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Winter 2014  
Volume III, Number 2

JOURNAL OF  
**CONTEMPORARY STUDIES**

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Faculty of Contemporary Studies  
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## Editor's Note

The *Journal of Contemporary Studies* is a flagship of Faculty of Contemporary Studies (FCS), National Defence University (NDU), Islamabad, and started with the unequivocal objective of advancing critically-oriented academic and intellectual environment. It is a biannual peer-reviewed journal that offers its readers in academia, government and policy world an in depth scholarly analysis and diverse policy perspectives on important contemporary issues, ongoing debates in the area of national & international security and wider field of world politics.

This is the sixth issue of the journal containing five research articles, three book reviews and important primary documents having valuable information for academic analysis and strategic community debates. The articles in the winter issue deal with variety of subjects that are of immense academic importance at the regional as well as global level. Three articles — dealing with themes such as the 'US-China Relations and the South China Sea' conflict; 'The emerging strategic rivalries in the Indian Ocean Region', and 'Indo-Pakistan rivalry and Afghanistan' — provide profound insights on the changing strategic landscape in and around South Asian region — an area of deep concern for our policymakers. We have also published a work on "Non-killing and social peace through '*Qisas*'" that offers a peacebuilding framework in conflict resolution; a valuable contribution in the ongoing debates in the field of peace and conflict studies. Finally, there is a policy-relevant comparative analysis of disaster management at nuclear power plant of Fukushima and Pakistan's readiness to handle such a disaster at its nuclear power plant. With this broader scope of interest we hope that the *Journal of Contemporary Studies* is making its modest contribution in the development of theory and practice to support scholarly debates, intellectual discourse, and serves the research interest of young scholars in the field. We sincerely hope that each of these articles would motivate our varied community of readers to undertake some further research in the area.

I am grateful to all the contributors who have sent their articles for this issue, and the anonymous peer-reviewers whose valuable comments helped authors to improve their contributions.

We hope that study of the *Journal* will invoke curiosity among the readers to contribute their perspectives in the ongoing academic discourses. Contributions are invited from all fields including broad spectrum of related fields like political science, security studies, political economy, terrorism, politics and religion, politics of energy, feminism, media and politics, management sciences, leadership psychology, military strategy, modern history, international law, sociology, education, conflict management and resolution, urban studies, demography, social anthropology, developmental studies, foreign policy etc.

We are accepting articles for the upcoming issue of *Journal of Contemporary Studies* based on original qualitative or quantitative research, an innovative conceptual framework, or a substantial literature review that opens new areas of inquiry and investigation. Case studies and comparative analysis are also welcome. The editorial team at the journal promotes submissions from expert analysts from around the world. The Journal seeks to promote a scholarly understanding of contemporary developments and changes related to aforementioned disciplines/fields of social sciences. It intends to promote interdisciplinary research and writing.

Editor  
Dr. Shaheen Akhtar

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# NONKILLING AND SOCIAL PEACE THROUGH: QISAS– A PRAGMATIC CONFLICT MITIGATION FRAMEWORK

Muhammad Feyyaz\*

وَلَكُمْ فِي الْقِصَاصِ حَيَوةٌ يَتَأُولَىٰ آلَ أَبِي لَهَبٍ لَّعَلَّكُمْ

تَتَّقُونَ ﴿١٧٩﴾

*In the Law of Equality, there is (saving of) life to you, O ye men of understanding: That ye may restrain yourself.*

Chapter 2, Al-Baqara: verse 179, Al-Qur'an

## Abstract

*Nonkilling has emerged as an important intellectual movement in recent past. Its proponents argue a case to create a killing-free world, and assert that it is not utopian idea but scope of such a possibility exists in real world. This article refutes this claim, arguing that nonkilling by pure reliance on pacifist frameworks has failed to yield moderating effects to prevent killing. It instead offers an alternative pathway, the Islamic concept of Qisas (retribution) to accomplish the propagated cause. Drawing upon multisource empirical data, a critical examination of nonkilling paradigm viz-à-viz Qisas is presented. It exposes theoretical gaps in the assumptions underlying nonkilling premise concomitantly highlighting why Qisas can be a more effective framework to achieve ends of peace. The discussion also traces the evolution of Qisas covering its form before, and the transformation it underwent after the advent of Islam. Further, the subjectivities and prejudices which associate Qisas with barbarism and its profile in contemporary Muslim countries are analyzed. The*

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\* Muhammad Feyyaz is Assistant Professor at School of Governance and Society, University of Management and Technology, Lahore.

*conclusion supports the refutation and offers some broad policy suggestions for nonkilling theorists and advocates.*

**Key Words:** *Qisas, Diyat, nonkilling paradigm, revenge, discourse in theology, justice system*

## Backdrop

At the beginning of the third millennium, a large part of the world continues to remain enmeshed in internecine power struggles, cultural commotions and violent armed conflicts. An estimated 526,000 people died violently as a result of conflicts, homicides and killings during legal interventions each year between 2004 and 2009.<sup>1</sup> More than two million perished globally during 2012 alone due to interpersonal violence, intentional injury, collective violence and legal intervention.<sup>2</sup> Similarly, the average rate of onset for societal wars and their frequency does not appear to have changed much (from 3.77 to 3.35 per year) across the shift from Cold War to post-Cold War periods.<sup>3</sup> In late 2011, there were 24 states directly affected by 32 ongoing internal wars, the number increased to 27 at the end of 2012 that have been joined by a few more in the intervening period such as Syria, Libya, Yemen, Mali and now Egypt.<sup>4</sup> Whereas in the preceding 10-year period (2002–11) there were 73 active state-based conflicts, 223 non-state conflicts and 130 actors recorded as carrying out one-sided violence, including 23 in 2011.<sup>5</sup> Meanwhile, almost at the matching scale, nonkilling or similar peace initiatives have turned into wider socio-intellectual movements spear headed by a range of internationally known peace and security organizations, think tanks, academics as well as inter- and intra-faith dialogue forums endeavouring to eradicate violence. Scholars engaged in different spheres of the nonkilling discourse have passionately maintained that such is not a utopian dream, arguing that space and scope of such

<sup>1</sup> "Measuring problems: Global Burden of Armed Violence (GBAV) 2011," Geneva Declaration on Armed Violence and Development, Switzerland. <<http://www.genevadeclaration.org/measurability/global-burden-of-armed-violence/global-burden-of-armed-violence-2011.html>> (accessed March 8, 2015).

<sup>2</sup> WHO, "Deaths: WORLD by cause," *Global Health Observatory Data Repository*, 2012 <<http://apps.who.int/gho/data/node.main.CODWORLD?lang=en>>. (accessed February 28, 2015).

<sup>3</sup> Monty G. Marshall, "Major Episodes of Political Violence (MEPV) 1946-2012: State Fragility and Warfare in the Global System 2012," Center for Systemic Peace, USA. <<http://www.systemicpeace.org>>.

<sup>4</sup> Allansson, Marie, Margareta Sollenberg and Lotta Themnér, "Armed conflict-Armed conflict in the wake of the Arab Spring," in SIPRI Year Book *Armaments, disarmament and international security* (UK-USA: Oxford University Press, 2013), 19.

<sup>5</sup> Lotta Themnér and Peter Wallensteen, "Armed conflict-2002-11: Patterns of organized violence," in SIPRI Year Book *Armaments, disarmament and international security* (UK-USA: Oxford University Press, 2013), 41.

projects is possible in existing realities.<sup>6</sup> An objective assessment exemplifying enormity of violent undertones not only defies these claims, but also clearly shows that the motivation underscoring nonkilling by pure reliance on pacifist frameworks has failed to yield moderating effects to prevent killing, thereby measurably challenging the ideological content and practical worth of the nonkilling paradigm.

