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The Rationale for the Necessity of Settling the Debts of an Intentional Homicide Victim from the Property Obtained through Compromise over Retaliation (Qiṣāṣ)

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ABSTRACT

Qiṣāṣ, as the principal punishment for intentional crimes, is a right that is granted to the wali al-dam (the victim's legal heirs). This right may, in certain cases, be waived gratuitously or relinquished in exchange for financial compensation. According to the views of Islamic jurists and legal scholars, whenever a debtor whose assets are insufficient to discharge his liabilities is intentionally killed, and his heirs agree to compromise their right of qiṣāṣ in return for property, the compensation obtained through such compromise must be allocated to the payment of the deceased's debts. This raises the question of why property that belongs to the wali al-dam should be used to settle the debts of the deceased, given that heirs bear no liability toward creditors beyond the assets of the deceased themselves. Owing to the distinct, significant, and practical legal consequences arising from this issue, the present article adopts a descriptive–analytical method to resolve this apparent tension and to provide a justification for the relevant statutory provisions and juristic opinions. The analysis demonstrates that, with the transformation of the nature of the right of qiṣāṣ at the moment it is converted into compensatory property, and with the consequent change in the subject matter of the issue, the applicable ruling likewise changes. This is because, in certain cases, there exist legal presumptions and juridical constructions grounded in Sharīʿa that may run counter to common rational intuitions. It is for this reason that, notwithstanding the attribution of the right of qiṣāṣ to the wali al-dam, once that right is compromised and exchanged for financial compensation, the debts of the deceased must be discharged from that consideration.

Keywords: *compromise over qiṣāṣ; victim of intentional homicide; settlement of the deceased's debts; consideration for the right of qiṣāṣ.*

Introduction

According to Islamic law, a person who intentionally commits murder and unjustly deprives another of life is subject to qiṣāṣ (retaliation). God the Exalted has established qiṣāṣ as a right vested in the wali al-dam (the heirs of the victim) and the bereaved survivors (Qur'an, al-Isrāʾ 17:33), so that, in addition to ensuring social security (Qur'an, al-Baqarah 2:179) and punishing the perpetrator, it may also serve as a source of consolation for the victim's family. This understanding is also reflected in juristic analyses concerning the philosophy and objectives of qiṣāṣ (1, 2).

At the same time, out of divine grace and expansive mercy toward His servants, God has granted the holders of the right of qiṣāṣ the discretion to enforce this right, to pardon it, or to reconcile and convert it into property or another right (Qur'an, al-Baqarah 2:178). In addition to Qur'anic verses and their encouragement of forgiveness and forbearance, this matter is explicitly affirmed in the traditions of the Infallibles. In a narration, Imam al-Ṣādiq (peace be upon him) states that if someone intentionally kills a believer, he is subject to qiṣāṣ unless the victim's heirs accept blood money (diyah) or consent to less or more than the diyah (3).

Accordingly, there is no disagreement among jurists and legal scholars that the heirs of the victim, as the principal holders of the right of qiṣāṣ, may—once the relevant conditions are fulfilled—freely and voluntarily enforce qiṣāṣ, or convert it into property, divide it among themselves, and exercise proprietary dispositions over it. The Islamic Penal Code likewise affirms this principle in Article 347, which provides that the holder of the right of qiṣāṣ may, at any stage of prosecution, adjudication, or enforcement of the sentence, pardon gratuitously or reconcile in exchange for a right or property. However, with respect to property obtained through reconciliation over qiṣāṣ, when the intentionally killed victim was indebted and his estate is insufficient to satisfy his debts, differences of opinion arise among jurists and legal scholars. In such a case, the law provides that if qiṣāṣ is converted into diyah, it must be applied to the payment of the deceased's debts (Article 432 of the Islamic Penal Code). Some jurists similarly maintain that the heirs must discharge the debts of the victim from the property obtained through reconciliation over qiṣāṣ and, if there is a will, execute it. For example, Fāḍil Hindī writes that diyah is treated as the property of the deceased and that the debts of the deceased are paid from it, even where the killing was intentional and the heirs consented to receiving diyah (4).

The point of contention in this ruling, however, lies in the fact that so long as the last breath of life remains and the victim is alive, the right of qiṣāṣ over life has not yet materialized such that the victim could waive it or convert it into property and thereby incorporate the resulting property into his own assets, from which his debts would be paid after death. Likewise, when the heirs pardon qiṣāṣ in exchange for property, the victim is no longer present to become the owner of that consideration so that his debts may be settled from it. Moreover, under statutory law, the heirs—or, in other words, the wali al-dam—are not obligated to pay the deceased's debts from their own property. Article 226 of the Law on Non-Contentious Matters provides that heirs are not required to give creditors anything beyond the estate, and if the estate is insufficient to satisfy all debts, it shall be distributed among creditors proportionally.

