against the state sovereignty. According to this verse of the Quran the case is so much clear.

According to Islamic law, Islamic law authorizes the guardians of the slain to demand

qisas or diyat. If a person kills someone intentionally, then qisas becomes obligatory, Otherwise, the parties should reconcile and agree on Diyat.

Influential classical commentators on the Quran such as Al-Tabari explained that qisas laws were revealed to reform the pre-Islamic culture of revenge:

“As Tabari explained that the qisas law was the reformation of the pre-Islamic culture of revenge in this perspective Quran named qisas as life itself. The crime against the human life is also provoke the culture of revenge. The crime against the state sovereignty is more serious and the state is authorized to punish the person who committed such crime. Raymond Davis was guilty in the both above mentioned cases. In the law of equity [qisas] there is [saving of] life to you, O ye men of understanding; That ye may restrain yourselves. (Quran 2:179) In his famous commentary on the Quran, Al-Tabari wrote: Others [i.e. interpreters of the Quran] said: what this means is that there is a preservation of life for others [i.e. innocent members of the family or tribe] in qisas since no one else other than the killer should be killed, according to God’s decision”¹³

“Al-Tabari goes on to explain that this verse (2:179) was in response to pre-Islamic tribal laws where the innocent could be killed for crimes committed by members of their families or tribes. Although the Quran prescribes the death penalty as a punishment for murder, it does not specify any procedural laws governing what happens in a Sharia court in order to ensure a fair application of the law. It does, however, make an explicit declaration on the importance of upholding justice in Islam”¹⁴.

“O ye who believe! Stand out firmly for justice, as witnesses to God, even as though it be against yourselves, or your parents, or your kin, and whether it be [a case against a] rich or poor [person]: for God must be given preference over them. Follow not the lusts [of your hearts], lest you swerve, and if you distort [justice] or decline to do justice, verily God is well-acquainted with all that ye do”¹⁵ Classical and medieval Islamic jurists (fuqaha) have, through fiqh, developed strict guidelines and conditions on how qisas laws should be implemented. These strict conditions reflect, in many respects, some of the established prohibitions and restrictions established under international law for the implementation of the death penalty.

If there is any suspicion in the murder case, the punishment of qisas is postponed according to Sharia law. Sharia law also says that two eyewitnesses are required in a murder case. Sharia law also says that two eyewitnesses are required in a murder case. “Sharia law also has a strict requirement that a person cannot be accused of an offence if they are under the age of criminal responsibility known as bulugh. Although the Quran does not specify what this age is, Islamic jurists have interpreted it to mean ‘age of physical puberty’ or ‘age of majority’. This has meant that in practice there are differences among jurists in all major schools of Sharia law regarding the exact age constituting bulugh. However, the Quranic ambiguity as well as the lack of general consensus (ijma’) on an agreed age demonstrates that bulugh could today be

interpreted in terms of Article 37(a) of the Convention on the Rights of the Child (CRC), which all Muslim states have ratified.

The CRC provides that people who were under the age of eighteen at the time the offence was committed must not face the death penalty. While almost all states have now abolished the death penalty for those under the age of 18, Iran, Saudi Arabia, Sudan and Yemen are known to have imposed death sentences and executions on people who were alleged to have committed the offence when they were under the age of 18.¹⁷ The lack of procedural guidelines in the Quran as to the implementation of the death penalty for qisas laws presents contemporary Islamic jurists with the opportunity to develop further safeguards and restrictions on how Sharia courts implement qisas laws. As the Quran and hadiths are silent on many modern-day concepts of justice with regards to due process and fair trial rights, Islamic jurisprudence (fiqh) can therefore derive laws on how to implement Sharia in a modern Islamic legal system. For example, Sharia law makes no clear provision for the right to appeal. At the same time Sharia law does not oppose such a right. Thus, an application of Sharia law which includes a right of appeal would not be incompatible with Islam. Although most Islamic states employ state executioners, traditionally, the next of kin of the victim would carry out the execution. And do not kill the soul which Allah has forbidden, except by right. And whoever is killed unjustly – We have given his heir authority, but let him not exceed limits in [the matter of] taking life. Indeed, he has been supported [by the law]”¹⁶.