It is with this background that an examination of the notion of *Qisas* (Arabic equality, semantically understood as revenge) in Islam is warranted to respond to rampant violence by informing theoretical persuasions, socio-political and legal processes, mechanisms and practices for promoting ideals of peace, security and equity. Indeed, there are arguments that view this segment of the Islamic legal theory as barbarous; those are arguably subjective due to lack of proper understanding of the objective message latent in this concept. This deficiency partly owes to the void in the nonkilling literature which is wanting in the optimum exploration of potentiality of Muslims' scriptural injunctions amenable to assimilation into broad vision of a humane discourse.<sup>7</sup> The principles of nonkilling have been alluded to in this study including those advocated by Islam, but these have been viewed essentially from an ethical lens that insist on outlawing manslaughter or urge restraint in causing hurt.<sup>8</sup> This article seeks to offer a unique ingredient for consideration in the ongoing debate to accomplish the cause propounded by CGNK (Center for Global Non-Killing). In substance, it is not a discourse in theology, rather is an academic exercise entailing comparison of the two constructs to highlight tuniqueness of *Qisas* viz-à-viz nonkilling, as an alternative life-preserving model.

## **Appraising Vision, Definition and Nonkilling Approaches**

During the last few years, immense amount of scholarly work has been produced mainly under the stewardship of CGNK, virtually touching every aspect of human life, including those constituting its physical

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<sup>6</sup> Joám Evans Pim, "Interdisciplinary Perspectives Toward a Nonkilling Paradigm," and Pikiilsh-Shalom "Nonkilling Political Science in the Killing Fields of International Relations," in *Nonkilling Political Science: A Critical Evaluation* Global Nonkilling, Working Papers #3, Center for Global Nonkilling, 10, 15,41.

<sup>7</sup> This observation is based on a thorough review of the scholarship produced by Center for Global Non-killing.

<sup>8</sup> Joám Evans Pim, (ed), *Nonkilling Security and the State* (Honolulu: Center for Global Nonkilling, 2013);Joám Evans Pim, (ed), *Nonkilling Political Science: A Critical Evaluation* (Honolulu: Center for Global Nonkilling, 2010), Joám Evans Pim, *Toward a Nonkilling Paradigm* (Honolulu: Center for Global Nonkilling, 2009); Antony Adolf, *Nonkilling History Shaping Policy with Lessons from the Past* (Honolulu:Center for Global Nonkilling, 2010).



surrounding.<sup>9</sup> In addition, several university based centres, research institutes, independent think tanks, coalition groups, peace brigades, peace building networks and nongovernmental organizations have been founded worldwide, broadly canvassing for resolution of conflicts through peaceful means. Their approaches visualizing nonviolence through respect for life by accent on peace education,<sup>10</sup> or nonviolent conflict to fight for rights, freedom, or peace through disarmament etc, all aim at making the world a safer place for humanity.<sup>11</sup> Obviously nonkilling is situated at the heart of all of these orientations; therefore, despite following different organizational philosophies, ultimately they converge on nonkilling. GNK (Global Non-Killing) can be reckoned a novel experience in these efforts by directly focusing on “Thou Shall Not Kill.” Among others, religious and spiritual traditions have found particular attention with the writers of GNK experimentation. This is abundantly symbolized in the body of ‘Interdisciplinary Perspectives Toward a Nonkilling Paradigm’.<sup>12</sup> These deliberations discuss at length nonkilling traditions and principles underlying sacred scripts of all major worldly and divine religions as well as personal charismas of a few distinguished individuals who occupy unique place in the history of global peace overtures.<sup>13</sup>

Originally, however, the concept of nonkilling as is now understood in the academic lexicon was innovated by Glenn Paige during the last decade which stemmed and refined overtime from several of his anthologies, more importantly ‘political science: to kill or not to kill’ and ‘Nonkilling Korea’, envisioning a nonkilling society.<sup>14</sup> He envisaged such a collectivity to be.<sup>15</sup>

[A] human community, smallest to largest, local to global, characterized by no killing of humans and no threats to kill; no weapons designed to kill humans and no justifications for using them; and no conditions of society dependent upon threat or use of killing force for maintenance or change.

This has found its definitional manifestation in the “absence of killings, threats to kill, and conditions conducive to killing in human

<sup>9</sup> Joám Evans Pim, (ed), “*Nonkilling Political Science...*”.

<sup>10</sup> Edward J. Brantmeier, Jing Lin and John P. Miller (eds), *Spirituality, Religion and Peace Education* (USA: Information Age Publishing, 2009).

<sup>11</sup> See International Center on Nonviolent Conflict at <[www.nonviolent-conflict.org/](http://www.nonviolent-conflict.org/)> and Jay’s peace and nonviolence links.

<sup>12</sup> Joám Evans Pim, “*Interdisciplinary Perspectives....*”.

<sup>13</sup> Antony Adolf, *Nonkilling History Shaping Policy with Lessons from the Past* (Honolulu: Center for Global Nonkilling, 2010).

<sup>14</sup> Glenn D. Paige, *Nonkilling Global Political Science* (Honolulu: Center for Global Nonkilling, 2009); Glenn D. Paige, “A Nonkilling Korea: From Cold-War Confrontation to Peaceful Coexistence,” *Social Alternatives* 21, no. 2 (2002); Glenn D. Paige, “Political Science: To Kill or Not to Kill?,” *Social Alternatives* 19, no. 2 (2000).

<sup>15</sup> Paige, “*Nonkilling Global Political Science*”, 21.

society”<sup>16</sup> that has since become a normative basis for framing nonkilling narratives and interventions to advance theoretical and practical dimensions of the discourse. Nevertheless, integrity and virtue signifying nonkilling appeal notwithstanding, it is an inherently flawed, subjective and incoherent theory which is sharply at odds with the Machiavellianism (dominance through persuasive manipulation of others), anarchy-prone and interest-centric dynamics characterizing the real world. The spectre of hazards and debilitating ramifications of climate change, population growth and the fast dwindling natural resources will further accentuate contested incompatibilities between and among humans. Arguments in favour of nonkilling underlined by measurability of goals through quantification and the open-ended nature of its realization, as well as in signifying “nonviolence” and “peace” as abstractive and passive ideas therefore seem devoid of reasoned articulation.<sup>17</sup> In reality besides acknowledging the uncertain nature of human conditions, all peace ideals without exceptions are generally open-ended; their forms may differ. Identically, the notion of problematization of human safety to be paramount in human thinking, which has been claimed as a paradigm shift, is difficult to reconcile due to the widely established recognition of this aspect by responsible entities and stakeholders.<sup>18</sup>

A few provocative arguments by Collyer and John Kavanaugh who support nonkilling further dilute the intellectual basis of the case.<sup>19</sup> The former notes that the “familiar word, nonviolence, is almost comforting in its generality” while nonkilling “confronts and startles us with its specificity.” This is indeed true insofar semantics is concerned. In spirit, nonviolence also propagates avoiding harm which is fatal. Its proponents are interested more in saving human life than enfolding entire biological collectivity and its ecology into its fold such as in Jainism which is not realistic either.<sup>20</sup> The message undergirding nonviolence is quite driven by extant realities; it too is pacifist as nonkilling. John Kavanaugh’s moral thesis on nonkilling in *Who Counts as Persons?* is equally puzzling and deficient of rationality. For example, while explaining how “[t]he principle of nonkilling is not a recommendation of passivity,” he supports

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<sup>16</sup> Pim, “Interdisciplinary Perspectives...”, 11.

<sup>17</sup> Ibid.

<sup>18</sup> Edwards Clayton K, “The Basis of the Nonkilling Belief,” *Asteriskos* 3, no. 4 (2007): 33-39.