This gives rise to a fundamental question: if, in the logic of the Qur'an and the traditions, the heirs are primarily and essentially the holders of the right of qiṣāṣ and this right belongs to them as their property, why is it that, when the estate is insufficient to discharge the deceased's debts, the wali al-dam is not permitted to pardon the killer gratuitously, or even to enforce qiṣāṣ without first paying or guaranteeing the claims of the deceased's creditors? Shaykh al-Ṭūsī states in this regard that if an indebted person is killed intentionally or accidentally, it is obligatory that his debts be paid from his diyah, and in cases of intentional killing, even the victim's heirs may not carry out qiṣāṣ before guaranteeing the debts (5). Imam Khomeini likewise considers it more prudent to allow qiṣāṣ only after the deceased's debts have been guaranteed, stating that, although there are two opinions on whether the heirs may enforce qiṣāṣ without guaranteeing the creditors' claims, caution dictates that qiṣāṣ not be enforced prior to such guarantee (6). Furthermore, why is it that when this right is converted by the heirs into property or another right, the received property is apparently regarded as part of the deceased's estate, such that his debts and bequests must be fulfilled from it pursuant to Article 432 of the Islamic Penal Code? In other words, why does the wali al-dam not become the owner of a right that originally belonged to him and was converted into property by his own will, but is instead, from a juristic and legal perspective, compelled to expend it for the benefit of another—namely, the indebted deceased? Does this imply original ownership by the victim himself? If so, how can the victim be considered the owner of his own right of qiṣāṣ, given that during his lifetime no killing and thus no right of qiṣāṣ had yet occurred, and after death ownership is ordinarily inconceivable?

It appears that, in order to resolve this issue, identifying the holder of the right of qiṣāṣ—and consequently the owner of its consideration—is of fundamental importance and entails distinct and practically significant legal effects, including the following:

• If diyah (as the consideration for qiṣāṣ) is the property of the deceased, it forms part of the estate and is distributed among the heirs according to the rules of inheritance; otherwise, the principle would require distribution in proportion to the harm suffered, or equally in cases of doubt (7).

• If diyah belongs to the deceased and thus forms part of the estate, the deceased's debts must be paid from it prior to distribution of the estate; whereas if it is deemed the personal property of the heirs, the deceased's debts are not discharged from it, since the heirs' assets are not collateral for the debts of the decedent.

• If diyah is part of the deceased's assets, inheritance tax rules apply to it; but if it belongs to the heirs, it is not subject to such taxation.

• …

Accordingly, the obligation to discharge the deceased's debts from the consideration for the right of qiṣāṣ varies depending on who is regarded as the holder of the right of qiṣāṣ. After examining the prevailing views on the holders of the right of qiṣāṣ and, by extension, the property obtained through reconciliation over it, the present study proceeds to analyze the settlement of the debts of an intentionally killed victim and the rationale for its necessity.

The Theory of the Attribution of the Right of Qiṣāṣ and Its Consideration to the Victim

The majority of Imamī jurists maintain that the right of qiṣāṣ over bodily injury and life initially and essentially belongs to the victim himself (8-12). Shahīd Thānī, in affirming the attribution of the right of qiṣāṣ to the victim, explains that if a person says "kill me, otherwise I will kill you," such consent does not render the killing permissible, because permission does not remove the prohibition. If the killer nevertheless carries out the act, qiṣāṣ does not become obligatory, since the victim waived his right through consent, and therefore the heir (wali al-dam) cannot exercise authority over the killer (8).

According to this view, not only does the right of qiṣāṣ belong to the victim himself—who may pardon it gratuitously or in exchange for property—but even the consideration for qiṣāṣ, in the event of reconciliation by the heirs after the victim's death, also belongs to the victim and enters into his assets, passing to the heirs through inheritance. The author of *Kashf al-Lithām* states in this regard that diyah is treated as the property of the deceased, even when the killing was intentional and the heirs consented to receiving diyah (4).

The Islamic Penal Code is likewise structured on the basis of this approach. Article 348 provides that the right of qiṣāṣ is inherited in accordance with the provisions of the law, and Article 352 subjects the distribution of property obtained through reconciliation over qiṣāṣ to the rules of inheritance, stating that if the right of qiṣāṣ is converted into diyah or reconciled for property or another right, the spouse of the victim also inherits from it. These provisions indicate that, from the perspective of the Iranian legislator, the right of qiṣāṣ and, consequently, its consideration enter into the estate of the deceased and are transferred to the heirs through inheritance.

The Evidences Cited by Proponents of the First View and Their Critiques

Regarding the attribution of the right of qiṣāṣ to the victim (al-majnī ʿalayh), it should be noted that the right of qiṣāṣ for bodily injury (qiṣāṣ al-ʿuḍw) is considered the property of the victim himself, and he may decide freely in relation to it. No objection has been raised on this point, and—according to the author of *Jawāhir al-Kalām*—it is a matter of consensus among Imamī jurists (9). However, with respect to the attribution of this right to the victim in qiṣāṣ for life (qiṣāṣ al-nafs), jurists have differed; and each group seeks to substantiate its position by invoking evidence from the Qur'an, the Sunnah, and rational argument. In this context, proponents of this view have relied on a set of proofs; below, some of these are presented together with the objections raised against them.

