

# ACID SPLASH: *QISAS* PUNISHMENT TO BE IMPOSED AGAINST THE OFFENDER

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## *Abstract*

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*In Islamic countries, there are cases where a court has given punishment to an acid splasher to be punished by acid as well. In 2004, an Iranian woman was blinded with acid by her suitor for turning down his marriage proposal. Four years later, the Iranian court sentenced the offender to be blinded in both eyes for taking away the woman's sight under the retribution principle permitted under Iran's Islamic law. This case's decision has regularly been objected as the punishment seems inhuman. This paper will discuss in detail the nature of the offence and the punishment imposed in Islamic perspective.*

**Keyword:** *Islamic criminal law, retaliation, acid splasher.*

## *Intisari*

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Terdapat beberapa kasus di negara-negara Islam di mana pengadilan memberikan hukuman pembalasan terhadap terdakwa yang menyiram cairan asam ke tubuh orang lain. Pada tahun 2004, seorang perempuan Iran dibutakan dengan asam oleh peminangnya setelah si perempuan menolak lamaran pria tersebut. Empat tahun setelahnya, pengadilan di Iran memutuskan untuk menghukum pria tersebut dengan hukuman yang sama, yaitu dibutakan dengan asam. Hukuman ini dijatuhkan dengan dasar asas retribusi menurut hukum Islam di Iran. Putusan hakim dalam kasus ini telah menuai kritik karena hukuman tersebut dianggap tidak berperikemanusiaan. Artikel ini akan membahas lebih dalam tentang perbuatan menyiram cairan asam dan hukuman pembalasan menurut perspektif Islam.

**Kata Kunci:** hukum pidana Islam, pembalasan, penyemprot asam.

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## A. Introduction

In Islam, an offence against the body of human is known as *qisas*. *Qisas* is derived from Arabic word “*qassa*” means law of equality or equitable retaliation. *Qisas* literally means “tracking the footsteps of an enemy”; but technically, in Muslim law, it is a retaliatory punishment, an eye for an eye. It is the *lex talioni* of the Mosaic law.<sup>1</sup> *Qisas* apply to a person who has committed violation to others and he will be harmed in the same manner or is understood as retaliation, which denotes vindictiveness or revenge than redress of harm or violation by equalizing the loss. The basic objective of the *qisas* law, as is mentioned by the Quran, is to protect life. Imam Amin Ahsan Islahi explains this in the following way:

If a murderer is executed because of his crime, it apparently seems as if a second life has been taken, but a little deliberation shows that this punishment actually guarantees the life of the whole society. If this punishment is not carried out, the mental disorder in which a person commits this crime is actually transmitted to the society. The extent of various diseases differ: diseases which result in such heinous crimes as murder, robbery, theft or fornication are like those diseases in which it is necessary to amputate some limb of the body to save the whole body. Amputating a limb may seem a callous act, yet a doctor has to be callous. If by showing sympathy to this limb he does not force himself to this cruelty, he may have to bear with the patient’s death. Society in its collective capacity is like a body. At times, its limbs get infected to the extent that the only option is to cut them off from the body through an operation. If sympathy is shown by considering it to be the limb of a patient, there is all the chance that this would fatally affect the whole body.<sup>2</sup>

There are five categories of offences under *qisas* punishment according to the majority of jurists view namely; intentional murder (*qatl amd*), quasi-intentional murder (*qatl shibh amd*), murder by mistake (*qati khata*) and intentionally hurt (*jurh*) and unintentionally hurt.<sup>3</sup> Some jurists generally place the crimes just mentioned under the category of felony or ‘*jenayat*’ since this term is applicable to wrongful or outrageous acts. But others classify it as *jirah* or injuries in as much as injury is the most common form of wrong. There are still others who prefer the term ‘*ad-dima*’ for the crimes in question.<sup>4</sup>

Traditional Muslims who understand the book of Allah and the hadith believes that Islamic law or sharia law expresses the highest and best goals for all societies. It is the will of Allah.<sup>5</sup> In modern cases, acid splashing presents itself as a form of legal punishment in Muslim countries and enacts itself to act under “the will of Allah”. Known examples of this are as follows:

- a. In 2003, a court in Pakistan sentenced a man to be blinded by acid after he carried out a similar attack on his fiancée. The court in the town of Bahawalpur, Punjab province, sentenced Mohammad Sajid under the Islamic *qisas* law that matches crime and punishment. Sajid blinded and mutilated his fiancée after her parents called off the couple’s engagement.<sup>6</sup>
- b. In 2005, an Iranian court ordered a man’s eye to be removed for throwing acid on another man and blinding him in both eyes. Etemaad says the accused, identified only as Vahid, was 16 when he threw a bottle of acid at another man during a fight in a vegetable market in 1993. The top opened — Vahid insists accidentally — and blinded his victim

<sup>1</sup> Ram Swarup, “Crime and Punishment (Qasamah, Qisas, Hadud)”, <http://www.voiceofdharma.org/books/uiith/index.htm>, retrieved on 9 December 2011.

<sup>2</sup> Amin Ahsan Islahi, 1986, *Tadabbur-i-Qur’an: Volume 1*, Faran Foundation, Lahore.

<sup>3</sup> Abdul Rahman Awang, “Konsep Jenayah dalam Islam dan Isu Semasa”, in Nasimah Hussin, et al., 2007, *Undang-Undang Islam: Jenayah, Keterangan dan Prosedur (Volume 13)*, Dewan Bahasa dan Pustaka, Kuala Lumpur, p. 3.

<sup>4</sup> Abdul Qadir Oudah, 1999, *Criminal Law of Islam*, Kitab Bhavan, India.

<sup>5</sup> James M. Arlandson, “The Law of Retaliation in the Quran and Early Islam”, <http://answering-islam.org/Authors/Arlandson/retaliation.htm>, retrieved on 1 December 2011.

<sup>6</sup> BBC News, “Eye for an Eye in Pakistan Acid Case”, [http://news.bbc.co.uk/2/hi/south\\_asia/3313207.stm](http://news.bbc.co.uk/2/hi/south_asia/3313207.stm), retrieved on 29 November 2011.

in both eyes. A court said the crime should be judged as *qisas*, a category for which the Koran stipulates specific punishments, in this case an eye for an eye. The paper said the sentence was to pour acid on Vahid's eyes, but an appeals court ruled it should be done surgically so as not to harm other parts of his face.<sup>7</sup>

- c. Another case, in November 2008, a court in the capital city of Iran, Tehran, sentenced Majid Movahedi to "blindness in both eyes" by ten drops of sulfuric acid for splashing acid on Ameneh Bahrami's face in 2004 as she had allegedly spurned his marriage proposals. Ameneh Bahrami's face became disfigured and she lost the sight in both eyes as a result of the injury. The sentence was approved by the Iranian Supreme Court in February 2009.<sup>8</sup>

The cases above show that an acid splashing offense can be punished under the basis of retaliation (*qisas*). Thus, this paper will focus in detail the reason why and how *qisas* punishment can be imposed against an acid splash offender. Furthermore, it will also focus on the "hurt" of the acid splash offence in relation to the injury and the punishment under Islamic law.

## B. Discussion

### 1. Definition of Hurt

"Hurt" means to cause bodily pain, harm, disease, infirmity, or injury to any other person or impairs, disables, or dismembers any limb or organ of the body, without causing death. According to Imam Malik and Imam Abu Hanifah's view, hurt can be classified into two namely intentionally hurt and hurt by mistake, whereby, according to Imam Shafi'e and Imam Ahmad, hurt can be classified into three categories i.e. intentional

hurt, quasi-intentional hurt and hurt by mistake or unintentional hurt.<sup>9</sup>

