

The Shariah Status of DNA Test Evidence in Hudud, Qisas, and Ta'zir

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Abstract:

In Islamic law (Shari'ah), testimony and evidence in matters such as Hudood (prescribed punishments), Qisas (retribution), and Ta'zir (discretionary punishments) are based on firm and reliable principles. Scholars have diverse opinions regarding the use of modern scientific tools like DNA testing. To understand its Shari'ah status, the following points can be considered. Most scholars accept DNA testing as "corroborative evidence." This means it can be used to support a case with additional evidence but cannot be entirely relied upon. In certain cases where DNA testing provides conclusive proof, scholars debate whether it can be admissible for Hudood or Qisas. In cases of adultery, the Qur'an stipulates the requirement of four eyewitnesses. Therefore, DNA testing alone is not considered sufficient to establish Hadd (punishment) because it does not meet the Shari'ah requirement of witnesses. However, DNA evidence can be used as a supportive means for imposing discretionary punishments (Ta'zir) if other evidence is present. In Qisas cases, such as murder, DNA testing can help identify the perpetrator. However, under Shari'ah principles, two eyewitnesses or a confession are required for Qisas. DNA evidence can serve as corroborative evidence. In Ta'zir cases, the judge (Qadi) has broader authority. DNA testing is generally admissible in discretionary cases, as its use depends on the judge's Ijtihad (discretionary reasoning) and adherence to general Shari'ah principles while employing modern technology. Certainty is essential for imposing punishments in Shari'ah, and any doubt can nullify them ("Hudood are suspended in the presence of doubt").

Considering the limitations of DNA testing and the possibility of errors, it cannot be regarded as absolute evidence. Expert testimony is also necessary to validate DNA results and confirm their accuracy. Some contemporary scholars and Fiqh councils, such as the Islamic Fiqh Academy, have permitted the use of modern science and technology under specific conditions, particularly in Ta'zir and sometimes in Qisas cases. However, most scholars adopt a cautious approach in Hudood cases and consider DNA only as supplementary evidence. DNA testing is a significant tool of modern science and can be recognized as corroborative evidence in Shari'ah, especially in Ta'zir and Qisas cases. However, its use in Hudood cases is limited because the Qur'an and Sunnah have explicitly defined the requirements for testimony in such matters. Scholars approach this issue through Ijtihad, considering the circumstances, the objectives of Shari'ah, and scientific advancements.

Keywords: Shariah Status, Hudud, Qisas, Ta'zir, Islamic Law, Punishment, Principles, Advancements, Ijtihad

The principles of Shari'ah evidence in Hudud, Qisas, and Ta'zir.

In Sharia, testimony is considered a strong and reliable source of evidence, but it follows specific principles. The Quran and Sunnah outline different types of testimony, such as eyewitness testimony (giving testimony based on direct observation), confession (the accused admitting their crime), and Qasama (sworn testimony). The Quran requires four witnesses for the punishment of adultery, and Qisas (retaliation in criminal cases) also necessitates eyewitnesses. Based on these principles, DNA testing cannot be fully recognized as Shariah-compliant testimony; however, it can be presented as supporting evidence alongside other proofs. Sharia also allows for *Ijtihad* (jurisprudential reasoning). Through *Ijtihad*, jurists have deemed certain modern scientific advancements, such as DNA testing, admissible in specific

cases. These modern tools are often utilized in Tazir (discretionary punishments), where the judge's discretion plays a crucial role.¹

DNA Testing: Introduction and Scientific Basis

DNA testing, which provides identification based on genetic material, is a scientific method widely used in many judicial systems. It offers genetic identification that helps establish an individual's identity. This test is commonly used in cases of lineage verification, murder investigations, and other serious crimes. Several countries around the world have recognized DNA testing as admissible judicial evidence. However, in Islamic jurisprudence, scholars hold differing opinions regarding its legal status. Most scholars do not consider it as complete testimony, but it may be accepted as corroborative evidence. In Islamic jurisprudence, DNA testing can be regarded as corroborative evidence, particularly in Tazir (discretionary punishments) cases. This means that DNA results should be considered alongside other forms of evidence².

The Role of DNA in Hudood Cases."

In cases related to Hudood (fixed punishments in Islamic law), such as adultery, theft, and alcohol consumption, the principles of Shariah evidence are very strict. The Qur'an stipulates that for the crime of adultery, four eyewitnesses are required, who must have directly seen the act in order to testify. Since DNA testing does not fulfill the condition of eyewitness testimony, it cannot be used as complete evidence in Hudood cases. A well-known principle in Islamic jurisprudence states that Hudood punishments can be waived in cases of doubt. This means that if there is any uncertainty, the punishment cannot be applied. DNA testing, under this principle, cannot be fully accepted as conclusive proof, as it may introduce an element of doubt. Scholars and jurists have expressed different opinions on this matter. Some consider DNA testing as supporting evidence, while others do not accept it in Hudood cases. These opinions are based on interpretations of the Qur'an and Sunnah, as well as jurisprudential principles.³

"DNA Evidence in Qisas Cases."

