



AL-IQRO'

JOURNAL OF ISLAMIC STUDIES

<https://ejournal.unu.ac.id/index.php/aijis>

THE IMPLICATIONS OF QIŞAŞON JUSTICE AND SOCIAL HARMONY IN NIGERIA

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Abstract

Keywords:

Shari'ah, Qişaş,
Justice and social
harmony, Peace,
Sustainable
Development.

This paper explores the impact of qişaş on justice and social harmony in Nigeria, a nation known for its rich cultural and religious diversity. Qişaş, which underscores the principle of fair retribution in Islamic law, provides a framework for resolving conflicts and addressing grievances, thereby fostering community trust and collaboration. By analyzing its historical context and current applications, the study illustrates how qişaş can reduce cycles of violence and support restorative justice in Nigeria. The paper aims to identify the challenges and opportunities of integrating qişaş into Nigeria's legal system, incorporating perspectives from various stakeholders. Utilizing a blend of historical and descriptive research methods, the paper gathered data through interviews, observations, and literature analysis. Findings of the paper suggest that effective implementation of qişaş could greatly enhance social cohesion and improve the prospects for peace and sustainable development in Nigeria's diverse society. The paper therefore, advocates for genuine enforcement of the law in areas where it is practiced and its integration into the broader Nigerian legal framework.

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INTRODUCTION

Allah considers willful homicide as a grave offence for which the offender should not be allowed to go free in a manner that he will encourage others to do the same because life in Islam is so sacred that a person who deliberately kills a person is assumed to have killed the entire world. It is in identification of the grievous nature of the offence that Islamic law established retribution as judgment of justice and deterrence for the offence. *Qişaş* (retributive justice), is a fundamental principle in Islamic law that governs cases involving serious harm or death, advocating for justice through proportional retribution. However,

Qisas also allows for compensation (*diyah*) or forgiveness (*afw*) which is a reflection of the broader Islamic values of mercy and reconciliation.

Qisas can be seen as offering a mechanism for achieving justice that is deeply rooted in religious and cultural values, providing victims and their families a sense of closure and reparation. In Nigeria, a country marked by religious, ethnic, and regional diversity, the application of *Qisas* is primarily observed in some northern states, where Shari'ah coexists with the secular legal system. This dual legal framework creates a complex and often contentious dynamism thereby making the implication of the law very significant. Notwithstanding this great importance, the practice of this law of retribution within a multi-religious and pluralistic society like Nigeria raises important questions about fairness, protection of human rights and national cohesion. The implication of this contrasting position is that, as the law could be seen as promoting social harmony in the country, a mismanagement of the application of the law may hinder harmony and social justice.

In the light of the above, this paper examines the implications of *Qisas* within Nigeria's unique socio-legal context, exploring how it impacts justice delivery and its effects on social relationships within and between communities. This paper utilises a blend of historical and descriptive research methods for data collection and data analysis. The paper gathered data from primary sources through interviews, observations and self participation. Secondary sources such as literature analysis of legal frameworks, case studies, and cultural practices were equally deployed. The paper offers a nuanced understanding of how *Qisas* influences both the pursuit of justice and the broader goal of social cohesion in Nigeria.

The Nigeria's legal system operates as a hybrid system that incorporates both secular and religious laws. Nigeria operates a federal structure with three tiers of government: federal, state, and local. Each level of government has its own set of laws, but the federal Constitution overrides state and local laws where conflicts arise. The Nigerian judiciary, composed of federal and state courts, adjudicates on civil and criminal matters, ranging from the Supreme Court down to magistrate courts. (Alhaji Umar Alkali et-al 2014 :1-10)

The Nigeria's legal system is a complex structure shaped by its colonial history, diverse ethnic makeup, and religious plurality. Until the time when most of the northern Nigeria states adopt Shari'ah as a legal system in the third republic, in matters of personal status, family law and criminal cases, the bequeathed law by the British colonial rule at the

federal level was the common law. In order to function properly and allow for the unique features of Nigeria like its customary laws and military rulership in the past, the Nigeria's Legal System possesses some unique characteristics among which is that, it consists of both the English law and the customary law. The Islamic law, which is applicable in the north, is treated as customary law. With the position of duality of Nigerian legal system, Judges are presumed to know English laws and so they do not have to be proved before the judges while customary laws have to be proved through evidence (Jimoh, S. et-al 2022:81-97). The Nigerian law is greatly influenced by external laws; a large part of the legal system in use in Nigeria was inherited from the English system. The Criminal Code and the Matrimonial Causes are modeled after those of Queensland in Australia while the Penal Code, applicable in the north, is fashioned after the Sudanese Penal Code. (Alhaji Umar Alkali et-al 2014 :1-10). Now comes the Shari'ah Penal Codes of seven northern Nigerian states that replaces the existing penal codes in those states and that remains the legal system of the concerned states. (Shittu: 2022: 10(2) 16-25)