<sup>19</sup> Charles E. Collyer, “A Nonkilling Paradigm for Political Scientists, Psychologists, and Others,” *Peace and Conflict: Journal of Peace Psychology* 9, no. 4 (2003): 371-372; Gilbert Meilaender, “Choose life,” Review of John F. Kavanaugh, *Who Count as Persons? Human Identity and the Ethics of Killing*, *The Review of Politics*, 2002.

<sup>20</sup> For example see home, mission statements and basic concepts on webpages of Center for non-violence and peace studies USA: <<http://web.uri.edu/nonviolence/>>; Meta center for non-violence USA: <[mettacenter.org/](http://mettacenter.org/)>; Center for nonviolence and social justice: <[www.nonviolenceandsocialjustice.org/](http://www.nonviolenceandsocialjustice.org/)> and Centre for applied nonviolent action and strategies, Belgrade: <<http://www.canvasopedia.org/>>.

intervention as “primary commitment to the inherent dignity of personal life... on behalf of the defenseless or the victim” but with a moral limit inhibiting “direct intended killing of the aggressor.”<sup>21</sup> Transcending traditional positions in Christian theology, Kavanaugh pins intentional killing as intrinsically wrong regardless of the motive or consequences — noble, socio-politically obligated or otherwise, justifying its need.<sup>22</sup> Freddoso, Meilaender, Sweetman and a few others have shown serious reservations on these assertions. Freddoso is particularly critical with regard to Kavanaugh’s silence on failing to draw the line between intentional killing and those forms of punishment, such as torture or mutilation, that also “negate personhood,” i.e., treat someone as a nonperson.<sup>23</sup> And secondly, the ruling out by Kavanaugh of intentional killing of anyone at all, even male-factors who threaten the common good in the serious ways that are commonly thought to justify war and capital punishment, creates ambiguity about his notion of morality.<sup>24</sup>

Sweetman contends Kavanaugh’s ‘right to life as absolute’, controversial wherein the latter terms intentional killing of an aggressor even in self-defence morally wrong.<sup>25</sup> At the same time to avoid being labelled as total pacifist, Kavanaugh proposes that we can defend ourselves against an intruder short of killing him. Whether or not he is insinuating use of force for the purpose of incapacitating an assailant, is not made clear. Identically confusion in leaving vague the arguments used to support just war theory reflected in the failure to declare the Gulf or all wars as immoral further add to the superficiality of Kavanaugh standpoint. These somewhat contradictory positions are antithetical to reality where states, societies and individuals that are faced with grave perils to their existence by terrorism, tyranny, oppression, aggression, genocide, violent persecution etc, are being asked to refrain from undertaking protective measures to survive. Decidedly, in majority of the cases, innate good sense and civilized behaviour prevents people from stepping over the line and breaking the law. Fear of punishment also throws in for a good measure in shaping the mindsets. Yet, however, there are those who for whatever reasons are unable to hold back from committing heinous crimes, including cold-blooded murder.<sup>26</sup> How to deal with such lot? — the question remains unanswered in Kavanaugh’s thesis. Furthermore, being

<sup>21</sup> John F. Kavanaugh, *Who Count as Persons?: Human Identity and the Ethics of Killing*, (Georgetown University Press, 2001), 123.

<sup>22</sup> *Ibid*, 92.

<sup>23</sup> Alfred J.Freddoso, Book Review, John F. Kavanaugh, *Who Count as Persons? Human Identity and the Ethics of Killing*, Afreddoso papers February 1, 2002.

<sup>24</sup> *bid*.

<sup>25</sup> Brendan Sweetman, Book Review, John F. Kavanaugh, *Who Count as Persons? Human Identity and the Ethics of Killing*, *The National Catholic Bioethics Quarterly* (2003Winters).

<sup>26</sup> *The World’s Worst Murders: 100 Murders That Horrified the World*, (London: Chancellor Press, 2001), 70.

entirely non-detering it does not become sufficiently clear how nonkilling as well as the ethical position taken by Kavanaugh, is distinguished from nonviolence in terms of passivity unless it intends to shift heightened if not harsh focus on legal and physical enforcements in preventive as well as interventionist frameworks by violating basic rights of citizenry; which at least Kavanaugh does not seem to approve. On the other hand, Meilaender considers Kavanaugh's comparison of acts of terrorism by non-state actors as moral equivalence of states' military responses to strategic threats as implausible.<sup>27</sup>

Undeniably, nonkilling behaviour is a reasonable possibility; it is true that 95 countries have completely abolished the death penalty,<sup>28</sup> and propensity for interstate armed conflicts is also on decline<sup>29</sup> sustaining assertions for a safer world. Yet it is a fact that myth surrounding "man the hunter," clamouring that humans are not necessarily prone to violence and killing, has not settled in its favour.<sup>30</sup> It may be noted that the number of people who were killed in non-conflict settings—such as in Central and South America and the Caribbean and in parts of Sub-Saharan Africa from 2004 to 2009 —was far greater than those who were put to death in conflicts, and phenomenally so during 2011.<sup>31</sup> This pattern replicates with equal intensity within developed and resource rich societies, US, Russia, China, South Africa etc, where penchant for criminal homicide manifests markedly.<sup>32</sup>

It will be instructive here to cite two verses from the Qur'an that Shia theologians most often employ to argue case for establishment of a government and which, in general terms, depict the nature of man. They contend that Islam regards it absurd and unrealistic to say that society is needless of government and brute force, even when it possesses sound training, knowledge of law and what is beneficial and harmful.<sup>33</sup> The claim is predicated first, on the verses about the creation of Adam, wherein the creation of man has been explained in such a manner that his weakness and possibility of going astray is clearly indicated (Chap 2, Al-Baqara,verse30):

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<sup>27</sup> Gilbert, Choose life.

<sup>28</sup> Amnesty International 2013, "Death sentences & executions in 2012," *Amnesty International publications*, UK, 51.

<sup>29</sup> Neil Melvin, "Overview," in SIPRI Year Book 'Armaments...', 17-18.

<sup>30</sup> Robert W. Sussman and Joshua L. Marshack, "Are Humans Inherently Killers?" *Global Nonkilling Working Papers #1*, 2010, Center for Global Nonkilling, Honolulu.

<sup>31</sup> WHO, "Deaths: WORLD by cause..."

<sup>32</sup> United Nations office on Drug and Crime, "Homicide statistics 2013."

<sup>33</sup> Professor Muhammad Taqi Misbah Ayatullah Yazdi, *Islamic Political Theory (Statecraft) Volume 2*, (Iran: TheAhl al-Bayt ('a) World Assembly (ABWA), 2008).

وَإِذْ قَالَ رَبُّكَ لِلْمَلٰٓئِكَةِ اِنِّىْ جَاعِلٌ فِى الْاَرْضِ خَلِیْفَةً قَالُوْۤا اَتَجْعَلُ فِیْهَا مَنْ یُّفْسِدُ فِیْهَا وَیَسْفِكُ الدِّمَآءَ وَیَنْحُنُّ تُسْبِیْحُ  
 بِحَمْدِكَ وَنُقَدِّسُ لَكَ قَالَ اِنِّىْۤ اَعْلَمُ مَا لَا تَعْلَمُوْنَ ﴿٣٠﴾

*"When your Lord said to the angels, 'Indeed I am going to set a viceroy on the earth,' they said, 'Will you set in it someone who will cause corruption in it, and shed blood, while we celebrate Your praise and proclaim Your sanctity?' He said, 'Indeed I know what you do not know'."*

The second verse (Al-Ibrahim, verse 34) wherein God describes man as "*zalum*" which is the superlative degree (Sighah al-Mubalighah) and means "most unfair", indicates that inequity, insolence and ungratefulness in human beings is such that it cannot be neglected, and human societies will always be replete with injustice and ingratitude.