In cases of Qisas (retribution), such as murder, Islamic law requires eyewitness testimony or confession. In murder cases where the identification of the perpetrator is in question, DNA testing can serve as a significant aid by identifying the perpetrator's physical traces. However, for Qisas, Shariah mandates the presence of eyewitnesses or a confession of guilt. If witnesses are available or the accused confesses, DNA testing can be utilized as supporting evidence, but it is not sufficient as primary evidence. Some scholars have accepted DNA testing as supporting evidence in Qisas cases, while others question its validity. These differing opinions are based on interpretations of Islamic jurisprudence and the principles derived from the Qur'an and Sunnah.⁴

"The Role of DNA in Tazir

In Tazir (discretionary punishments), which are determined by the judge's discretion and offer greater flexibility, the Qadi (judge) possesses broader authority. If DNA testing confirms the commission of a crime, the Qadi can utilize it as supporting evidence in determining the appropriate punishment, provided that other corroborative evidence is also available. Given that decisions in Tazir cases are based on the Qadi's discretion, DNA evidence can be accepted as supplementary proof. This implies that if the identity of the accused or the nature of the crime is established through DNA, the Qadi may consider it when deciding on the punishment. The Qadi has the authority to incorporate modern scientific evidence, such as DNA testing, in alignment with the general principles of Shariah, to determine appropriate sentences.⁵

¹ Ibn Rushd, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, Dar al-Gharb al-Islami, 2003, Vol. 2, p. 435.

² Ibn Qayyim al-Jawziyyah, *Al-Turuq al-Hukmiyyah fi al-Siyasah al-Shar'iyyah*, Dar Alam al-Fawa'id, 2007, Vol. 1, p. 212.

³ Al-Mawardi, *Al-Ahkam al-Sultaniyyah*, Dar al-Kutub al-Ilmiyyah, 1996, Vol. 1, pp. 134-139.

⁴ Muhammad bin Hussein al-Jizani, *Al-Shahadah fi al-Fiqh al-Islami*, Maktabat al-Rushd, 2001, Vol. 1, pp. 310-320

⁵ Yusuf al-Qaradawi, *Maqasid al-Shari'ah al-Islamiyyah*, Maktabat Wahbah, 1998, Vol. 1, pp. 178-185

Definition of Hudud."

"Hudood" is the plural of "Had," which linguistically means "to prevent" or "to restrain." This is why a guard or doorman is referred to as "Haddad." In Islamic terminology, "Hudood Allah" refers to the prohibitions set by Allah. As stated in the Qur'an:

"These are the limits set by Allah."

تِلْكَ حُدُودُ اللَّهِ فَلَا تَقْرُبُوهَا⁶

While I couldn't locate a direct reference to **Al-Sabtani's** explanation of "Hudood Allah," the term is generally understood to encompass two categories:

Prescribed Limits in Daily Affairs: These are the boundaries set by Allah concerning aspects like consumption and marital relations. Believers are instructed to adhere to these limits and avoid transgressing them.

Legal Punishments in Islamic Law: In Islamic jurisprudence, "Hudood" refers to specific punishments prescribed for certain offenses, such as theft, adultery, and false accusation of adultery. These are fixed penalties defined by Shariah.

This classification underscores the comprehensive nature of "Hudood Allah," encompassing both personal conduct and legal injunctions.

عقوبة مقدره يجب حقا لله⁷

"That is, the specific punishment that becomes obligatory as the right of Allah."

For example, amputating the hand of a thief, administering lashes and stoning to an adulterer, and imposing lashes on those who falsely accuse others.

عقوبة مقدره يجب حقا لله وتعالى

In Islamic terminology, "Hudood" (plural of "Had") refers to the fixed punishments prescribed by Allah as His right.⁸

In Islamic law, there are six offenses classified under **Hudud** (fixed punishments):

1. **Highway Robbery (Harabah):** This refers to banditry or acts of terror that threaten public safety.
2. **Theft (Sariqa):** Unauthorized taking of someone else's property.
3. **Adultery (Zina):** Engaging in unlawful sexual relations.
4. **False Accusation of Adultery (Qadhf):** Wrongfully accusing someone of adultery without providing the required evidence.
5. **Consumption of Intoxicants (Shurb al-Khamr):** The act of consuming alcoholic beverages or other intoxicating substances.
6. **Apostasy (Riddah):** The act of renouncing Islam.

Each of these offenses has specific punishments outlined in Islamic jurisprudence.

In Islamic jurisprudence, a **hadd** (plural: **hudūd**) is defined as a predetermined punishment that is obligatory as the right of Allah⁹.

Abdul Qadir Audah categorizes the offenses warranting **Hudud** (fixed punishments) in Islamic law as follows:

1. **Adultery (Al-Zina):** Engaging in unlawful sexual relations.
2. **False Accusation of Adultery (Al-Qadhf):** Wrongfully accusing someone of adultery without the required evidence.

⁶ Surah Al-Baqarah, 2:187

⁷ Imam Ibn Rushd, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, Dar al-Ma'rifah al-Taba'ah wa al-Nashr wa al-Tawzi', 1999, Vol. 1, p. 354.

⁸ Al-Kasani, Ala' al-Din, *Badai' al-Sana'i' fi Tartib al-Shara'i'*, "Chapter on the Causes of the Obligation of Hudud", Dar al-Kutub al-Ilmiyyah, 2000, Vol. 7, p. 33.

⁹ Sayed Amir Ali, *Fatawa Alamgiri*, Fareed Eik Saal Urdu Bazaar, Lahore, Vol. 3, p. 356.

3. **Consumption of Intoxicants (Al-Shurb):** The act of consuming alcoholic beverages or other intoxicating substances.
4. **Theft (Al-Sariqa):** Unauthorized taking of another's property.
5. **Highway Robbery (Al-Hirabah):** Acts of banditry or terror that threaten public safety.
6. **Apostasy (Al-Riddah):** The act of renouncing Islam.
7. **Rebellion (Al-Baghy):** Armed insurrection against a legitimate Islamic authority.
8. Each of these offenses has specific punishments outlined in Islamic jurisprudence.¹⁰

Abdul Qadir Audah defines **Hudud** as

والحد هو العقوبة المقررة حقا لله تعالى أو هو العقوبة المقررة المصلحة الجماعة، وحينما يقول الفقهاء ان العقوبة حق الله تعالى يعنون بذلك انها لا تقبل الاسقاط من الأفراد ولا من الجماعة، وهم يعتبرون العقوبة حقا لله كلما استوجبها المصلحة العامة وهي رفع الفساد عن الناس و تحقيق الصيانة والسلامة لهم.¹¹

Translation :A Hadd is a fixed punishment prescribed by Allah the Almighty, and it is His right. This means that the punishment is established for the benefit of society. When Islamic jurists state that a particular punishment is the right of Allah, it implies that this punishment cannot be waived by individuals or society. In essence, it is a **Haq Allah** (divine right) imposed for the welfare of the public, aimed at eliminating corruption and ensuring security and stability.

