



THE SCOPE AND LIMITATIONS OF EXECUTING QISAS (RETALIATION) OF BODY PARTS IN CONJOINED TWINS BASED ON ISLAMIC JURISPRUDENCE AND HUMAN RIGHTS STANDARDS

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ABSTRACT:

Conjoined twins, as a rare biological phenomenon, pose unique challenges in the interpretation and execution of criminal rulings within Islamic jurisprudence. The execution of qisas (retaliation), especially when shared organs between twins are involved, necessitates a thorough examination of jurisprudential principles, ethical considerations, and human rights standards. This article aims to evaluate the scope and limitations of executing qisas of body parts in conjoined twins based on Islamic jurisprudence and human rights principles. From the perspective of Islamic jurisprudence, the principle of justice in qisas requires that the punishment be proportional to the harm inflicted. However, in the case of conjoined twins, complex questions arise, such as determining ownership of shared organs, assessing the impact of qisas on the lives of both individuals, and delineating criminal responsibility. Using a descriptive-analytical method, this study critically examines the scope and limitations of implementing qisas on conjoined twins within the framework of Islamic jurisprudence and human rights standards. If vital organs such as the heart or brain are shared between the twins, distinguishing their legal personalities becomes challenging, and in many cases, the traditional execution of qisas may be impossible. In contrast, if the critical organs and biological systems of each individual are independent, qisas could be implemented with adherence to the principles of justice. Furthermore, human rights standards emphasize that the dignity and rights of both conjoined individuals, particularly the innocent twin, should not be overlooked in the process of qisas. Islamic law, while emphasizing justice, also considers principles such as compassion and the protection of the innocent. Thus, in certain cases, alternatives such as diya (blood money) or other mechanisms may be proposed as more humane and equitable solutions. This research concludes that addressing the complexities related to conjoined twins requires more comprehensive ijtihad within Islamic jurisprudence to ensure that both justice and human

rights are upheld. This topic remains a fertile ground for further investigation within Islamic jurisprudence and contemporary law.

Keywords: Qisas of body parts, Conjoined twins, Islamic jurisprudence, Human rights

INTRODUCTION:

The execution of *qisas* (retaliation) has always been regarded as a fundamental principle of criminal justice within Islamic jurisprudence, playing a crucial role in fulfilling justice and ensuring social security. However, unique circumstances such as conjoined twins bring forth new jurisprudential, legal, and ethical challenges in the implementation of this punishment. The legitimacy of *qisas* in Islam is established upon individual responsibility and proportionality between crime and punishment. Yet, in cases involving the physical and biological complexities of conjoined twins, where punishing one individual may lead to unintended consequences for the innocent twin, there arises an urgent need to reassess the method of execution for this ruling. The significance of addressing such issues, particularly in defining the legal and ethical boundaries, becomes increasingly apparent. The importance of this matter extends beyond jurisprudential debate and encompasses human rights dimensions as well. On the one hand, Islam emphasizes the right to life and human dignity, while on the other hand, contemporary human rights standards strongly oppose punishments that may inadvertently affect innocent individuals. This intersection between Islamic jurisprudence and human rights has turned the issue into a significant challenge for jurists, legal experts, and policymakers, necessitating thorough and comprehensive evaluations.

The primary aim of this research is to delineate the scope and limitations of implementing *qisas* of body parts in conjoined twins, taking into account the principles of Islamic Shari'a and human rights standards. This study endeavors to provide the necessary legal and ethical criteria for delivering a comprehensive response that not only addresses the demands of Islamic criminal justice but also aligns with the requirements of human dignity under human rights law. The methodology of this paper relies on a comparative analytical approach. First, key concepts such as *qisas*, individual responsibility, and intention in Islamic jurisprudence are examined. These concepts are then analyzed within the framework of human rights to evaluate potential challenges and conflicts. Subsequently, potential trends that offer practical and interdisciplinary solutions to this issue will be explored. This research seeks to integrate perspectives from Islamic jurisprudence and human rights to propose responsive strategies for similar cases.