اِنَّ الْاِنْسَانَ لَظَلُوْمٌ كَفَّارٌ ﴿٣٤﴾

*"Indeed man is most unfair and ungrateful!"*

Further, a major discrepancy in the definition of nonkilling is its implicit condoning of all violence other than that is fatal by emphasizing only on or absence of threats of killing, thereby dismissing enormity of deaths produced by intentional injuries. This accentuation at once strips this formulation of its moral fibre by creating a nonkilling particularism. Perhaps, it is for that reason (with deference) that justifications to prove and locate nonkilling geo-biological spaces sounds like a far cry in a world where one person is murdered every 60 seconds and one person dies in armed conflict every 100 seconds. Mapping trends and patterns of lethal violence from across 186 countries, Global Burden of Armed Violence 2011 dataset substantiates colossal human loss through violent social crimes by describing that roughly 12.2 per cent of the lethal violence occurred in armed conflict settings, while 87.8 per cent in the non-conflict settings.<sup>34</sup> This translates to 55,000 direct conflict deaths and 396,000 intentional homicide victims per year. The 55,000 average deaths per year in armed conflicts around the world can be compared to the estimated 48,800 people who die violently on average each year only in Brazil.<sup>35</sup> The latest data by Geneva Declaration on Armed Violence and Development

<sup>34</sup> "Measuring problems: Global Burden of Armed Violence (GBAV) 2011".

<sup>35</sup> Ibid.

indicates a further bleak situation in which more than 740,000 men, women and children die each year as a result of armed violence.<sup>36</sup> The majority of these deaths — 490,000 — occur in countries that are not affected by armed conflicts.

## Revenge in pre-Islamic period

Revenge or 'badal' (the right of blood feuds) in Pashtu is a common feature of many cultures around the world.<sup>37</sup> In pre-Islamic Arabia, tribalism was the dominant lifestyle governed by indigenous norms accumulated over time as the human experiences progressed in these areas. During this 'Age of Ignorance', bravery and strength in battle, patience in disaster, insistence on seeking revenge, being truthful even at the risk of one's life, were all perceived as virtues and praised.<sup>38</sup> Since there was no government, hence there was no law and no order. Arbitrary actions consistent with self or groups' interests defined rules to sustain social institutions and relational aspects. The only protection for a man's life was the certainty established by custom, that it would be dearly bought: blood for blood and a life for a life. The vendetta, *tha'r* in Arabic, was one of the pillars of Bedouin society.<sup>39</sup> Consequently, if the Arabs ever exercised any modicum of restraint, it was not because of any susceptibility to questions of right or wrong but because of the fear of provoking reprisals and vendetta which consumed entire generations.<sup>40</sup> Generally, in case of tribe member being killed, all members would act together to take revenge. The conflict continued even after the belligerents had killed each other off, because previously uninvolved families and/or tribal members expanded the fight seeking revenge. The ancient tribal custom of '*fasil*' (an Iraqi term for compensation or a negotiated settlement), presented a way to defuse the perpetuated cycle of revenge. '*Fasil*' could be exercised even after intentional killings, and did not have to be necessarily financial.<sup>41</sup> The perpetrator could agree to be exiled from a

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<sup>36</sup> See "What is Declaration," Geneva Declaration of Armed Violence and Development, 2014, <<http://www.genevadeclaration.org/the-geneva-declaration/what-is-the-declaration.html>>, (accessed March 9, 2015).

<sup>37</sup> Pashtu is a widely spoken language by ethnic community, known as pathan or pakhtun, residing in parts of Afghanistan and Pakistan in addition to by diaspora settled in Middle East, western Europe, China etc.

<sup>38</sup> NihalSahinUtku, "Arabia in the Pre-Islamic Period," The lastprophet.info, June 13, 2013, <<http://www.lastprophet.info/arabia-in-the-pre-islamic-period>>, (accessed March 8, 2015)

<sup>39</sup> Sayed Ali Asgher Razwy, *Restatement of History of Islam, UK*: World Federation of KSI Muslim Communities, n.d., <<http://www.al-islam.org/restatement/3.htm>>, (accessed March 8, 2015).

<sup>40</sup> *bid.*

<sup>41</sup> "Arab Cultural Awareness: 58 Fact sheets," US Army Training and Doctrine Command – 2006, <<http://fas.org/irp/agency/army/arabculture.pdf>>, (accessed March 9, 2015).

neighbourhood, village or region which is peculiar to Arab setting.<sup>42</sup> Individually, if the person who was responsible for seeking revenge failed to do so, they were believed to be covered in dishonour.<sup>43</sup> This pattern of revenge seeking was subjective and undifferentiated. Maududi (2011 [1972]) has eloquently explained it in the exegesis written by him. In this age, blood of kin was regarded more precious by a tribe than those from whom revenge was to be exacted.<sup>44</sup> This psychological orientation-cum-tradition led them to take numerous lives including that of the killer. Life for a life was practically a misnomer. A key characteristic overriding the tradition was the adapted notion of equalizer in the course of score settling — by carrying out lethal disposal of not only the murderer, but coupled with that slaying a person equal in social status of the victim. At times, this value entailed condoning the life of the murderer if he was of a menial social ranking.<sup>45</sup> Likewise, it was common that for a killed slave, free men or vice versa, were avenged. Same was true of feuds involving women, whose revenge was taken by killing men of the killer's tribe.<sup>46</sup>

Islam retained revenge in its message; its methodological and human dimensions however underwent revolutionary changes by effecting profound modification in the Arab sense of justice. It mitigated horrors of pre-Islamic custom of retaliation but further in order to meet the strict claims of justice, prescribed equality with strong recommendation for mercy and forgiveness as described in Al-Baqara, verse 178.<sup>47</sup>

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرُّ بِالْحُرِّ  
وَالْعَبْدُ بِالْعَبْدِ وَالْأُنْثَىٰ بِالْأُنْثَىٰ فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَأُولَئِكَ  
بِالْمَعْرُوفِ وَأَدَاءُ إِلَيْهِ بِإِحْسَنٍ ذَلِكَ تَخْفِيفٌ مِنْ رَبِّكُمْ وَرَحْمَةٌ  
فَمَنِ اعْتَدَىٰ بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ ﴿١٧٨﴾

*O you who believe! The Law of Equality is prescribed to you in case of murder: The free for the free, the slave for the slave, and the woman for the woman. But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude. This is a concession and a mercy from your Lord.*

<sup>42</sup> Ibid.

<sup>43</sup> Utku, Arabia in the Pre-Islamic Period.

<sup>44</sup> Syed Abu al-A'la Maududi, trans-mufasir, *Tafheem-ul-Qur'an*, Vol 1 (Lahore: Idara Tarjaman-al-Qur'an, 2011 [1971], note 177, 137.

<sup>45</sup> Ibid, 138.

<sup>46</sup> Ahmad Raza Khan and Syed Muhammad Naeem-ud- Din, trans-mufasir, *Kanzal Iman* (Lahore-Karachi: Zia ul Qur'an publications, n.d.), 736.

<sup>47</sup> Abdullah Yusuf Ali, trans-mufasir, *The Holy Quran: text, translation and Commentary* (New Delhi: Farid Book Depot (Pvt) Limited, n.d. [1938]), 71.

