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The Qasama Regulation of Islam

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ABSTRACT

Islam is a complete code of life, repellent of darkness, and a terminator of rituals. Islam is a religion of safeness, there are goods of peace and safeness within Islam for all humanity. Allah Ta'ala created humans, and made human needs with him, due to which he feels hunger and thirst, cold and heat, health and illness are necessary with him. Desires are also attached to it, due to which sometimes a person commits sins. So just as they have created means and means to protect against cold and heat to quench hunger and thirst, in the same way, they have set various limits and rules of punishment to protect against sins and disobedience. One of them is the "Doctrine of Qasama". The relevant article discusses in detail the importance, definition, rulings, and procedures of this Code of Islam.

Keywords: Clue, Islam, Qasama, Oath, etc.

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INTRODUCTION

Out of more than 18,000 creatures, human beings and jinn (إنسان وجنات) are the special creatures who have feelings of hunger, thirst, cold, and heat as well as desires. Due to this this honorable person sometimes commits crimes. That is why Allah Almighty has established the law of Hudood and punishments (حدود وتجزيرات) for the prevention of these crimes and the purity and cleanliness of this honorable creature. So even if this person becomes a victim of any crime or disobedience by being overwhelmed by desires or by being deceived by the devil, then with the implementation of these limits, it becomes a means of purification.

Therefore, the method of Qasama (قسامة) is also one of the rules by which they try to establish peace and order in the society by making the whole area responsible. If someone commits a crime due to their carelessness, as a result of Qasama, it is made possible to compensate the local people by applying Diyat (ديت) to a sufficient extent.

DEFINITION OF QASAMA

Literally (According to the dictionary): Qasama means beauty, loveliness, etc. As the meaning of (القسيمة، المرأة الصالحة) which means beautiful woman.¹

In the same way Qasama (with the Zabar of Qaaf), it means Oath.

الْقَسَامَةُ، بِالْفَتْحِ، الْيَمِينُ كَالْقَسَمِ - 2 فَالْقَسَامَةُ فِي اللُّغَةِ: تَسْتَعْمَلُ بِمَعْنَى
الْوَسَامَةِ، وَهُوَ الْحَسَنُ وَالْجَمَالُ، يُقَالُ: فُلَانٌ قَسِيمٌ أَيْ حَسَنٌ جَمِيلٌ،
وَفِي صِفَاتِ النَّبِيِّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَسِيمٌ، وَتَسْتَعْمَلُ بِمَعْنَى
الْقَسَمِ، وَهُوَ الْيَمِينُ - 3

In the term of Sharia: There are many types of definitions quoted from the jurists.

Therefore, **according to the Hanafi school of thought;** Qasama means that in the village or town where the murdered person is found, then fifty people of that area should swear in the name of Allah that we did not kill him and we do not know the killer.

"وَإِذَا وَجَدَ الرَّجُلُ قَتِيلًا فِي مَحَلَّةٍ قَوْمٍ فَعَلَيْهِمْ أَنْ يَقْسَمَ مِنْهُمْ خَمْسُونَ
رَجُلًا بِاللَّهِ مَا قَتَلْنَا وَلَا عَلِمْنَا قَاتِلًا" - 4

It can also be described as Swearing for a specific reason, with a specific number, on a specific person, in a specific manner.⁵

In the Maliki school of thought; Qasama refers to swearing fifty oaths or certain oaths to prove blood.

الْقَسَامَةُ حَلْفُ خَمْسِينَ يَمِينًا أَوْ جُزْأَهَا عَلَى إِبْتِثَاتِ الدِّمِ -⁶

According to Shafi'i jurisprudence; Qasama means Saints are types distributed on blood.

هِيَ الْإِيمَانُ فِي الدِّمَاءِ -⁷

According to the Hanbali school of thought; Qasama means repeated oaths given in an alleged murder.

وَالْمُرَادُ بِالْقَسَامَةِ هَاهُنَا الْإِيمَانُ الْمُكَرَّرُ فِي دَعْوَى الْقَتْلِ -⁸

JURISPRUDENTIAL OPINIONS ABOUT METHOD OF QASAMA

According to Hanafi jurisprudence;

an oath will be taken to the residents of the Area in which the deceased is found, (to the Respondents).

