

PEACE IN RETRIBUTION AND ITS RULINGS IN HANAFI JURISPRUDENCE

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Abstract. *Retribution (Qisās) constitutes one of the most significant enforcement guarantees within Islamic criminal law, playing a fundamental role in ensuring justice and deterring crimes against the bodily integrity of individuals. Nevertheless, in order to safeguard social interests and to promote the spirit of forgiveness and reconciliation, Islam has introduced the institution of Sulh (amicable settlement) alongside Qisās. Within Hanafi jurisprudence, Sulh in the context of Qisās is recognized as a legitimate mechanism for ending disputes and preventing the continuation of hostility, with specific legal provisions governing its application.*

Hanafi jurists, relying on Qur'anic verses and Prophetic traditions, consider Sulh in Qisās not only permissible but, in certain cases, recommended and commendable; thus, the legal heirs of the victim (wali al-dam) may pardon the offender either in exchange for compensation (diya) or gratuitously. This study examines the concept of Sulh in Qisās, analyzing its validity requirements and legal consequences under Hanafi jurisprudence, and demonstrates that this institution can play an effective role in achieving restorative justice and mitigating social harms. Furthermore, a comparative overview of Hanafi perspectives with those of other Islamic schools of law is presented, thereby highlighting the significance of this subject within the framework of Islamic legal thought.

Keywords: *Sulh, Qisās, pardon, Hanafi jurisprudence, diya, wali al-dam, Islamic criminal law.*

Introduction

Islam, as a comprehensive religion, while emphasizing the implementation of justice, has also introduced mechanisms for forgiveness, reconciliation, and reform. One such mechanism is Sulh (amicable settlement) in Qisās (retribution), whereby the legal heirs of the victim (awliyā' al-dam) reach a settlement with the offender instead of executing retribution. This institution holds particular significance in reducing retaliatory violence and fostering social stability.

Qisās, as one of the most important penal provisions of Islamic law, was legislated on the basis of justice and the protection of both individual and social rights. This legal institution not only addresses crimes against life and bodily integrity but also primarily serves the purposes of deterrence, relieving the suffering of the victim's heirs, and ensuring social order (Jawadi Amuli, 2016, p. 340). Alongside this, the divine legislator, by enacting Sulh and forgiveness in the context of Qisās, has emphasized the ethical and humanitarian dimensions of punishment. Hence, Sulh in Qisās is not only permissible but, in many cases, encouraged and recommended. As stated in the Holy Qur'an: "But if anyone remits the retaliation by way of charity, it is an expiation for him" (al-Baqara: 178), which affirms the permissibility and desirability of forgiveness and reconciliation.

Hanafi jurisprudence, relying on its four primary sources—Qur'an, Sunnah, consensus (ijmā'), and analogical reasoning (qiyās)—has examined Sulh in Qisās as a legitimate matter

subject to specific legal rulings. According to this school of law, reconciliation may take different forms, such as unconditional pardon, pardon conditioned on diya (blood money) or compensation, or settlement involving material benefits and interests (al-Sarakhsi, 1421 AH, vol. 10, p. 165). A distinctive feature of Hanafi jurisprudence in this regard is its emphasis on safeguarding social welfare and preventing further corruption and bloodshed within society; accordingly, in certain instances, it prefers reconciliation over the implementation of retribution.

From a legal perspective, the institution of Sulh in cases involving crimes against life has also been incorporated into the penal codes of several Islamic countries. Notably, in Afghanistan—where the legal system is heavily influenced by Hanafi jurisprudence—Sulh in Qisās has been granted legal recognition and is promoted with a restorative orientation (Afghanistan Penal Code, 2017, Article 576).

In this light, the examination of the rulings and conditions of Sulh in Qisās under Hanafi jurisprudence plays a crucial role in clarifying the approach of this legal school toward criminal justice and its interaction with humanitarian and ethical perspectives.

1- Conceptualization

1-1- Qisas (Retaliation)

The term Qisas in its linguistic sense denotes pursuit and prosecution (Ibn Manzur, 1414 AH). In Islamic jurisprudential terminology, Qisas refers to punishing the offender in the same manner as the crime committed, provided that the conditions and limitations stipulated are duly observed (Sarakhsi, 1421 AH). The Hanafi jurists have regarded Qisas as one of the instruments for achieving justice and preserving social life, which is legitimized as the right of the heirs of the victim following homicide or bodily injury (Kasani, 1406 AH).