The jurists have divided the hurt into 5 main kinds:<sup>10</sup>

1. To cut or amputate totally any limb or organ of the body of another person like amputation of hand, foot, finger, eye, ear, lip, etc.
2. To destroy or permanently impair the functioning or power or limb or an organ of another person
3. To cause hurt on the head or face of any person which does not amount to the total amputation or destroying of the head or face. It is called *shajjah*. It consists of:
  - a. *Harisah*; if only the skin has been cut or separated
  - b. *Damiah*; if blood has flowed
  - c. *Badiyah*; if the flesh has been injured
  - d. *Mutalahimah*; if the flesh has been penetrated
  - e. *Simhak*; if the membrane enters the flesh and bone is injured
  - f. *Mudihah*; if the bone has been uncovered
  - g. *Hashimah*; if the bone itself has been injured
  - h. *Munaqqilah*; if the bone is broken so that the fragments are separated.
  - i. *Mamunah* or *Ammah*; if the membrane of the brain has been injured
  - j. *Damighah*; if the brain has been injured
  - k. *Damiah*; if the blood is uncovered but does not flow
4. To cause hurt at any part of the body of a person other than head or face leaving a mark of the wound whether temporary or permanent. If a person causes hurt to another person and the wound enters the body cavity of the trunk, it is called as *jaifah*. And if a person causes hurt to another person and the wound does not enter the body cavity of the trunk, it is called *ghair jaifah* and such hurt either causing rupturing the skin with

<sup>7</sup> Free Republic, "Iranian Court Orders Man to be Blinded", <http://www.freerepublic.com/focus/f-news/1434247/posts>, retrieved on 29 November 2011.

<sup>8</sup> Iran Human Rights, "URGENT: Iranian Man's Acid Blinding Punishment Set for Tomorrow Morning in Tehran", <http://iranhr.net/spip.php?article2194>, retrieved on 30 November 2011.

<sup>9</sup> Wahbah al-Zuhaili, 1989, *Al-Fiqh al-Islami wa Adillatuhu: Volume VI*, Daar al-Fikr, Damascus, p. 332.

<sup>10</sup> Paizah Haji Ismail, 1996, *Undang-undang Jenayah Islam*, Dewan Pustaka Islam, Selangor.

which bleeding starts or cutting the flesh without exposing the bone or lacerating the flesh without exposing the bone or fracture of a bone without dislocating it or fracturing and dislocating the bone.<sup>11</sup>

5. Hurt other than hurts mentioned.

## 2. Legal Text of *Qisas* for Hurt

Generally, the punishment of hurt, when it has been done intentionally is *qisas* which means that the punishment imposed to the offender must be similar to the same part of the body of the victim. Quran says:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُنِبْ عَلَيْكُمْ الْقِصَاصُ فِي الْقَتْلِ الْحَرْبُ بِالْحَرْبِ  
وَالْعَبْدُ بِالْعَبْدِ وَالْأُنْثَىٰ بِالْأُنْثَىٰ فَمَنْ عَفَىٰ لَهُ مِنْ أَخِيهِ شَيْءٌ فَإِنْسَاءُ  
بِالْمَعْرُوفِ وَأَدَاءُ إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ  
فَمَنْ أَعْتَدَىٰ بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ ﴿١٧٨﴾

O ye who believe! The law of equality is prescribed to you in cases of murder: the free for the free, the slave for the slave, the woman for the woman. But if any remission is made by the brother of the slain, then grants any reasonable demand, and compensates him with handsome gratitude, this is a concession and a Mercy from your Lord. After this whoever exceeds the limits shall be in grave penalty (178) In the Law of Equality there is (saving of) Life to you, o ye men of understanding; that ye may restrain yourselves. (179) (al-Baqarah: 178-179)

وَكُنِبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ  
وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ  
قِصَاصٌ فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ وَمَنْ لَّمْ  
يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَئِكَ هُمُ الظَّالِمُونَ ﴿٤٥﴾

We ordained therein for them: "Life for life, eye for eye, nose or nose, ear for ear, tooth for tooth, and wounds equal for equal." But if any one remits the retaliation by way of charity, it is an act of atonement for himself. And if any fail to judge by (the light of) what Allah hath

revealed, they are (no better than) wrong-doers. (45) (al-Ma'idah: 45)

The law of *qisas* which is mentioned in Al-Baqarah and Al-Ma'idah is based on the following four clauses: Firstly, *qisas* is an obligation imposed by the Almighty on an Islamic State. It guarantees survival to a society and is, in fact, a Divine Law which can only be breached by those who wrong their souls. Consequently, it is the responsibility of the government to search for the murderer, arrest him and implement the will of the heirs of the murdered person.

