

***Application of Islamic Legal Maxims to Qiṣāṣ and  
Diyat Crimes and Their Punishments***  
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**Abstract**

*Application of Islamic legal maxims to the novel issues emerged in the area of the criminal law of Islam and to generate interpretation according to the demand of time and circumstances is quite logical provided that any Islamic legal maxim should not be in contradiction to the principles of Šharī‘ah.<sup>1</sup> In this research work, the potential of Islamic legal maxims will be explored for the declaration of legal verdict and their role will be highlighted within the domain of qiṣāṣand diyat crimes and their punishments.<sup>2</sup> It will be discussed that how these legal maxims are in compliance with the injunctions of the Holy Qur‘ān and Sunnah related to the punishments under the category of qiṣāṣand diyat. The application of Islamic legal maxims will also be justified for the implementation of ta‘zīr punishments in the cases where actual qiṣāṣand diyat penalties are not applicable.*

**Key Words:** *Islamic legal maxims, qiṣāṣ and diyat crimes and punishments, ta‘zīr.*

**1. Introduction**

Legal maxims of Islamic law are the legal principles in the form of brief and comprehensive idiomatic expressions which summarize and illustrate the actual essence, wisdom and objective of Šharī‘ah. Many cases can be referred to these maxims for the solutions and they can be used as principles for the deduction of further rules of Islamic law.<sup>3</sup> In the terminology of Šharī‘ah, death of the culprit in the case of intentional murder or injuring the culprit in the same way as he injured the victim in the case of intentional hurts is known as qiṣāṣ.<sup>4</sup> On the other hand, diyat is the prescribed financial compensation which is paid to the victim in case of physical injuries

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or the heirs of the victim in case of his murder.<sup>5</sup> The qīṣāṣ and diyat crimes in the case of intentional or unintentional murder and hurts have been specified in the Noble Qur'ān, Aḥādīth and decisions of Sahabah. The main objectives of these Islamic legal penalties are to safeguard the peace and prosperity of a community, to provide justice to the victim and his heirs, to rehabilitate the behavior of the criminal and to give warning to the rest of the society.<sup>6</sup> In the present research work, application of Islamic legal maxims to qīṣāṣ and diyat crimes and punishments will be examined and it will be identified that how Islamic legal maxims are helpful for determination of validity or invalidity of an issue presented to a jurist or a judge for making decision.<sup>7</sup>

## 2. Application of Islamic Legal Maxims to Qīṣāṣ Crimes and Their Punishments

Application and compatibility of Islamic legal maxims with the injunctions of the Holy Qur'ān and Sunnah related to the punishment belonged to the category of qīṣāṣ has been analyzed here.

### 2.1 Islamic Legal Maxims And Punishment of Intentional Murder in Islam

Prohibition and punishment of intentional and unintentional murder is proved from the verse no.178 of Surah Al-Baqarah:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَى بِالْأُنثَى فَمَنْ  
غَفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبِعْ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ مِنْ رَبِّكُمْ وَرَحْمَةٌ فَمَنْ  
اعْتَدَى بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ

“O you who believe! Al-Qīṣāṣ (the Law of retaliation) is prescribed for you in case of murder; the free for the free, the slave for the slave, and the female for the female. But if the killer is forgiven by his brother, the blood money should be decided in accordance with the customary law and payment should be made respectfully. This is an alleviation and a mercy from your Lord. So after this, whoever transgresses the limit, shall have a painful torment”.<sup>8</sup>

In this verse, the law of retaliation is discussed in an equitable manner regardless the colour, cast and family or in case of granting pardon to the perpetrator payment of blood-money by his paternal family. There is also a Prophetic Traditions as follows:

من قَتَلَ مُؤْمِنًا مُتَعَمِّدًا دُفِعَ إِلَىٰ أَوْلِيَاءِ الْمَقْتُولِ فَإِنْ شَاءُوا قَتَلُوا وَإِنْ شَاءُوا أَخَذُوا الدِّيَةَ.