Thus, the present article represents an effort to open new horizons in connecting Islamic jurisprudence and human rights while offering equitable and humane solutions to address intricate circumstances, such as cases involving conjoined twins.

1. CONCEPTUALIZATION AND THEORETICAL FRAMEWORK

1.1. Definition of Qisas in Islamic Jurisprudence

In Islamic jurisprudence, **qisas** (retaliation) refers to “equitable punishment” and serves as one of the fundamental principles of criminal justice, grounded on the concept of retribution. Linguistically, the term derives from the Arabic root “qassa” (قَصَّ), meaning “to follow or to seek justice” (Tabatabai, 1996: 656). In Islamic legal terminology, it signifies a punishment that is precisely proportional to the nature and severity of the committed crime. Qisas primarily applies to cases of intentional murder and bodily harm, aiming to enforce justice and prevent violations against others' rights (Mughniyah, 2001: 306).

Qisas is divided into two main categories:

1. **Qisas for life (Qisas al-Nafs):** Relates to intentional homicide, where the perpetrator's life may be taken as retribution for the victim's life.
2. **Qisas for body parts (Qisas al-Udhu):** Pertains to bodily harm and injuries, where a corresponding body part of the offender is punished in proportion to the committed crime.

While Islamic jurisprudence emphasizes justice in qisas, it is constrained by specific principles such as the precise conditions for its application, the intention of the offender, proportionality between crime and punishment, and the consent of the victim's legal heir (*wali ad-dam*). The Qur'an emphasizes this principle in several verses, including **Surah Al-Baqarah, Verse 178**: "*O you who have believed, prescribed for you is legal retribution for those murdered...*" (Quran 2:178). This verse highlights qisas as a mechanism for promoting social security and justice. Moreover, the sayings of Prophet Muhammad (PBUH) and the works of Islamic jurists affirm the pivotal role of qisas in Islamic criminal justice.

Islamic scholars assert that qisas is not merely a punitive measure but also aims to safeguard human rights, deter criminal behaviors, and promote social justice. Simultaneously, Islamic jurisprudence gives consideration to moral values such as mercy (*rahma*) and forgiveness. The *wali ad-dam* (the victim's legal heir) is given the right to forgo qisas by accepting blood money (*diyya*) or offering pardon (Allama al-Hilli, 1980: 379).

Thus, qisas in Islamic jurisprudence operates within a framework that harmonizes the requirements of criminal justice with moral and social principles. Its foundations are deeply rooted in the Qur'an, the sayings of the Prophet (PBUH), and the works of leading Islamic jurists.

1.2. The Nature of Conjoined Twins from Medical and Legal Perspectives

Conjoined twins represent a rare form of twinning, wherein two embryos are physically connected due to irregularities in normal development. This phenomenon occurs when a fertilized egg (monozygotic) fails to completely divide between the 13th and 15th day after conception or when two embryos accidentally fuse during their growth process. Conjoined twins are typically mono-gender with identical genetic structures. Such cases are rare, occurring in approximately one in every 50,000 to 200,000 live births, with the majority observed among female twins (Ahmadian, 2016: 44).

From a medical standpoint, the connection between twins can occur in various body regions, such as the abdomen (*Omphalopagus*), chest (*Thoracopagus*), or head (*Craniopagus*). This diversity in attachments results in some twins sharing vital organs (e.g., the heart or liver), directly impacting their survival rate and the possibility of surgical separation. Diagnostic technologies such as ultrasound or MRI are often employed in the early stages of pregnancy to identify these conditions. Decisions regarding the separability of conjoined twins largely depend on the type of connection and a comprehensive assessment of the risks associated with surgery (Kaufman, MH, 2004: 169).