There is diversity amongst the customary laws in the Nigerian legal system as they majorly affect marriage, child custody, divorce and property ownership. Two neighboring communities may have different laws guiding them, owing to the various and diverse ethnic groups of the country. Equally relevant is the system of precedents. Early decisions of courts are binding on lower courts and they can equally serve as persuasive authority for superior courts and courts of equal standing even when lower courts are inclined by good reasons to depart from binding precedents. The military in Nigeria ruled by Decrees and Edicts and their laws are passed with dispatch because they are not subjected to political considerations and bureaucratic bottle necks hence been more active in the areas of law reforms than the civilian regime.

The existence of both Shari'ah and secular law creates a form of legal pluralism, where different legal systems operate simultaneously within the same geographic and national boundaries. This legal pluralism can offer flexibility in addressing the diverse needs of Nigeria's population, allowing individuals to seek justice through the system that best aligns with their religious or cultural beliefs.

Qisas in the Shari'ah is the act of retaliating for an offence of homicide committed against a human being and the purpose is to save other lives. Allah says

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنْثَىٰ بِالْأُنْثَىٰ فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ
شَيْءٌ فَاتِّبَاعُ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ۗ ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ مِّنْ عِزِّ رَبِّكُمْ بَعْدَ ذَلِكَ فَالَهُ عَذَابٌ أَلِيمٌ
وَلَكُمْ فِي الْقِصَاصِ حَيَوةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ

O ye who believe! the law of equality is prescribed to you in cases of murder: the free for the free, the slave for the slave, 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. After this whoever exceeds the limits shall be in grave penalty. In the Law of Equality there is (saving of) Life to you, o ye men of understanding; that ye may restrain yourselves. (Q2:178-179)

Homicide is of different types. It could be illegitimate or legitimate. It could be an intentional, quasi-intentional or inadvertent action. It is illegitimate when it is violently committed and legitimate when it is carried out legally. Intentional homicide is committed when the murderer deliberately or intentionally takes the life of the murdered, and it is quasi-intentional when the murderer did not intend the murder but the victim died due to injury sustained from the murderer. It is inadvertent when an offender has no intention to harm the victim that eventually died from injury sustained through the action of the murder (Shittu, 2010:29-40). If the killing is done mistakenly such as hitting somebody with a motorcycle and causing the death of such a person, the culprit shall be liable to pay the blood wit (*diyah*) to the heirs of the deceased and to free a believer from slavery or fast for two consecutive months as established in Qur'an 4 verse 92. *Diyah*, in the submission of Mustapha et-al (2022 7(1)21-42),is a compensation to be paid by a person who inflicts injury or his relative to the injured party or his relatives. Under some circumstances, the government takes over the responsibility of the payments. *Diyah* serves as punishment or compensation and is one of the three options available to the relatives of a murdered person. The Prophet (SAW) legislated thus;

Anyone who is killed, his legal heirs have three options against his murderer and if he requests for the fourth option, he should be cautioned: to kill (in vengeance) or pardon or take *diyah* (Sunanu Abu Dawud: Hadith 4497)

The interpretation of this tradition is that the family of the murderer reserves the right to revenge, condone or take compensation. However, in a situation where the family decides to forgive, should the state interfere by way of inflicting any discretionary punishment or not? Feyyaz (2014:28-48) noted that Mawdudi in his *Tafheemul Qur'an* is

of the opinion that the state does not have any right of interference because the choice is absolutely for the relatives of the deceased but for Yusuf Ali in his commentary on the Qur'an, the state takes precedence over the position of the family of the murdered. By implication, ta'zir punishment could still be inflicted by the authority. The two views could be reconciled with consideration of the circumstance under which the crime was committed.