Secondly, complete equality should be observed in taking *qisas*. Hence, if the murderer is a slave, only that particular slave should be executed and if the murderer is a free man, only that particular free man should be executed. A person's social status should never create an exception to this rule of equality nor should it be given any emphasis in this regard.

Thirdly, the heirs of the slain or wounded person have only two options: they can either demand life for life, limb for limb wound for wound or they can forgive the criminal and accept *diyat* from him. The latter case, according to the *Qur'an* is a favor and rebate by the Almighty to the criminal. Consequently, their forgiveness shall become atonement (*kaffarah*) for the criminal and as a result the government shall not lay hands on him at all.

Fourthly, if the heirs of the slain or wounded person agree to accept *diyat*, then this should be given to them with goodness and goodwill<sup>12</sup>.

Another verse:

وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ وَإِذْ صَبَرْتُمْ لَهُوَ  
خَيْرٌ لِلصَّابِرِينَ ﴿١٣٦﴾

And if ye do catch them out, catch them out no worse than they catch you out: But if ye show patience that is indeed the best (course) for those who are patient. (an-Nahl: 126)

<sup>11</sup> Abd. Al. Qadir Audah, 1968, *Al-Tashri' a Al-Jinai Al-Islami: Volume 2*, Dar al-Kitab, Beirut, p. 204.

<sup>12</sup> Javed Ahmad Ghamidi, et al., "The Penal Law of Islam", <http://www.renaissance.com.pk/septfeart2y2.html>, retrieved on 2 December 2011.

It has been supported by few hadiths. One of the hadiths is narrated by Anas (bin Malik): Ar-Rubai (the paternal aunt of Anas bin Malik) broke the incisor tooth of young Ansari girl. Her family demanded the *qisas* and they came to the Prophet who passed the judgment of *qisas*. Anas bin An-Nadr (the paternal uncle of Anas bin Malik) said, "O Allah's Apostle! By Allah, her tooth will not be broken." The Prophet said, "O Anas! (The law prescribed in) Allah's Book is *qisas*." But the people (i.e. the relatives of the girl) gave up their claim and accepted compensation. On that Allah's Apostle said, "Some of Allah's worshippers are such that if they take an oath, Allah will fulfill it for them."

Another hadith is narrated by 'Abdullah. Allah's Apostle said; "The blood of a Muslim who confesses that none has the right to be worshipped but Allah and that I am His Apostle, cannot be shed except in three cases: In *qisas* for murder, a married person who commits illegal sexual intercourse and the one who reverts from Islam (apostate) and leaves the Muslims."

The term *qisas* in these hadiths means punishment by causing similar hurt at the same part of the body of the offender as he has caused to the victim. However, some scholars argue that the punishment for hurt is not retaliation. There is no clear evidence in Quran and Sunnah to show that *qisas* is the punishment for hurt.<sup>13</sup> They base their argument on a few Quranic verses. Among of the verses is *surah* al-Maidah 45:

"We ordained therein for them: "Life for life, eye for eye, nose or nose, ear for ear, tooth for tooth, and wounds equal for equal." But if any one remits the retaliation by way of charity, it is an act of atonement for himself. And if any fail to judge by (the light of) what Allah hath revealed, they are (No better than) wrong-doers."