A) The Noble Qur'an

Islamic law treats the unlawful killing of a protected soul as tantamount to killing all humankind (Qur'an, al-Māʾidah 5:32), and for that reason prescribes retaliation as a right of counter-killing (qiṣāṣ) (Qur'an, al-Māʾidah 5:45). Since the slain person cannot personally exercise this right, God the Exalted has empowered his relatives—designated as the wali al-dam—to exercise the right of qiṣāṣ (Qur'an, al-Isrāʾ 17:33). This line of reasoning is further reinforced when certain exegetes, in an uncommon interpretation, gloss the term *walī* in the verse as "the one who takes charge of his affair after his death, namely the heir." (13-15) On these readings, *walī* is the person who assumes responsibility for another's affairs due to that person's inability to perform the act himself; that is, if a person is able to act, there is no need for a *walī* to take charge. Consequently, the right of qiṣāṣ would have been delegated to the *walī* only because the person no longer exists to exact his right; thus, the *walī* would merely be the victim's substitute in the enforcement of qiṣāṣ, not its original holder, and would be free to act only insofar as doing so does not conflict with the victim's interests.

However, this interpretation—which takes *walī* in a primarily lexical sense—is not found in the well-known exegetical works; rather, most exegetes understand *walī* in its juristic and legal sense, namely as the one vested with authority over the right of qiṣāṣ. It should also be noted that this latter understanding is more consistent with the Qur'anic logic (16). This is because, beyond qiṣāṣ, the Qur'an also treats diyah as an established entitlement of the victim's family and heirs (Qur'an, al-Nisāʾ 4:92).

B) Verse 45 of Sūrat al-Māʾidah

The primary proof relied upon by proponents of this position is the verse "life for life, eye for eye …" (Qur'an, al-Māʾidah 5:45). They argue that just as the offender's eye is retaliated for the victim's eye, and the offender's ear for the victim's ear, so too the offender's life is taken for the victim's life. Some further contend that the preposition *bi-* in the expression "al-nafs bi-al-nafs" indicates an exchange relationship, and they argue that the taking of the offender's life is because of the taking of the victim's life—not because of the heirs (17).

That said, invoking this verse to establish that the right of qiṣāṣ belongs to the victim is highly contestable and, ultimately, weak. The verse is concerned with specifying equivalence in the locus of retaliation, not with identifying the bearer of the right of qiṣāṣ (18). Many exegetes interpret the verse precisely in this manner, i.e., as establishing parity between the retaliated organ and the organ harmed (19, 20). Some exegetes have even regarded the addressee as the victim's *walī al-dam*, treating the verse as connected to his discretion to enforce qiṣāṣ, to pardon, or to reconcile, as well as to the prohibition on exceeding justice in the enforcement of retaliation (21, 22).

C) Narrations

Among the narrations, no report was found that explicitly or implicitly states that the right of qiṣāṣ itself belongs to the victim. The most that may be invoked are certain narrations that treat payment of the victim's debts as required from diyah. One example is the narration transmitted by Yaḥyā al-Azraq from Imam al-Kāẓim (peace be upon him) concerning an indebted victim who left no property to pay his debts, while his heirs received diyah from the killer; the Imam replies that since they took the diyah, they must pay the debt (3). Another is the narration of al-Sukūnī from Imam al-Ṣādiq (peace be upon him), which includes one-third of diyah within the scope of the victim's bequest (3). On this basis, some jurists have inferred that the right of qiṣāṣ itself belongs to the victim (23). Yet these narrations cannot establish that the right of qiṣāṣ belongs to the victim, because they relate to diyah in cases of unintentional killing, not to the consideration for qiṣāṣ in intentional murder.

D) Retaliation in Relation to the Victim's Body

Some jurists argue that, just as bodily injuries below homicide fall upon the body of the victim, homicide likewise falls upon the victim's body; and since it is the victim who bears the suffering and harm, he is more entitled than anyone else to decide concerning "his" qiṣāṣ—to pardon it or reconcile it—and to benefit from any property taken in exchange for it (24).

In response, it must be said that the ground of qiṣāṣ is the taking of life, and before that act is completed, qiṣāṣ is not established so that it could be pardoned or reconciled by the victim or anyone else. Waiving the right of qiṣāṣ, or pardoning it, before death would amount to waiving what has not yet become due (*isqāṭ mā lam yajib*), which jurists generally deem invalid (1, 25). Accordingly, on this analysis, the slain person not only does not become the owner of rights and property acquired after death, but he also loses his control and ownership over his assets upon death. Hence, some jurists consider any disposition by him in the right of qiṣāṣ, or in its consideration, to be a disposition in another's property and thus *fuḍūlī* (unauthorized) (9, 26). Muqaddas Ardabīlī likewise holds that the fall of qiṣāṣ due to the victim's pardon is uncertain, because the very establishment of the right for him is uncertain, and such pardon cannot remove the offender's criminal liability (27).

What ultimately appears is that the deceased lacks capacity to acquire ownership after death, and the continuation of the decedent's legal personality after death is contrary to reality (28, 29). Since the property obtained through reconciliation over qiṣāṣ is acquired after the decedent's death, the decedent cannot exercise any disposition over it—whether prior to death by way of pardon, or after death by way of settling debts and executing a bequest.

