



← RULINGS OF →
ISLAMIC LAW
A SIMPLIFIED PRESENTATION



◆ CHAPTER 12: ◆

OFFENCES



www.islamicfiqh.net

Chapter 12

Offences

The Arabic term *jinayah*, which means ‘offence’, refers to a crime committed against a person, or property or honour. Muslim scholars dedicate the heading ‘Offences’ to apply to physical crimes against persons, and consider other offences to fall under the heading of ‘Mandatory Punishments’, or *Hudud*. As such, an offence, or *jinayah*, refers to a crime affecting a person physically and incur a punishment that is in the form of equal retribution, a financial fine or other recompense.⁴⁸⁵ An offence may be a crime leading to death, or a lesser harm.

An offence against life

This is the crime of killing. All Muslims agree that to kill without a lawful cause is strictly forbidden. Allah says: ‘Do not take any human being’s life – which Allah has made sacred – except in the course of justice’ (6: 151). There are three categories of killing: deliberate, semi-deliberate and accidental.

Deliberate killing, or murder

This refers to a case when the killer intends to unlawfully kill another human being, using means that will most probably lead to that person’s death. Three conditions must apply to make the

⁴⁸⁵ Al-Nadawi, *Al-Fiqh al-Muyassar*, p. 341.

killing a murder: 1) The killer's intention is to kill his victim; 2) Knowledge that the person he intends to kill is a human being who enjoys the right to life; and 3) The means used is something that normally leads to killing, whether it has a sharp blade or not. Alternatively, the killing may be by using something or a method leading to death, such as poisoning or strangulation.

Ruling: Murder has two rulings, the first of which relates to the hereafter, the other relating to this life. Islam considers murder a cardinal sin incurring severe punishment in the life to come, unless the murderer repents and mends his ways, earning Allah's forgiveness. Allah says: 'He who deliberately kills a believer, his punishment is hell, therein to abide permanently. Allah will be angry with him, and will reject him, and will prepare for him a dreadful suffering' (4:93).

In this life, murder is punishable by death as a *qisas*, or equal punishment, unless the victim's immediate family pardon the killer. This means that the immediate family have the options of enforcing the death punishment on the killer, or to give him a free pardon, or demand indemnity, or to agree a higher sum. This is based on a *hadith* that quotes the Prophet (peace be upon him) as saying: 'Whoever commits a murder is given to the victim's immediate family. They may enforce the death penalty, or may take indemnity which is thirty camels over three years of age, and thirty over five years and forty pregnant she-camels. Whatever they agree above that is theirs to take.'⁴⁸⁶

⁴⁸⁶ Related by Ibn Majah, *hadith* No. 2,626.

Islam encourages its followers to forego their rights whenever possible. Therefore, giving a pardon in such cases is encouraged as it demonstrates a God-fearing attitude.

Semi-deliberate killing, or manslaughter

This occurs when the offender attacks his victim with something which does not normally cause death, but then the victim dies. This is a case similar to deliberate killing, in the sense that there is an assault, yet on the other hand it is similar to accidental killing, because of using something that does not normally cause death. Therefore the ruling here falls in between. The ruling applies even in cases where the attacker merely wanted to punish the person being attacked.⁴⁸⁷

Ruling: Like murder, this type of killing has two rulings.⁴⁸⁸ The first relates to the hereafter, which makes such action forbidden, incurring Allah's punishment for killing someone who has the right to life. However, this punishment is lesser than the one for murder. The second ruling relates to this life. The offender is required to pay indemnity to the victim's family. However, even if the victim's family demand the death penalty, it does not apply. The indemnity is payable from the estate of the offender. In addition he is required to free a slave from bondage. If he cannot find that, he is required to fast two consecutive months.

⁴⁸⁷ Ibn Qudamah, *Al-Mughni*, vol. 7, p. 677.

⁴⁸⁸ *Ibid.*, p. 775.

Accidental killing

The offender has no intention to kill the victim, but his action results in another's death,⁴⁸⁹ as in the case of a driver making an error that results in crashing his vehicle into another vehicle, or a wall or hitting a lamp post. If such an occurrence results in someone's death, it is considered accidental killing.

Ruling: The ruling relating to the hereafter is that accidental killing does not incur a sin or a punishment, while the ruling relating to this life is that indemnity is payable by the offender and his relatives over a period of three years.

Offences causing physical injury

These include every type of harm that affects a human being but does not lead to death, including wounds and loss of limbs or other organs. In all such offences, a *qisas* punishment is enforced, based on the Qur'an, the Sunnah and unanimity of scholars. In the Qur'an Allah says: '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 a similar retribution for wounds' (5: 43). Al-Rubayyi [, a lady Companion of the Prophet (peace be upon him), broke the front teeth of a maid. The Prophet (peace be upon him) said: 'According to Allah's book, a similar punishment is due.'⁴⁹⁰ Moreover, all Muslim scholars agree that equal punishment

⁴⁸⁹ Ibid., p. 770.