“Whoever kills [a Believer] deliberately, he is handed over to the guardians of the one killed. If they wish to, they have him killed, and if they wish to, they take the blood-money”.<sup>9</sup>

The underlying objective behind the law of retaliation is, first of all, to cool down the anger and reduce the suffering of the heirs of the victim by providing them

justice, secondly, to restrict the hands of the criminals who disgrace the sanctity of human life and thirdly, to secure many lives in a society from the same terrible fate through implementing this exemplary punishment. This is what has been stated in this Ḥadīth which is also a legal maxim that

”كل المسلم على المسلم حرام دمه وماله وعرضه“

“The blood, wealth and honour of the Muslim is sacred to all Muslims”<sup>10</sup>.

This maxim along with some other maxims protects one of the basic Objectives of Shari’ah that is preservation of life. These maxims include

الضرر يزال

“Harm must be eliminated”<sup>11</sup>and

“الضرر يدفع بقدر الامكان”

“Injury is to be repelled to the extent possible”<sup>12</sup>and

يتحمل الضرر الخاص لدفع الضرر العام

“A private injury is borne toward off a public injury”.

The basic purpose of Šharī’ah is to establish justice among people and communities and to protect them from any kind of injury so that they could feel secured about their rights. The wisdom behind implementation of qisās on the perpetrator is infliction of the harm to remove the painful effect of harm caused by the perpetrator. The other maxim provides the evidence of the abolishing damage whether it is in the case of murder, hurts, physical injuries or some other pain caused by someone in the same way it was inflicted on the victim.

Nevertheless, if life and body of a human being, his / her family, friends or close-ones is no longer safe and they are going to be threatened physically then for the survival of one’s life, the permission has been granted by Šharī’ah to take safety measures against the violator even by hurting him / her. The legal maxims

الشَّهْرُ الْحَرَامُ بِالشَّهْرِ الْحَرَامِ وَالْحُرُمَاتُ قِصَاصٌ فَمَنْ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى

عَلَيْكُمْ وَانْتَفُوا اللَّهَ.

The sacred month is for the sacred month and for the prohibited things, there is the Law of equality so whoever transgresses against you, you transgress likewise against him”<sup>13</sup>

الضرورات تبيح المحظورات,

“Necessity permits the prohibited” and

الأمر إذا ضاق اتسع

“Under duress, the rules are relaxed”

“المشقة تجلب التيسير,

Hardship begets facility”

الخرج مرفوع ,

“Difficulty has been lifted up” and

لَا ضَرَرَ وَلَا ضِرَارَ

“There should be neither harming nor reciprocating harm”<sup>14</sup> enclose the wisdom behind self-defense allowed by Šharī‘ah that this exception will be acknowledged in the state of dire necessity as there is no concept of inflicting and bearing harm in Islam. However, power will be exercised within the reasonable limits sufficient to intercept the injurious action of the violator. This idea has been set out in the legal maxim

ما ابيح للضرورة يتقدر بقدرها

“What is permissible due to necessity, would be estimated through its quantity” that utilization of extraordinary power will not be accepted as legal justification.

Another legal maxim establishes the principle about preservation of life,

الإضطرار لا يبطل حق لغيره

“Duress does not annul the right of another”<sup>15</sup> that the one who is under coercion or some sort of threat like serious physical harm, death, loss of honour or property, is not allowed to deprive an innocent person of life for the sake of his own security. If a person has pressurized another man to do it, the legal decision will be taken place accordingly and the former will be executed by way of qiṣāṣ while the later will only go through ta‘zīr punishment. However, if the former has paid the price for murder then the actual perpetrator will be given death penalty while the one who gave order for it, will go through ta‘zīr punishment.

