

HOMICIDE AND PUNISHMENT IN ISLAMIC JURISPRUDENCE

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ABSTRACT

The research fell into three sections; the first section focused on the definition of the homicide, difference between the homicide and felony, and finally, it defined the killing and mentioned its types and legitimacy. The second section dealt with the provisions of qatl-i-amd (intentional homicide), its aspects and tools. While the third section dealt with the penalties inflicted on Qatl-I-Amd such as Qisas (equality in punishment) and da'iyah (blood money), and the deprivation of rights in the will and inheritance. There were two reasons behind my selection of this topic to write on, the first is a subjective reason that is represented by my wish to address such theme as having a far-reaching effect in real life, secondly, the objective reason as represented in the excessive spread of the homicide in the recent years.

Keywords: *Homicide, Punishment, Jurisprudence, legitimacy.*

INTRODUCTION

Praise be to Allah, the Lord of those of old and those of later times, and prayer and peace upon his messenger of mercy to the worlds, Mohammed Bin Abdullah and his good and pure progeny.

The Islamic Shari'a , since its descent, paid paramount attention to the sanctity of the human life and made of man at the top of the priorities of its interests and necessities, which were devoted to ascertain it so as to maintain and preserve it, prohibiting any kind of "udwan" (aggression) that will lead to end it, considering such an aggression as one of the greatest of major sins, as it came in the holy Koran in Surat Al-Ma'dah:

(because of that, We decreed upon the Children of Israel that whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely). The importance of this research (Homicide and its Punishment in Islamic jurisprudence) stems from the fact that Islam holds the human life in the highest esteem to the extent that the duty to preserve life forms one of the core principles in the Maqasids "objectives" of Sharia, laying emphasis on the sanctity of human life and any act that would perish it, is held prohibitive as one of the capital sins, which entails the severest punishment for man is considered by Sharia as the most honorable and noblest creature that has been ever created on the earth.

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THE FIRST SECTION: THE HOMICIDE OF QATL-I-AMD

First: Definition of crime as a word and term

First: The word "Jerima" (crime) is derived from the Arabic base of the verb "Jeramah" (commit a crime). This verb has several senses in Arabic, among its meanings, is to "earn something illegally for one's family" and this is considered undesirable gain under Sharia.

Second: The term "crime is used by people to refer to various types of behavior despite differences in people's stereotypes, which are described by people as crimes in general, for being anti-human zeal and harmful to society.

Second: difference between crime and offence

The Offence as a word and term:

As a word, the offence is defined as any " 'udwan" (offense) against the human life that entails severe punishment or financial liability, and it is legitimately a forbidden action. As a term, Islamic scholars and jurists gave different definitions for "jinah", such as

1. Shaafa'is defined it as qatl (killing) qatia (wounding) or jirm (crime) that does not perish and the killing of soul unjustly and unlawfully, which is regarded as the greatest of major sins.
2. Hanbalis defined it as any "'udwan" act of aggression inflicted on the human life or property.
3. Malikis defined it as the perishing of a soul or an entity purposefully and aggressively.
4. Hanafis defined it as "a name for a lawfully forbidden act inflicted on soul or property.
5. Imamiyates defined as "ta addiy" inflicted on the human body in a way that entails severe punishment, or blood money, or penance.

After having reviewed these opinions of jurists and scholars regarding the definition of felony, I'd rather to take up Imamiyats' definition: "ta addiy (aggression) inflicted on the human body which entails qisas or financial liability or penance because it embraces all types of homicide beginning from qisas to blood money to penance.

Third: Definition of homicide and its types:

Qatl is linguistically defined as death and ending of life. Ibn Manzur said in his dictionary "Lisan Al-Arab": (to kill him is to make him die by hitting or stone or poison or any other reason.

Bin Faris also defined the word "qatl" as saying that it consists in three letters;

"Qaf", "Ta" and "Lam", which altogether reflect humiliation and death; it is said that " he killed him surely, and in this context the adverb "surely" is used to replace the cognate accusative case used by Arabic language to refer to the manner of killing, for example, he was badly killed, or to the number: he was killed for only once, or to man's fighting against the causes of 'udwan.