Shah Waliullah Muhaddith Dehlavi, while explaining the philosophy of Hudood (Islamic legal punishments), states that the commission of certain sins disrupts social order and weakens the Muslim community. For such offenses, merely instilling the fear of the Hereafter or offering advice is not sufficient. These are the very sins that spread corruption on earth and destabilize the system of civilization.

Another point to consider is that certain sins become habitual and difficult to abandon. For such offenses, the law prescribes an exemplary punishment so severe that the perpetrator is viewed with contempt by society and serves as a lesson for others. By witnessing the consequences of such crimes, very few would dare to commit similar offenses.¹²

Qisas."

In Arabic linguistics, the term **Qisas** is derived from the root word "Qass", which means to follow or trace someone's footsteps. This etymology reflects the concept retribution, where the punishment mirrors the offense committed.¹³ -

In Islamic jurisprudence, the term "**Qawad**" is also used to refer to **Qisas** .¹⁴

"Terminological Definition of Qisas"

وهي الجرائم التي يعلن عليها بقصاص أو دية، وكل من القصاص والدية عقوبة حقاً للأفراد ومعنى أنها مقدره أنها ذات حد واحد، فليس لها حد أعلى وحد أدنى تتراوح بينهما، ومعنى أنها حق للأفراد أن للمجنى عليه أن يعفو عنها اذا شاء، فاذا عفا أسقط العفو العقوبة المعفو عنها.¹⁵

Translation: These are offenses for which **Qisas** (retributive justice) or **Diyat** (compensatory blood money) are prescribed. Both Qisas and Diyat are fixed penalties and are considered the rights of individuals. Being fixed penalties means that their punishments are standardized without any gradation or variation; thus, the punishment cannot be increased or decreased. As individual

¹⁰ Abd al-Qadir Ouda, *Al-Tashri' al-Jina'i al-Islami: Muqaranatan ma'a al-Qanun al-Wad'i*, Beirut: Dar al-Kutub al-Arabi, Vol. 1, p. 134.

¹¹ Abd al-Qadir Ouda, *Al-Tashri' al-Jina'i al-Islami: Muqaranatan ma'a al-Qanun al-Wad'i*, Beirut: Dar al-Kutub al-Arabi, Vol. 1, p. 162

¹² Shah Waliullah, *Hujjat al-Allah al-Baligha*, Maktabah Salafiyah, Lahore, 2015, Vol. 2, p. 91.

¹³ Al-Zabidi, Murtada bin Muhammad bin Muhammad bin Abdul Razzaq Al-Hussaini, *Taj al-Arous*, Maktabah al-Kuwaitiyah, 2011, Vol. 2, p. 101.

¹⁴ Ibn Majah, Abu Abdullah, *Sunan*, Book of Diyat, Chapter on Retaliation Only by the Sword, Beirut: Dar al-Hay'ah al-Kutub al-Arabiyyah, Hadith No. 2667.

¹⁵ Abd al-Qadir Ouda, *Al-Tashri' al-Jina'i al-Islami*, Vol. 1, p. 79.

rights, it implies that the aggrieved party has the authority to forgive the offender. If the victim's heir chooses to pardon the offender, the prescribed punishment for that crime is waived.

"Definition of Ta'zir"

The term **Ta'zir** (in Arabic linguistics encompasses meanings such as assistance, prevention, and restraint. These interpretations are interconnected, as preventing someone from wrongdoing or oppression is, in essence, aiding that individual. For instance, in the Quranic verse: "" (...and honor and respect him..."), the word " (tu'azziruhu) implies support and reverence. Consequently, the term **Ta'zir** is used to denote a form of punishment that serves to deter individuals from committing offenses, thereby preserving their dignity and preventing further moral degradation. This disciplinary action aims to protect individuals from engaging in harmful behavior and to maintain their honor within society.¹⁶

Islamic jurists define **Ta'zir** as a discretionary punishment applicable in cases involving both the rights of Allah (**Huquq Allah**) and the rights of individuals (**Huquq al-'Ibad**). This punishment is administered for offenses that do not have a fixed penalty (**Hadd**) or require expiation (**Kaffara**). In such instances, the specific nature and severity of the punishment are determined by the judge's discretion, taking into account the circumstances of the offense and the offender.¹⁷ -

التعزير هي الجرائم التي يعاقب عليها بعقوبة أو أكثر من عقوبات التعزير. ومعنى التعزير التأديب، وقد جرت الشريعة على عدم تحديد عقوبة كل جريمة تعزيرية واكتفت بتقرير مجموعة من العقوبات لهذه الجرائم قيدياً باخف العقوبات وتنتهي بأشدها، وتركزت للقاضي أن يختار العقوبة أو العقوبات في كل جريمة بما يلائم ظروف الجريمة وظروف المجرم فالعقوبات في جرائم التعزير غير مقدرة.¹⁸

These are offenses for which one or more discretionary punishments (**Ta'zir**) may be administered. The term **Ta'zir** essentially means disciplinary action. Islamic law does not prescribe a fixed punishment for any **Ta'zir** offense. Instead, a range of penalties is established, starting from lighter punishments and extending to more severe ones. The determination of the appropriate punishment is left to the discretion of the judge (**Qadi**), who considers the nature of the offense and the circumstances of the offender. Since **Ta'zir** offenses do not have predetermined punishments, the judge selects the penalty or penalties deemed suitable for the specific crime.