From a legal perspective, the condition of conjoined twins raises intricate and ethical dilemmas, including the provision of medical care, decisions regarding separation surgery, and determining the rights and responsibilities of each twin. Shared vital organs complicate medical interventions (such as surgical separation), requiring consultations between family members, medical teams, and, in some cases, medical ethics committees. Furthermore, obtaining informed consent and safeguarding the right to life of each twin are among the most sensitive issues in such cases. Legal considerations in these situations are often guided by ethical regulations aimed at preserving human dignity and ensuring fairness (Ahmadian, 2016: 46).

In conclusion, conjoined twins represent a complex phenomenon from both medical and legal perspectives, necessitating the integration of scientific knowledge alongside ethical and legal considerations in decision-making processes.

1.3. Human Rights Concepts Related to the Right to Life and Human Dignity

The right to life and human dignity are fundamental principles of human rights emphasized in international documents and various legal schools of thought. The right to life, as the most basic human right, is explicitly stated in Article 3 of the Universal Declaration of Human Rights (1948): “Everyone has the right to life, liberty, and personal security.” This right applies to all individuals regardless of gender, race, religion, or other characteristics. It is further reinforced in Article 6 of the International Covenant on Civil and Political Rights (1966), which asserts that this right is inherent to human beings and that no one shall be arbitrarily deprived of their life.

Human dignity, alongside the right to life, forms the foundation of human rights. This concept affirms that every individual, regardless of their social status, physical condition, or mental state, deserves respect and access to equal rights. In the Preamble of the Universal Declaration of Human Rights, human dignity is described as “the foundation of freedom, justice, and peace in the world.” According to Article 1 of this declaration: “All human beings are born free and equal in dignity and rights.”

In addition to international documents, legal scholars have extensively discussed these concepts. For instance, some researchers argue that the right to life is a natural right and plays a critical role in guiding the ethical framework of societies (Kelsen, 2015: 160-165). Ultimately, the right to life and human dignity hold a significant position in both international law and domestic legal systems, and they are recognized as inviolable principles ensuring social justice and the protection of humanity.

2. PRINCIPLES OF ISLAMIC JURISPRUDENCE REGARDING THE EXECUTION OF QISAS

2.1. Principles of Individual Responsibility in Islamic Jurisprudence

In Islamic jurisprudence, the principles of individual responsibility are based on the freedom of choice, awareness of the consequences of one’s actions, and the ability to distinguish between good and evil. Every individual is held accountable for their decisions and behavior based on their intention and free will; in other words, “Actions are judged by intentions.” This principle is affirmed not only in religious foundations but also in the conceptualization of moral and legal responsibility, underscoring that individuals are answerable for their actions.

According to jurisprudential perspectives, individual responsibility comprises three fundamental elements: free choice, awareness of consequences, and the ability to discern right from wrong. A person is held fully accountable for their actions only when the decision to act is made voluntarily and without coercion. In cases where coercion, diminished intellectual capacity, or emergency situations exist, the degree of responsibility is reduced and adjusted within jurisprudential frameworks. This concept plays a significant role in the interpretation of criminal justice within Islamic thought.

Seyyed Hossein Nasr states that individual responsibility must be assessed within the framework of free will and conscious intention. He emphasizes that full accountability is established only when a person is fully aware of the consequences of their actions and makes decisions without external compulsion (Nasr, 2011: 78). Conversely, in circumstances where external factors influence an individual’s decisions or when sufficient knowledge is lacking,

their accountability is proportionally diminished. This demonstrates Islamic jurisprudence's emphasis on justice and the preservation of human dignity.

Therefore, the principles of individual responsibility in Islamic jurisprudence are structured to ensure criminal and social justice by emphasizing freedom of choice and awareness of consequences. These principles provide a detailed framework for analyzing human behavior and ensure that, in cases of criminal activity, only those who acted freely and knowingly are held fully accountable for their actions. Meanwhile, instances involving coercion or emergency circumstances are treated with flexibility and adjustments to uphold fairness.