وَوُجُوبُ الْقَسَامَةِ وَالِدِيَّةٍ عَلَى أَهْلِ الْمَحَلَّةِ مَذْهَبُ عُلَمَائِنَا -⁹

Argument (from Quran & Sunah);

There are famous hadiths in this matter, one of which is the narration of Sahl bin Hathmah (RA), (may Allah be pleased with him), that Abdullah bin Sahl (RA), Abdurrahman bin Sahl (RA), Huwaisah (RA) and Mahisah (RA) went to Khyber in the matter of trade, then they went to Khyber in the matter of their work. Separated from others. After some time, they found Abdullah bin Sahl dead in an old well in Khyber, he was covered in blood. So those people came to Medina to tell the Messenger of Allah (PBUH) about that. Abdurrahman, the brother of the deceased, who was the youngest among them, wanted to speak, so the Messenger of Allah, (peace be upon him), said, "Let the elder speak." He told the Prophet (peace be upon him) about this incident, and then the Messenger of Allah (peace be upon him) asked; Who killed him? So they said who could kill him except the Jews? Then the Messenger of Allah, (peace be upon him), said, "Should the Jews be acquitted by taking fifty oaths?" On this, they said that we are not willing to accept the oaths of the infidels who do not care to swear on anything. So the Messenger of Allah, (peace be upon him), said, "Can you swear fifty oaths to be entitled to take revenge from the murderer?" He said, "How can we take an oath on a matter in which we were neither present nor seen?" The Messenger of Allah, (peace be upon him), did not like the blood of the deceased to be wasted, so he paid a hundred camels (on his behalf in the death of the deceased) among the camels of charity.

Like this, Imam Zuhri narrated from Hazrat Saeed Ibn al-Musayyab (RA) that Qasama was one of the rulings of Jahiliyyah, so the Messenger of Allah, (peace be upon him), kept it in the case of a slain person of the Ansar who was found in the neighborhood of the Jews. And in the same narration, it is also said that the Messenger of Allah, (peace be upon him), made Diat and Qasama obligatory on the Jews. In another narration, the Prophet (peace and blessings of Allah be upon him) wrote to them to either pay the death of the deceased or prepare for war with Allah and His Messenger. And Kalbi has narrated from Abi Salih the hadith of Abdullah bin Abbas (RA) that the Messenger of Allah (PBUH) wrote to the people of Khyber that this slain man was found among you, so how can you be free from him? So he wrote to the Messenger of Allah that a similar incident had also happened in the time of Moses (peace be upon him), so Allah revealed his decision. If you are a true prophet of Allah, then ask Allah for a similar decision. So the Messenger of Allah (peace and blessings of Allah be upon him) wrote to them, "Allah has shown me that I should choose fifty people from among you and swear that by Allah, we did not kill him, nor did we find his killers." Is there any news about Then they will pay the Diat (دية)? So they (Jews) said, "Surely you have decided between us with honor, i.e. divine revelation."

Similarly, Hanif narrates on the authority of Ziyad Ibn Abi Maryam, who says that a person came to the Messenger of Allah and said, "I have found my brother killed among the people of such and such a tribe." The Messenger of Allah said: Choose fifty people from among them and they will swear by Allah that we did not kill him, nor do we know anything about his killer. So the man said, "Is this the only oath I will get in the case of my brother's murder?" So the Messenger of Allah said; Yes, and a hundred camels too. In another hadith, a person was found dead between Wada'a (وعدة) and Arhab (ارحاب), but he was closer to Wada'a, so Hazrat Umar (RA) decreed Qasama and Diat against the people of Wada'a. So Harith bin Al-Isba Al-Wadai said farewell; O Ameerul Momineen! (What happened, how did you decide) Neither our oaths give any benefit about our wealth, nor our wealth in the matter of our oaths? So Hazrat Umar (RA) said, "You have preserved your blood with your oaths." And I make you the guarantor of Dayat because the deceased was found among you, and because of this decree of the Messenger of Allah; "That if people are given according to their claim, etc".

So, these hadiths indicate the proof of the decree of Qasama, and the necessity of a deed on the residents of the Area in which the deceased is found.

Logical Argument; The logical argument is that the killer is one of them. Because when a person comes to an Area and is killed there, it means that the

killer has the help and support of those people for this act. So they will be like A'aqila. Therefore, Shariat has made it obligatory for those people to protect the blood of the deceased from Hadr (free). Qasama has been made obligatory on them so that the killer will be revealed in this way. And the criminal should be separated from the non-criminal. Therefore, they swear by Allah that we have not killed him, nor do we have any information about his killer.¹⁰

According to the Maliki jurisprudence; an oath will be taken from the martyred saint.¹¹ Imam Malik (may Allah have mercy on him) says that in the area where the deceased was found, if there is clear enmity between the people of that area and the family of the deceased and there is Louth-لوث (Clue), and the time between the entry of the deceased into that area and the time of the murder is close, then The saint will be ordered to appoint the murderer from among them, believing the Louth-لوث (Clue).

Louth-لوث (Clue) means that there is a symbol of murderers or an open enmity between them.