Our Almighty God says in the Koran in reference to Jesus Christ (peace be upon him); "*they didn't kill him certainly*". And it is also said that the camel driver "ta qatalat" the man means " infatuated him" until he fell in her love as if she had submitted to him. So in this context, the word qatl means submission., Zamakhshari also defined it as saying: he killed the man; they fought each other, and there was a great killing "mass killing" inflicted on the Romans in the war, he killed "stabbed" him to death and it also means "exposed him for killing", as Malik bin Nawira said to his wife when she was seen by Khalid Ben Waleed: iqtilini (kill) me, woman, he meant that Khalid would kill him for her.

Homicide "killing" as a term

The fuqaha of different schools defined qatl as term differently, they presented several definitions, including:

1. Imamiyates' said: "It is the perishing of the infallible soul "amdan" deliberately and "udwanan" aggressively"
2. Malikis said: It is the act that perishes a soul and destroys both the structure and man.
3. Hanafis said: that it is an act by "Ibad" (people) to eliminate "Jah" human life.
4. Hanbilas said: that it is some act that causes a soul to perish, which means the departing of the soul from the body.
5. Shafi'is said that it is the act that immolates a soul, ie, murdering of the human life.

After having reviewed the different definitions of homicide by jurists and scholars, I adopted the Imamiyates' definition " it is the perishing of the infallible life deliberately and aggressively for it an all-encompassing definition of all types of homicide and all other things associated with it.

Types of Homicide: jurisprudents classified homicide into to several types;

The first type according to the offender's criminal intent,

The first view; it is the view of the majority of the Imamiyate jurists, who divided homicide into three types: qatl-i-amd (deliberate homicide), qatl-i-shibh-amd semi-deliberate homicide and qatl-i-khata homicide by mistake.

In qatl-i-amd, the perpetrator has a criminal intent to kill, to mean to kill a person by virtue of his favor, even rarely, or to means to undertake an act that often kills. In qatl-i-shibh-amd, the perpetrator has a criminal intent to kill but has a wong qasd (intention), just like the death of a human being while being beaten for chastising. In qatl-i-khata, the perpetrator is wrong in intent and qasd just like shooting a bird but hitting a human. Imamiyates' Fugah agree with Shaf'iis on this opinion, for Shaf'iis also see three divisions in the homicide; qatl-i-amd, qatl-i-shibh-amd and qatl-i-khata.

The second view: Hanafi scholars divided the homicide into five types: qatl-i-amd, qatl-i-shibh-amd, qatl-i-jara ma jara al-khata (accidental homicide), qatl-i-khata and qatl bi sabab (homicide by a reason). In qatl-i-amd, the perpetrator intends to hit another person with a weapon such as sword, or knife, or spear or bullets or "ma jara majra al silah" (means the like), which pierces into the parts of the body, while in qatl-i-shibh-amd, the perpetrator hits with what is not a weapon or not with what jara majra silah that pierce into parts of the body like the use of stone or

a large piece of wood, that does not kill and such a homicide considered as qatl-i-shibh-and because it does not end life mostly. and it is meant for chastising and deterrence. As for qatl-i-khata is meant to kill or hit, it falls into two types; qatl-i-khata and qatl ma jara majra-i-khata. It implies an acceptable legitimate excuse such as the coup of the sleeper on another sleeper that causes him to die.

As for the homicide by an indirect incident, such as digging a hole or a well in a wrong place, or on a public road without the knowledge of the authorities, in which a man fell and died

The third view: it is the most prominent view by Malikis' Mathhab (doctrine)

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that homicide is divided into two types: the intentional and by mistake for these two types have been mentioned in the Koran Al-Kareem, to state their provisions and addition to them is considered an increase in the holy text. Imam Malik denied the semi-deliberate homicide for in the deliberate killing, the perpetrator is intended to kill directly by beating with a stone or another heavy tool, or by burning, or by drowning, or by strangling, or by poisoning or the like, such as the prevention of food or drink, with intention of causing death of the victim who died for it.

Fourth: Legitimacy of Homicide

God (swt) has forbidden the killing of man "zulman" unjustly and "udwanan" aggressively, considering it a major sin, and violently threatened perpetrators who shed the blood of people and promised them a great torment in hell as it came in both the Koran and Sunnah.

The Koran Account

1. Allah Almighty says: (as an interpretation of the meaning): " And do not kill the soul which Allah has forbidden [to be killed] except by [legal] right. This has He instructed you that you may use reason".