Shariah clearly gave authority to the relatives of the victim, but in Raymond Davis case the heirs of the slain were put under pressure and their decision and authority was taken. According to the shariah law it is illegal and as well against the constitution of Pakistan.

Raymond Davis act was against the person and as well as against the state.

A judge can convict anyone on the basis of evidence under the Qisas Act, because qisas is the right of the heirs of the slain.

“And we ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution. But whoever gives [up his right as] charity, it is an expiation for him. And whoever does not judge by what Allah has revealed – then it is those who are the wrongdoers”¹⁷.

The Quran encourages the victim (or their family) to forgive the perpetrator, and seek financial compensation (diyya – sometimes called ‘blood money’) as an alternative to demanding retribution through execution as an act of charity or in atonement for sins.

“The provision for paying an indemnity, Muslims argue, provides a strong motive for encouraging the next of kin to pardon the offender, particularly because the indemnity is not treated as a mere pardon or a charitable payment. It is not considered as dishonorable to accept diyya; it is taken as a right as stipulated in the Quran. Diyya can, in many respects, be compared to the financial compensation which exists in many states’ criminal and civil laws. Traditionally, diyya was paid in terms of goods

or animals rather than money. However, the Quran is silent as to how much diyya should be paid. Different schools of

Sharia law have established different amounts. Countries whose laws follow Sharia have enacted laws for qisas and diyya. In Yemen, for example, diyya for the murder of a woman is half that paid for the murder of a man¹⁸. “This is in direct contradiction to the verses of the Quran and authoritative traditions of Prophet Muhammad which do not discriminate between men and women in qisas laws and other criminal cases. No single verse from the Quran or authentic hadith from the Prophet Muhammad exists to support the Yemeni legal position. The Yemeni position is based on a questionable narration recorded by the famous

hadith expert Abu Bakr Ahmad ibn Husayn al-Bayhaqi (d. 1066 CE) in his hadith collection entitled Sunan al-Kubra¹⁹. Al-Bayhaqi goes on to admit that this hadith is weak and unreliable as it does not meet the conditions of authenticity set down by Islamic jurists and hadith experts. He adds that in its chain of transmission is a narrator called Ubada Ibn Nasiy, who was classified by hadith experts as unreliable.

“The law stipulates that the amount of financial compensation is to be determined by the family of the murder victim²⁰.

“2011 to two years’ imprisonment, already served, and the payment of diyya, after the victim’s family accepted 3.4 million AED (approximately US\$1 million) and dropped their request for retribution²¹.

If a person cannot pay Diyat, his Diyat can be paid with the amount of Zakat. While Raymond Davis, who was self-sufficient, was paid by the Pakistani government. This is not only against Sharia law but also a compromise on national sovereignty.

“(Charity) funds. Charitable donations [zakat] are only for the poor and the needy, and those who work in the administration of such donations, and those whose hearts are to be won over, for the freeing of people in bondage and debtors, and to further God’s cause, and for the traveller in need. This is a duty ordained by God, and God is All-knowing, Wise²².

The law of Diyat was introduced in Islamic law for the purpose of protecting life. As Allah (SWT) directed: “If you punish, then punish with the like of that wherewith you were afflicted. But if ye endure patiently, verily it is better for the patient²³.

Conditionally sharia law encourages the forgiveness of the murderer. If a murderer commits crime against the sovereignty of the state like Raymond Davis committed in such condition the shariah law will impose death penalty.

The Qur'an encourages forgiving in cases of wise killing, but this exception is limited to a specific case. As for as the case of Davis is concern his crime was exempted from this relaxation because he committed as serious crime against the constitution of Pakistan and also was a great conspiracy against the state sovereignty.

“And never is it for a believer to kill a believer except by mistake. And whoever kills a believer by mistake – then the freeing of a believing slave and a compensation payment presented to the deceased’s family [is required] unless they give [up their