2.2. The Role of Intention in Determining Punishment

Intention stands as one of the pivotal elements in determining punishment within Islamic jurisprudence, holding significant importance. In the Islamic system, actions are not judged solely by their physical manifestations; instead, the intention behind the action determines the degree of individual responsibility and consequently the severity of the punishment. The well-known hadith, "Actions are judged by intentions," reinforces this principle and highlights the necessity of examining the intention behind an action. In other words, although an act may appear criminal in its material form, the absence of malicious intent could mitigate or even eliminate the individual's criminal responsibility altogether.

In this light, contemporary Islamic jurists emphasize the need for a precise assessment of intention in determining punishment. Intention, as the driving force and defining element of an act, must be carefully considered in interpreting and implementing criminal rulings. From an Islamic perspective, the distinction between the material and spiritual aspects of a crime underscores the importance of scrutinizing the motive of the individual. Justice in criminal rulings can only be achieved when the intention behind the act is properly evaluated. This principle proves especially critical in cases where the practical consequences of an act may harm an individual or society. Without a harmful intention, even if an act results in observable damage, the individual cannot be punished to the same degree (Nasr, 2011: 95). Nasr emphasizes that assessing intention should serve as a criterion for determining the severity of punishment to ensure the proper administration of justice.

Thus, accurately identifying the intention of the perpetrator not only guarantees the correct implementation of Islamic rulings but also balances the preservation of human dignity with the realization of criminal justice. This approach paves the way for developing fair legal and criminal systems within the framework of Islamic jurisprudence, wherein human actions are evaluated based on either pure or harmful intentions, and punishments are proportionately assigned.

2.3. Religious Limitations in Executing Qisas While Upholding Justice

In Islamic jurisprudence, *qisas* (retaliation) is emphasized as a punishment based on justice and balance among penal measures. However, the implementation of this ruling is not only subject to Islamic legal principles but also requires careful adherence to preserving human dignity and preventing unnecessary harm. One of the key religious limitations is the principle of "*La Darar wa La Dirar*" ("No harm and no reciprocation of harm"), which underscores that any punishment must minimize harm to the victim or society and avoid infringing upon human dignity. This principle highlights that the enforcement of *qisas* should not be considered merely as an act of revenge but as a measure for deterrence and compensation, while simultaneously preventing injustice.

Moreover, from the perspective of Islamic jurisprudence, *qisas* is deemed necessary only when the crime is conclusively proven and the conditions for its execution are fully met. In cases where there is doubt regarding the proof of the crime or the perpetrator acted under circumstances such as coercion or a lack of awareness of the consequences, Islamic jurists often

prefer alternative punishments such as *diya* (blood money) instead of *qisas*. This approach ensures the preservation of criminal justice and prevents irreversible harm within the framework of Islamic legal systems.

The execution of *qisas* must be regulated according to established religious limitations to ensure that, in addition to its deterrent effects, human dignity is preserved and additional damages are avoided. Nasr emphasizes that justice in Islamic jurisprudence requires a careful assessment of the circumstances surrounding each crime and aligning the punishment with the degree and nature of the harm inflicted (Nasr, 2011: 112). Therefore, adhering to these religious limitations in enforcing *qisas* creates a balance between implementing criminal justice and safeguarding human rights in society.

3. CHALLENGES AND COMPLEXITIES OF EXECUTING QISAS IN CONJOINED TWINS

3.1. Determining Independent or Shared Identity of the Twins

Establishing the independent or shared identity of conjoined twins is one of the most intricate issues in the fields of forensic medicine, law, and ethics, posing numerous theoretical and practical challenges. On the one hand, individual identity is recognized as an independent entity that carries legal and ethical rights and responsibilities. On the other hand, in exceptional cases such as conjoined twins, determining the level of independence—whether physical, psychological, or functional—leads to significant ambiguity. In this context, adopting multidisciplinary approaches is essential to thoroughly address various dimensions of the issue.