2. Allah (swt) says: (But whoever kills a believer intentionally – his recompense is Hell, wherein he will abide eternally, and Allah has become angry with him and has cursed him and has prepared for him a great punishment.)

Sunnah Account:

It was narrated from Abdullah that the Messenger of Allah (PUBH) said: (the first matter concerning which judgment will be passed among people on the Day of Resurrection will be bloodshed.)

THE SECOND SECTION: THE PROVISIONS OF THE QATL-I-AMD (INTENTIONAL HOMICIDE) AND ITS ASPECTS

First: The provision of the qatl-i-amd:

The consensus of scholars since the era of Al-Sahabah "the Companions of the Prophet" (may Allah be pleased with them) was held to this day, on the prohibition of the unlawful homicide as being one of the greatest sins after polytheism in God.

Second: its aspects

The Fugaha of different schools of jurisprudence have certain details and differences in their consideration of some types of homicide, such as deliberate killing or other ones as follows:

First: Homicide by strangling, which is meant to prevent the victim from taking air in and out by any possible means, whether the perpetrator tightens the neck of the victim with a rope or presses his throat with his hand or by hanging him until his feet leave the ground, or by putting on the victim's nose or mouth what prevents him from breathing. However, fuqaha gave different opinions regarding the killing by strangling, including

The first opinion: strangling the victim for a duration of time that terminates his life is considered qatl-i-amd that entails severe qisas to be inflicted on the perpetrator; but if the strangling that lasts for a period that does not end life in general and the victim dies, is considered qatl-shibh-amd that entails retaliation for death because the death resulted from an offence, as if he had died from a wound. But when the strangled came to his consciousness later, and the, died. Such act does not entail any qisas because the victim did not die because of the strangling. This opinion is adopted Hanabils, Shaf'iis, and Imamiyates.

Second opinion: The scholars who took up this opinion said; it is qatl-i-amd under all circumstances, since it was intentionally carried out as "udwan" and it did not occur coincidentally for fun or play, and this is Hanbalis' opinion.

Third opinion; strangulation is a quasi-intentional homicide that entails the payment of (Diya) blood money because it was carried out without pre-intent to kill. The condition of qatl-i-amd is to be undertaken by the use of an instrument that kills as indicated by Hanafis.

Second: Murder by Drowning and Burning

Fuqaha were different about the homicide by drowning or burning, is it considered qatl-i-amd or qatl-i-shibh-amd.

The first opinion: if the victim was thrown in water or fire, he was unable to get himself rid of it either because of the abundance of water and fire or because he was thrown hand-tied and was unable to come out of water or fire, or because the perpetrator prevented him from getting out of the water or fire because he was thrown in a pit that he could not ascend or thrown in a deep well. And consequently the victim died, it is regarded qatl-i-amd because it often causes death. But if the victim was thrown in fire which he could get out of it, but he did not do, or thrown in non-lethal water, yet he did not try to save himself until he died for it, it is not considered qatl-i-amd, and opinion was adopted by Shaf'iis and Hanbalis and Imamiyates.

The second opinion: The drowning and burning is considered a deliberate homicide, as long as it was often a lethal action that led to death, and was not done for fun or play, and this is what the Malikis adopted.

The third view: scholars and Fuqaha also differentiated between burning and drowning. Burning often causes qatl-i-amd or qatl-shibh-amd as Hanafis believed. Third opinion: homicide by poisoning is a deliberate murder: if the perpetrator intended to use poison to kill his victim and the latter willfully ate the poisoned food or drank the poisoned drink if he did not know it was poisoned or he took it under duress, in such a case, the victim was considered as the perpetrator because he was aware that the food or drink given to him was poisoned, while the real perpetrator was taken not to be guilty. Such opinion was that of the Malikis, Hanbalis, Imamiyates and Shaf'iis as they quoted the narration of Abu Salamah as saying that a Jewish woman came to the Prophet (peace and blessings of Allah be upon him) with a poisoned sheep meat, of which Bisher bin Al-Rari' ate and died. The Prophet immediately ordered to kill her.

The second opinion: murder by poisoning is not considered qatl-i-amd, therefore it entails –as said–the punishment of ta'zir in the opinion of Hanafis.