The Theory of the Attribution of the Right of Qiṣāṣ and Its Consideration to the Wali al-Dam

According to this view—and relying on Qur'anic and hadith-based proofs—the right of qiṣāṣ belongs primarily and essentially to the wali al-dam. Therefore, if the heirs collectively waive this right and convert it into property or another right, that property—following the principal right of qiṣāṣ—will also be owned by the heirs. (9) Fāḍil Hindī likewise adopts this position and states that creditors cannot prevent the heirs from enforcing qiṣāṣ, even if the deceased was indigent, because qiṣāṣ is the heirs' original right. (4)

ʿAllāmah Ḥillī also holds this view and, citing Ibn Junayd al-Iskāfī, describes the enforcement of qiṣāṣ—or its conversion into property—as belonging to the discretion of the wali al-dam: the heirs of the slain person may choose between enforcing qiṣāṣ, receiving diyah, or granting pardon. (30)

The Islamic Penal Code likewise, in Article 452, characterizes diyah—depending on the case—as a personal right of the victim or the wali al-dam, and treats it as having the rules and effects of civil liability/guarantee. It further states in Article 432 that the heirs may demand qiṣāṣ against the offender without regard to the deceased's debts or guaranteeing them: "If the victim dies prior to the enforcement of qiṣāṣ and his estate is insufficient to satisfy his debts, the holder of the right of qiṣāṣ has the right to enforce qiṣāṣ without paying or guaranteeing those debts …". This reflects the legislator's acceptance of the attribution of qiṣāṣ—and thus its consideration—to the wali al-dam, although a subsequent proviso in the same article appears, contrary to the usual rule that the ancillary follows the principal, not to treat the consideration for qiṣāṣ as the heirs' property and instead obliges them to pay the deceased's debts from it: "… if, for any reason, qiṣāṣ is converted into diyah, it must be applied to the payment of the aforementioned debts …". In support of attributing the right of qiṣāṣ to the wali al-dam, several evidences have been advanced, including the following:

A) The Noble Qur'an

Within the Qur'anic framework, and based on the explicit statement of God in verse 33 of Sūrat al-Isrāʾ, qiṣāṣ is a right for the wali al-dam, and its exercise or waiver lies within their discretion (Qur'an, al-Isrāʾ 17:33). The scope of "killing" in the verse is general: whoever is wrongfully killed, his wali is granted authority by which he may enforce qiṣāṣ or reconcile (ṣulḥ) over it. Clearly, the generality of the verse also encompasses cases in which the deceased is indebted and lacks assets sufficient for payment. (10) Under this approach, qiṣāṣ is not like an inherited asset transferred from the slain person; rather, it is a right established ab initio and essentially for the wali al-dam, such that even the victim himself has no share in it prior to death and cannot pardon it or convert it into property. (16) In *Fiqh al-Ṣādiq*, it is likewise stated that qiṣāṣ—pursuant to the noble verse "We have granted authority to his wali"—is the right of the wali, not the right of the victim. (28) Accordingly, upon the killing of the person, the right is assigned to the wali al-dam (who are his heirs), and they have discretion: they may enforce qiṣāṣ, reconcile for property in exchange for this right, or pardon the offender entirely from qiṣāṣ and from any payment in lieu of it.

B) Narrations

The apparent meaning of the narrations likewise indicates that, in intentional killing, the primary punishment is qiṣāṣ—established for the wali al-dam—who may choose to retaliate, to pardon without compensation, or to convert the right of qiṣāṣ into property by reconciling for an amount equal to diyah, or less, or more. Among such narrations are the following:

1. "If someone intentionally kills a believer, he is retaliated against, unless the victim's heirs accept diyah or consent to less or more than diyah …" (3)
2. It is transmitted from Imam al-Ṣādiq (peace be upon him), through two chains, that: "Whoever intentionally kills a believer is retaliated against, unless the victim's heirs accept diyah." (3)
3. It is narrated from Imam Mūsā b. Jaʿfar (peace be upon him) regarding an intentional killer: "If the victim's heirs wish, they pardon him, and if they wish, they take diyah." (3)

In Sunni hadith sources as well, a narration from the Prophet (peace be upon him and his family) conveys the same meaning: “Whoever has a relative killed is given the choice between taking diyah or enforcing qiṣāṣ.” (31)

As is evident, these narrations grant the wali al-dam discretion to enforce their primary right—qiṣāṣ—absolutely, or to be satisfied with receiving property in place of it. Notably, in the formulations of these narrations there is no condition that makes the enforcement of the right, or its conversion into property, contingent upon the deceased’s debt, the creditors’ rights, or any other consideration. As mentioned earlier, the Islamic Penal Code also treats the enforcement of qiṣāṣ—without regard to the debts of an intentionally killed victim—as established for the wali al-dam (Article 432 of the Islamic Penal Code).

C) Tashaffī (Appeasement/Consolation)

Among the arguments invoked to prove that qiṣāṣ belongs to the wali al-dam is the notion of *tashaffī*—that is, qiṣāṣ is established to appease and console the survivors in view of the material and moral harms arising from the loss of the deceased, and this rationale is intelligible for the wali al-dam, not for the victim himself. (2, 32) Accordingly, qiṣāṣ is an original right for the wali al-dam and becomes established independently for each heir. On this analysis, the legislator places qiṣāṣ at the disposal of the victim’s family as an instrument for their reassurance and relief, so that they may obtain this consolation through the justice system; otherwise, they might seek private vengeance, resulting in disorder. (33) Hence, qiṣāṣ is a right in the hands of the heirs, and no one—even the victim himself—has decision-making authority over it; rather, it is the heirs who may enforce it or waive it in exchange for compensation.