The legal maxims

“الأمر بمقاصدها

Matters are determined according to their purposes”<sup>16</sup> and

المراء مؤاخذ باقراره

“One will be punished by one’s confession”<sup>17</sup> assert that the liability for a crime like murder will be based on the intention of the perpetrator whether he really intended to kill the victim or was it just an act of perpetrator’s negligence. Punishments like qiṣāṣ, diyat, expiation or deprivation of inheritance will be executed in compliance with the intention of the perpetrator. The initial rule of Šharī‘ah is to liberate a person from any responsibility. An accused one will not be convicted of murder till the prescribed conditions like his own confession, trustworthy eye-witnesses, authentic proofs are fulfilled or other circumstantial evidences like finger prints, CCTV footage etc are obtained. This is what has been narrated in the legal maxim

الاصل براءة الذمة

The initial presumption is freedom from all liability”<sup>18</sup>. Although qiṣāṣ is the right of individuals, yet, just like ḥadd penalty, it will be lapsed if a doubt exists as a result of lack of required proofs, evidences and witnesses for the reason, a person is going to face the loss of his / her life through qiṣāṣ which is not possible to be altered later, so the accused one will enjoy the privilege of the existing doubt and qiṣāṣ punishment will be rendered ineffective. This philosophy has been depicted in the legal maxim

القصاص كالحدود في الدفع بالشبهة

“Qiṣāṣ punishment is like ḥudūd punishment and it is to be warded off if doubt persists”<sup>19</sup>.

However, sometimes intention no longer works when consequences of an action are clear to prove a crime for instance, to hit someone with knife or anything else commonly used for the purpose of murder and generally considered fatal and which caused the death of the victim, this result of the perpetrator’s action will decide his intention itself. This ideology has been expressed in the legal maxims

الأمر بعواقبها

“All affairs must be judged on the basis of their consequences”<sup>20</sup> and

ان الصريح لا يحتاج الى النية

“The matter which is clear does not necessitate (to be proved by) intention”<sup>21</sup>.

The legal maxims

الاحكام تبني على العادة الظاهرة

“The laws are to be structured upon the apparent physical facts”<sup>22</sup> and

البناء على الظاهر واجب ما لم يتبين خلافه

“The decision is to be structured upon the apparent facts unless its contrary is proved”<sup>23</sup> furnish the rule that legislation will be made and legal penalty will be enforced on the accused one according to the physical facts and figures only. After the accessibility of murderer’s confession or two reliable eye-witnesses or other seemingly authentic circumstantial evidences through forensic testing of weapon or items which may contain DNA material as a result of being touched or worn by the accused one and postmortem report of the dead-body, the accused one will be convicted of murder until and unless, some other obvious facts and proofs negate the previous ones. But once murder is proved to be committed deliberately and no room for doubt exists anymore, legal decision will be made accordingly as stated in the legal maxim

اليقين لا يزول بالشك

“Certainty is not overruled by a doubt” and

ما ثبت بيقين لا يرتفع الا بيقين

“The matter once proved with certainty cannot be eliminated without another certainty”<sup>24</sup>.

For the affirmation of the crime and execution of the punishment of qiṣāṣ, two righteous and trustworthy eye-witnesses are mandatory as it is mentioned in the legal maxim

خبر الواحد لا تنفك عن الشبهة

“Kḥabr-e-Wāḥid is not separated from doubt”<sup>25</sup>. So the minimum criterion for testimony is two witnesses. Also due to this significant role of witnesses for the application of a legal penalty, the adult, sane, pious and reliable witnesses are required in the case of the intentional murder as discussed in the legal maxim

نقل الثقلت الاخبار حجة شرعية في وجوب العمل بهما

“Information from trustworthy persons is a legal evidence to make an action obligatory”<sup>26</sup>.

Method of executing death penalty for murder may vary place to place according to the custom of that particular state for instance, in Pakistan execution is occurred through hanging. In some other countries like Saudi Arabia, it takes place by way of decapitation, in Iran through pushing from an unknown height and in Afghanistan, Libya, and Nigeria through firing squad. If a custom prevailed in a state is upright and reasonable and fulfill the demand of Ṣharīʿah like in Pakistan, hanging fulfills the requirement of qiṣāṣ which is murder for murder then there is no harm in acting upon that custom as provided by the legal maxim “العادة محكمة” “Custom is a basis for judgment”<sup>27</sup>

التعيين عرفاً كالتعيين بالنص

“Ascertainment through customary law is like ascertainment by an explicit text” and

أن أمور المسلمين محمولة على السداد والصلاح حتى يظهر غيره

“The affairs of the Muslims are to be construed as upright and proper unless the contrary is established”<sup>28</sup>.