right as] charity. But if the deceased was from a people at war with you and he was a believer – then [only] the freeing of a believing slave; and if he was from a people with whom you have a treaty – then a compensation payment presented to his family and the freeing of a believing slave. And whoever does not find [one or cannot afford to buy one]—then [instead], a fast for two months consecutively, [seeking] acceptance of repentance from Allah. And Allah is ever knowing and Wise”²⁴. In fact, Sharia law appears to prioritize forgiveness over and above retribution as the appropriate means of achieving justice. In his famous collection of hadiths the eminent and influential Shi’a jurist Shaykh Al-Hurr al-Amili (d. c. 1692 CE) dedicated a chapter in his book on qisas to hadiths which privilege forgiveness over the application of qisas laws. He entitled the chapter: “It is better for the next of kin to forgive [the perpetrator] in qisas cases, and to seek compensation [diyya], or other forms of compensation”²⁵. Similarly, the Sunni jurist Shaykh Mansur Ibn Yunus al-Bahuti (d. 1641 CE) included a chapter on pardon in qisas cases in his influential Islamic legal text, still used today in Egypt and other Muslim countries, entitled *Kash al-Qina’* (6 volumes). He wrote: “There is legal consensus [i.e. among Muslim jurists] that it is permissible to pardon [the guilty party] in qisas cases and that this option is better [than the application of qisas]. This is supported by the Quranic verse 2:178: And for him who is forgiven somewhat by his (injured) brother, prosecution according to usage and payment unto him in kindness. This is an alleviation and a mercy from your Lord”²⁶. “Verily the punishment of the Hereafter is greater if they did but know”²⁷.

The punishment for premeditated murder is clearly stated in the Qur'an and Islamic law provides a complete guarantee of protection of life.

“Article 6(2) of the ICCPR provides that for countries which have not abolished the death penalty ‘sentence of death may be imposed only for the most serious crimes. The ‘most serious crimes’ threshold has been interpreted restrictively, it being understood that their scope should not go beyond ‘intentional crimes with lethal or other extremely grave consequences’”²⁸. “The UN Human Rights Committee has found that the imposition of the death penalty for crimes that do not result in loss of life is incompatible with the ICCPR”²⁹.

This point of view of international law and Human Rights is not authentic and it is based on misconception, Quran clearly explained that the killing of one person is the killing of all mankind. The above cited verse of the Quran context does not support this point of view, as Raymond Davis also killed and his action was also breaking the constitution of Pakistan so he is guilty for multiple serious crimes. While the sharia law is miss-interpreted.

As Raymond Davis crime against the state sovereignty of the state and also against violation of the law of crime against the life of a person. There is a need to improve the country's reputation in foreign affairs while ensuring national sovereignty. The case of Raymond Davis was neither resolved in the light of public sentiment nor in accordance with the principles of Sharia. On the contrary, the sovereignty of the

country has been violated in this matter. This is very clear in the light of the above arguments.

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⁵ Id

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⁹ America and Pakistan: Stuck with You, supra note 2.

¹⁰ Money Is Thicker Than Blood, supra note 7.

¹¹ Id

¹² Al-Baqarah 2: 180

¹³ At-Tibri, Imam bu Ja'far Muhammad b Jarir, Tafseer At-Tibri, Translator, Scott Lucas, The Royal Aal Al-Bayt Institute For Islamic Thought (Jordan) and The Islamic Texts Society (ITS), Cambridge, UK. V.1. P 143.

¹⁴ Id

¹⁵ An-Nisa 4: 135

¹⁶ Bani Israil 17: 33

¹⁷ Al Maidah 5: 45

¹⁸ Article 12 of the Penal Code, Amnesty International, Yemen: Submission to the UN Human Rights Committee, UK, 2012, p. 6.

¹⁹ Al-Bayhaqi, Sunan al-Kubra, Vol. 8, pp. 95-96.

²⁰ Article 3 of Law No. 6 of 1423.

²¹ Amnesty International, Death sentences and execution in 2011, UK, 2012, p. 44.

²² At-Tawbah 9: 60.

²³ An-Nahal 16: 126.

²⁴ An-Nisa 4: 92.

²⁵ Wasa'il al-Shi'a, Chapter 57 (The Book on Qisas).

²⁶ Mansur Al-Bahuti, Kashf al-qina' 'an matn al-Iqna, 13, Ministry of Justice, Saudi Arabia, 2008, p. 289

²⁷ Al-Qalam 68:33.

²⁸ Safeguard 1 of the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (approved by the UN Economic and Social Council in resolution 1984/50 of 1984).

²⁹ UN Human Rights Committee, 48th Session, Concluding Observations: Iran, 29 July 1993, CCPR/C/79/Add.25, para. 8.