Forensic experts, utilizing modern imaging technologies and advanced diagnostic methods, aim to assess the structural and neurological dependency of the twins. These evaluations determine whether the twins function independently or are considered as sharing a single identity. Such analyses provide the basis for legal decisions regarding individual responsibility, execution of criminal penalties, and even equitable division of rights in matters such as inheritance and other legal disputes.

From the perspective of criminal law and Islamic jurisprudence, determining whether the twins possess independent or shared identities directly impacts how punishments are applied. Only when each individual is distinctly identified as an independent entity can punishments be assigned proportionate to their responsibility. Assuming a “shared identity” in general terms may lead to injustice and the violation of human dignity.

According to presented theories, a multidimensional approach is vital for determining the identity of conjoined twins. This approach, by simultaneously evaluating medical, psychological, and legal dimensions, ensures fairness and equity in legal decision-making. Furthermore, it not only resolves existing ambiguities but also provides a foundation for formulating equitable legal policies to address such complex cases. (Ahmadi, 2016: 145)

3.2. Reciprocal Physical and Psychological Effects of Implementing Punishment

The implementation of a punishment, particularly in severe cases such as *qisas* (retaliation), entails profound physical and psychological consequences. From a physical perspective, carrying out such sentences can cause serious and irreversible harm to the bodily structure of the individual. For instance, in cases of *qisas* involving body parts, the permanent destruction or loss of normal functioning of certain organs is observed, resulting in both physical damage and a significant psychological burden. These physical harms, due to their close association with human dignity, have always been a subject of debate and scrutiny in the field of Islamic criminal law.

On the other hand, the psychological effects of implementing punishments have substantial negative impacts not only on the convicted individual but also on their family. Feelings of guilt, anxiety, depression, and difficulties in integrating into society are among the reported psychological consequences that can significantly reduce the individual's social and mental well-being. These effects, in addition to directly influencing the individual's mental state, may indirectly affect other aspects of their life such as familial and social relationships.

Some scholars in the fields of Islamic criminal law and forensic psychology argue that during the process of issuing and executing sentences, special attention must be given to the reciprocal physical and psychological dimensions to ensure that criminal justice aligns with the preservation of human dignity. For example, Mir-Mohammad Sadeghi, in his book *Islamic Criminal Law*, states that "The execution of a sentence must strike a balance between delivering justice for the victim and ensuring the physical and psychological well-being of the perpetrator" (Mir-Mohammad Sadeghi, 2008: 163). He emphasizes the importance of developing regulatory frameworks and employing scientific methods to assess reciprocal effects in order to prevent unlawful harm.

In conclusion, a comprehensive examination of the physical and psychological impacts of implementing punishment from legal and humanistic perspectives is essential. Relying on principles of justice and human dignity, sentencing policies must be structured to ensure both deterrence and the preservation of human values in the most effective manner possible.

3.3. The Risk of Harm to Innocent Individuals in Punishment Execution

The execution of punishments, particularly within the framework of Islamic criminal law, carries profound physical and psychological effects on the convicted individual, as well as their family and society. From a physical perspective, punishments such as *qisas* (retaliation) may result in severe and irreversible harm to the convicted individual's body. For instance, permanent injuries or the loss of functionality of certain body parts not only impose significant physical suffering but also lead to long-term psychological consequences. Such physical damages often act as catalysts for psychological disorders like anxiety, depression, and post-traumatic stress disorder (PTSD).

Additionally, the psychological effects of executing punishments can extend beyond the individual to influence their social interactions and family relationships. Punishment can serve as a source of humiliation, damaging the individual's dignity and self-esteem, while fostering guilt and even social isolation. These psychological impacts may further ripple outward, affecting family members and the broader community, as the experience of punishment can generate feelings of injustice and mistrust in the judicial system.

Given such ramifications, it is essential that the execution of punishments occurs within a framework that ensures fairness and humanity, minimizing unnecessary physical and psychological harm (Mir-Mohammad Sadeghi, 2008: 163). Preserving human dignity requires judicial systems to consider not just the retributive and deterrent goals of punishment but also the psychological rehabilitation and well-being of the individual.