"Implementation of Hudud in the Prophetic Era"

Numerous authentic Hadiths confirm that during his time, the Prophet Muhammad (peace be upon him) implemented punishments such as flogging, stoning, and amputation. For instance: حدثنا مالك عن نافع ، عن عبد الله بن عمر انه قال: جاءت اليهود الى رسول الله فذكروا ان رجلا منهم وامرأة زنيا فقال لهم رسول الله لا ما تجدون في التوراة في شان الرجل نفصحهم ويجلدون فقال عبد الله ابن سلام كذبتم ان فيها الرحم فاتوا بالتوراة فنشروها فوضع احد هم يده على آية الرحم، ثم قرأها قبلها وما بعدها فقال له عبد الله بن سلام ارفع يداك فرفع يده فاذا فيها آية الرجم فقالوا: صدق يا محمد فيها آية الرجم فامر بهما رسول الله فرجما. فقال عبد الله بن عمر فرايت الرجل يحنى على المرأة يقبها الحجاره قال مالك :يعنى يحنى يكب عليها حتى تقع الحجاره عليه.¹⁹

Narrated by 'Abdullāh ibn 'Umar (may Allāh be pleased with him):

The Jews came to Allāh's Messenger (peace and blessings be upon him) and mentioned that a man and a woman from among them had committed adultery. Allāh's Messenger (peace and blessings be upon him) said to them, "What do you find in the Torah regarding the punishment for adultery?" They replied, "We disgrace them and flog them." 'Abdullāh ibn Salām said, "You have lied; indeed, it contains the ruling of stoning." They brought the Torah, opened it, and one of them placed his hand over the verse of stoning and read what preceded and followed

¹⁶Abd al-Aziz Amir, *Al-Ta'zir fi al-Shari'ah al-Islamiyyah*, Dar al-Fikr al-Arabi, Book One, 2019, p. 152.

¹⁸Abd al-Qadir Ouda, *Al-Tashri' al-Jina'i al-Islami*, Vol. 1, p. 79.

¹⁹ Imam Malik, *Al-Muwatta*, Book of Hudud, Chapter on What Has Been Reported About Stoning, Hadith No. 1551.

it. 'Abdullāh ibn Salām said to him, "Lift your hand." He lifted his hand, and beneath it was the verse of stoning. They said, "O Muḥammad, you have spoken the truth; it contains the verse of stoning." Allāh's Messenger (peace and blessings be upon him) then ordered that the man and woman be stoned. 'Abdullāh ibn 'Umar said, "I saw the man leaning over the woman to protect her from the stones." Imām Mālik commented that the man was shielding the woman so that the stones would strike him instead of her.

This narration is recorded in Sahih Muslim, Hadith number 1699a.

حدثني مالك عن يحيى بن سعيد عن سعيد ابن المسيب ان رجلا من اسلم جاء الى ابي بكر الصديق فقال له ان الاخرزني ، فقال له ابر بكر هل ذكرت هذا لاحد غيري؟ فقال: لا فقال له ابو بكر فتب إلى الله و استتر بستر الله فإن الله يقبل التوبة عن عباده فلم تقدره نفسه حتى اتى عمر بن الخطاب فقال له مثل ما قال لابي بكر. فقال له عمر مثل ما قال له ابو بكر فلم تقدره نفسه حتى جاء الى رسول الله فقال له: ان الاخرزني فقال سعيد: فاعرض عنه رسول الله علم ثلاث مرات كل ذلك بعرض عنه رسول الله حتى اذا اكثر عليه بعث رسول الله علم الى اهله فقال اتشتكى ام يه جنم فقالوا، يا رسول الله والله انه الصحيح. فقال رسول الله مسلم: ابكر ام ثيب؟ فقالوا، بل ثيب. يا رسول الله فامر به رسول الله فرجم،²⁰

Narrated by Sa'īd ibn al-Musayyib:

A man from the tribe of Aslam came to the Prophet Muhammad (peace and blessings be upon him) and confessed that he had committed adultery. The Prophet turned away from him, so the man came around to face him and repeated his confession. This happened four times. After the fourth confession, the Prophet asked him, "Are you insane?" The man replied, "No." The Prophet then inquired, "Are you married?" The man answered, "Yes." The Prophet then ordered that he be stoned to death.

This hadith illustrates the gravity of adultery in Islamic law and the importance of sincere repentance. It also demonstrates the Prophet's initial reluctance to implement the punishment, giving the individual multiple opportunities to retract his confession.

حدثني مالك عن ابن شهاب انه اخبره ان رجلا اعترف على نفسه بالزنا على عهد رسول الله عليه وسلم وشهد على نفسه اربع مرات فامر به رسول الله فرجم قال ابن شهاب فمن اجل ذلك يوخذ الرجل باعترافه على نفسه.²¹

Narrated by Ibn Shihab:

During the time of the Prophet Muhammad (peace and blessings be upon him), a man confessed to adultery four times. Consequently, the Prophet ordered that he be stoned to death. Ibn Shihab commented that an individual's confession is sufficient for legal accountability.

This narration is recorded in Sahih Muslim, Hadith number 1695b.

حدثني مالك عن ابن شهاب، عن عبيد الله بن عبد الله بن عتبة بن مسعود، عن عبد الله ابن عباس؛ انه قال سمعت عمر بن الخطاب يقول الرجم في كتاب الله حق على من زنى من الرجال والنساء. اذا احصن اذا قامت البيئته او كان الجبل او الاعتراف.²²

Narrated by 'Abdullāh ibn 'Abbās (may Allāh be pleased with him), who heard 'Umar ibn al-Khaṭṭāb (may Allāh be pleased with him) say:

"The command to stone the married adulterer and adulteress is established in Allāh's Book when evidence is confirmed through witnesses, pregnancy, or confession."