وَقَفَيْنَا عَلَىٰ آثَرِهِمْ بَعِيسَىٰ ابْنِ مَرْيَمَ مَصْدَقًا لِّمَا بَيْنَ يَدَيْهِ مِنَ التَّوْرَةِ  
وَأَيَّتَنَّهُ الْإِنجِيلَ فِيهِ هُدًى وَنُورٌ وَمَصْدَقًا لِّمَا بَيْنَ يَدَيْهِ مِنَ التَّوْرَةِ  
وَهُدًى وَمَوْعِظَةً لِّلْمُتَّقِينَ ﴿٤٦﴾

The scholar argued that this verse is not for retaliation punishment for hurt but it is for the revelation and Jews law which has stated in Torah. It is set of law for Jews and Christian and not retaliation punishment when this verse read together with next verse in *surah* al-Maidah 46:

الشَّهْرُ الْحَرَامُ بِالشَّهْرِ الْحَرَامِ وَالْحُرُمَتُ قِصَاصٌ فَمَنۢ وَعَدَدۡنَا عَلَيْكُم  
فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا آتَدَدۡنَا عَلَيْكُمۡ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ مَعَ  
الْمُتَّقِينَ ﴿١٩٤﴾

And in their footsteps, We sent Jesus the son of Mary, confirming the Law that had come before him: We sent him the Gospel: therein was guidance and light, and confirmation of the Law that had come before him: a guidance and an admonition to those who fear Allah.

This verse shows every Prophet have their own law revealed by the God. Thus, the Quranic verses above are not meant for Prophet Muhammad. Apart from these Quranic verses, the scholars refer to *surah* an-Nahl verse 126, as we have quoted *supra*, and to *surah* al-Baqarah verse 194 which states that:

الشَّهْرُ الْحَرَامُ بِالشَّهْرِ الْحَرَامِ وَالْحُرُمَتُ قِصَاصٌ فَمَنۢ وَعَدَدۡنَا عَلَيْكُم  
فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا آتَدَدۡنَا عَلَيْكُمۡ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ مَعَ  
الْمُتَّقِينَ ﴿١٩٤﴾

The prohibited month for the prohibited month, - and so for all things prohibited, - there is the law of equality. If then any one transgresses the prohibition against you, Transgress ye likewise against him. But fear Allah, and know that Allah is with those who restrain themselves.

These verses also are not meant for retaliation punishment for hurt but it shows the relationship for Muslim with non-Muslims.<sup>14</sup> They believed that hurt cannot be punished by *qisas* but it is a *ta'zir* punishment or it is based on *ijma'*.

<sup>13</sup> Mohamed S. El-Awa, 1999, *Hukuman dalam Undang-Undang Islam: Satu Kajian Perbandingan*, Dewan Bahasa dan Pustaka, Malaysia, p. 107.

<sup>14</sup> *Ibid.*, p. 108.

### 3. Conditions for *Qisas*

There are certain conditions that must be fulfilled before an offender is liable to be punished with *qisas*. Otherwise, *qisas* punishment cannot be done when there is lack of conditions. In short, the conditions for *qisas* are as follows:

1. The offender must have caused hurt to the victim intentionally;
2. The offender must be an adult and sane;
3. According to Imam Shafi'e, the victim must be a Muslim. Thus if a Muslim causes hurt to non-Muslim, he will not be punished with *qisas* but will be punished with the compensation accordingly. However, according to Imam Abu Hanifah, the hurt of a Muslim and non-Muslim is equal and as such if a Muslim causes hurt to a non-Muslim, the offender is liable for *qisas* and vice-versa. In this situation, the later opinion is preferable;<sup>15</sup>
4. There must be equality in the relevant organ or limb of the victim and the offender;
5. There must be complete equality in the severity of the hurt and thus no harm will be caused to the offender which causes more harm to him than that he caused to the victim.<sup>16</sup>

As causing similar hurt to the offender as he has caused to the victim is difficult in many hurts, the *qisas* will only be applied when the organ has the joint and limit known in the body like finger and hand if mutilated totally or any such hurt which can easily and clearly be caused to the offender without causing him any more harm than he has caused to the victim.<sup>17</sup> If the harm cannot be determined, then *qisas* cannot be applied to the offender. This has been supported by hadith whereby The Holy Prophet said: "there is no *qisas* in fracture of the bone." In another version, the Holy Prophet mentioned: "there is no *qisas* in *mamunah*, *jaifah* and *munaqilah*."