2-1- Sulh (Reconciliation/Settlement)

Sulh, in its linguistic sense, means the removal of conflict and the establishment of peace between the disputing parties (Raghib Isfahani, 1412 AH). In jurisprudential terminology, Sulh is an agreement concluded between two parties to end a dispute, and in the context of Qisas, it refers to the waiver of the right of retaliation by the heirs of the victim in exchange for compensation or without compensation (Ibn Abidin, 1412 AH).

1. Legitimacy of Sulh in Qisas in Hanafi Jurisprudence

Hanafi jurisprudence, relying on the Qur'an, Sunnah, and Qiyas, recognizes the legitimacy of Sulh in matters of Qisas. Sarakhsi states: “al-Sulh ja'iz fi al-Qisas, sawa'un kana 'ala mal aw bighayri mal” (Settlement is permissible in Qisas, whether with compensation or without it) (al-Mabsut, Vol. 26, p. 85). Likewise, in Bada'i' al-Sana'i' it is noted that Sulh in Qisas is analogous to sale when it involves compensation, and is akin to pardon when it is without compensation.

2. Types of Sulh in Qisas

a) Sulh with compensation ('iwad): In this situation, the heirs of the victim relinquish Qisas in return for monetary compensation. Under Hanafi jurisprudence, this type of Sulh carries the legal ruling of a contract of sale (Kasani, Bada'i' al-Sana'i', Vol. 7, p. 238).

b) Sulh without compensation: In this situation, the heirs of the victim forgive the offender without receiving any compensation. This type of Sulh is considered equivalent to a gift (hiba) or an absolute pardon (Ibn Abidin, Radd al-Muhtar, Vol. 6, p. 293).

3-1- Conditions for the Validity of Sulh in Qisas

1. Majority and maturity of the heir of the victim (wali al-dam).

2. Legal capacity of the offender (jāni) to provide compensation (in the case of settlement with consideration).

3. Consent of both parties.

4. Determination and clarity of the amount of compensation in financial settlement.

5. Absence of coercion or deception in the contract (al-Hindi, al-Fatawa al-‘Alamgiriyya, Vol. 3, p. 355).

6. Effects of Sulh in Qisas

7. Extinguishment of the right of retaliation: by the conclusion of Sulh, the right of Qisas is extinguished, and the offender is released from punishment.

8. Binding nature of the settlement: Sulh is a binding contract (‘aqd lāzim) and, once concluded, withdrawal from it is impermissible.

9. Preservation or extinguishment of the right to diyyah (blood money): if the Sulh is without consideration, the right to diyyah is also extinguished unless otherwise specifically agreed upon.

10. Effect of settlement by some heirs of the victim: if some heirs enter into Sulh while others demand Qisas, the right of Qisas remains enforceable proportionate to the shares of the remaining heirs.

11. Status of a minor’s guardian in Sulh concerning Qisas: the guardian of a minor (father or executor) may not conclude Sulh on behalf of the minor unless it is in the minor’s best interest. In such cases, the authorization of a judge is required. If the settlement serves the interest of the minor, it is deemed permissible (Ibn Humam, Fath al-Qadir, Vol. 7, p. 201).

12. Comparison with Other Schools of Jurisprudence

Shafi‘I jurisprudence: recognizes Sulh in Qisas with compensation, but the compensation must equal or be less than the diyyah.

Maliki jurisprudence: prefers Sulh, but jurists differ over permitting compensation in excess of the diyyah. Imami (Shi‘a) jurisprudence: allows Sulh both with and without compensation, but stipulates specific conditions regarding the consent of the offender and the heirs of the victim.

13. Societal and Governmental Role of Sulh in Qisas

In many countries influenced by Islamic jurisprudence (such as Afghanistan and Pakistan), Sulh in Qisas serves as a mechanism to prevent tribal and familial conflicts. The Islamic judge (hakim al-shar‘) may also play the role of mediator in such cases to prevent bloodshed.

14. Jurisprudential-Social Analysis of Sulh in Qisas

Sulh in Qisas represents a moral and rational solution that accords with the principles of justice while simultaneously preventing the escalation of hostilities. Hanafi jurisprudence, through its flexible rulings on settlement, has provided the necessary framework for the application of this legal instrument.

2- Qur’anic and Hadith Background of Sulh in Qisas

In the Holy Qur’an, the permissibility of reconciliation (Sulh) in Qisas is explicitly stated: «فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبِعْ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ» (Sūrat al-Baqarah, 2:178)

“But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude.”