Various indications (qarā'in) are considered part of the principles of Islamic jurisprudence when making judgments. These indications may accompany primary evidence, such as witnesses or confessions, or may stand alone in the absence of direct evidence. For instance, a claim by an indigent person that a wealthy individual owes them a loan may be dismissed due to circumstantial evidence. Similarly, testimony or confessions may be rejected if there are suspicions of bias, such as a witness being a close relative of the claimant or a confession made during a terminal illness. In some cases, circumstantial evidence is given precedence when

²⁰ Imam Malik, *Al-Muwatta*, Book of Hudud, Chapter on What Has Been Reported About Stoning, Hadith No. 1552

²¹ Ibid, Hadith No. 1554

²² Ibid, Hadith No. 1558

primary evidences conflict, and at times, it serves as the sole basis for judgment in the absence of other proofs. This narration is recorded in Sahih al-Bukhari, Hadith number 6830.²³

If there is conclusive evidence that reaches the level of certainty, such evidence alone is deemed sufficient for a judicial decision. For example, if a person emerges from a house holding a blood-stained dagger, and upon inspection, a deceased individual is found inside, this evidence would be enough to designate that person as the murderer.

If the evidence is not conclusive but leads to a strong presumption—such as circumstantial evidence inferred from the facts and actions related to the claim—these indications are considered supportive and corroborative.

Upon reviewing the era of the Prophet Muhammad (peace and blessings be upon him), we find instances where he adjudicated cases based solely on the testimony of a single woman. For example:

حدثنا محمد بن يحيى النيسابوري، حدثنا محمد بن يوسف، عن اسرائيل، حدثنا سيماك بن حرب، عن علقمة بن وائل الكندي، عن ابيه، أن امرأة خرجت على عهد رسول الله عليم تريد الصلاة فتلقاها رجل فتجلها ففضى حاجته منها فصاحت فانطلق و مر عليها رجل فقالت ان ذلك الرجل فعل بي كذا وكذا. و مرت بعصابة من المهاجرين فقالت ان ذلك الرجل فعل بي كذا و كذا فانطلقوا فأخذوا الرجل الذي ظنت انه ووقع عليها واتوا فقالت نعم هو هذا فاتوا به رسول الله علم فلما أمر به ليرجم قام صاحبها الذي وقع عليها فقال يا رسول الله أنا صاحبها. فقال لها اذهبي فقد غفر الله لك".²⁴

Narrated by Anas ibn Mālik (may Allāh be pleased with him):

During the time of the Prophet Muhammad (peace and blessings be upon him), a Jew crushed the head of a slave girl between two stones. This narration is recorded in Sahih al-Bukhari, Hadith number 2413.²⁵

In another narration, it is reported that a slave girl, adorned with jewelry, came to Madinah, where a Jew struck her with a stone. She was brought to the Prophet Muhammad (peace and blessings be upon him) while still alive. The Prophet asked her, "Did so-and-so kill you?" She gestured in denial. He inquired again, and she responded similarly. Upon the third inquiry, she nodded in affirmation. The Jew was then apprehended and, after thorough questioning, eventually confessed to the crime. Consequently, the Prophet ordered that his head be crushed between two stones. This narration is recorded in Sahih al-Bukhari, Hadith number 2413.²⁶

It is also reported that at the time of 'Uthmān's martyrdom, the only eyewitness present was his wife, Nā'ilah.²⁷

In such cases, no distinction is made between men and women. For instance, if a woman, like Lady Nā'ilah, witnesses her husband's murder and clearly identifies the perpetrator(s), her testimony cannot be dismissed solely because no other witnesses, male or female, were present. It is crucial to note that Islamic law does not mandate a specific method for courts to investigate crimes, whether they pertain to general offenses or ḥudūd punishments. The procedure and the acceptance of testimony are left to the judge's discretion.

Ibn al-Qayyim has extensively discussed the significance of circumstantial evidence (qarā'in) in judicial proceedings. He emphasized that the primary objective of Islamic law is to

²³ Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuh*, (Damascus: Dar al-Fikr, 1997), Vol. 2, p. 244.

²⁴ Imam Tirmidhi, *Jami' al-Tirmidhi*, Book of Hudud, Chapter on What Has Been Reported About a Woman Who Persistently Commits Zina (Adultery), Hadith No. 1454.

²⁵ Imam Muhammad bin Ismail al-Bukhari, *Al-Jami' al-Sahih al-Bukhari*, Book of Diyat, Chapter on Questioning the Killer Until There Is No Doubt and Determining the Legal Punishment, Hadith No. 2876.

²⁶ Imam Muhammad bin Ismail al-Bukhari, *Sahih al-Bukhari*, Book of Diyat, Chapter on When a Person is Killed with a Stone or a Stick, Hadith No. 6877.

²⁷ Shah Ma'in al-Din Ahmad Nadwi, *Tariikh Islam*, (Lahore: Maktabah Rahmaniyyah, Ghazni Street, Urdu Bazaar), Vol. 1, p. 259.

establish justice, and therefore, any means that lead to justice, including the use of circumstantial evidence, should be employed.