Thus, there is no such retaliatory equivalence for injury to the tongue, bones or sexual organs or for the removal of the eye from its socket, since such injuries are difficult to duplicate with precision. These injuries require compensation.<sup>18</sup> The Jurists of the Hanafi School of Law hold that *qisas* for injuries should be inflicted in two cases only when the injury reaches the skull-bone (*al-muwaddah*) and for an articular injury (*al-jinaya 'ala-mifsal*). All other cases of injury are either unanimously held not to be subject to *qisas*, or agreed upon among the Hanafi jurists but not among others, or are subject to dispute among Hanafi scholar themselves.<sup>19</sup>

However, the jurists concur that the execution of the sentence of *qisas* in hurt should be preceded by medical examiner in order to find out whether equality can be maintained without causing the convict an additional injury.

### 4. Punishments for Hurt

When hurt has been caused intentionally, the punishment for it is retaliation (*qisas*). This has been affirmed by few Quranic verses and the hadith narrated by Anas bin Malik which has been mentioned above. However, it depends on the nature of the injury or harm inflicted over the body of the victim. If it can be determined, *qisas* simply can be imposed. Otherwise, the offender is liable to pay compensation only.

With regard to punishment for hurt by mistake, it is not *qisas* but shall be punished with the compensation accordingly and may also be liable for *ta'zir* if the offence has been committed partly due to his negligence or it is required for public interest. This is because hurt by mistake lacks of intention from the offender and thus the elements of crime are not being fulfilled.

<sup>15</sup> Anwarullah, 2002, *The Criminal Law of Islam*, A.S. Nordeen, Kuala Lumpur, p. 104.

<sup>16</sup> Mohamed S. El-Awa, 1998, *Punishment in Islamic Law: A Comparative Study*, American Trust Publications, Indianapolis, p. 73.

<sup>17</sup> Anwarullah, *Op.cit.*, p. 105.

<sup>18</sup> Matthew Lippman, *et al.*, 1988, *Islamic Criminal Law and Procedure*, Praeger Publishers, New York.

<sup>19</sup> Mohamed S. El-Awa, *Op.cit.*, p. 74.

However, the victim which is sane and adult is authorized to pardon the offender with or without compensation or compound it by anything agreed upon by the parties. When the victim has pardoned the offender, no *qisas* punishment can be imposed. This can be based on the hadith of the Holy Prophet which mentions that "Some of Allah's worshippers are such that if they take an oath, Allah will fulfill it for them." Based on this hadith, the punishment is revoked when a person has forgiven the others.

Today, the *diyah* (compensation) is paid by the offender to the victim if he is alive. If the victim is dead, the money is paid to the victim's family or to the victim's tribe or clan. The assumption is that victims will be compensated for their loss. The *qisas* crimes require compensation for each crime committed. Each nation sets the damage before the offense and the judge then fixes the proper *diyah*. If an offender is too poor to pay the *diyah*, the family of the offender is called upon first to make good the *diyah* for their kin. If the family is unable to pay, the community, clan, or tribe may be required to pay.<sup>20</sup>

## 5. Acid Splash and *Qisas*

With regard to the offence of acid splash, the conditions of *qisas* which has been discussed earlier should be fulfilled first, and then *qisas* punishment can be imposed. For the first condition, the offender must have two things to be done which are *actus reus* (action to splash the acid to the victim) and the *mens rea* (the intention to commit the offence to the victim). This condition is very important to relate *qisas* punishment with the offence because if there is lack of one of the elements in the first condition, *qisas* or the law of retaliation cannot be imposed at all against the offender.

The second condition is that the offender must be adult and sane. It is to ensure that the offender realize and aware of all of his actions done towards

the victim. The third condition is debatable but based on personal opinion, view of Imam Abu Hanifah should be preferable because there is no different between Muslim or non-Muslim. The offence will inflict against the same nature i.e. a human.