The legal maxims

ولا تكسب كل إنفس عليها

“No person earns any (sin) except against himself”

ولا تزر وازرة وزر أخرى

“No bearer of burdens shall bear the burden of another” and

وَكُلُّ إِنْسَانٍ أَلْمَنَاهُ طَائِرَهُ فِي عُنُقِهِ.

“And We have fastened every man’s deeds to his neck” furnish the principle that a person will face the consequences of his own actions only. In the Criminal Law of Islam, no innocent person including relatives or friends will go through the

punishment in place of the actual perpetrator. That is the reason when an individual commits the crime of murder, this is the actual assailant who is executed through qiṣāṣ while the assistant does not receive death punishment rather ta'zīr punishment for involving in a serious crime and the maxim

إذا اجتمع المباشر والمتسبب يضاف الحكم الى المباشر

“When the actual perpetrator and his assistant both are together, the ruling will be attributed to the actual perpetrator”<sup>29</sup> establishes the very rule.

## 2.2 Islamic Legal Maxims And Punishment of Intentional Hurts in Islam

The Qur'ānic verses and the Prophetic Traditions have prescribed the penalty of intentional hurts like in Sūrah al- Mā'idah, verse 45:

وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الظَّالِمُونَ

“And 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 anyone remits the retaliation by way of charity, it shall be for him expiation. And whosoever does not judge by that which Allah has revealed, such are the unjust”.<sup>30</sup>

Here the word qiṣāṣ indicates towards the similarity and equality in taking revenge. Injuring body parts like head, eye, ear, nose, teeth, lips, hands, feet will lead towards the liability of qiṣāṣ if the crime is committed intentionally.<sup>31</sup>

Narrated by Hazrat Anas (may Allah be pleased with him):

أَنَّ ابْنَةَ النَّضْرِ، لَطَمَتْ جَارِيَةً، فَكَسَرَتْ ثِيَابَهَا، فَأَتَوَا النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَأَمَرَ بِالْقِصَاصِ.

“The daughter of An-Naḍr slapped a girl and broke her incisor tooth. They (the relatives of that girl) came to the Allah's Prophet (peace be upon him) and he gave the order of qiṣāṣ (equality in punishment)”.<sup>32</sup>

The legal maxim

كل المسلم على المسلم حرام دمه وماله وعرضه

“The blood, wealth and honour of the Muslim is sacred to all Muslims”<sup>33</sup> reveals the wisdom that Šharī'ah has bestowed respect and sacredness to the life and body of a Muslim and strictly forbidden from not only depriving one from life but also causing an injury. Therefore this legal maxim accomplishes one of the fundamental Objectives of Šharī'ah i.e. protection of one's life (including body). For the fulfillment of this Objective, the punishment of intentional hurts has been determined in the Criminal Law of Islam and that is infliction of same injury, the perpetrator caused to the victim. That is what has been asserted in the legal maxims “الضرر يزال”<sup>34</sup>, “Harm must be eliminated”<sup>34</sup>,

### الضرر يدفع بقدر الامكان

“Injury is to be repelled to the extent possible”<sup>35</sup> and

### يتحمل الضرر الخاص لدفع الضرر العام

“A private injury is borne to ward off a public injury”.<sup>36</sup>

The purpose of this legal penalty as described in the maxims is to hinder people from violation of individuals’ safety as well as secure the individuals from harm and develop a just and peaceful society where everyone could be satisfied with his / her rights.