## ***Qisas* in Islam**

Textually, revenge has been enjoined in the Quran as *Qisas*, which means equality. Jurists have carefully laid down that the law of *Qisas* refers to murder only. It is not applicable to manslaughter due to mistake or an accident for which there is no capital punishment.<sup>48</sup> It is interesting to note the translation of *Qisas* by some eminent translators<sup>49</sup> and research-scholars as ‘retaliation’.<sup>50</sup> Similarly, there is a category of researchers who do not have grounding in theology, but have ventured into commentaries on revenge by applying theological perspectives. For example, Hawkins and Strickland — two western writers while analyzing the sociological aspects of ethnic communities residing along Pakistan-Afghan borders — have examined this aspect from the prism of Sharia’h (Islamic jurisprudence). Hawkins has asserted that the act of revenge must be in proportion to the insult received which he also supports by referring to Quranic injunctions stipulating restrictions on revenge.<sup>51</sup> Strickland interprets the legal theory of *Qisas* in Sharia’h by unravelling it as *total* retribution.<sup>52</sup> Theologically, both positions are counterfactual. Hawkins mentions verse 190 of Chapter 2, Al-Baqara from Quran which addresses restraint during war. Strickland does not completely describe the divine commandment which, besides ordaining *Qisas* as necessary (but not obligatory), also lays down alternative mechanisms in the form of *Diyat* (restitution) or voluntary remission “by way of charity”, which is reckoned by divinity “an act of atonement [by aggrieved].<sup>53</sup>” Women and children are not liable to pay *Diyat*.<sup>54</sup>

These latter provisions in the Qur’an were an advancement from the Mosaic Law (Torah) or Pentateuch which simply warranted “*Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth and wounds equal for equal.*”<sup>55</sup> Maududi compares condoning by victims to epitomizing human spirit.<sup>56</sup> Strickland’s construction of expiation in Sharia’h as *total* possibly draws inspiration from narratives where *Qisas* is translated as retaliation without distinction of moral limits. On the contrary, equality (*Qisas*) in legal terms commands just the matching response and not

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<sup>48</sup> Ibid.

<sup>49</sup> Muhammad Marmaduke Pickthall, trans., *The meaning of the Glorious Quran* (Hyderabad-Deccan: Government Central Press, 1938), 178.

<sup>50</sup> Cyril Glasse, *The concise encyclopedia of Islam* (revised edition) (UK: Stacy International, 2001-2), 372.

<sup>51</sup> Lieutenant Colonel Jonathan Hawkins, “The Pashtun Cultural Code: Pashtunwali,” *Australian Defence Force Journal* 180 (2009): 16-27.

<sup>52</sup> Major Richard Tod Strickland, “The way of the Pashtun: Pashtunwali,” *Canadian Army Journal* 3 (2007): 44-5.

<sup>53</sup> Ali, *The Holy Quran: text, translation and commentary*, 71.

<sup>54</sup> Thomas W. Arnold, M.Th Houtsma and A.J. Wensinck, *First Encyclopedia of Islam: 1913-1936, Vol II* (New York-Koln E.J. Brill, 1987), 981.

<sup>55</sup> Ali, *The Holy Quran: text...*, 262.

<sup>56</sup> Maududi, *Tafheem-ul-Qur’an*, Vol 1, 138.



more.<sup>57</sup> Unlike earlier customs, when blood revenge could be taken upon any member of the clan of the perpetrator, *Qisas* made the actual perpetrator alone guilty, and alone liable to punishment which was to be exact equivalent of the crime.<sup>58</sup>

Abdullah Yusuf Ali, a renowned translator and exegete of the twentieth century South Asia, is of the opinion that to translate *Qisas* as retaliation is incorrect since retaliation in English has a wider meaning, equivalent almost to returning evil for evil, and would more fitly apply to the blood feuds of the 'Days of Ignorance'.<sup>59</sup> The law of equality instead takes account of three conditions in the civil society: free for free, slave for slave, and woman for woman. Among free men or women, all are equal.<sup>60</sup> For example, if one slave kills another, the owner of the latter may demand the life of the former, or the value of his own slave, or the owner of the former surrender his slave in compensation.<sup>61</sup> Essentially, it "requires the satisfaction of the aggrieved rather than the punishment of the aggressor" by concentrating against the aggressor.<sup>62</sup>

The spirit draws its root from the fundamentals of the justice system of Islam and valuation for life. The Qur'an does not give a dictionary definition of justice, but it links the concept to the notions of balance, equity, righteousness, proper measuring, truth, personal growth and development and the state of natural order. It contrasts justice with transgression, oppression, evil, falsehood and the disturbance (*fitnah*) in the natural order.<sup>63</sup> The Book, the Balance and Iron, have been divinely conceptualized as the emblems to hold the society together viz. revelation which commands good and forbids evil; justice which gives each person his due; and the strong force of the law, which maintains sanctions against evil doers.<sup>64</sup> Another dimension of *Qisas* is its conflation with preservation of life which is described in verse 179 of Al-Baqara, shown below. This has been misconstrued by many as God's sanction to kill indiscriminately or brutalization of society.

وَلَكُمْ فِي الْقِصَاصِ حَيَوةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ  
تَتَّقُونَ

<sup>57</sup> For law of equality see notes 182-183 and Verse 45, Surah Al-Maida, (Chapter 5), Abdullah Yusuf Ali, *The Holy Quran: text, translation and commentary*, 71, 262.

<sup>58</sup> Glasse, *The concise encyclopedia of Islam*, 372.

<sup>59</sup> Ali, "The Holy Quran: text ...", 71.

<sup>60</sup> Ibid.

<sup>61</sup> Thomas W. Arnold, *First Encyclopedia of Islam*, 980.

<sup>62</sup> Olaf Caroe, *The Pathans* (London: Macmillan & CO Limited, 1958), 355.

<sup>63</sup> "A Study Research Report on *Qisas/Diyat Law*," National Commission on the Status of Women (NCSW), 2006, Pakistan, <[http://www.ncsw.gov.pk/prod\\_images/pub/Report\\_Qisas\\_Diyat.pdf](http://www.ncsw.gov.pk/prod_images/pub/Report_Qisas_Diyat.pdf)>. (accessed March 8, 2015).

<sup>64</sup> Anwar Baig Khan, *Shariah, Justice & Islamic Law* (Lahore: Hassan & Haider law books publishers, 2011). Also see Chapter 57, Al-Hadit verse 25 of the Quran.

*In the Law of Equality, there is (saving of) life to you, O ye men of understanding: That ye may restrain yourself*

The criticism and objections that are propounded in connection with the issue of *Qisas* have been succinctly summarized by Islamic scholar Ayatullah al-Uzma Hajj Shaykh Nasir Makarim Shirazi, reproduced here:<sup>65</sup>

- 1) The crime perpetrated by a killer is nothing more than taking the life of a person, but *Qisas* repeats the same act!
- 2) *Qisas* is just plain vengefulness and brutality.
- 3) Murder is not a crime that takes place at the hands of sound individuals; surely the murderer suffers from some psychological disorder and ought to be treated, and *Qisas* can not be a remedy for such sick individuals.
- 4) Issues that are related to social order need to develop in step with the society; hence, laws that used to be implemented fourteen hundred years ago should not be implemented in today's society!
- 5) Is it not better that instead of *Qisas* the killers are placed in prisons, compelled to work and utilized for the benefit of the society. In this way, not only would the society remain protected from their evils but simultaneously, they could be utilized to the maximum extent possible.

This aspect needs deliberation at some length to highlight its varied perceptions and connotations to understand its deeper meaning. In the first place, attention is required to six verses (27-31) of Chapter 5, Al-Maida, that narrate heinous killing of innocent Abel by his brother Cain. This parable is then extended to capture conditions of anarchy among Israelites and it is commanded in the same Chapter in verse 32 (cited below) that taking a single life is like decimating the whole mankind, and saving one life amounts saving the whole humanity. This message has been deductively universalized by Muslims in later centuries to explicate the significance of human life in Islam.

مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَءِيلَ أَنَّهُ مَن قَتَلَ نَفْسًا  
يَغْيَرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ  
جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا وَلَقَدْ  
جَاءَهُمْ رَسُولُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِنْهُمْ بَعْدَ ذَلِكَ فِي  
الْأَرْضِ لَمُسْرِفُونَ ﴿٣٢﴾

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65 Ayatullah al-Uzma Hajj Shaykh Nasir Makarim Shirazi, "180 Questions Enquiries About Islam Volume Two: Various issues," chapter 22, UK: The Islamic Education Board of the World Federation of Khoja Shia Ithna-Asheri Muslim Communities, n.d., <[http://www.al-islam.org/180\\_questions\\_vol2/](http://www.al-islam.org/180_questions_vol2/)>. (accessed March 8, 2015).

*For that cause We decreed for the Children of Israel that whosoever killeth a human being for other than manslaughter or corruption in the earth, it shall be as if he had killed all mankind, and whoso saved the life of one, it shall be as if he had saved the life of all mankind. Our messengers came unto them of old with clear proofs (of Allah's sovereignty), but afterwards lo! many of them became prodigals in the earth.*

This commandment admits instinct of self-preservation as a basic natural urge of life in all its gradations. But figuratively for human beings, as noted by Dr. Khalid Alvi, the self to be preserved is not only the individual physical entity; his essential self is a social self, which is to be regulated by a socially embedded cycle of crime-punishment-save equation.<sup>66</sup> By this measure a correlation of individual with society is implied in the cited verse. In spirit each incident of murder must generate a wave of anxiety until and unless *Qisas* is taken in order to eliminate dangerous individuals for the development of a society.<sup>67</sup> Muslim scholars, therefore, assert that it is not the religious punishments which are barbaric but rather the crimes which call them into operation. The whole system of punishments is primarily a deterrent.<sup>68</sup>

On the same grounds doing away with capital punishment has been opposed; *Qisas* is life only if it retains its presence to condition the mischief in society. A society that abolishes all jurisprudential semblances to punish murderers is unlikely to preserve life which is the spiritual theme of *Qisas*.<sup>69</sup> Also, a society in which the penalties set forth in Islamic Sharia'h are disregarded is doomed to corruption and (moral) bankruptcy.<sup>70</sup> Equally significant is the fact that in punishing those guilty of such acts (murder...), no transgression, no 'overkill', and especially, no torture should be allowed.<sup>71</sup> When a person is sentenced to suffer *Qisas* for injuries the sentence shall direct that the *Qisas* be carried out in the like manner the offender inflicted such injury on the victim.<sup>72</sup> In order to get an

<sup>66</sup> Dr. Khalid Alvi, *Islam ka Moasharati Nizam (social system of Islam)* (Lahore: Al-Faisal Nashran, 2009), 620.

<sup>67</sup> A Study Research Report on *Qisas/Deyat Law*, "NCSW; Shirazi, 180 Questions Enquiries About Islam.

<sup>68</sup> Hamid Enayat, *Modern Islamic political thought* (Kuala Lumpur: Islamic book trust, 2001), 159.

<sup>69</sup> Maududi, *Tafheem-ul-Qur'an*, Vol 1, 139.

<sup>70</sup> Dr. Omer F. Atari trans. Dr. Suleiman Bin Abdul Rahman Al-Hageel, *Human rights in Islam and their applications in the Kingdom of Saudi Arabia, first edition* (Riyadh: King Saud University Islamic University, 2001), 154.

<sup>71</sup> Hamid, *Modern Islamic political thought*, 155-56.

<sup>72</sup> Jan Michiel Otto, (ed), *Sharia Incorporated: A comparative overview of the legal systems of twelve Muslim countries in past and present* (Amsterdam: Leiden University Press, 2010), 591.

objective sense of the notion of equality, it is imperative that verses describing *Qisas* (Al-Baqara, 178-9), are read in conjunction with verse 194 (shown below) from the same Chapter that insists on maintaining symmetry in all spheres of social life including war and revenge seeking, emphatically forbidding excesses.<sup>73</sup> The Muslims have been commanded to exercise self-restraint as much as possible. Force is to be used for self-defence or self-preservation, but self-restraint is pleasing in the eyes of Allah. Even when during fighting, it should be for a principle, not out of passion.<sup>74</sup>

الشَّهْرُ الْحَرَامُ بِالشَّهْرِ الْحَرَامِ وَالْحُرُمَتُ قِصَاصٌ فَمَنْ أَعَدَّى عَلَيْكُمْ  
فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا أَعَدَّى عَلَيْكُمْ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ مَعَ  
الْمُتَّقِينَ

*The prohibited month for the prohibited month, and so for all things prohibited, there is the law of equal if then anyone transgresses the prohibition against you, transgress ye likewise against him. But fear Allah, and know that Allah is with those who restrain themselves.*

A few oral traditions (*hadith*) of Prophet Muhammad (Peace be upon him) ascribed to his companions (*sahaba*) expand the law of equality into further details.<sup>75</sup> First, murderer should be handed over to the family of victims who may decide to avenge the crime, condone him or take compensation from him. In the present era this function has been taken over by the state. Saudi Arabia is unique in this respect where relatives of the victim are allowed by the state law to execute the murderer at will. Opinions, however, differ among theologians over the role of the state in case the murderer is forgiven by the aggrieved party. Maududi asserts that the state does not have the right to interfere in case of pardon by the victim's relatives; Yousuf Ali is inclined toward the primacy of the state as the final arbiter in adjudicating such matters to maintain peace and order.<sup>76</sup>

In addition to retributive value of *Qisas* for those who are not deterred by anything but punishment, Islamic penal code is also an instrument of correction for those for whom punishment is merely a

<sup>73</sup> Ali, "The Holy Quran: text...", 78.

<sup>74</sup> Ibid.

<sup>75</sup> Muhammad Mian Siddique, trans., *Qisas and Diyat* Edition 2009 (Islamabad: Islamic Research Institute-International Islamic University, 2009), 44-45.

<sup>76</sup> Maududi, *Tafheem-ul-Qur'an*, Vol 1, 139; Ali, *The Holy Quran: text, translation and commentary*, 262.

promise given in good faith.<sup>77</sup> This is based on the belief that human beings are naturally predisposed to avoid pain and discomfort, hence will avoid disobedience of divine injunctions. Furthermore, due to resulting low level of crime, people will be free to devote themselves to fruitful labour and production, which will lead to the spread of ease and prosperity among all members of the society, affecting rise in income and virtuousness.<sup>78</sup> In *Qisas*-related cases under prosecution, complainants are encouraged to accept *Diyat* in lieu of *Qisas*. At times, this may entail persuasive efforts by judiciary spanning over several years. In Nigeria, at least one state (Kano) has made this more attractive by enacting that the state must pay if the defendant and his family cannot.<sup>79</sup> Such leniency follows from the tradition of the Prophet Muhammad (PBUH) who was inclined to milder punishments or to the minimum prescribed penalty for the crimes brought before him, on case to case basis.<sup>80</sup>

The law of *Qisas* at times has been faced with puzzling questions such as disposal of a spouse who has killed the partner and father who kills his son. Sheikh Abdel Khaliq Hasan Ash-Shareef (2013), a prominent Egyptian Muslim scholar, states that a spouse could be executed if he/she kills his/her spouse, as none of them is considered the origin of the other.<sup>81</sup> So if a husband kills his wife, his punishment may reach to execution and the same will be valid for a wife. However, decrees on penalty for a father are divided. The underlying rationale quoting Prophet Muhammad (PBUH): "No father should be killed (executed) for killing his son," holds that a father is not expected to kill his child on purpose. Some Muslim scholars, therefore, see it unimaginable for a father to intentionally murder his son. Accordingly, a suspected father may not be executed for killing his son as this is most probably not an intentional killing. Ash-Shareef quotes Imam Malik, leader of Sunni Maliki school of thought, to have opined that if a father kills his son definitely on purpose, without any doubt, he may be executed. This judgment brings in focus the role of a judge who is considered to have the right to afflict the proper punishment on the criminal on the basis of the proofs he has regarding the case.<sup>82</sup>

## ***Qisas* in Contemporary Muslim World**

The institutionalization and practice of *Qisas* in the constitutional mechanisms and legal processes of contemporary Muslim societies

<sup>77</sup> Al-Hageel, *Human rights in Islam and their applications in the Kingdom of Saudi Arabia*, first edition, 153.