This comprehensive approach necessitates thorough medical and psychological assessments during sentencing to ensure that the imposed punishment aligns with the principles of criminal justice and human rights protection. By incorporating these measures, judicial systems can strike a delicate balance between achieving justice and safeguarding the rights and dignity of all involved.

4. ALIGNING PRINCIPLES OF ISLAMIC JURISPRUDENCE WITH HUMAN RIGHTS STANDARDS

4.1. The Sanctity of Life in Islamic Law and Human Rights

The sanctity of life is a fundamental concept emphasized in both Islamic jurisprudence and human rights frameworks. In Islamic law, life is regarded as a divine blessing that God has bestowed upon humanity, and its preservation is considered a mandatory duty. The Quran, in Surah Al-Ma'idah (5:32), states: "Whoever kills a soul unless for a soul [justice in retaliation] or for corruption [done] in the land – it is as if he had slain mankind entirely." This verse underscores the profound importance of human life in Islam. Moreover, safeguarding life is one of the higher objectives of Sharia (Maqasid al-Sharia), emphasizing the unyielding duty to protect human lives.

On the other hand, in the international human rights system, the right to life is recognized as the most fundamental human right and serves as the foundation for all other rights. The Universal Declaration of Human Rights (UDHR) explicitly states in Article 3: "Everyone has the right to life, liberty and security of person." This right is regarded as inalienable and fundamental, with any violation of it being deemed unacceptable in principle.

While both frameworks share an emphasis on the sanctity of life, there are differences in their foundational perspectives. In international human rights law, the right to life is conceptualized as intrinsic and inalienable, not granted by any authority. In contrast, in Islamic jurisprudence, the right to life is viewed as a divine gift that can only be revoked with religious or legal justification. Essentially, in Islam, human life is regarded as a trust (Amanah) from God, and believers are duty-bound to preserve it, except in specific cases where Sharia provides explicit permission for its revocation, such as in cases of intentional murder (Azimi-Moeid, 2018: 37).

These differing theoretical foundations can lead to conceptual challenges in interpreting and implementing the right to life. For instance, in international human rights law, capital punishment is considered a violation of the right to life, whereas in Islamic jurisprudence, capital punishment is permissible in certain cases, such as deliberate murder, as part of the framework of *qisas* (retaliation). Thus, a proper understanding of the theoretical bases of each system is critical to interpreting and implementing the right to life in a manner that respects the nuances of both frameworks.

4.2. The Principle of Non-Discriminatory Punishment in Human Rights

The principle of non-discriminatory punishment is one of the fundamental tenets of human rights, emphasizing the prohibition of bias in the determination and execution of punishments. This principle ensures that no individual is subjected to discrimination based on characteristics such as race, gender, religion, language, nationality, or political beliefs.

This principle is clearly enshrined in international human rights instruments. For instance, Article 2 of the Universal Declaration of Human Rights (1948) states that everyone is entitled to all the rights and freedoms set forth in the Declaration, without any distinction. Similarly, Article 2 of the International Covenant on Civil and Political Rights (1966) obligates state parties to guarantee the rights recognized in the Covenant without any discrimination.

National legal systems also uphold this principle prominently. For example, Article 19 of the Constitution of the Islamic Republic of Iran emphasizes that all individuals in Iran, regardless of their race, tribe, or ethnicity, enjoy equal rights, and factors such as color, race, or language shall not constitute grounds for privilege. Additionally, in the realm of international labor rights, Convention No. 111 of the International Labour Organization (1958) addresses the prohibition of discrimination in employment and occupation, reinforcing the need for equality in labor practices.

However, certain legal systems may have laws or practices that indirectly result in discriminatory punishments. For instance, in some countries, different penalties are imposed for similar crimes based on the gender or religion of the perpetrator, potentially violating the principle of non-discriminatory punishment. Therefore, to achieve criminal justice and uphold human dignity, it is vital for national and international legal systems to continually review and revise their laws and practices to ensure the absence of any form of discrimination in the determination and execution of punishments.