Maturity, free will and intent are among the conditions for which a man could be convicted for the offence. The murderer shall not be murdered if he had acted on the command of the Amir especially when it is for a legislative reason. (Ismail: 296) Furthermore, the murderer must not have killed the murdered for self defense such that his life would have been at stake by the murdered if he had not murdered him first in a just manner. For *qisas* to be upheld, the person killed must be somebody whose blood is protected by law (*ma'sumud-damm*). There is no *Qisas* on somebody killed for participating in armed robbery or for being an apostate. (Shittu, 2015.5(1)103-108)

Jurists are of the opinion that a group should be killed for the intentional murder of a person (Muhammad: 1993). Ibn Rushd (1995: 2:327) maintained that Jurists are of the opinion that the son shall be liable to *Qisas* for killing his father but disagreed over the father who killed his son. Maliki, in its popular opinion, maintains that the father is not to be subjected to *Qisas* for killing his son except when he catches him unaware and slaughters him but Hanafi, Shafi'i and Hanbali uphold a contrary opinion. *Qisas* is proved through confession by the offender or through the witness of two upright men as contained in the provision of Q2:282 and Q65:2.

RESEARCH METHODOLOGY

This study seeks to examine how the Islamic principle of *Qisas* (retributive justice) impacts justice systems and social harmony in Nigeria, with a particular focus on regions where Shari'ah is practiced. To achieve this, the study adopts a mixed-methods approach, combining both qualitative and quantitative research designs to provide a holistic understanding of the implications of *Qisas* in Nigeria's socio-legal context. The qualitative approach involves case studies, interviews, and content analysis to explore the perceptions, interpretations, and practical applications of *Qisas* in Nigerian Shari'ah courts while the quantitative approach involves a collection of data on public attitudes towards the implementation of *Qisas* and its perceived impact on justice and social harmony. The

mixed-methods approach employed in this study is expected to yield comprehensive insights into the implications of Qiṣāṣ for justice and social harmony in Nigeria. By combining qualitative and quantitative data, the research aims to provide a good understanding of how Islamic legal principle shapes societal dynamics, particularly in regions governed by Sharī'ah. The study focuses on Islamic scholars and the general public as its study population in selected Sharī'ah compliant states in Northern Nigeria. Purposive and random sampling techniques were used to participants who have direct knowledge of Qiṣāṣ and respondents for the survey. Semi-structured interview was conducted with judges, legal scholars and community leaders to explore themes such as justice, fairness, social harmony, and religious beliefs. A case was reviewed to further explain how justice was administered and its implication. A structured interview was administered on members of the public targeting diverse groups, gender and social background to access the perceptions of the public on Qiṣāṣ, its effectiveness in delivering justice and its role in fostering or undermining social harmony. Thematic analysis was used to analyse interview conducted and themes related to justice, retribution, forgiveness and social stability were analysed.

RESULT AND DISCUSSION

This section discusses findings of the research on the role of Qiṣāṣ in upholding justice and promoting peace. Information gathered from the field reveals that Qiṣāṣ plays a central role in the Islamic legal system, especially in the context of criminal justice, where it governs cases of intentional harm or death. In its essence, Qiṣāṣ reflects the principle of proportional retribution and serves as a mechanism for delivering justice in a manner that prioritizes fairness, deterrence, and victim restitution thereby promoting peace in the society. Its application, particularly in northern Nigeria, demonstrates its significance in upholding justice within the framework of Sharī'ah.

In this section, attempt is made to study a decided case of Qiṣāṣ/Diyahon 4/12/2006 with suit number SCA/KN/CR/9/06 under the Sharī'ah Penal Code of Kano State as contained in the Record Book of the Kano State Sharī'ah Court of Appeal. The trial of Ibrahim Usman under the Sharī'ah Penal Code of Kano State is considered relevant for assessment to drive in the point on implications of Qisas for social justice and peace.

The case of Ibrahim Usman was filed at Kogo /Kudu Upper Shari'ah Court with case number CR/79/05 on 16th November 2006. The case was between one Ibrahim Usman who caused grievous hurt to one Ali Maifawa such that he had his leg broken. Ibrahim Usman confessed before the Upper Shari'ah Court that he committed the offence of grievous hurt. The court, based on the confession of the accused person, convicted him of the offence of grievous hurt contrary to S 159 of Kano State SPC Law 2000 and sentenced him as follows:

1. Six months imprisonment
2. Fine of N12, 000 in respect of the hospital bill

3. Fine of N166, 500 in compensation for the inconveniences to which the complainant was subjected and for the maintenance of his family at the time he was incapacitated to go and fetch for what to sustain the family. This judgment was passed under S 37 of Kano State SPC Law 2000. The court sentenced the accused person to a fine of the said amount based on the request of the complainant. The accused person, even as he admitted he had committed the offence, filed an appeal with the Kano State Shari'ah Court of Appeal requesting to be pardoned of the fine having spent six (6) months in the prison.