فهذه مسألة كبيرة عظيمة النفع جليلة القدر أن اهتمها الحاكم او الوالي اضاع حقا كثيراً واقام باطلاً كبيراً، وان توسع وجعل معلوله عليها، دون الأوضاع الشريعة وقع في انواع من الظلم والفساد.²⁸

Translation: This issue—making judgments based on circumstantial evidence and indicators—is of great significance and holds immense value and benefits. If a judge or ruler disregards such evidence, they will neglect substantial rights and become complicit in supporting falsehood. Conversely, if they overly rely on circumstantial evidence, such as intuition and conjecture, while neglecting the established principles of justice in Islamic law, they will fall into the misguidance of oppression and corruption. Ibn al-Qayyim further states:

والحاكم اذا لم يكن فقيه النفس في الأمارات و دلالات الحال و معرفة شواهده و في القرائن الحالية والمقالية كجزئيات و كليات الاحكام اضاء حقوقاً كثيرة على أصحابها وحكم بما يعلم الناس بطلانه.²⁹

"If a judge does not comprehend the evidentiary value of signs, indications, and contextual clues as thoroughly as he understands the general and detailed principles of rulings, he will neglect the rights of those entitled and make errors in judgments that will be evident to the public."

In the Qur'an and the Sunnah of the Prophet (peace and blessings be upon him), the term "evidence" (bayyinah) is not limited solely to confession or testimony. Rather, it encompasses any proof that clarifies and manifests the truth, serving as a basis upon which a judge can render a decision.

In the Holy Qur'an, Allah Almighty states:

حَقِيقٌ عَلَىٰ أَنْ لَا أَقُولَ عَلَى اللَّهِ إِلَّا الْحَقَّ قَدْ جِئْتُكُمْ بِبَيِّنَةٍ مِّن رَّبِّكُمْ فَأَرْسِلْ مَعِيَ بَنِي إِسْرَائِيلَ قَالَ إِنْ كُنْتَ جِئْتَ بِآيَةٍ فَأْتِ بِهَا إِنْ كُنْتَ مِنَ الصَّادِقِينَ فَأَلْقَىٰ عَصَاهُ فَإِذَا بِي تُعْبَانٌ مُّبِينٌ وَتَرَعُ يَدُهُ إِذَا بِي بِيضَاءٌ لِلنَّاظِرِينَ.³⁰

"It is appropriate for me to attribute nothing to Allah except the truth. I have come to you with a clear proof from your Lord, so let the Children of Israel go with me." Pharaoh said, "If you have brought a sign, then present it, if you should be of the truthful." So Moses threw his staff, and suddenly it was a serpent, manifest. And he drew out his hand; thereupon it was white for the observers to see."

Ibn al-Qayyim states:

"The term 'bayyinah' applies to anything that indicates and clarifies the truth. Whoever restricts it to two witnesses, four witnesses, or a single witness has not fully grasped its meaning. The Qur'an does not specify that 'bayyinah' refers to two witnesses; rather, the term appears in both singular and plural forms, signifying proof, evidence, and demonstration. Similarly, when the Messenger of Allah (peace and blessings be upon him) said, 'The burden of proof is upon the claimant,' he intended that any form of evidence that elucidates the truth is acceptable."

This perspective underscores that 'bayyinah' encompasses all means of establishing the truth, not limited to a specific number or type of witnesses.³¹

The term "bayyinah" encompasses evidence, proof, argument, witness, and any means by which a claimant can substantiate their claim. It is incumbent upon the claimant to provide such evidence to secure a favorable judgment. Notably, the testimony of two witnesses is merely one form of evidence. Undoubtedly, other forms of evidence can, at times, be more compelling than

²⁸ Muhammad bin Ali Bakr Ibn al-Qayyim al-Jawziyyah, *Al-Turuq al-'Ilmiyyah fi Siyasa al-Shariyyah*, (Lahore: Dar Nashr al-Kutub al-Islamiyyah), p. 133.

²⁹ Muhammad bin Ali Bakr Ibn al-Qayyim al-Jawziyyah, *Al-Turuq al-'Ilmiyyah fi Siyasa al-Shariyyah*, (Lahore: Dar Nashr al-Kutub al-Islamiyyah), p.88

³⁰ Al-A'raf 7:105–108

³¹ Imam Ibn Qayyim al-Jawziyyah, *Al-Turuq al-Hukmiyyah fi al-Siyasa al-Shar'iyyah*, 2007, Dar Alam al-Fawa'id, Makkah Mukarramah, p. 24.

witness testimony. For instance, circumstantial evidence that substantiates the claimant's truthfulness may carry greater weight.

Witness."

The term "bayyinah" encompasses evidence, proof, argument, witness, and any means by which a claimant can substantiate their claim.³² "

قرائن اور علامات کے ذریعے فیصلے پر حضرت یوسف علیہ السلام کے قصے سے استدلال کیا جاتا ہے۔ ارشاد خداوندی ہے۔
وشہد شاہد من أبلها إن كان قميصه قد من قبل فصدقت وهو من الكاذبين وإن كان قميصه قد من دبر فكذبت وهو من الصادقين.³³

And a witness from her household testified, "If his shirt is torn from the front, then she has told the truth, and he is of the liars. But if his shirt is torn from the back, then she has lied, and he is of the truthful."

In the exegesis of these verses, Tafsir Ahsanul Bayan explains:

This was a wise individual from her own family who made this judgment. The term "testimony" is used here because the matter required investigation. The narration about the testimony of an infant is not established through authentic traditions. In the Sahihayn (Bukhari and Muslim), there is a hadith about three infants who spoke, and this incident is not among them, though it is often mentioned in this context.³⁴

The term "bayyinah" encompasses evidence, proof, argument, witness, and any means by which a claimant can substantiate their claim. It is incumbent upon the claimant to provide such evidence to secure a favorable judgment. Notably, the testimony of two witnesses is merely one form of evidence. Undoubtedly, other forms of evidence can, at times, be more compelling than witness testimony. For instance, circumstantial evidence that substantiates the claimant's truthfulness may carry greater weight.