Šarī‘ah has granted special concessions in exceptional cases like fighting back the assailant to protect one’s life and body so the legal maxim (also a Qur’ānic verse)

الشَّهْرُ الْحَرَامُ بِالشَّهْرِ الْحَرَامِ وَالْحُرُمَاتُ قِصَاصٌ فَمَنِ اعْتَدَىٰ مَا اعْتَدَىٰ  
عَلَيْكُمْ وَأَتَقُوا اللَّهَ

“The sacred month is for the sacred month and for the prohibited things, there is the Law of equality so whoever transgresses against you, you transgress likewise against him”<sup>37</sup> and the maxims

### الضرورات تبيح المحظورات

“Necessity permits the prohibited”<sup>38</sup> and

### الأمر إذا ضاق اتسع

“Under duress, the rules are relaxed”<sup>39</sup> justify self-defense by providing exception in case of being attacked by someone who intends to inflict an injury. However, it should be kept in mind that this exception of utilizing force against the assailant will be exercised in the reasonable limits and the purpose of fighting back should be to prevent the assailant, not to inflict unusual harm as maintained in the legal maxim

### الضرورات تقدر بقدرها

“Necessity is limited by its extent”.

According to the legal maxim

### الاصل براءة الذمة

“The initial presumption is freedom from liability”,<sup>40</sup> the first and original rule about the criminal liability is that a person will be presumed innocent. Without the presence of his own confession or testimony of eye-witnesses or some other valid evidences, he will not be punished and his civil rights as a citizen will not be violated on the basis of doubt. This principle of doubt has been identified in another legal maxim

### القصاص كالحودود في الدفع بالشبهة

“Qiṣāṣ punishment is like ḥudūd punishment and it is to be warded off if doubt persists”.<sup>41</sup> Due to lack of prescribed conditions for the confirmation of the crime of



physical injury, the qiṣāṣ punishment will render ineffective and the accused one will be given the benefit of doubt. However, ta'zīr punishment may be enforced on him.<sup>42</sup>

The chief importance of one's intention in the Criminal Law of Islam has been stated in the legal maxim *الأمر بمقاصدها* "Matters are determined according to their purposes".<sup>43</sup> Therefore the judgment will be issued on the grounds of the intention of the perpetrator whether his purpose was really to hurt the victim or not. If the perpetrator admits his crime willingly then there is no hindrance in the enforcement of legal penalty as described in the legal maxim

*المرء مؤاخذ باقراره*

"One will be punished by one's confession".<sup>44</sup>

In the case of intentional physical injuries, amputation or incapacitation of body limbs, consequences will also be taken into consideration apart from the words of the perpetrator, for instance, if it is obvious that the perpetrator has utilized a weapon or some other sharp object commonly regarded as fatal and causes an injury then this result of the perpetrator's action will decide his intention that he actually wanted to hurt the victim and so the hurt inflicted to the victim does not need to be proved by perpetrator's intention and confession. The legal maxims

*الأمر بعواقبها*

"All affairs must be judged on the basis of their consequences"<sup>45</sup> and

*ان الصريح لا يحتاج الى النية*

"The matter which is clear does not necessitate (to be proved by) intention"<sup>46</sup> talks about the very rule. The maxim

*نقل الثقلت الاخبار حجة شرعية في وجوب العمل بهما*

"Information from trustworthy persons is a legal evidence to make an action obligatory" supports the idea of provision of reliable witnesses for the enforcement of legal punishment of any crime. The maxim

*إذا اجتمع المباشر والمتسبب يضاف الحكم الى المباشر*

"When the actual perpetrator and his assistant both are together, the ruling will be attributed to the actual perpetrator"<sup>47</sup> illustrates in the case of contribution of two violators in the infliction of injury upon someone, the court will convict the person who has actually hurt the victim and he will be punished with qiṣāṣ penalty. As regards the assistant of the perpetrator who helped him but not hurt the victim himself, he will be inflicted with a ta'zīr punishment. This philosophy has also been mentioned in some other legal maxims

*ولا تكسب كل إنفس عليها*

"No person earns any (sin) except against himself"

### ولا تزر وازرة وزر أخرى

“No bearer of burdens shall bear the burden of another” and

وَكُلِّإِنْسَانٍ أَلْزَمْنَاهُ طَائِرَهُ فِي عُنُقِهِ.

“And We have fastened every man’s deeds to his neck”.

Every perpetrator of the crime will be responsible of his own actions and liable to punishment accordingly. Relatives or any other person, who has no role in the commission of crime, will share no penalty with the actual criminal.