Kano State Shari'ah Court of Appeal after looking at the gravity of the offence committed ruled thus:

1. The diyyah (blood wit) which is to be paid by the appellant is adequate looking into the following:
 - a. The appellant confessed he had committed the offence
 - b. The injury is a permanent trait on the injured person because there is a difference already in the length of his two legs.
 - c. Injury of a broken leg, especially when it occurs to an aged person, does not heal on time and it would subject the victim to untold hardship.
 - d. It is sure that anybody who finds himself in the position of Ali shall have to spend money on the hospital bill and home maintenance.
 - e. When the accused person was charged with the offence and liable to qisās punishment he did not deny committing the offence, he only pleaded for leniency.

2. Equally, the first court gave the appellant every opportunity entitled to him but he chooses to confess being guilty.
3. The court does not see any injustice in the judgment of the first court.

The Kano State Shari'ah Court of Appeal upheld the judgment of the first court along with all other orders given by the court on 4th, December 2006 under S.16 of Kano State Shari'ah Court Law and withdrew the order earlier passed that the first court should suspend its judgment regarding payment of diyah. Islamically, confession or admission by a sane adult is proof of guilty provided the culprit confesses unambiguously and he was made to know the effect and consequence of his confession. (Olaniyan, 2004:40) The accused in this case was charged with accidentally causing grievous hurt based on his confession and he was sentenced to six months imprisonment and payment of diyah which amounts to N178,500. A cross-examination of the issues shows that the accused was under-punished because:

1. The accused was charged under S 159 of Kano State SPC Law 2000 which is the offence of grievous hurt.
2. S 163 of Kano State SPC Law 2000 provides for the punishment for the offence of grievous hurt thus:

Whoever voluntarily causes grievous hurt to any person shall be punished:

- a. With retaliation (qiṣāṣ); or
- b. where the qiṣāṣ is not applicable, or the act was done by mistake, with the payment of diyah as provided under Schedule 2 to this law, and shall also be liable to imprisonment for a term which may extend to six months; and
- c. (With caning which may extend to twenty lashes.

A digest of this provision shows that caning is not optional, even after the imprisonment and the payment of diyah, the accused ought to be sentenced to caning. The issue of caning is a discretion of the court (ta'zir) which is substantiated by the environment in which the punishment is applied. In conclusion, the Shari'ah Court of Appeal is justified in upholding the judgment of the first court as it agrees with the provision of the Qur'an 5:45. A study of the sampled case coupled with the interview conducted with scholars in the field of legal practice and the public in the northern region

where the law is being entrenched in Nigeria on the role of Qisas in maintaining peace and social harmony in Nigeria reveals the following

The Role of Qiṣāṣ in the Provision of Peace and Social Justice

Members of the judiciary, legal practitioners, colleagues in the academic industry and stake holders in the public domain were interviewed mostly on phone regarding the role of Qiṣāṣ in the actualization of peace and harmony in the society. Questionnaire was also administered on selected religious groups in the northern Nigeria where the law is being practiced. Analysis of the data collected is as presented below

1. *Justice and religious obligations are achieved through proportional retribution*

Qiṣāṣ aims to ensure that the punishment for an offence matches the crime. In cases of murder or serious bodily harm, Qiṣāṣ allows the victim or their family to seek retribution by demanding that the offender face a punishment equivalent to the injury caused. In communities that adhere closely to Islamic values, Qiṣāṣ strengthens social harmony by aligning justice with religious and moral principles. For many in northern Nigeria, the practice of Qiṣāṣ is not only a legal necessity but also a way to uphold religious obligations. By reflecting Islamic values of justice, fairness, and mercy, Qiṣāṣ reinforces a sense of shared identity and communal responsibility, contributing to social cohesion.

2. *Compensation (Diyah) is an appropriate alternative to Qiṣāṣ*

While Qiṣāṣ allows for retribution, it also provides for compensation, known as diyah, as an alternative form of justice. In cases where the victim or their family is willing to waive retribution, the offender can pay a monetary compensation (diah) to the family of the victim. The payment of diyah is a reconciliatory option that allows for practical justice and will give the family of the deceased the solace to still maintain peace with the murderer.