This verse demonstrates that while Islamic law recognizes the right of Qisas, pardon and reconciliation are regarded as superior and recommended.

The use of the passive verb 'ufiya ("is forgiven") highlights the voluntary nature of pardon (Ṭabāṭabā'ī, 1417 AH). Many exegetes, including Fakhr al-Rāzī (1420 AH), have emphasized that this verse confirms the fundamental legitimacy of Sulh in cases of intentional homicide.

On the other hand, the Prophet of Islam (peace be upon him) said in a hadith:

«أَعْفُوا يَغْفُ اللَّهُ عَنْكُمْ» (al-Bukhārī, 1400 AH)

"Forgive, and Allah will forgive you."

This hadith provides an ethical reinforcement of the role of forgiveness and settlement in social relations, and it has been cited by jurists as evidence of the moral significance of Sulh, even in the context of implementing hudūd (fixed punishments under Shari'ah).

3- General Overview of the Hanafi School on Sulh in Qisas

The Hanafi school of jurisprudence regards Sulh (settlement) in Qisas not only as permissible but, in many cases, as recommended (mustahabb), since it preserves lives, reduces acts of vengeance, and strengthens social cohesion. According to al-Sarakhsi (1421 AH), if the heir of the victim (walī al-dam) reconciles with the offender, the right of Qisas is extinguished and replaced with compensation (diyyah or other property), provided that the settlement is concluded with full consent. Likewise, Hanafi jurists consider settlement for more or less than the standard diyyah valid, on the condition that it does not involve uncertainty (gharar) or deception (al-Kasani, 1406 AH).

Thus, it is concluded that the concept of Qisas and Sulh in Islamic jurisprudence reflects Qisas as just retaliation and retribution for crime, whose legitimacy is explicitly affirmed in verse 178 of Sūrat al-Baqarah. At the same time, Islam also recognizes the possibility of pardon and reconciliation in the same verse:

«يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ ... فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبِعْ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ

بِإِخْسَانٍ» (al-Qur'ān, al-Baqarah: 178)

"O you who believe! Prescribed for you is retaliation in cases of murder ... But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude." In Islamic jurisprudence, Sulh in Qisas is thus recognized as a valid Shari'ah-based contract, which may be concluded either with consideration (financial compensation) or without it.

4- The Hanafi School's Perspective on Sulh in Qisas

1-4- Legitimacy of Sulh in Qisas in Hanafi Jurisprudence

Hanafi jurists, relying on verse 178 of Sūrat al-Baqarah, affirm the legitimacy of Sulh in Qisas. They hold that the right of retaliation belongs to the heir of the victim (walī al-dam), who may relinquish this right either gratuitously or in exchange for specified property (al-Sarakhsi, 1421 AH, Vol. 10, p. 165). Furthermore, the Prophet (peace be upon him) stated: «مَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ، إِمَّا أَنْ يُعْطَى الدِّيَّةُ، أَوْ يُقْتَلَ قَاتِلُهُ»

(al-Bukhārī, 1400 AH, ḥadīth no. 6891)

"Whoever has his relative killed has two options: either he is given the blood-money (diyyah), or the killer is executed."

The Hanafis consider this hadith as the basis for granting the heir of the victim the authority to choose pardon or reconciliation.

2-4- Types of Sulh in Qisas According to Hanafi Jurisprudence

The Hanafi school classifies Sulh in Qisas into two principal categories:

1-2-4- Gratuitous Settlement (Pardon without Compensation)

In this case, the heir of the victim waives the right of Qisas without receiving any compensation. This form of pardon is considered *mustahabb* (recommended) and results in the extinction of the right of retaliation. Hanafis believe that such pardon entails great divine reward and may serve as a means of reconciliation between disputing parties (al-Kasani, 1406 AH, Vol. 7, p. 267).

2-2-4- Compensated Settlement (Sulh with Consideration)

The heir of the victim may waive the right of Qisas in return for receiving *diyyah* or other property. Unlike certain other schools of jurisprudence, Hanafi law permits Sulh for more or less than the standard *diyyah*, provided that both parties consent and that no elements of usury (*ribā*) or uncertainty (*gharar*) are present (Ibn 'Abidin, 1412 AH, Vol. 5, p. 352).

3-4- Conditions for the Validity of Sulh in Qisas

Hanafi jurists have outlined several conditions for the validity of Sulh in Qisas, the most important of which are as follows:

Full consent of both the heir of the victim (*walī al-dam*) and the offender: no form of coercion or compulsion should be involved (al-Sarakhsi, 1421 AH, Vol. 10, p. 168).