4.3. The Role of Restorative Justice in Islam and Human Rights

Restorative justice is an approach within legal systems aimed at addressing the harm caused by criminal acts through inclusive and participatory processes that involve all parties, including the victim, the offender, and the community. This model of justice emphasizes not punishment and retribution but rather the restoration of relationships and the rebuilding of social harmony. Islamic teachings align closely with these principles, emphasizing forgiveness, reconciliation, and the repair of social bonds.

In Islam, the principle of justice is not solely about punishing offenders but is also seen as a tool for healing the harmed individuals and minimizing the adverse effects of crime on society. The Quran and Hadith highlight the values of forgiveness and peace. For example, the Quran states: *“But if you pardon and overlook and forgive, then indeed, Allah is Forgiving and Merciful”* (Surah An-Nur, 24:22). This verse underscores the importance of forgiveness and reconciliation between individuals, which are foundational aspects of restorative justice.

Restorative justice also finds strong alignment with human rights principles. Islamic teachings emphasize the protection of human dignity and the rights of all individuals, proposing a judicial system that prioritizes repair and reform over punishment. These principles correspond to modern human rights frameworks, which stress the importance of both victims’ and offenders’ rights. Restorative justice creates opportunities for dialogue and interaction between involved parties, fostering mutual understanding and respect (Susan C. Hascall, 2011: 38).

The application of restorative justice in an Islamic context can provide alternative pathways for resolving disputes. These pathways stress truth-telling, accountability, and shared understanding, which are crucial for diagnosing the root causes of problems and addressing them. This approach not only aims to reform the offender’s behavior but also prioritizes the psychological and emotional well-being of victims while recognizing their rights and strengthening social relationships.

In conclusion, restorative justice within Islam provides a framework that is deeply aligned with human rights principles. Its focus on restoration rather than retribution helps achieve a more humane and compassionate response to wrongdoing, fostering reconciliation and social empathy. This model embodies fundamental Islamic values such as mercy, kindness, and human dignity, demonstrating how restorative justice can contribute to contemporary discussions on justice and human rights.

5. RECOMMENDATIONS FOR RESOLVING

Recommendations for Resolving Conflicts Between Islamic Jurisprudence and Human Rights Standards

5.1. Revisiting Traditional Approaches to Qisas (Retaliation)

In Islamic jurisprudence, the principles of *qisas* (retaliation) have been consistently emphasized as tools for ensuring justice and deterring crimes. However, with the rise of social transformations and shifts in human rights perspectives in recent decades, the necessity of revisiting traditional approaches to *qisas* has become increasingly evident. Modern approaches

aim to preserve the core values of justice while reforming the excessive harshness and implementation gaps present in traditional systems. Some scholars argue that reinterpreting religious texts through the lens of contemporary moral and ethical principles can create a balance between upholding tradition and aligning with human rights standards.

In this regard, attention to historical records and jurisprudential evidence, combined with legal and social analyses, is considered essential. Theoretical frameworks suggest that reforming judicial systems and employing innovative mechanisms of *ijtihad* (independent reasoning) can pave the way for achieving genuine justice. Furthermore, the formulation of comparative laws that integrate legal provisions to protect the rights of both defendants and victims has become a major focus in this discourse.

Revisiting the principles of *qisas* could effectively foster social justice by creating a precise balance between traditional narratives and modern needs. Recent studies indicate that the implementation of *qisas* in certain countries has faced numerous challenges and restrictions, making the reform of approaches inevitable (Tabatabai, 2016: 156).

These approaches include revisiting the interpretation of legal rulings, applying analogical reasoning (*qiyas*) and *ijtihad*, and fostering constructive dialogue between legal and religious experts. By adopting such methods, the fundamental values of Islamic jurisprudence can be preserved while enabling alignment with human rights standards and international regulations. Thus, through modern and flexible approaches to the interpretation of *qisas* principles, social justice can be improved, and practical challenges within this system can be fully addressed.