Third: Tools of Homicide

The tools of murder differ in terms of the extent of its impact on the human body. So, jurists enacted for each tool of killing a specific provision and certain conditions. Yet, they were different in the arrangement of the tools, presenting several opinions in this respect:

The first opinion: Abu Hanifa stipulated that the instrument of the intentional murder should often kill and be prepared for committing homicide such as a blade or spear or the like that penetrates the human body and separates its different parts, whether it was made of iron or lead or copper or honed wood or stone or sword or gun and knife and spear or the likes, which are used to wound and stab as fire, glass and reeds, as Hanafis said.

The second opinion: The scholars of this school were eclectic in their determination of the instrument of qatl-i-amd, to be lethal often, whether the killing is carried out with sharpened instrument or sharpened and heavy one, which cuts the body and pierces into it such as sword and knife and the like made of any metal, such as iron, lead, copper and gold, or non-metal material such as glass and stone and cane and honed wood, and the sharpened instrument is not often doubted in the case of murder, as evidence if the lobe of the ear was cut off and the victim consequently died, the murder is considered deliberate as the Shaf'iis and Hanbalis said.

Third opinion: Every tool or instrument of the intentional murder that is often used for killing such as a sharpened weapon, heavy as stone, or that is not often used for killing such as the stick, whip, etc., whether the perpetrator meant to kill the victim by beating him or meant just to beat him; or he meant to kill a person, thinking that he was Zaid, but the killed turned to be Omar instead. If such beating was undertaken for an enmity or anger but not for chastising. This is the opinion of Malikis.

Fourth opinion: Murder occurs by the use of any instrument that usually kills such as a piece of metal, or a stone, or a stick or a punch as Imamiyates said.

Third Section: Punishments of Qatl-i-amd under the Islamic criminal law:

First: Qisas – definition - legitimacy – Conditions

The Arabic word 'qisas' is derived from the verb 'qassa' meaning to "cut" to "iqtassa minhu" is to take the right of murder from the convicted perpetrator; qisas is, therefore, equality in punishment or retaliation in kind.

As for a term, qisas underlies different definitions including;

1. Hanafis defined it as taking the right of murder by equality in punishment, wounding and bloodshed.
2. Imamiyates defined it retaliation in kind. It may be in a soul or in a part of the body, and the qisas in soul entails the taking of the infallible life of the sane mature perpetrator.
3. The Shafi'i defined it as any act that represents the wounding and the like, it is 'udwan' of the excusable homicide that leads to terminating of life of the convicted perpetrator.

Legitimate Justification of Qisas

Qisas in the Koran

Allah, Almighty says: (O you who have believed, prescribed for you is legal retribution for those murdered – the free for the free, the slave for the slave, and the female for the female. But whoever overlooks from his brother anything, then there should be a suitable follow-up and payment to him with good conduct. This is an alleviation from your Lord and a mercy. But whoever transgresses after that will have a painful punishment And there is for you in legal retribution [saving of] life, O you [people] of understanding, that you may become righteous.,

Qisas in the Noble Sunnah

-The Prophet Muhammad (peace and blessings of Allah be upon him) said: (*Whoever kills a person by rash or negligence with stone, or whip or stick, he is to be punished as a quasi-intentional offender. But whosoever kills intentionally, he should be punished as an intentional perpetrator.*)

-Mohammed Bin Al-Hasan narrates from Bin Khtakl from some of the Prophet's companions, from Abu Abdullah (peace be upon him), said: "*Whoever kills a small or large thing, pre-intently is to be "qassased" punished as an intentional perpetrator.*

Conditions of obligation of punishment

The imposition of a legal punishment under Shari'a (qisas), the Fuqaha stipulated several conditions, they attributed some of them to the perpetrator, some to the victim and the rest to the homicide itself.

First condition: The conditions of the perpetrator who has to be punished are puberty, sanity, for under Shari'a both the insane and minor are excluded from qisas. And since qisas is a penalty that cannot be inflicted unless there is a felony and its commitment is not described as felony and the perpetrator should possess a criminal intent, intending to kill but if he commits it wrongly, no qisas has to be inflicted upon him as the Prophet (PUBH) said that the intentional homicide entails qisas. Since qisas is a finite punishment that necessitates the presence of finite murder which does not terminate but by intentional murder and this qasid is what distinguishes the intentional homicide from other types of killing. This is the principle adopted by Hanafis, Shaafa'is, and Malikis.