Legal capacity of the parties: both the heir of the victim and the offender must be of sound mind and of legal age. In the case of a minor heir, pardon is not valid unless granted by the legal guardian in accordance with the best interests of the child (al-Kasani, 1406 AH, Vol. 7, p. 270).

Clarity of the subject matter of settlement: in compensated Sulh, the amount and type of consideration must be specified in order to prevent the invalidity of the transaction (Ibn 'Abidin, 1412 AH).

4-4- Jurisprudential Effects of Sulh in Qisas

In Hanafi jurisprudence, Sulh results in the extinction of the right of Qisas, and depending on the type of settlement, a financial right such as *diyyah* becomes established. A compensated Sulh (*ṣulḥ mu'āwaḍah*) is regarded as a binding contract (*'aqd lāzim*), and the parties may not revoke it thereafter (al-Sarakhsi, 1421 AH). Moreover, Sulh does not extinguish the *ḥudūd* (fixed punishments prescribed by Allah), except in cases where the right is private in nature and the heirs of the victim waive it. Hanafi jurists emphasize that Sulh must serve the purpose of removing hostility and preserving social order.

5- The Difference Between the Hanafi Perspective and Other Schools Regarding Sulh in Qisas

Islamic jurists unanimously agree on the legitimacy of Sulh in Qisas. However, differences exist among the schools of jurisprudence concerning the detailed rules and the scope of permissibility. Compared to other Sunni schools and the Ja'fari (Imamiyyah) school, Hanafi jurisprudence adopts a more moderate and expediency-oriented (*maṣlaḥah*-based) approach. Some of these differences are as follows:

1-5- Sulh for More or Less than the Prescribed Diyyah

Hanafi jurists hold that the *walī al-dam* may conclude Sulh for more or less than the prescribed *diyyah*, as the right of Qisas belongs exclusively to him, and he has discretion to settle it in any manner, provided there is mutual consent and no element of deception or *gharar* is involved (Ibn 'Abidin, 1412 AH, vol. 5, p. 351). In contrast, the Shafi'i and Ja'fari schools invalidate such a settlement, holding that Sulh is valid only for the full *diyyah* or less than it, while Sulh for more than the *diyyah* is regarded as a void transaction (al-Najafi, 1981, vol. 43, p. 78; al-Nawawi, 1405 AH, vol. 26, p. 180).

2-5- Binding Nature of Sulh

According to the Hanafis, a Sulh in which the wali al-dam renounces Qisas in return for property or diyyah is binding and irrevocable, and one cannot revert to Qisas thereafter (al-Kasani, 1406 AH, vol. 7, p. 270). In contrast, certain schools such as the Maliki school permit revocation of Sulh in specific cases, particularly if it is established that the wali al-dam was deceived or subjected to significant unfairness (ghubn fāḥish) (Ibn Rushd, 1995, vol. 2, p. 455).

3-5- The Role of the Judge in Approving Sulh

In Hanafi jurisprudence, judicial intervention is not a requirement for Sulh; reconciliation between the wali al-dam and the offender is valid upon mutual consent, unless a dispute arises regarding its validity (al-Sarakhsi, 1421 AH, vol. 10, p. 170). By contrast, some Hanbali jurists stipulate that Sulh must be concluded with the knowledge and supervision of the judge in order to prevent corruption or coercion (Ibn Qudāmah, 1405 AH, vol. 9, p. 371).

4-5- Sulh Involving a Minor Heir

Hanafi jurists maintain that the guardian of a minor heir has no right to settle for money or diyyah unless it is clearly in the best interest of the minor and with judicial approval (Ibn 'Ābidīn, 1412 AH). Similarly, this rule applies in Ja'fari jurisprudence. However, the Maliki school in certain cases allows the pardon granted by a minor's guardian even without compensation (Ibn Rushd, 1995).

5-5- Overall Comparison

In general, Hanafi jurisprudence adopts a more flexible approach towards Sulh in Qisas and recognizes broader discretion for the wali al-dam. Other schools, however, impose restrictions in order to prevent potential abuse, corruption, or infringement upon the rights of the offender or the heirs.

6- Sulh in Qisas in Contemporary Law

Over time, and with the transformation of legal systems in Islamic countries, many criminal codes—particularly in matters of Qisas—have been shaped under the influence of Islamic jurisprudence, especially the Hanafi school. Sulh in Qisas is not only recognized within Islamic jurisprudence but has also acquired a special status in contemporary law as a restorative and humanitarian mechanism.