Therefore, once it is established—both rationally and textually—that qiṣāṣ belongs to the wali al-dam, its consideration likewise belongs to them, on the basis that the ancillary follows the principal, a rule endorsed by scholars. (34) On this basis, the heirs, as the wali al-dam, decide what to do with the property obtained through reconciliation over qiṣāṣ, because it is property acquired in exchange for the waiver of their own right. Accordingly, spending it on the deceased’s debts or bequests would have to be based on the wali al-dam’s will and choice; and if they do not intend to pay the deceased’s debts, they should be able to exercise other proprietary dispositions over it as they wish.

Settlement of the Debts of an Intentionally Killed Victim

On the foregoing account, under the first view the right of qiṣāṣ belongs to the victim, and due to the death of the right-holder, its enforcement is assigned to his heirs; consequently, when reconciliation occurs between the heirs and the killer, the consideration enters the deceased’s estate. On that basis, the deceased’s interest must be taken into account and this opportunity used to clear his liabilities.

However, as explained in the critique of that view, the core premise—namely, attributing the right of qiṣāṣ to the victim—is not established, such that one could then establish attribution of the consideration to the victim. This point appears in the words of some jurists as well. For example, al-Baḥrānī states that the property obtained through reconciliation over qiṣāṣ is not applied to the deceased’s debts, because it is obtained after the life that is a condition for ownership; debts attach to the debtor’s liability during life and to his property after death; and “the deceased does not acquire ownership after death,” so that his debts could be paid from the consideration for qiṣāṣ which is obtained after his death. (35) Hence, one cannot rule that the deceased’s debts must be paid from the property obtained through reconciliation over qiṣāṣ on the basis of the deceased’s ownership of that property.

Under the second view—which, according to the present analysis, is established through the presentation of the views and the evaluation of their proofs—qiṣāṣ and its consideration are wholly the heirs' property and have no connection to the deceased or his debts; and the heirs are not obligated to pay the deceased's debts from their own property. This is precisely what Article 226 of the Law on Non-Contentious Matters explicitly provides: heirs are not required to give creditors anything beyond the estate, and if the estate is insufficient to satisfy all debts, it is distributed among creditors in proportion to their claims. Fāḍil Hindī similarly treats qiṣāṣ as exclusive to the heirs and denies that any liability toward creditors attaches to them: even if the slain person has no property, qiṣāṣ is the heirs' right, and they bear no guarantee regarding the debts. (4)

In other words, if the victim was indebted and left no property for paying those debts, the wali al-dam may still enforce their right of qiṣāṣ, and there is no obligation to convert qiṣāṣ into property and then spend that property on the deceased's debts.

Accordingly, merely for the sake of protecting creditors' rights, one cannot compel the wali al-dam to convert qiṣāṣ into property or to spend the property on paying the deceased's debt, because qiṣāṣ is their right and the received compensation is its consideration: "qiṣāṣ is their right, and no one may prevent it." (28) Therefore, prohibiting qiṣāṣ, or obliging its conversion into property, due to the existence of debt would entail stripping away the authority that God has granted the wali al-dam in the Qur'an. On this basis, the primary rational presumption is that heirs are not responsible vis-à-vis creditors, because the deceased has no property by which his debts can be cleared; and the existing property—obtained through the heirs' reconciliation over their own right of qiṣāṣ—is not the deceased's property such that it must be spent on his debts.

That said, there are narrations that, in their apparent generality, conflict with the prior Qur'anic and hadith-based generalities and treat payment of the debts of an intentionally killed victim as required from the property obtained through reconciliation over qiṣāṣ. Among them is a report from Imam al-Kāẓim (peace be upon him) in which the narrator asks: a person has been intentionally killed, and his heirs have reconciled with the killer (in lieu of qiṣāṣ) for property—upon whom does the victim's debt fall? Upon the wali al-dam to pay from the diyah, or upon the Imam/ruler? The Imam responds that the debt is paid from the property (diyah) agreed upon in reconciliation, because the slain person has a stronger claim to "his diyah" than others. (3) However, this report is argued to be unreliable due to weaknesses in the chain, including criticism directed at certain transmitters in biographical evaluation. (36) Consequently, it cannot serve as a basis to restrict or qualify the Qur'anic text.

In another narration, Imam al-Kāẓim (peace be upon him) states regarding payment of the debt of an indigent debtor who is killed, and whose heirs receive diyah from the killer (instead of qiṣāṣ), that the heirs must pay his debt; when the narrator asks "even though he left no property?", the Imam replies: since they took the diyah, it is obligatory upon them to pay the victim's debt. (3) Although this narration is regarded as authentic and is among the bases for requiring payment of the deceased's debt, it does not refer to the consideration for qiṣāṣ and does not encompass intentional killing and property obtained through reconciliation over qiṣāṣ; rather, it concerns diyah in non-intentional homicide, which stands as compensation for the taking of the victim's life, belongs to the victim, and enters his estate. Thus, there is no contradiction between this set of narrations and the earlier Qur'anic and hadith generalities.