⁴⁹⁰ Related by al-Bukhari, *hadith* No. 4,499; Muslim, *hadith* No. 1,675.

(*qisas*) is due, if possible,⁴⁹¹ in any case that results in bodily harm.

Offences causing bodily harm are of three categories: 1) wounds; 2) loss of a limb; and 3) loss of function of a bodily organ.

Wounds

Wounds are of two kinds: a) wounds to the face or the head; and b) wounds to the rest of the body.

Scholars have identified 10 degrees of wounds for these two categories. The first five are: a wound that scratches the skin; a wound that causes little blood; a wound that cuts the flesh lightly but does not reach the bones; a wound that goes deeper into the flesh but does not reach the membrane that separates the flesh from the bone; and a wound that reaches this membrane. In any of these five degrees, no equal, i.e. *qisas* punishment or indemnity is due. It is left to the judge to determine the compensation payable by the offender.

The other five degrees are a wound that cuts the membrane and exposes the bone, which incurs five% of the total indemnity payable in the case of killing; a wound that exposes and breaks a bone, which incurs 10% of the indemnity; a wound that dislocates a bone whether it is exposed and broken or not, which incurs 15% of the indemnity; a wound that reaches the

⁴⁹¹ Al-Nadawi, *Al-Fiqh al-Muyassar*, p. 350; al-Bahuti, *Kashshaf al-Qina* [, vol. 5, p. 638.

meninges, the membranes enclosing the brain; and a wound that cuts the meninges and reaches the brain. Each of these last two wounds incurs one-third of the total indemnity.

Added to these is a wound that goes deep into the body, whether in the abdomen, chest or back, and this type also incurs one-third of the indemnity.

The bases for estimating such compensation is found in the Sunnah: The Prophet (peace be upon him) sent a written message to the people of the Yemen, stating that wounds going as deep as the meninges enclosing the brain incur one-third of the indemnity, and the wound that causes the fracture of a skull or a facial bone incurs 15%, while the one that exposes the bone incurs five% of the indemnity.⁴⁹² Moreover, scholars are unanimous that to cause the fracture of a skull bone incurs 15%, and they agree that wounds going deep into the body incur one-third of the indemnity. Zayd ibn Thabit, a learned Companion of the Prophet (peace be upon him), ruled that a wound that exposes or breaks a facial or skull bone incurs 10% of the indemnity, and his ruling was not opposed. Furthermore, a wound that pierces the meninges incurs nothing less than a wound that reaches the meninges without piercing them, which is one-third of the indemnity.

These five degrees of wounds are not subject to *qisas*, except for the first one, which exposes a bone. This is the only one of these degrees of wounding that can be exacted to measure. If

⁴⁹² Related by al-Nassa'i, *hadith* No. 4,853; al-Hakim, vol. 1, p. 552; al-Bayhaqi, vol. 4, p. 89.

qisas is applied to the others, it may easily result in aggravation or reduction. Therefore, such equal punishment is not attempted, but recompense is required.⁴⁹³

The other kinds of wound refers to those in the rest of the body, and they differ greatly. However, we may say that what does not allow *qisas* if it affects the face or the head also precludes it in the rest of the body. The only exception is a wound that exposes a bone, such as a chest bone. This is due to the fact that it is very difficult to ensure equality and causing the same extent of harm as the offender caused. Hence, an indemnity is payable to the victim as a judge may decide.

Loss of limb

There are also three categories of this offence: deliberate, semi-deliberate and accidental. Equal punishment is only applicable to the deliberate category if three conditions are observed:

1. It should be possible to achieve equal punishment without aggravating the injury. This means that when an amputation is exacted, any amputation should be at a joint or to a defined limit, such as a finger, a wrist or an elbow. No equal punishment is possible for a wound that does not end at a clear limit, such as a wound going deep into the body. Nor can equal punishment apply to a break of bone

⁴⁹³ Al-Zuhaili, *Al-Fiqh al-Islami wa Adillatuh*, vol. 7, p. 296.

other than teeth. Thus, it does not apply to the break of an arm or a leg.

2. The organs of the offender and the victim should be the same in name and location. This means that if the victim loses his left arm, the equal punishment must apply to the left arm of the offender. If the victim loses his right thumb, the equal punishment must apply to the offender's right thumb, not to any other finger.
3. The organs of the offender and the victim must be equally complete and healthy. If the victim loses his arm which had missed fingers, equal punishment must apply to an arm with the same loss of fingers.