### 3. Application of Islamic Legal Maxims to Diyat Crimes and Their Punishments

Application and compatibility of Islamic legal maxims with the injunctions of the Holy Qur’ān and Sunnah related to the punishment belonged to the category of diyat have been analyzed here.

#### 3.1 Islamic Legal Maxims and Punishment of Unintentional Murder in Islam

At several places in the Holy Qur’an like Sūrah al-Baqarah, verse 178 and Sūrah an-Nisā, verse 92, diyat (blood-money) in case of unintentional murder and its relevant rulings have been elaborated:

وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَقْتُلَ مُؤْمِنًا إِلَّا خَطَأً وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ إِلَّا أَنْ يَصَدَّقُوا

“It is not for a Believer to kill a Believer except by mistake; and whosoever kills a Believer by mistake, he must set free a Believing slave and submit compensation (blood money) to the deceased’s family unless they remit it.”<sup>48</sup>

Also many Prophetic Traditions provide injunctions related to diyat for example:

Narrated from Hazrat ‘Abdullāh bin ‘Amr (may Allah be pleased with him) that the Messenger of Allah (peace be upon him) said:

فَتَيْلُ الْخَطَا شِبْهُ الْعَمْدِ فَتَيْلُ السَّوْطِ وَالْعَصَا مِائَةٌ مِنَ الْإِبِلِ أَرْبَعُونَ مِنْهَا خَلْفَةٌ فِي بُطُونِهَا أَوْلَادُهَا

“Killing by mistake that resembles intentionally, is killing with a whip or stick, for which the blood money is one hundred camels, of which forty should be pregnant she-camels in middle of their pregnancies, with their young-ones in their wombs.”<sup>49</sup>

Narrated from Hazrat Abdullah bin Mas‘ūd (may Allah be pleased with him) that the Apostle of Allah (peace be upon him) said:

فِي دِيَةِ الْخَطَا عِشْرُونَ حِقَّةً وَعِشْرُونَ جَدَعَةً وَعِشْرُونَ بِنْتٍ مَخَاضٍ وَعِشْرُونَ بِنْتٍ لَبُونٍ وَعِشْرُونَ بَنِي مَخَاضٍ ذُكُورٍ

“The blood money of one who killed by mistake is twenty Ḥiqqah (three-year-old she camels), twenty Jaḍa‘ah (four year old she camels), twenty Bint-e-Makḥāḍ (one

year old she camel), twenty Bint-e-Labūn (two year old she camels) and twenty Banī Makḥāḍ (one year old male camels).<sup>50</sup>

As in the case of involuntary murder, the perpetrator's intention does not involve so qiṣāṣ penalty i.e. infliction of same hurt or amputation of the body limb like that of the victim cannot be imposed. Nevertheless, as the victim has faced an awful damage to his body so for the sake of compensating the harm caused by the perpetrator due to his carelessness, the price of that loss is paid which is called diyat (blood-money) for the reason, repelling a harm is recommended by Shari'ah and so in the legal maxims **الضرر يزال** "Harm must be eliminated"<sup>51</sup> and **الضرر يدفع بقدر الامكان** "Injury is to be repelled to the extent possible"<sup>52</sup>, this theory has been discussed.

In the Holy Qur'ān and Sunnah, the crime of murder by mistake has also been regarded as punishable apart from the intention of the murderer. However, through murderer's confession, authentic evidences or testimony of trustworthy witnesses, if the lack of intention of the murder is proved then the punishment will be lightened which is blood-money along with expiation paid by the perpetrator.<sup>53</sup> This is what has been mentioned in the maxim

**المباشر ضامن وان لم يتعمد**

"The perpetrator is responsible whether he did something on purpose or not"<sup>54</sup>  
The crime whether committed deliberately or mistakenly has to be judged on the basis of intention. This is the principle taught by Šharī'ah and this is what has been declared in the legal maxim

**الأمر بمقاصدها**

"Matters are determined according to their purposes".<sup>55</sup> The underlying idea of this maxim is that the purpose behind the crime can be detected through the confession or testimony or other circumstantial evidences but first and foremost requirement for the implementation of legal penalty is confession of the criminal that he committed the murder mistakenly. This rule has been pointed out in the maxim

**المراء مؤاخذ باقراره**

"One will be punished by one's confession"<sup>56</sup>.