In light of the foregoing, what initially comes to mind is the non-requirement of paying the victim's debts; yet, contrary to this rational presumption, juristic opinions (6) and statutory provisions ["… if, for any reason, qiṣāṣ is converted into diyah, it must be applied to the payment of the aforementioned debts." (Article 432 of the Islamic

Penal Code)] maintain that where the victim was indebted, the estate is insufficient, and the wali al-dam reconcile the right of qiṣāṣ for property, creditors' claims must be satisfied from the property obtained through reconciliation over qiṣāṣ. In other words, in this situation, creditors' rights take precedence over the heirs' control over the consideration for qiṣāṣ—even though that consideration is, in appearance, their personal property. It appears that the resulting tension can be resolved through the following considerations:

Setting Aside Conflicting Evidences and Resorting to Practical Principles (al-Uṣūl al-ʿAmaliyyah)

Some scholars, instead of resolving the conflict by reconciling the evidences and construing the absolute (muṭlaq) in light of the qualified (muqayyad), have—when confronted with narrations that require payment of the slain person's debts from the consideration for the right of qiṣāṣ (thereby restricting the wali al-dam's dispositions) alongside verses and narrations that present the wali al-dam's exercise of this right in absolute terms—set aside the apparent meanings of these evidences and resorted to practical principles such as the presumption of innocence (aṣl al-barāʾah). For example, Fāḍil Hindī states: "The presumption is the exoneration of the heirs' liability from paying debts." (4) Others have argued that "after intentional killing, no property is generated within the deceased's estate for the wali al-dam to destroy; and converting qiṣāṣ into diyah is a form of acquiring new property, and, as a matter of principle, one cannot compel persons to undertake it." (7) That is, under the presumption of innocence, acquiring this property and converting qiṣāṣ into property for the purpose of paying the deceased's debts is not obligatory upon the wali al-dam. Muḥaqqiq Baḥrānī likewise holds: "Intentional killing entails qiṣāṣ, and taking diyah is a new act of transfer and acquisition; this cannot become obligatory upon the heirs merely because of the ancestor's debt." (35) Therefore, where qiṣāṣ is permissible without paying or guaranteeing the deceased's debts and the heirs are not obligated to convert this right into property for debt-settlement, it follows—on this view—that the heirs' liability is discharged in relation to the deceased's debts, and that they have full proprietary authority over the property they obtained through reconciliation over their right of qiṣāṣ.

However, it must be said, first, that the maxim "al-aṣl dalīl ḥayth lā dalīl" applies; in other words, where there is an ijtihād-based proof—such as relevant verses and narrations—and where any conflict (if present) is susceptible to resolution, there is no recourse to practical principles such as barāʾah. Accordingly, some jurists have construed the generalities and absolute formulations of the Qur'anic and hadith evidences in light of the qualifying narrations, restricting the heirs' freedom to dispose of the property obtained through reconciliation over qiṣāṣ to cases in which the slain person had no debt. In response to those who rely on the generality and absoluteness of the evidences—especially verse 33 of Sūrat al-Isrāʾ ("Whoever is killed wrongfully, We have granted his wali authority …")—and who therefore treat the wali al-dam, without regard to the deceased's debts, as the holder of the right of qiṣāṣ and its consideration, and as extending this generality to cases in which the deceased is indebted (10, 30), they argue that the cited verses establish the basic legitimacy of qiṣāṣ and the fact of its presence in the Sharīʿa, but they are silent regarding details such as whether the slain person is indebted; thus, affirmatively or negatively, one cannot rely on them for such particulars. (37)

Conversely, it may be argued—by relying on the principle against unwarranted restriction—that these verses and narrations exhibit an apparent generality and therefore include the case of the victim's indebtedness as well, thereby establishing the right of qiṣāṣ for the wali al-dam in absolute terms.

Second, if one were to exonerate the heirs from paying the deceased's debts on the basis of barāʾah while also assuming that the estate is insufficient to satisfy those debts, then the deceased's creditors would be subjected to harm—harm that is negated in Islamic law under the Prophetic maxim “no harm and no reciprocal harm in Islam.” (3) Put differently, if the heirs’ ownership of the right of qiṣāṣ and its consideration is taken as unconditional, then either enforcing qiṣāṣ without paying or guaranteeing the deceased’s debts, or converting qiṣāṣ into property and retaining that property without settling the debts, conflicts with certain juristic maxims, including the rule of *lā ḍarar* and the rule negating undue hardship (*nafī al-ʿusr wa-al-ḥaraj*) (Qur’an, al-Māʾidah 5:6; al-Ḥajj 22:78). In both scenarios—enforcing qiṣāṣ without paying or guaranteeing the deceased’s debts, and converting it into property for the heirs’ benefit—the creditor is exposed to hardship, and there is no meaningful difference between them in this regard. Yet the Islamic Penal Code and many Imamī jurists distinguish between the two: they permit enforcement of qiṣāṣ without paying or guaranteeing the deceased’s debts, but they prohibit failing to pay the deceased’s debts from the property obtained through reconciliation over qiṣāṣ. Article 432 of the Islamic Penal Code provides that the holder of the right of qiṣāṣ may enforce qiṣāṣ without paying or guaranteeing the debts, but that he does not have the right to grant gratuitous pardon without paying or guaranteeing the debts, and that if qiṣāṣ is converted into diyah, it must be used to pay those debts.