5.2. Collaboration Between Islamic Jurists and Legal Experts for Practical Solutions

In the modern era, collaboration between Islamic jurists (*fuqaha*) and legal experts has gained special significance as a cornerstone for finding practical solutions within legal and religious systems. This cooperation, aimed at building bridges between religious principles and human rights frameworks, provides a foundation for formulating modern, flexible, and applicable policies. On the one hand, *fuqaha*, with their deep knowledge of Islamic jurisprudence and interpretation of religious texts, offer perspectives grounded in ethical and spiritual values. On the other hand, legal experts, utilizing contemporary legal concepts and experiences from international judicial systems, propose solutions that address societal needs within the framework of justice and fairness.

This interaction between jurists and legal professionals presents a valuable opportunity to thoroughly examine the challenges facing legal systems and allows for the development of innovative approaches rooted in multidimensional analyses. Hosting joint conferences, seminars, and specialized workshops can provide a platform for the exchange of academic and practical insights, leveraging successful experiences from both fields. Furthermore, drafting regulations that reflect both religious obligations and human rights values could mitigate conflicts and enhance social justice.

Employing modern analytical methods, such as *qiyas* (analogical reasoning) and collective *ijtihad* (independent reasoning), alongside the integration of diverse perspectives, offers solutions that effectively preserve religious identity while addressing the modern needs of society. This new intellectual framework paves the way for fundamental transformations in both legal and religious systems and promotes constructive dialogue and unity across different sectors of society (Moradi, 2019: 122).

In summary, constructive collaboration between *fuqaha* and legal experts can lead to the development of new legal frameworks and improve the performance of judicial systems. Such cooperation, by fostering mutual understanding and exchanging academic and practical experiences, helps resolve existing contradictions and establish a balance between religious values and human rights. Creating specialized networks and encouraging joint research are

among the recommended strategies in today's society.

CONCLUSION

Examining the issue of executing *qisas* (retaliation) of body parts in conjoined twins, with an emphasis on the principles of Islamic jurisprudence and human rights standards, reveals numerous complexities and challenges in this area. On one hand, Islamic jurisprudence emphasizes the principles of individual responsibility, justice in the execution of rulings, and adherence to ethical and religious limitations. On the other hand, human rights standards, advocating for respect for human dignity and the prohibition of discriminatory behaviors, provide a broader perspective on legal issues that require a reassessment and adaptation of traditional principles. Within the framework of Islamic jurisprudence, the issue of the identity and individuality of conjoined twins plays a crucial role in determining criminal responsibility and the feasibility of executing *qisas*. The principle of individual responsibility underscores that punishment should not harm the body or life of an innocent individual. However, the unique nature of conjoined twins and their physical and psychological connection challenges this principle and makes decision-making regarding the execution of the ruling extremely difficult. Human rights standards also emphasize the sanctity of life and the necessity of maintaining fairness and human dignity in any judicial process. The principle of prohibiting discriminatory punishment and the need to adopt restorative and empathetic approaches create a common ground with the values of justice in Islamic law. From this perspective, any decision regarding cases involving conjoined twins requires attention to the reciprocal physical and psychological consequences of executing the ruling, holding tremendous significance.

The general conclusion of this research emphasizes that dealing with such cases requires close collaboration between jurists, medical professionals, and legal experts. Reevaluating traditional principles of *qisas* to adapt to specific circumstances and human rights frameworks offers a practical solution for resolving conflicts between Islamic jurisprudence and international legal frameworks. It is also suggested that the principles of restorative justice be considered as an alternative approach—one that preserves the values of Islamic law while being compatible with human rights standards.

Therefore, the development of clear and flexible legal guidelines for addressing such cases, along with leveraging experiences from similar cases in both Islamic and international judicial systems, can be an effective step towards achieving justice and reducing legal conflicts.

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