The second condition: the perpetrator should be liable for punishment, and if not, he is not to be punished because the child, the insane and all those who are out of their minds, such as the sleeper or the unconscious, and the likes, such as the intoxicated, are exempted from the infliction of qisas under Shari'a for not embracing all conditions.

The third condition: the offender must have been aware of the meaning of his or her act and importantly, of the fact that the act was often or rarely an offence that causes death "Ilm". So if death is not intended, it is not punishable. But the death resulted from beating with a light or heavy stick, it is considered a deliberate homicide that entails punishment as Imamites said.

Secondly: The conditions of the victim: the victim shall not to be as a penalty for the killer, if the origin kills its branch, the perpetrator shall not be punished as the majority of fuqaha agreed; father shall not be killed for his son, or the grandfather for his child, he has to pay diya "the blood money" Omar Bin Khtab narrated that he heard the Messenger of Allah (peace and blessings of Allaah be upon him) say: "The father should not be killed for the child".

And because the father is the reason for the presence of the child, so he must not be a reason because the son came from him, and since "qisas was enacted to deter and restrain, therefore, there is no need for it as far as the father is concerned.

Ahmad Bin Hanbal went on to narrate from Imamiyates that the origin that is not killed for his branch is the father though he is higher than the brother. But, if the mother killed her son, she would be killed for him because she has no jurisdiction over him.

Thirdly: Conditions of killing: killing that entails qisas should be a direct action and not being a reason for it; if it was indirect such as digging a well in the path of the victim, who fell in

and died, no qisas is inflicted as Hanafis said because the indirect killing is not considered a direct killing, because the indirect killing is not committed in the similar way in which the direct killing is committed. Fuqaha did not differentiate between the direct and indirect homicides for there is no difference between them in the term of qisas

Second: Diya "blood money"

First: Definition of Diya as a word and term

the Arabic word "Diya" is derived from "Wadi" and originally it came to be "widiyah", which means "friendliness"

Diya as a term is defined by the Islamic Sharia, as the payment of "blood money to compensate for death caused by a serious offense against the victim.

1. Imamiyates defined it as the money paid to a victim or a victim family to compensate for the soul of the murdered.
2. Hanaf'iis defined it as the name of the money paid as a compensation for death.
3. Maalikis defined it as money entailed due to a committed homicide as compensation for death.
4. Hanabils defined it as the money paid to a victim or to the wali of the victim or the heirs of the victim as compensation for an offence.

After having reviewed the scholars' different opinions as to the definition of Diya, I took up the first opinion that Diya is the money given to the victim's guardian in return to its death for it covers all types of offence from murder, wound or all the things that cause harm to the person. The Islamic Shari'a imposes blood money for any unlawful aggression against the human body.

Second: Diyat of the deliberate homicide

The punishment prescribed in the Koran for deliberate homicide is the killing of the culprit (Qisas) or the payment of blood money (diyat) in case the culprit is pardoned by the victim family. Qisas is not permissible, when the homicide is committed by a minor or insane perpetrator, or when the father kills his son, or when the perpetrator dies before the Qisas is performed. Under such cases, the perpetrator has to pay blood money immediately and costily in three parts:

Thirty "Huqah" four year old she-camels and thirty "Jitha' (five year old she- camels and forty "Khilqah" pregnant she-camels. Hanafites, Maalikis did not specify the amount of diyat for the deliberate homicide but to be an immediate amount whether large or small to be paid to the

victim's family. It is said that diyat can be deferred to for three years and to be paid by mature adult for the minor or insane perpetrator. Heavy diyat is four parts: 25 she-camels in age of 2 and 25 she-camels in age of 3 and 25 she-camels in age of 4 and 25 she-camels in age of 5. Diyat should not be doubled by Maalikis as to the deliberate homicide but when the father kills his son and it is three parts as Shaiyates indicated. While Imamites said that the perpetrator in in Qatl-i-amd has to choose one of six cases, either to pay 100 of the best camels called "Al-Thanah" that means in the age from six to nine, or 200 cows, or 200 wears, each wear consists in two dresses, or 1000 sheep, or one thousand dinars, 10000 Dirhm, to be paid within one year span from the property of the perpetrator.