<sup>78</sup> Ibid.

<sup>79</sup> Otto, *Sharla Incorporated: A comparative overview of the legal systems of twelve Muslim countries in past and present*, 604.

<sup>80</sup> Glasse, *The concise encyclopedia of Islam* (revised edition), 372.

<sup>81</sup> Ash-Shareef, Abdel Khaliq Hasan, "Fatwa on Executing a Father for Killing His Son by on Islam Fatwa," On Islam, 2013, <<http://www.onislam.net>>. (accessed March 2, 2015).

<sup>82</sup> Ibid.

demonstrate diverse standards. Regardless of the nature of the government – Islamic, monarchical or secular – *Qisas* can be witnessed in several social settings both as part of legal stipulations as well as normative traditions. It is conceded, however, that acquiring reliable data dealing essentially with *Qisas* barring a few cases, has been a predicament to cohere a clear picture on profiling implementation of *Qisas*. Available statistics from open sources on murder rates and executions do not differentiate between causation leading to deaths. Besides, there are some inherent limitations to produce a standardized dataset on murder rates such as different definitions of murder, time differential in data collection using different methods and potential of manipulation of figures by countries, which make an objective comparison that much difficult. Furthermore, while Islamic jurisprudence is uniformly applicable to all Muslim societies, all predominantly Muslim countries do not follow the Sharia'h law due to varying political ideologies underpinning state structures ranging from 'puritan' to 'moderate' to 'secularist'.<sup>83</sup>

Most Muslim countries have mixed systems. These systems postulate the hegemony of the national constitution and rule of law, while at the same time allowing the rules of Islam to play a dominant role and influence certain areas of national law.<sup>84</sup> Pakistan, Afghanistan, Iraq, Sudan, Malaysia, Oman, Egypt, Mauritania, Morocco, Qatar and United Arab Emirates can all be classified in this category.<sup>85</sup> Several countries, including Lebanon and Indonesia have mixed jurisdiction courts based on residual colonial legal systems and supplemented with Sharia'h.<sup>86</sup> It may be noted that in many of these countries, Islam is the official religion listed in the constitution, but governments only derive their legitimacy from Islam short of declaring full integration of Sharia'h into judicial system. A few of the non-Muslim Asian as well as western countries such as India, Thailand, UK and Tanzania have also selectively instituted Islamic provisions where civil courts apply Sharia'h or secular law according to the religious backgrounds of the defendants. Similar examples can be seen in Nigeria and Kenya, which have Sharia'h courts that rule on family law for Muslims. Besides, there are a tiny number of countries which follow Sharia'h law for all areas of jurisprudence.<sup>87</sup> A classic example is Saudi Arabia, while Iran also follows Sharia'h law for all areas of jurisprudence.<sup>88</sup> In Iran, Iraq and Pakistan, it is also forbidden to enact legislation that is

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<sup>83</sup> Otto, *Sharia Incorporated: A comparative overview of the legal systems of twelve Muslim countries in past and present*, 82.

<sup>84</sup> Michiel Otto, "Sharia and National Law...", 8.

<sup>85</sup> Ibid.

<sup>86</sup> Toni Johnson and Lauren Vriens, "Islam: Governing under sharia," *Council on Foreign Relations*, January 9, 2013, <<http://www.cfr.org/religion/islam-governing-under-sharia/p8034>>. (accessed February 26, 2015).

<sup>87</sup> Helen Ziegler and Associates - Shariah Law, <<http://www.hziegler.com/articles/shariah-law.html>>. (accessed on March 8, 2015).

<sup>88</sup> Ibid.

antithetical to Islam.<sup>89</sup> An illuminating research into legal systems by leading legists reveals that *Qisas* provisions are in force only in five countries i.e. Saudi Arabia, Sudan, Iran, Pakistan, and North Nigeria, whereas the legal situation in Afghanistan is uncertain.<sup>90</sup> Besides, parallel with national laws, many of Muslim countries have significant proportion of their population inhabiting in rural and tribal environment which profoundly blend legal provisions with social traditions especially in ungoverned or geographically remote regions. Revenge in such settings assumes exclusive or adapted connotation assimilating strands of juridical or traditional moorings depending upon the degree of statehood being exercised in territorial jurisdiction of the country. Other than in Arab peripheries, the tribal areas of Pakistan, the Kurdish regions of Turkey and the Pakhtun dominated areas of eastern Afghanistan are a few such examples. Decentralized sanctions carried out by the victim are common in societies without state law, but in these areas the local social code of conduct, is unusual in imposing an affirmative duty to seek revenge; failing to do so can cause one to suffer a reputational sanction in being thought of as a coward).<sup>91</sup> A statement by former Turkish President Abdullah Gul in response to reprisal killings during May 2009 in Kurdish south eastern Turkey that "Everybody should think seriously about tradition, blood feuds and animosity standing before human life in this era we are living in," amply illustrates the depth and bitterness of blood feuds, clan rivalries and vendettas in Kurd ethnicity.<sup>92</sup>

By the end of 2012, more than two-thirds (140) of the countries in the world had abolished the death penalty in law or practice. As many as 97 countries abolished it for all crimes, 35 in practice (Russian Federation etc) and eight others for ordinary crimes such as Brazil.<sup>93</sup> *Russian Federation introduced a moratorium on executions in August 1996. Amnesty International reports that despite the declaration, executions were carried out between 1996 and 1999 in the Chechen Republic.*<sup>94</sup> The 58 countries that retain this punishment include the overwhelming majority of the most populated nations in the world –Bangladesh, China, India, Indonesia, Japan, Nigeria, Pakistan and the United States. Of them, 25 are Muslim states, including 10 having the highest population in Muslim world. All of these 58 countries make up approximately 66 percent of the world's

<sup>89</sup> Toni and Lauren Vriens, "Islam: Governing under sharia."

<sup>90</sup> Otto, "*Sharla Incorporated: A comparative overview...*", 633.

<sup>91</sup> Tom Ginsburg, "An Economic Interpretation of the Pashtunwali," Draft paper. University of Chicago Law School. April 15, 2011, <<http://home.uchicago.edu/~tginsburg/pdf/articles/AnEconomicAnalysisOfThePashtunwali.pdf>>. (accessed March 8, 2015).

<sup>92</sup> Daren Butler, "Blood feuds and gun violence plague Turkey's southeast". Reuters, May 5, 2009.

<sup>93</sup> Amnesty International 2013, "Death sentences & executions in 2012."

<sup>94</sup> Ibid.

population, reflecting acknowledgement of the magnitude of homicide being experienced by these countries.<sup>95</sup>

Iran (317), Saudi Arabia (143), Pakistan (135), Egypt (48) and Iraq (33) top the list of 38 countries for carrying out executions. On the other hand, none of these countries appear anywhere among a sample of 46 countries recorded for higher murders by firearms.<sup>96</sup> In fact, none of the Muslim countries rank in top ten countries with highest murder rates. In particular, Iran, Jordan, Bahrain, Oman, Saudi Arabia, Kuwait, Qatar, UAE, Maldives and Malaysia figure out conspicuously for low rates of intentional homicide in the UNOD Chomicide statistics report 2013 during a time span of 16 years – 1995 to 2011. All have capital punishment in vogue. Even among the top ten countries with the lowest reported crimes rates during 2013, four are Muslims i.e., Bangladesh, Syria, Mali (both pre-war) and Yemen.<sup>97</sup>

Pakistan (besides Sudan) is an exception in registering escalation in incidence of murders among those where *Qisas* is enforced. Between 1998 and 2011, murder count in former country has fluctuated from 8,906 to 13,860, observing alarming rise since 2008.<sup>98</sup> *Qisas* is not as effective here due to manipulative exploitation of the law by privileged strata of the society. Nigeria has of late become more violent compared to earlier period of its existence due to various radical movements operating in the country for a systemic change in the socio-political order. However, the Sharia'h-abiding states of Nigeria have been by and large peaceful until the emergence and beginning of a terror campaign by the zealots of Boko Haram seeking to enforce Islam in the entire country.