There are some legal maxims which indicate towards the importance of consequences along with the intention of the committer i.e

**الأمر بعواقبها**

"All affairs must be judged on the basis of their consequences"<sup>57</sup> and

**ان الصريح لا يحتاج الى النية**

"The matter which is clear does not necessitate (to be proved by) intention"<sup>58</sup>.  
For instance, if a person tortured the victim; or hit with something like stick which is usually not fatal and the victim died; or slapped or pushed him and the victim fell down and struck his head with something and died resultantly, then the weapon

utilized and result of this incident will be analyzed for the issuance of judgment by the court. From the legal maxims *تنبنى على العادة الظاهرة* “The laws are to be structured upon the apparent physical fact”<sup>59</sup> and *البناء على الظاهر واجب ما لم يتبين خلافه* “The decision is to be structured upon the apparent facts unless its contrary is proved”<sup>60</sup> it is apparent that for the purpose of legal investigation of murder, the apparent proofs and evidences will be detected and the decision will be issued according to the results come forth after investigation and those results would be turned invalid only after the availability of some other accurate proofs and evidences. The wisdom behind these legal maxims is that the criminal law of Islam has been structured for the establishment of a just and fair legal system in this world so the legal punishments will be implemented on the criminals according to the obvious facts only, not on the basis of personal sentiments, judgment or personal secret information.

One of the chief parts of legal investigation of a murder is testimony provided by the respectable, righteous and trustworthy witnesses which play major role to reach the result and access to the criminal. In both voluntary and involuntary murder, witnesses can assist the court to give legal verdict related to the innocence or liability of the perpetrator as mentioned in the maxim

نقل الثقلت الاخبار حجة شرعية في وجوب العمل بهما

“Information from trustworthy persons is a legal evidence to make an action obligatory”.

From the maxim *العادة محكمة* “Custom is a basis for judgment”<sup>61</sup>, it can be identified that the way of imposing diyat (financial compensation) and kaffārah (expiation) for unintentional murder varies according to the custom of that particular state. In Arabia, 1400 years ago, blood-money was paid through 100 camels. However, nowadays, it depends on the customary law of a state. In Pakistan, price of blood-money is paid in cash form. It can also be paid in the form of some property as suited in compliance with the tradition of that particular region.

### 3.2 Islamic Legal Maxims and Punishment of Unintentional Hurts in Islam

In case of unintentional hurts and incapacitation of different body parts, different diyat has been prescribed in Aḥādīth as follows:

وَقَضَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي الْأَنْفِ إِذَا جُدِعَ الدِّيَّةُ كَامِلَةً وَإِنْ جُدِعَتْ تَنَدُّوْنُهُ فَنِصْفُ الْعُقْلِ حَمْسُونَ مِنَ الْإِبِلِ أَوْ عَدْلُهَا مِنَ الذَّهَبِ أَوْ الْوَرِقِ أَوْ مَائَةٌ بَقْرَةٌ أَوْ أَلْفُ شَاةٍ وَفِي الْيَدِ إِذَا قُطِعَتْ نِصْفُ الْعُقْلِ وَفِي الرَّجْلِ نِصْفُ الْعُقْلِ وَفِي الْمَأْمُومَةِ ثَلَاثُ الْعُقْلِ ثَلَاثٌ وَثَلَاثُونَ مِنَ الْإِبِلِ وَثَلَاثٌ أَوْ قِيمَتُهَا مِنَ الذَّهَبِ أَوْ الْوَرِقِ أَوْ الْبَقْرِ أَوْ الشَّاءِ وَالْجَانْفَةُ مِثْلُ ذَلِكَ وَفِي الْأَصَابِعِ فِي كُلِّ أُصْبُعٍ عَشْرٌ مِنَ الْإِبِلِ وَفِي الْأَسْنَانِ فِي كُلِّ سِنَّ حَمْسٌ مِنَ الْإِبِلِ .