Then the guardian will swear fifty oaths by the name of Allah, that he (the specified person) has killed him. And when he swears, Qisas-قصاص (Hanging) will be taken from the murderer. And if these conditions are not found, or if the guardian refuses to swear, then the same ruling as in the case of other ordinary claims will apply here.¹²

Argument; Imam Malik takes the argument from the statement of the Prophet (peace be upon him) which is in the hadith of Hazrat Sahl bin Abi Hathma (RA); "Do you become entitled to your partner's blood by swearing?" In another narration, if you swear, you will become entitled". It is clear that the oath is the responsibility of the guardian and he has the right to Hang (Qisas-قصاص). Another hadith mentions that the Prophet (peace be upon him) decided to Hang (Qisas-قصاص) in the case of Qasama. And Abu Bakr and Umar also. And it is narrated from some of the Companions (صحابہ کرام) that they said that we killed the murderer in the case of Qasama by the order of the Messenger of Allah, while we had no evidence except Louth-لوث (Clue). There is a famous hadith that the Messenger of Allah (PBUH) said, "Bayyina (بينة) is the responsibility of the plaintiff (مدعی), and oath (يمين) is the responsibility of the defendant (مدعى عليه), except for Qasama." So in this exception, it is stated that the oath in Qassam is the responsibility of

the plaintiff. And when he swears, the aspect of truth will prevail in his favor. So he will be entitled to the claimed thing i.e. Qisas (قصاص).¹³

In the Shafi'i jurisprudence; The above saying of Imam Malik (RA) is the first saying of Imam Shafi'i. According to the modern view of Imam Shafi'i (RA), when the guardian swears, the Diat (ديت) will be decided for him from the property of the murderer.

Argument; Imam Shafi'i (RA) says that we will prefer one side of it, but with such proof that there is a kind of doubt, while Qisas (قصاص) is one of the punishments that are abrogated due to doubt. So wealth will be obligatory. And because the oath is evidence for him to whom the appearance is a witness, as in all other Claims, because the appearance is a witness in favor of the defendant. Because the original is innocent. In the rest of the Qasama, there is an argument in favor of the apparent plaintiff in the case of finding Clue, and the period is approaching, so Oath will be the evidence for him.¹⁴

In the Hanbali school of thought; When a deceased person is found in a place and the relatives of the deceased make a claim for the death of a person or a group, while there is no enmity between them, nor is there any Clue, then it will be like other general claims, that if those who claim If they have any evidence, it will be decided in their favor, otherwise, the word of the one who refuses will be accepted. Imam Malik (RA), Imam Shafi'i (RA), and Ibn al-Munzir (RA) also adopted this opinion. A claim against an unspecified person, city, neighborhood, or community is not admissible. And this is also adopted by Imam Shafi'i (RA).

Argument; Since the claim is a matter of right, a claim against an unspecified has no validity, as with all other claims. And the Prophet (peace be upon him) has made it clear that the claim is not valid except for one. The Prophet (peace be upon him) said: "You will swear by one of them (being the killer of a certain person). So it is clear that the claim against an indefinite one is not valid."¹⁵

TERMS OF QASAMA

- i. The plaintiff and the defendant (مدعی اور مدعا علیہ) are Liable/Obligated (مكلف).
- ii. The murderer is human.
- iii. The killer should not be known (According to Hanfi Fiqh).
- iv. The impact of the killing on the murdered is significant.

- v. Louth-لوث (Clue) should be found. Louth (لوث) means proof that makes a strong suspicion of the truth of the claim in the heart
- vi. The murderer must be a Muslim (according to Maliki Fiqh).
- vii. Denial by the defendants.
- viii. The claim should be made by the Consanguine of the deceased.
- ix. According to Imam Ahmad and Imam Shafi'i, it is also necessary to determine the defendants. According to the Hanafi school of thought, the determination is not necessary, but the claim on the people of the relevant area is valid.¹⁶
- x. Qasama is also required to be demanded.
- xi. The place of killing is owned or occupied by someone. Therefore, if the deceased is found in a common Road, a Jamia Masjid, a river, a common market, or a large canal, then there will be no Qasama in that case. Rather, the Compensation will be paid to the Consanguine of the deceased from the Baitul-Mal money.
- xii. Be in the middle of the population or near the settlement. Therefore, even if it is found in the forest away from the population, there will be no Qasama.¹⁷

CONCLUSIONS OF QASAMA

According to the Hanafi school, after Qasama, Diyat (Compensatio-خون بها) is required.

قلت فإن لم يعرفوا رجلا قتله بعينه ولكنهم وجدوا قتيلا في قرية من قراه قال هو ضامن للدية بعد القسامة.¹⁸ ثم يغرمون الدية. بلغنا هذا عن رسول الله - صلى الله عليه وسلم - وفي هذا أحاديث مشهورة.¹⁹ ثم يغرمون الدية بلغنا نحو من هذا عن النبي صلى الله عليه وسلم وبلغنا عن عمر رضي الله عنه أنه قضى بالدية على عاقلتهم في ثلاث سنين.²⁰

According to Imam Shafi'i, according to one tradition, Diyat-ديت (Compensation-خون بها) will be done, while according to another tradition, Qisas will be taken.²¹

According to Imam Malik and Imam Ahmad, in the case of a claim of Premeditated murder, Qisas-قصاص (Hanging) will be required, while Diyat-ديت (Compensation-خون بها) in the case of a claim of manslaughter.²²

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