1-6- Sulh in Qisas under Afghan Law

The Afghan legal system, considering the Hanafi school as the formal source of legislation (Article 130 of the Constitution), has formally recognized the institution of Sulh in Qisas. According to Article 576 of the Afghan Penal Code (2017), the wali al-dam may renounce his right to Qisas and reconcile with the offender. This reconciliation may be either gratuitous ('afw) or in exchange for compensation (payment of diyyah or another form of property).

Furthermore, Article 60 of the same Code stipulates that in case of reconciliation or pardon, criminal prosecution of the offender concerning Qisas shall be terminated. However, if the public aspect of the crime (ḥaqq al-'āmmah / public order) remains, the prosecutor may continue prosecution under the framework of ta'zīr. This approach reflects that Afghan law seeks to strike a balance between private rights and public interests (Ministry of Justice of Afghanistan, 2017).

2-6- Sulh in Other Islamic Legal Systems

In many Islamic countries—including Pakistan, Sudan, Saudi Arabia, and Iran—the institution of Sulh in crimes subject to Qisas is recognized. For example, in the Iranian Islamic Penal Code (2013), Article 429 explicitly provides that the wali al-dam may reconcile with the

offender and forgo Qisas, whether by accepting full diyyah, or more, or less than it (Iranian Islamic Penal Code, 2013).

This development demonstrates either the adoption of, or influence from, Hanafi jurisprudence in various countries, since many of these laws grant the wali al-dam broad discretion in determining the type and amount of compensation, consistent with the Hanafi position (al-Kasani, 1406 AH).

3-6- Sulh as a Mechanism of Restorative Justice

In contemporary legal discourse, particularly within the framework of Restorative Justice, emphasis is placed upon reconciliation, pardon, and the restoration of relationships between the victim and the offender. Many scholars of criminal law argue that Sulh in Qisas provides a foundation for the realization of humane justice and the reduction of penal violence (Yazdani, 2019). Accordingly, social welfare, rehabilitation of the offender, and the satisfaction of the heirs of the victim are considered as fundamental bases for Sulh in modern legal systems.

4-6- Challenges and Solutions

Contemporary law also faces challenges such as coercion in reconciliation, imposition of compensation beyond the offender's capacity, or misuse of the right to compromise. Hanafi jurisprudence addresses these concerns by requiring genuine consent, prohibiting coercion, and mandating fairness in reconciliation (al-Sarakhsi, 1421 AH).

Conclusion

The institution of Qisas in Islamic jurisprudence has been established with the primary objective of ensuring criminal justice and promoting social deterrence. Nevertheless, Islamic law, through the recognition of Sulh (reconciliation) and pardon as complementary mechanisms to Qisas, underscores the humanitarian and reformatory dimensions of penal sanctions. The legitimacy of Sulh is expressly affirmed in Qur'an 2:178 and corroborated by various Prophetic traditions, thereby reflecting the dual emphasis on justice and mercy within Islamic criminal law.

Within this framework, the Hanafi school adopts a pragmatic and interest-oriented approach, considering Sulh not only lawful but, in certain circumstances, recommended (mustahabb). This school validates both gratuitous reconciliation and reconciliation with compensation, permitting the wali al-dam to relinquish the right of Qisas in exchange for more or less than the prescribed diyyah, provided mutual consent is achieved. Such flexibility distinguishes Hanafi jurisprudence from the Shafi'i and Imami schools, which impose stricter limitations on compensation. Consequently, the Hanafi position significantly expands the discretionary authority of the victim's heirs while promoting reconciliation as a means of social harmony.

In contemporary legal systems, particularly those influenced by Hanafi jurisprudence such as Afghanistan and Pakistan, the institution of Sulh has been formally incorporated into codified criminal law. It serves as a restorative and humanitarian alternative to Qisas, reducing the likelihood of retaliatory violence and fostering reconciliation. Moreover, this framework aligns closely with modern theories of Restorative Justice, which prioritize offender rehabilitation, victim satisfaction, and the restoration of social cohesion.

In conclusion, the operationalization of Sulh in Qisas not only safeguards the rights of the victim's heirs but also reinforces social stability and prevents discord in accordance with the wisdom of Islamic law. Nevertheless, effective implementation requires clear legal standards, judicial supervision, and safeguards against coercion or exploitation to ensure that Sulh fulfills its intended role as an instrument of justice, mercy, and social order.

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