“The Messenger of Allah (peace be upon him) gave judgment that for cutting off a nose completely there was full blood-money i.e. one hundred (camels) were to be paid. If the tip of the nose was cut off, half of the blood-money, i.e. fifty camels were to be paid or their equivalent in gold or in silver or a hundred cows or one thousand sheep. For the hand, when it was cut off, half of the blood-money was to be paid; for one foot, half of the blood-money was to be paid. For a wound in the head, one third of the blood-money was due, i.e. thirty-three camels and a third of the blood-money or their equivalent in gold, silver, cows or sheep. For a head thrust which reaches the body, the same blood-money was to be paid. Ten camels were to be paid for every finger and five camels for every tooth.”<sup>62</sup>

In the Criminal Law of Islam, rulings are enforced in case of unintentional hurts like that of unintentional murder therefore, same legal maxims will be applied in their case, for instance, the maxims

### الضرر يزال

“Harm must be eliminated”<sup>63</sup> and

### الضرر يدفع بقدر الامكان

“Injury is to be repelled to the extent possible”<sup>64</sup> preserve the Objective of Šharī‘ah i.e. protection of life and body as it was in the case of unintentional murder. To provide satisfaction to the citizens of an Islamic state about their fundamental rights, restrict the violence against them and establish an exemplary law and order situation, penalties will be executed whether voluntary or involuntary hurts take place so that the people could develop the respect for the safety of one another’s life and body and the harm could be repelled.

Infliction of injury, beauty defect, amputation or incapacitation of a body organ mistakenly, will be punishable with diyat (prescribed blood-money) as stated in the maxim that

### المباشر ضامن وان لم يتعمد

“The perpetrator is responsible whether he did something on purpose or not”<sup>65</sup>.  
From the maxims

### الأمر بمقاصدها

“Matters are determined according to their purposes”<sup>66</sup> and

### المرء مؤاخذ باقراره

“One will be punished by one’s confession”<sup>67</sup>, it can be understood that without knowing the intention of the accused one behind a crime and giving him a chance to explain his action, qiṣāṣ or diyat punishment cannot be imposed on him as this is against the nature of the Šharī‘ah as well as the civil rights of a citizen in Islam.

The maxim

### اليقين لا يزول بالشك

“Certainty is not overruled by a doubt”<sup>68</sup>, assert that after the conviction of the crime through all required evidences, no doubt can create a room and the perpetrator will have to pay the blood-money according to the nature of his crime.

In the Criminal Law of Islam, the punishment both for murder and hurts will be imposed on the basis of seemingly accurate proofs until and unless some reliable proofs negate the previous ones. This is what has been discussed in the maxim

البناء على الظاهر واجب ما لم يتبين خلافه

“The decision is to be structured upon the apparent facts unless its contrary is proved”<sup>69</sup>.

The maxim العادة محكمة “Custom is a basis for judgment”<sup>70</sup> generates the theory that the mode of paying diyat (financial compensation) in case of hurts may be in the form of currency, property or in any other reasonable way in accordance with the customary law of the state.

#### 4. Conclusion:

From the study of injunctions provided by the explicit texts of Šarī‘ah and Islamic legal maxims, it is proved that homicide and inflicting injuries are terrible offences because the perpetrator of these offences puts the law and order of a society in danger and violates the higher objectives of Šarī‘ah. That is the reason, severe penalties have been prescribed by Šarī‘ah for these perpetrators. However, for the execution of these penalties, strict conditions of providing witnesses, perpetrator’s confession or other valid circumstantial evidences have been established by Šarī‘ah. Islamic legal maxims have the capability to give solution for the issues according to the need of time, cases and circumstances. The present research work has focused on the role played by Islamic legal maxims to assist and guide the jurists, judges and legislators in order to determine the legality or invalidity of an issue for making legal decision and implementation of qiṣāṣ and diyat punishments. Therefore, it is indispensable to apply the legal maxims of Islamic law on the newly-occurred and controversial problems with respect to crimes and their punishments to find out legal rulings.

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