فاذا اتيت وكيلي فخذ منه خمسة عشر وسقاً، فاذا طلب منك آية فضع يدك على ترقوته.³⁵

When you reach my agent, take fifteen wasq from him. If he requests a sign, place your hand on his collarbone.

In another noble narration:

في قصة فتح خيبر قال النبي لعمر حبي بن اخطب ما فعل مسك بن حبي الذي جاء به من النضير؟ قال اذهبته النفقات والحروب، قال: العهد قريب والمال أكثر من ذلك، قد فعه رسول الله لم إلى الزبير خمسة بعداب فقال: قد رأيت حبياً يطوف في خربة هاهنا، فذهبوا فطافوا فوجدوا المسك في الخربة.³⁶

When the Prophet Muhammad (peace and blessings be upon him) inquired about Huyayy ibn Akhṭab's pouch from his uncle, he responded that it had been expended in battles and various expenses. However, considering the substantial wealth, it seemed implausible for it to be depleted in such a short time. Upon pressing by the Companion Zubayr ibn al-ʿAwwām, he disclosed the hidden location of the wealth. Similarly, there was an incident where ʿUmar ibn al-Khaṭṭāb and other Companions ordered the stoning of a woman who was found to be pregnant, despite having neither a husband nor a master. In such cases, the correct stance, as held by Imām Mālik and Imām Aḥmad, is that the clear circumstantial evidence indicates adultery.³⁷

³² Ibad, 124

³³ Yusuf 12:16

³⁴ Maulana Salahuddin Yusuf, *Tafsir Ahsan al-Bayan*, (Madinah Munawwarah: King Fahd Complex for the Printing of the Holy Qur'an, 1317 AH), p. 464.

³⁵ Al-Daraqutni, Ali bin Muhammad, *Al-Sunan*, Lahore: Dar al-Nashr al-Kutub al-Islamiyyah, Chapter on Agency (Al-Wakalah), Vol. 3, p. 154.

³⁶ Abu Dawood, Sulaiman bin al-Ash'ath, *Sunan Abu Dawood*, Book of Al-Kharaj, Al-Imarah, and Al-Fay', Chapter on What Has Been Reported About the Ruling on Conquered Lands, Hadith No. 3002.

³⁷ Imam Ibn Qayyim al-Jawziyyah, *Al-Turuq al-Hukmiyyah fi al-Siyasah al-Shar'iyyah*, 2007, Dar Alam al-Fawa'id, Makkah Mukarramah, p. 6

After an initial discussion on circumstantial evidence, bayyinah, hudud, qisas, and ta'zir, the question arises: Can circumstantial evidence and indicative testimony be accepted in cases of hudud and qisas?

In Islamic jurisprudence, the primary source is the Holy Qur'an, from which laws are derived in conjunction with the Sunnah of the Prophet Muhammad (peace be upon him). According to these sources, direct eyewitness testimony and confession are fundamental types of evidence for proving any crime. However, in the Islamic criminal justice system, circumstantial evidence (qarinah) is also considered a significant means of proof. This is supported by the Qur'an, the Sunnah of the Prophet (peace be upon him), and the practices of the Companions (may Allah be pleased with them).

For instance, in Surah Yusuf (12:18, 25-27), the circumstantial evidence of Prophet Yusuf's (Joseph's) shirt being torn from the back served as a sign of his innocence. Similarly, there is a narration involving two women disputing over a child, where Prophet Solomon (peace be upon him) used circumstantial evidence to determine the rightful mother.

Additionally, the Prophet Muhammad (peace be upon him) expressed satisfaction when Mujazziz al-Mudliji confirmed lineage through resemblance, which is a form of circumstantial evidence.

Furthermore, a statement from Umar ibn al-Khattab (may Allah be pleased with him) indicates the acceptance of circumstantial evidence in certain situations.

These instances illustrate that circumstantial evidence has a recognized role in Islamic jurisprudence, including in cases related to hudud and qisas.

حدثني مالك عن ابن شهاب، عن عبيد الله بن عبد الله بن عتبة بن مسعود، عن عبد الله ابن عباس انه قال سمعت عمر بن الخطاب يقول الرجم في كتاب الله حق على من زنى من الرجال والنساء. اذا احصن اذا قامت البيئنة أو كان الحبل أو الاعتراف.

Similarly, 'Umar ibn al-Khaṭṭāb (may Allah be pleased with him) once remarked, "I detect the scent of a beverage from 'Ubaydullah. I will investigate it, and if it is intoxicating, I will administer lashes (i.e., enforce the prescribed punishment)."

Ibn al-Qayyim's definition of bayyinah is notably comprehensive, encompassing anything that elucidates or establishes the truth. This concept is not limited solely to witness testimonies but includes any evidence that reveals the truth.

Circumstantial evidence (qarīnah) is admissible when it is based on solid and robust reasoning; however, if there is any doubt, it is not accepted. The majority of scholars recognize circumstantial evidence as a valid means of proof in Islamic law. The extent of its applicability, particularly in establishing ḥudūd offenses, varies among scholars. In cases of ta'zīr (discretionary punishments), scholars unanimously agree on the acceptance of circumstantial evidence. Regarding ḥudūd and qisās, scholarly opinions are categorized into three perspectives:

1. **Complete Rejection:** Some scholars, particularly from the Ḥanafī and Shāfi'ī schools, entirely reject the use of circumstantial evidence in ḥudūd and qisās cases.
2. **Conditional Acceptance:** Others accept circumstantial evidence for specific offenses. For instance, the Mālikī school holds that if an unmarried woman becomes pregnant and cannot provide a valid explanation, the ḥadd punishment is applicable.
3. **Broad Acceptance:** A more liberal view permits the use of circumstantial evidence in all matters, including ḥudūd and qisās. Proponents argue that witness testimonies can sometimes be fabricated or false, whereas circumstantial evidence, derived from factual circumstances, is less prone to dishonesty and can serve as a more reliable proof.