3. *Forgiveness and Mercy*

While Qiṣāṣ allows for retribution, it also emphasizes the importance of forgiveness, which plays a key role in promoting social harmony. Islamic teachings encourage victims and their families to forgive offenders, which not only mitigates the severity of punishment but also fosters reconciliation between parties. In cases where forgiveness is granted, Qiṣāṣ can transform a potentially divisive situation into one of healing and unity.

In Nigerian, forgiveness can lead to the restoration of relationships, particularly when disputes involve families or tribes. By prioritizing mercy, Qiṣāṣ fosters an environment where personal and communal peace is valued over retribution, reinforcing social cohesion and reducing the likelihood of future conflicts. Shittu (2015) observed that forgiveness is the best alternative to retribution especially in the cases of domestic violence where the murderer is in one way or the other related to the murdered. Forgiveness according to him, will contribute to communal healing and restore social harmony. Qiṣāṣ is seen as not solely focusing on punitive justice, but also allowing mercy and the possibility of reconciliation. In a society like Nigeria, where extended family and community ties are critical, forgiveness can serve as a powerful tool for restoring peace and preventing the cycle of violence and retaliation from continuing. When forgiveness is granted, it is often seen as a moral victory, reinforcing social cohesion. Sabiq submits “(The punishment for intentional homicide is) retaliation or pardoning (with the option of) taking diyah or not. Even if it is more than that, the heir has the right to waive (qisas) without taking any compensation and that is even better” (Sabiq, 1977: 523)

4. *Justice for the Victim*

In Qiṣāṣ, the right of the victim overshadows that of Allah. Qiṣāṣ grants a central role to the victim in deciding whether to pursue retribution, seek compensation, or grant forgiveness. This victim-centered approach to justice ensures that those directly affected by the crime have a sort of satisfaction in their mind that the final judgment is their own choice with no one coercing them. In northern Nigeria, where Qiṣāṣ is applied, this approach resonates with local cultural values that prioritize family and community input in justice matters. By giving the victim's family the authority to decide the course of action, Qiṣāṣ empowers individuals and communities to address harm in a way that reflects their values, promoting a sense of justice that is rooted in local traditions and Islamic teachings.

5. *Deterrence*

One of the key roles of Qiṣāṣ in upholding justice is its function as a deterrent to serious crimes. The strict application of proportional retribution serves as a warning to potential offenders that they will face equivalent consequences for their actions. In Nigeria, the use of Qiṣāṣ in the northern states is often seen as a way to reinforce community values and discourage lawlessness. The knowledge that offenders will face swift and just

consequences under Qiṣāṣ helps to prevent cycles of violence, as it assures victims and their families that justice will be served.

6. *Promoting social order and stability*

When an offender is held accountable for his actions through proportional retribution or compensation, it satisfies the community's desire for justice. Qiṣāṣ helps prevent individuals from taking matters into their own hands, which could lead to cycles of revenge and ongoing violence. In regions of northern Nigeria, where community cohesion and family honor are highly valued, the ability to seek justice through Qiṣāṣ reinforces social stability. When justice is perceived as fair and aligned with the community's moral values, it can lead to a greater sense of social equilibrium, preventing unrest and promoting long-term peace..

CONCLUSION

This paper studied the relevance of Qisas in forestalling justice and social harmony in Nigeria. The work is empirical in nature as it navigates the Nigerian legal system and the application of Islamic law in the country with its data being collected from both primary and secondary sources. A study of a case on the payment of diyah for an offence that is less than willful homicide under the Shariah Penal Code of Kano State was used to conclude that an adequate management of the law of retribution is potentially capable of restoring peace and harmony in the society.

It is however suggested that the government should develop a legal framework that clearly defines Qiṣāṣ principles and how they integrate with national laws. In addition, the government should implement educational programs that explain the principles of Qiṣāṣ and their importance within the context of justice. This will promote understanding and acceptance of the practice.

It is necessary for the government to provide specialized training for judges, lawyers, and law enforcement officials on the principles and application of Qiṣāṣ. For the effort to be fruitful, the government should create oversight bodies to monitor the implementation of Qiṣāṣ laws, ensuring that they are applied fairly and justly, create systems for ongoing monitoring and evaluation of the impact of integrating Qiṣāṣ with national law.

In a multi religious society like Nigeria, it is necessary for the government to facilitate dialogue among religious leaders, legal experts, and civil society to discuss the

implications of integrating Qiṣāṣ into the national legal system. Equally necessary is the promotion of mediation and reconciliation as alternatives to Qiṣāṣ, particularly in cases where the victim and perpetrator may reach a mutual agreement..

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