Ironically, a distinct culturally embedded and tacitly endorsed characteristic of most Muslim societies is the phenomenon of honour killing, which accounts for higher number of homicides mostly victimizing women. While Islamic teaching does not encourage killing in the name of honour,<sup>99</sup> these crimes occur in an attempt by the conservative elements fearful of their culture and traditions changing before their eyes, and seek to codify 'culture' and 'tradition' by use of lethal force.<sup>100</sup> Iraq, Egypt, Palestine, Turkey and Pakistan experience most occurrences of this kind. For example, during 2013, 811 cases of honour killing were reported in

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<sup>95</sup> *bid.*

<sup>96</sup> "Higher murders by firearms," Nationmonitor.com, <<http://www.nationmaster.com/statistics/stats>>. (accessed September 24, 2013).

<sup>97</sup> "As of September 14, 2013, the maps of world listed on its website," <<http://www.mapsofworld.com/world-top-ten/countries-with-lowest-murder-rates.html>>.

<sup>98</sup> United Nations office on Drug and Crime, "Homicide statistics 2013".

<sup>99</sup> Muhammad Niaz, Mufti Muhammad Mushtaq Ahmed, Abdullah Abdullah, Fazle Omer and Naeqeb Hussain Shah, "Honor Killing in Pakistan: An Islamic Perspective," *Asian Social Science* 8.10 (2012): 180-185.

<sup>100</sup> Beena Sarwar, "There is no 'honour' in killing," *The Hindu*, September 8, 2008.



Pakistan, mostly from urban centres of the country.<sup>101</sup> Sections 302-310 of Pakistan Penal Code explicitly lay down a law on *Qisas* and *Diyat*. While punishment for intentional murder (*qatl-i-amd*), is death as *Qisas*; at the same time it makes such offenses compoundable (open to compromise as a private matter between two parties) by providing for *Qisasor Diyat*. The heirs of the victim can forgive the murderer in the name of God without receiving any compensation or *Diyat*(Section 309), or compromise after receiving *Diyat* (Section 310).Once such a pardon has been secured, the state has no further writ on the matter although often the killers are relatives of the victim. Mysterious release of CIA operative in Pakistan, Raymond David, accused of murdering two Pakistani citizens in Lahore in January 2011 and pardon extended to killers belonging to influential families of Shahzeb Khan by his parents during September 2013 allegedly under pressure exemplify abuse of *Qisas* to further vested interests.<sup>102</sup>

## Conclusion and Policy Suggestions

Nonkilling as a spiritual philosophy has been an organic constituent of all religious traditions. Yet, humankind has continued to substitute justice with cruelty, peace with conflict and reason with greed. Consequently, the concept of reward and penalty has coexisted concomitantly to incentivize a harmonious social order. Retaining capital punishment by countries with highest population concentrations is one such proof that suggests the need for criminal justice system in maintaining internal peace and order. Without indulging into debate whether or not humans are intrinsically prone to violence, nonkilling in contemporary setting characterized by rational underpinning, exclusionary politics, social inequalities and structural imperialism, does not appear to be a pragmatic goal. Defence against its being non-passive is tenuous at best due to the absence of persuasive reasons and empirical exemplification.

Concerns of human rights organizations notwithstanding, the effectiveness of *Qisas* as conflict mitigating framework and failing that *Diyet* which mostly involves forbidding monetary sums in checking tendencies, incidence and proliferation of violence is clearly established by this study.<sup>103</sup> It is equally true, however, that while *Qisas* is effective in ensuring inter/intra community peace in tribal settings and in a few countries, it has not reduced instances of intentional injuries or homicide

<sup>101</sup> "Stat: Killings 2013," Human Rights Commission of Pakistan, <<http://www.hrcp-web.org>>. (accessed February 24, 2015).

<sup>102</sup> Mazak Mazzeti, "Mysterious release of CIA operative in Pakistan," *New York Times*, April 9, 2013; "Shahzeb's murderers get pardon by family," *Pakistan Today*, September 9, 2013.

<sup>103</sup> See e.g., "Govt hope to get Satinah off death row by paying '*diyat*'," *Jakarta Post*, July 22, 2013.

in mainstream societies due to expediencies of real-politick, inefficient and corrupt criminal justice system. The law in itself is credible. It is driven by a strong moral force respecting the right to life for all, viz-à-viz unbound vengeance, retaliation, or vendetta which is not advocated by Islam, with the purpose to actualize a social contract that comprehensively serves the ends of nonkilling. Significantly, therefore, all misgoverned Muslims yearn for a return to a rule of law, the *Sharia'h*, "a just legal system, one that administers the law fairly."<sup>104</sup> That further exposes the objective state of the appalling conditions besetting human living.

The proponents of nonkilling contend that the idea has entered the 21st century not simply as a normative principle but as an approach to global problem solving, based on practical applications and empirical findings.<sup>105</sup> To the contrary, the analysis has shown that current emphasis of nonkilling envisaging global transformation to realize its purpose is simply rhetoric without much substance. It is considered more prudent to apply the approach selectively appropriate to the varied conditions of violence instead of its indiscriminate universal usage. Dramatic fluctuation of rates of lethal violence on annual basis and in particular countries, reinforces this observation evident from dropping of number of victims of intentional homicides from 397,000 in 2004 to 368,000 in 2006, while in 2009 these figures increased to 423,000.<sup>106</sup> This may save the labour of researchers, practitioners and those who fund for such endeavours by addressing where such resources are critically needed. For this to achieve, it will be essential to bifurcate nonkilling research, theory and practice into inter- and intra-state contexts to calibrate policy applications consistent with killing trends among and between nations and societies. It will be imperative also that nonkilling as an approach should envisage absence of grievous injury and propensity for it, in order to reinforce its intellectual appeal. These variables should redefine existing thought of nonkilling.

*Qisas* is an Islamic provision; therefore, it is not applicable to societies following non-religious legal precepts and practices. This underscores the requirement to build nonkilling models suited to the needs of secular and semi-secular societies. This will entail academic and scientific rigor in designing such constructs that generate penal codes based on the idea of proportionate punishment to transform human aspirations for peace, harmony and coexistence into reality.

In essence, nonkilling with its current postulates and urging is a fascination abated by its overemphasized decorousness and lack of rational viability. A realistic review is warranted of its fundamentals in order to embellish and harmonize it with realism pervading the

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<sup>104</sup> Abdul Rashid Moten, Review - Noah Feldman, *The Fall and Rise of the Islamic State* by, *Intellectual Discourse* 17, no. 1 (2009): 107-22.

<sup>105</sup> Pim, "Interdisciplinary Perspectives...", 10.

<sup>106</sup> Measuring problems: Global Burden of Armed Violence (GBAV) 2011.

psychosocial and ideological bent of the human nature, which submits to the mechanisms and institutions that restrain its innate instincts to kill. Recourse to *Qisas* is one such effective measure to establish order and stability in the anarchic world we inhabit.

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*Printed by*  
NDU Press, Islamabad