It must nonetheless be considered that, if the absence of payment or guarantee of the deceased’s debts were to render qiṣāṣ impermissible for the wali al-dam or make enforcement of their right contingent, this would conflict with the explicit Qur’anic text that treats qiṣāṣ as the right of the wali al-dam and grants them authority to exercise it. (Qur’an, al-Isrāʾ 17:33). Acting upon a rule that contradicts an explicit Qur’anic text is rejected. One of the issues within qiṣāṣ is converting it into property; and on the foregoing claim, the wali al-dam—by virtue of the Qur’an—would be free to convert their right into property without concern for whether their slain relative was indebted.

In response, it may be said that, given the rule of *lā ḍarar* and the negation of undue hardship, where the slain person is indebted, converting the right of qiṣāṣ into property without accounting for the debts assumes the secondary characterization of “causing harm to another,” which is negated under the Sharīʿa; accordingly, it is ruled that the deceased’s debts must be paid from the consideration when qiṣāṣ is converted into property. Yet the question remains unanswered: why is enforcement of qiṣāṣ without paying or guaranteeing the debts deemed permissible, whereas reconciling qiṣāṣ for property without paying the debts is deemed impermissible?

Transformation in the Legal Character of the Consideration for Qiṣāṣ

Some jurists maintain that converting the right of qiṣāṣ into property—an outcome that occurs through the wali al-dam’s will and their decision concerning their own right—effects a transformation in the legal character of that property. In other words, once it is established that the right of qiṣāṣ is legislated primarily and essentially for the wali al-dam, and that no one—even the victim himself—has any right to intervene in it under any condition, these jurists justify the obligation to pay the deceased’s debts from the property obtained through reconciliation over qiṣāṣ by positing a change in the property’s legal character: rather than entering the heirs’ assets, it is treated as entering the deceased’s assets. ʿAllāmah Majlisī states: if an intentional killing occurs, the heirs may enforce qiṣāṣ, because the Lawgiver established it for *tashaffī*; but if they reconcile for property, the resulting property is treated as the property of the deceased, from which his debts must be paid. (38) Here, the language is explicitly one of “becoming” and “transformation”: although the rationale for qiṣāṣ is presented as consolation for the wali al-dam, once reconciliation for property occurs, that property is treated as if it were part of the deceased’s estate and must be applied to the payment of his debts.

This approach may be rooted in a Prophetic narration stating that if the diyah for intentional killing is accepted and thus becomes "property," it is inheritance like other property. (3) This narration regards the conversion of qiṣāṣ into property as a juridical transformation that removes the matter from the heirs' discretionary domain as wali al-dam and inserts it into the deceased's assets, like the remainder of the estate; accordingly, the deceased's debts must be discharged from it. (3)

Although this narration is argued to be weak due to discussion of certain transmitters, Shaykh al-Ṭūsī's methodological position in *al-ʿUddah* is invoked to support accepting and not discarding such reports. (39)

As can be seen, jurists have acted upon this narration: when the wali al-dam reconcile with the killer and convert the right of qiṣāṣ into property, the resulting property is treated as entering the deceased's assets, and the payment of his debts and execution of his bequests are deemed obligatory from it. Likewise, heirs such as spouses—who, on the well-known view, have no share in the right of qiṣāṣ—inherit from it once it is converted into property, like other heirs. (18) Muḥaqqiq Ḥillī states in *al-Sharāʾiʿ* that those who inherit the deceased's property will also inherit qiṣāṣ, except the husband and wife, who do not inherit qiṣāṣ but do have a share in diyah—whether the killing was intentional or accidental. (40) Article 352 of the Islamic Penal Code likewise aligns with the well-known juristic position by granting spouses a share once the right is converted into diyah or reconciled for property.

Accordingly, it is appropriate to say that, upon the conversion of the right of qiṣāṣ into property, a transformation occurs in its legal character: it becomes like other estate property, enters the deceased's assets, and—after payment of debts—is distributed among the heirs. With the change in the subject matter, the ruling also changes. That is, the ruling that initially applied to qiṣāṣ—under which the heirs could enforce it—changes once the subject shifts from qiṣāṣ to property; and the heirs cannot dispose of that property without paying or guaranteeing the deceased's debts.

The Legislator's Ruling Contrary to Rational Presumptions (ʿUrf al-ʿUqalāʾ)

Although Islamic law is fully rational and there is no contradiction between definitive rational judgment and the established rulings of religion, one may at times observe tensions between certain Sharīʿa rulings and the prevailing presumptions of rational agents (ʿurf al-ʿuqalāʾ). While such presumptions cannot be equated with definitive rational proof, they nonetheless constitute the foundation of many legal rules across societies and nations.

With respect to the payment of the debts of an intentionally killed victim whose estate is insufficient to satisfy his liabilities, it was noted that—even if property is obtained through reconciliation between the heirs and the killer—this property belongs to the wali al-dam and, on a rational presumption, bears no connection to the deceased or his debts. Even if one were to assume that the victim was the original and primary holder of the right of qiṣāṣ and that this right passed to the heirs by inheritance, the conversion of that right into property would still be an act undertaken by the heirs with respect to their own right, bearing no relation to the deceased or his debts. This is because they converted one of their own rights—acquired by inheritance—into property through reconciliation; according to rational presumptions, this property belongs to the heirs, who are not obligated to spend their own property for the benefit of others. For creditors' rights attach to the deceased's property—such as diyah in cases of unintentional killing and similar assets—not to rights as such, like the right of qiṣāṣ (41). Accordingly, once this right passes to the heirs, no one may prevent its enforcement or conversion, much like rights of pre-emption, acquisition of ownerless property, and the like.