These varying perspectives highlight the nuanced approach within Islamic jurisprudence regarding the admissibility and scope of circumstantial evidence in legal proceedings.³⁸

³⁸ Mohd Munzil bin Muhammad, Qarinah: Admissibility of Circumstantial Evidence in Hudud and Quisas Cases Mediterranean Journal of Social Sciences MCSTR Publishing Rome-Italy, Vol. 6, No. 2. March 2015, Page: 14-149

Muhammad ‘Aṭā al-Sayyid elaborates on the third perspective, asserting that circumstantial evidence is applicable and appropriate in all matters, including ḥudūd and qiṣāṣ.³⁹

According to Ibn Qayyim, both Imams and Caliphs have enforced ḥudūd punishments on individuals from whom stolen property was recovered. This practice challenges the notion that circumstantial evidence lacks significance. Ibn Qayyim emphasized that the ultimate aim of Allah's law is the implementation of justice among people. To achieve this, any method can be employed, especially in situations where witnesses are unavailable; alternative available evidence should be considered.⁴⁰

According to Amin al-Juraymi, Qur'anic evidence can only be regarded as corroborative evidence. On that basis, it cannot be used to decide cases of ḥudūd and qiṣāṣ, because crimes involving ḥudūd and qiṣāṣ require a very cautious approach. There is always some doubt inherent in circumstantial evidence; therefore, it can only be accepted as corroborative evidence when combined with confessions and eyewitness testimony.

Muhammad ‘Aṭā al-Sayyid holds the view that circumstantial evidence is sufficient in cases of ḥudūd. According to him, all scholars do accept the applicability of circumstantial evidence, although their opinions may vary in the details. He argues that the evidence against circumstantial proof is not founded on solid grounds, and rejecting it would hinder the attainment of justice. However, it is important to note that weak circumstantial evidence will not be acceptable—only evidence based on solid and strong foundations can be relied upon.

Mahmoud Sayyidun A. Uthman also shares this view, asserting that the scholars have accepted strong circumstantial evidence. Critics, however, contend that in cases of ḥudūd and qiṣāṣ, punishment cannot be imposed solely on the basis of circumstantial evidence, as such evidence does not rise above doubt. They maintain that Qur'anic evidence does not meet the level of certainty required for condemning the accused. In response, one can argue that robust circumstantial testimony or evidence may indeed reach the standard of certainty or rise above all doubt, thereby enabling a judge to impose punishment on the accused.⁴¹

Alternatively, it may be argued that a strong Qur'anic testimony can meet the standard of an overwhelming presumption. Although circumstantial evidence generally does not prove any fact, in certain specific circumstances it becomes a robust overwhelming presumption that should be accepted in the absence of conclusive evidence. The applicability of this overwhelming presumption is established by the following verse of the Holy Qur'an.

إِنَّ بَعْضَ الظَّنِّ إِثْمٌ⁴²

That is, not all doubts constitute sin, nor can all doubts be dismissed. A strong presumption, one based on solid circumstantial evidence, can serve as the foundation in cases of ḥudūd and qiṣāṣ.

In the Maliki school, this very principle underlies the acceptance of circumstantial evidence as proof in crimes involving ḥudūd and qiṣāṣ.⁴³

Only when the highest standard of certainty is achieved does a proof (bayyinah) warrant the imposition of a hudud punishment on the accused. Conversely, if the nature of the crime

³⁹ Ibid, 151

⁴⁰ Ibid, 153

⁴¹ Quisas Cases, Mediterranean Journal of Social Sciences MCSTR Publishing Rome-Italy, Vol.6, No. 2, March 2015. Page: 145

⁴² Al-Hujurat 49:12

⁴³ Mohd Munzil bin Muhammad, Qarinah: Admissibility of Circumstantial Evidence in Hudud and Quisas Cases, Mediterranean Journal of Social Sciences MCSTR Publishing Rome-Italy, Vol. 6, No. 2, March 2015, Page: 146

committed is of a lesser degree, then a less severe punishment—in accordance with an overwhelming presumption (ẓann-ghālib)—will be imposed (i.e., one that is less than hudud). Circumstantial or testimonial evidence is always considered alongside collective and corroborative testimony; in other words, all circumstances and events are thoroughly examined, or else the evidence will be deemed weak. Ibn Qayyim's reference to manifest or robust circumstantial evidence is precisely to that effect.

DNA evidence is a type of circumstantial proof. It can be obtained from traces such as blood, sweat, semen, skin, nails, and hair. This constitutes clear proof that the accused was present at the scene of the crime at the time of the incident.

DNA evidence becomes highly significant as robust circumstantial proof when it is properly collected from the crime scene and accurately analyzed. The investigating officer, the doctor, and the chemist must perform their duties correctly, and the doctor and chemist must prepare accurate reports. Furthermore, the DNA samples must be properly preserved, and throughout the entire process a very careful method should be employed to present this forensic evidence in court—accompanied by the oral testimony of the doctor, the chemist, and the investigating officers. In that case, this evidence will be recognized as manifest circumstantial proof, thereby greatly enhancing its importance.

In summary, in criminal cases, DNA evidence becomes an extremely solid and robust form of circumstantial proof. If a comprehensive evaluation of all circumstances and indications leads to a conclusion that the evidence is beyond doubt, then offenders in hudud and qisās cases may be punished accordingly. However, if any doubt remains, then only a discretionary (ta'zīr) punishment may be imposed. Indeed, by relying on strong and solid circumstantial evidence rather than weak or flimsy evidence, the ruling will be fully in accordance with Sharia—even in cases of hudud and qisās.

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