Third: Deprivation from of Inheritance and Will

The fuqaha differed on the type of homicide that entails the deprivation from inheritance or will.

First: Deprivation from Inheritance

First view: Qatl-i-amd when committed by a sane adult person entails the deprivation from inheritance. Hanafites did not stipulate that the perpetrator should be a direct or an indirect culprit. So did Shafities and Hanabilas:

There is no difference between the direct homicide or the indirect one, both of them entails the deprivation of the perpetrator from inheritance

But if the homicide was righteous, such as the one that results from qisas, hudd, or self-defense, rebellion, chastising, or accident, such as being beaten by the father, or the husband or the teacher. Such a homicide as for Hanafis and Hanbalis is not preventive to inheritance but it is in Shaf'iis' and Hanbalis' fuqah, while homicide under duress prevents the perpetrator from inheritance In both Shaf'iis and the Hanbalis, and the enforced killing of the Shaf'iis and the Hanbalis, and prevents the inheritance of the Shaf'iis and the Hanbalis fuqah. Hanbalis forbid inheritance, which is the view of the Hanafis, Shaf'iis and Hanbalis.

The second opinion: Qatl-i-amd and qatl-i-sibhi-amd, whether it was direct or indirect, entail the deprivation from the inheritance, while qatl-i-khata does not entail the deprivation from inheritance. Consequently, the "Mathahib" schools that made the homicide as preventing the perpetrator from the inheritance were Shaafa'is, Hanbalis, and Maalikis. And this was adopted by Maalikis.

Third opinion: in case qatl-i-amd, the heir is prohibited from the inheritance, even it was qatl-i-khata within the framework of diya inheritance as ascertained by Imantis

Second: Denial of the will

The homicide that prevents the perpetrator from the will, is similar to the homicide that prevents the inheritance; that is to be perfect, committed directly or indirectly by a sane adult culprit, whether it was qatl-i-amd or qatl-i-khata as indicated by Hanafis.

As for Maalikis, qatl-i-khata is not valid to be preventive to the will, as in the case of inheritance or qatl-i-amd and qatl-i-shibhi-amd to be probably preventive to the will, if the testator did not know that the legatee beat him and in case the testator knew who had hit him or killed him and did not change his will, and left a will it is considered valid, whether the homicide was intentional or by mistake as the Maalikis went to.

Similarly, Hanbalis said that the unrighteous homicide, whether it is intentional or by mistake, renders the will null and void because it prevents the culprit from the inheritance.

Shaafa'i said: it seems that if the legatee kills the legator unlawfully, he deserves the legacy as recommended for him.

Whereas, Imamites it is permissible for the perpetrator to take the recommended legacy as long as it is not inheritance.

Conclusion

After having thanked and praised Allah, I have summarized my research, shedding light on the most prominent findings as follows: 1. The scholars of different schools of Islami Fuqah differed on the types of homicide and classified it into three parts:

Qatl-i-amd, qatl-i-shibhi-amd and qatl-i-khata. The first type should embrace a criminal intent by an adult sane perpetrator, that mostly leads to the death of a victim and if it is done by an insane person, it is regarded qatl-i-khata.

1. While qatl-i-shibhi-amd is defined as having a criminal intent but with wrong (qasd) intention, such as the death that results from chastising. Whereas, qatl-i-khata is defined as not having a criminal intent, in which the right of Allah is dropped if it occurs as igtihad (juristic deduction) and without intention to punish, where the perpetrator is free from qisas or penalty.

2. The deliberate homicide has several forms: murder by suffocation, by drowning, by burning and by poisoning. The elements of intentional murder are the killing of a human being whose life is infallible, died as a result of the culprit's criminal act, and most importantly with an lethal tool.
3. The penalty of intentional murder is retribution (qisas) and in the case of pardon, is diya, blood money to be paid to the victim heirs. It is also a heavy diya in case of the quasi-intentional homicide, and it is the light diya in the case of the homicide by mistake.
4. Intentional killing is will and inheritance preventive as punishment, while qatl-i-shibhi-amd is only inheritance preventive,
5. Whereas the killing by mistake neither prevents the perpetrator from both inheritance and will.
6. The holy legislator specified the punishments of each kind of killing such as qisas, diya, penance, and ithim (sin) but he did not set any punishment as regard the tribal customs.

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