Consequently, what may be subject to creditors' claims is diyah—relevant in unintentional killing—not qiṣāṣ or its consideration, which constitutes the principal and primary punishment in intentional homicide. Nevertheless, despite this rational presumption, juristic opinions and statutory provisions adopt a ruling contrary to it. To justify this outcome, one may invoke the concept of a legal fiction (farḍ ḥuqūqī). The defining feature of a legal fiction is that it is openly contrary to factual reality; the legislator, for specific interests, disregards reality and substitutes a legal construct in its place (7). Such a fiction operates only within the scope of the predetermined objectives for which it is instituted—similar to Article 17 of the Civil Code, which treats certain movable assets dedicated to agriculture as immovable solely for purposes of jurisdiction and attachment, not for other purposes.

In the case of paying the debts of an indebted deceased, the Lawgiver may deem the deceased as legally "alive" in order to allow him to benefit from the consideration for qiṣāṣ. This fiction operates only for limited purposes—namely, the discharge of debts, execution of bequests, and distribution according to the rules of inheritance.

This approach is reflected in juristic discourse through expressions such as "constructive ownership" (milk iʿtibārī) or "juridical ownership" (milk ḥukmī). The late Ayatollah Boroujerdi—while considering diyah to be the property of the deceased—provides a clear explanation of how the Sharīʿa may rule contrary to rational presumptions: since ownership itself is a rational construct and consideration, and since the Lawgiver has endorsed many such rational constructs, there is no impediment to deeming ownership valid for the deceased. The reason jurists say "in the ruling of the deceased's property" rather than "the deceased's property" is not because ownership is impossible for the deceased, but because the deceased cannot perform acts that require life; due to the impossibility of such acts, they assumed ownership itself to be impossible. Yet, since the Lawgiver has attached some effects of ownership to it, they described it as "in the ruling of the deceased's property." In reality, the property is the deceased's property, from which the Lawgiver has negated some effects of ownership and affirmed others; such negation and affirmation lie within the Lawgiver's authority, because both the subject (ownership) and its effects are either instituted or endorsed constructs within the Sharīʿa (29). It thus becomes clear that, in the realm of legislation, the Lawgiver may negate some effects of ownership for the deceased while affirming others—affirming here, in particular, the payment of debts from the property obtained through reconciliation.

Accordingly, even though the deceased lacks actual capacity to acquire ownership, constructs are not self-subsisting but effect-dependent; that is, where legal effects are attached, the deceased may be deemed an owner by legal assumption (37). It is for this reason that some jurists employ the expression "in the ruling of the deceased's property" when discussing diyah: "According to us, diyah is in the ruling of the deceased's property—even though it arises after death—from which his debts are paid and his bequests executed, even if the killing was intentional, provided the heirs consented to diyah in intentional killing …" (4). Therefore, the deceased is deemed the owner—or at least treated as the owner—of the property obtained through reconciliation over qiṣāṣ, and his debts must be discharged from that property.

Conclusion

After examining, critiquing, and reassessing the existing evidences concerning the right of qiṣāṣ and its consideration, it becomes clear that the property obtained through reconciliation over qiṣāṣ—like the right of qiṣāṣ itself—belongs exclusively to the wali al-dam of the slain person. It is the wali al-dam who, by their own will, may convert the right of qiṣāṣ into property and exercise proprietary control over it as they see fit.

At the same time, an examination of the evidences relating to the settlement of the debts of an intentionally killed victim whose estate is insufficient to satisfy his liabilities shows that such debts must be paid from the property obtained through reconciliation over qiṣāṣ. This ruling stands in tension with the heirs' ownership of the consideration for qiṣāṣ and consequently restricts their ability to dispose freely of that property.

To resolve this tension, it must be said that when the right of qiṣāṣ is converted into property, its legal character changes; and with the change in character and subject matter, the applicable ruling likewise changes. Accordingly, although the right of qiṣāṣ belongs to the heirs and lies within their discretion, once it is converted—by the heirs' own will—into property, it enters into the constructive and juridical ownership of the deceased and is treated as part of his estate. As such, like the rest of his assets, it must first be applied to the payment of his debts. This outcome is grounded in legal constructs that lie within the Lawgiver's authority, whereby certain effects of ownership are affirmed for the deceased—even though the deceased no longer possesses a continuing legal personality or the capacity to acquire new ownership.

Nevertheless, the Lawgiver—and, by extension, the legislator—through a legal fiction and contrary to prevailing rational presumptions, requires that where the slain person was indebted and the estate is insufficient to satisfy those debts, the debts be discharged from the consideration for qiṣāṣ. Thus, the ruling that mandates payment of the debts of an intentionally killed victim from the property obtained through reconciliation over qiṣāṣ—although seemingly contrary to rational presumptions—is justified by the aim of preventing harm to creditors and by the change in the subject matter. Through a legal fiction and contrary to rational presumptions, the Lawgiver has treated the deceased as an owner for this limited purpose and has thereby required that his debts be paid from this property.

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