For acid splash offence, the last two conditions are essential to determine whether the offender can be punished using *qisas* punishment or not. This is because the nature of the offence difficult to be determined. If it can be determined and limited, then *qisas* punishment can be executed to the offender.

In the case 2008 earlier, court had agreed to order *qisas* punishment to be executed to the offender as request by the victim. In this case, court held that the acid should be poured to both eyes of the offender as suffered by the victim. In this case, court had taken into consideration the view of medical experts in this case and the expert said that injury suffered by the victim in this case can be determined since the acid caused the victim to be blinded. Thus, court held *qisas* punishment can be executed since all of the conditions to pass *qisas* punishment had been fulfilled and the victim request to make the eyes of the offender to be blinded.

Apart from that, *qisas* punishment for hurt has been provided in Iranian Penal Code which states as follows:

Article 273: In retribution for injury to, or loss of, bodily organs men and women shall be treated equally. Thus, a male culprit who has maimed a woman or otherwise caused her bodily injury shall be subject to commensurate retribution unless the blood money for the lost organ is a third or more than a third of the full blood money, in which case the female victim pay the culprit half of the blood money for said organ.<sup>21</sup>

Thus, the law in Iran has provided the eye-for-an-eye punishment in case of injury and hurt.

<sup>20</sup> Mohammed Salam Madkoar, "Human Rights from an Islamic Worldview: An Outline of Hudud Ta'zir & Qisa", <http://www.muhammad.com/docstorage/hudud.htm>, retrieved on December 1, 2011.

<sup>21</sup> Article 273, Iranian Penal Code.

But then the victim through her lawyer in 2008 case has announced that she has pardoned the offender and she has retracted *qisas* punishment to the offender. In this situation, *qisas* punishment cannot be executed to the offender anymore except for *diyah*.

Acid splash is an offence under the third category of injury classified by the jurists as mentioned earlier which falls under; to cause hurt on the head or face of any person which does not amount to the total amputation or destroying of the head or face. It is called *shajjah*. This third category has few division of injuries and injury suffered from acid splash is part of the offence which difficult to be determined. Thus, indirectly *qisas* punishment to the offender is difficult to be executed but it is not impossible.

This kind of offence requires medical examiner in order to find out whether equality can be maintained without causing the convict an additional injury. This has been unanimously agreed by Muslim scholars.

### C. Conclusion

As a conclusion for this paper, acid splash offence is a new case in the modern era which evolves from time to time especially in Malaysia. It has been committed from long time ago in few regions such as Iran and Pakistan and for these countries; the court had faced lots of

cases regarding this offence. That is why the judges in these countries have to give severe punishment such as *qisas* to the offender as a reminder to the offender and as an education or awareness to their people about the severity of the offence.

However, it should be noted that *qisas* punishment cannot be simply imposed to the offender because it depends on the nature of the hurt and whether the degree of the hurt can be measured or not. If not, *qisas* punishment cannot be executed to the offender. The punishment for acid splash which cannot be ascertained for its limitation is *diyah*. Acid splash offence should impose greater punishment like *qisas* or greater monetary punishment because the victim will suffer loss permanently and it requires lots of money to make facial surgeries to restore the face of the victim as like before he or she has been splashed by the acid.

In Malaysia, *qisas* punishment cannot be imposed to the offender because Islamic criminal law is minimally used in that country. Most laws in Malaysia are based on common law adopted from British.<sup>22</sup> Despite not being practiced in Malaysia, *ta'zir* punishment equivalent to *qisas*, can be imposed through the judicial decision and assessment of a medical examiner who determines the severity of the infliction from the offence.

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<sup>22</sup> Hamid Jusoh, "Perkembangan Undang-Undang Jenayah Islam di Malaysia", in Nasimah Hussin, et al., 2007, *Undang-Undang Islam: Jenayah, Keterangan dan Prosedur (Volume 13)*, Dewan Bahasa dan Pustaka, Kuala Lumpur, p. 3.



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