Loss of function of a bodily organ

If the offender causes the loss of the function of a bodily organ, *qisas*, or equal punishment, cannot apply because it is practically impossible to determine the exact measure of punishment. Instead, he must pay the victim the full indemnity. If the offender causes partial loss of function, and the extent of loss can be properly assessed, the punishment can be in the same proportion of the indemnity, such as a half or one quarter. If the loss cannot be assessed, the punishment is determined by a judge. The function that may be lost totally or partially include the mind, hearing, sight, smell, voice, taste, chewing, sex, etc.⁴⁹⁴

⁴⁹⁴ Al-Khatib al-Shirbini, *Mughni al-Muhtaj*, vol. 2, p. 62; al-Bahuti, *Kashshaf al-Qina* [, vol. 6, p. 37.

Indemnity

The Arabic term *diyah*, i.e. indemnity, is defined as the money given to the victim or to his immediate family because of the offence. Its payment is a duty according to the Qur'an and the Sunnah and the unanimity of scholars. In the Qur'an Allah says: 'He who kills a believer by mistake must free a believing soul from bondage and pay an indemnity to his family, unless they forgo it by way of charity' (4: 92). Abu Hurayrah reports that the Prophet (peace be upon him) said: 'Whoever suffers the killing of a close relative has the better of two options: either to kill (the offender) or to accept indemnity.' There is also the document the Prophet (peace be upon him) gave to [Amr ibn Hazm explaining the indemnities due for different offences. All Muslim scholars are of the view that indemnity for such offences is obligatory. The purpose of putting this legislation in place is to save life and protect people against criminals who may find it easy to kill if they can escape a severe punishment.

Who is to pay:

If a person is killed, or is caused grievous bodily harm, there can be only two possibilities:

- If the offence that results in the loss of life is absolutely deliberate, the whole amount of the indemnity should be taken from the property of the offender, if the family of the victim forgo equal punishment. The one who is

responsible for the loss must bear the cost, as Allah says: ‘No one shall be made to bear the burden of another’ (6: 164).

- If the offence is accidental or semi-deliberate, the indemnity is payable collectively by the offender’s relatives. Abu Hurayrah reports: ‘Allah’s messenger ruled in the case of the embryo of a woman from the Lihyan tribe, as she had a miscarriage because of a physical attack, that the attacker should give as indemnity a male or female slave. Then the woman who was to pay the indemnity died. The Prophet (peace be upon him) ruled that her property belongs to her children and her husband and the indemnity was to be paid by her relatives.’⁴⁹⁵

The indemnity is payable by the offender’s close relatives because such accidental offences are frequent, and there are often extenuating circumstances. Hence, it is right that he should be helped so as to reduce his burden. By contrast, the deliberate offender pays the indemnity himself for freedom from suffering an equal punishment. Hence, when the victim or his family forgo equal punishment, he must pay the indemnity himself.

⁴⁹⁵ Related by al-Bukhari, *hadith* No. 6,740; Muslim, *hadith* No. 1,681.

The indemnity and its assessment

The indemnity was originally assessed by a number of camels. The Prophet (peace be upon him) said to [Amr ibn Hazm: ‘The indemnity for the killing of a believer is 100 camels...’ He also says: ‘In the case of a semi-deliberate accidental killing, which is caused by using something like a whip or a stick, [the indemnity] is 100 camels.’⁴⁹⁶ [Amr ibn Shu[ayb reports: ‘During the Prophet’s (peace be upon him) lifetime, the indemnity was 800 dinars (the gold currency) or 8,000 dirhams (the silver currency) [...] It remained so until [Umar’s reign. He addressed the people and said: “Camels are now more expensive.” He assessed the indemnity for those who pay in gold as 1,000 dinars, and who pay in silver as 12,000 dirhams, and those whose business is in animals as 200 cows or 2,000 sheep, and those who trade in clothes as 200 suits.’⁴⁹⁷ This means the standard by which the indemnity is assessed was camels, while the other options are supposed to be of equal value. [Umar did this in the presence of other Companions of the Prophet (peace be upon him), and none objected to him, thus unanimity was achieved. Therefore, the indemnity should be paid in the form of camels or their value.⁴⁹⁸

The basis of assessment is the indemnity for killing a free Muslim, which is 100 camels. It is increased in the case of

⁴⁹⁶ Related by Ahmad, *hadith* No. 6,719; Abu Dawud, *hadith* No. 4,541; al-Nassa’i, *hadith* No. 4,793.

⁴⁹⁷ Related by Abu Dawud, *hadith* No. 4,542; al-Bayhaqi in *Al-Sunan al-Kubra*, vol. 8, p. 77.

⁴⁹⁸ Al-Bahuti, *Kashshaf al-Qina* [, vol. 6, p. 17.



murder and manslaughter by requiring 40 of these camels to be pregnant females.

It is clear on the basis of [Umar's ruling specifying different types of property that the important point is to impose a severe punishment to serve as a deterrent. Scholars have given extensive details of the amount of indemnity required for different offences and the extent of the damage suffered by the victim. Courts assess the indemnity payable according to the extent of the damage caused.