

Tafseer Al-Baqarah (2: 178-179)

From the Book, Introduction to the Tafseer of the Quran,

by the Ameer of Hizb ut Tahrir, the eminent jurist and statesman, Sheikh
Ata Bin Khalil Abu Al-Rashtah:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَى بِالْأُنثَى فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبِعْ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ مِنْ رَبِّكُمْ وَرَحْمَةٌ فَمَنْ اعْتَدَى بِكُمْ بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ * وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ﴾ [البقرة: 178-179]

“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 something, and 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 (178). And there is for you in legal retribution [saving of] life, O you [people] of understanding, that you may become righteous. (179)” [Surah al-Baqarah 178-179]

Allah (swt) has clarified in the previous verses the subject of Iman, Kufr, hypocrisy, and the denial of the Jews of what Allah (swt) had blessed them with, the disagreement between the People of the Book over what was mentioned in their Books about the attributes of RasulAllah (saw), their contention about the relative preference of their respective Deens and the Qibla between themselves, amongst other disputes over the fundamentals and principles of the Deen. After these verses, Allah (swt) legislates some Ahkam As-Shariyah (أحكام شرعية Legal Rulings), which organise relationships between people.

Allah (swt) clarifies the following in these two verses, the following:

1. The equality in Qisas (قصاص Legal Retribution) for the murdered without differentiation. So if a slave were to kill another slave, then he is killed for him. It will not be said that the slave of so and so was better, so kill a freed one from such and such, because killing a slave is not enough. The same applies to a free man. if he was also to kill a freed man, then he is killed for him. It will not be said that your freed man was of a lower status than our freed one, so killing a slave of yours instead of your freed man will be enough. Also if a woman kills a woman then she will be killed for her. It will not be said that this woman was from a certain tribe which equals a man from another tribe, so instead of killing your woman we shall kill one of your men to avenge our murdered woman.

This verse was revealed to make clear realities like this, it was reported that in the times of Arab Jaahiliyyah there was bloodshed between two tribes of the Arab tribes. One of the tribes had might over the other, so they made an oath that they would kill a free person for a slave or a male for a female. When Islam came, the people sought arbitration from the Prophet SAW and that is when the ayah was revealed.

This is the Mantooq (منطوق Literal Meaning) of the verse as well as its subject and Al-Ibaara bi Umoom al-Lafz laa bi Khusoos as-Sabab (العبرة بعموم اللفظ لا بخصوص السبب) "The consideration is the generality of the expression and not in the specification of the cause (of Revelation)" However, in the same subject there is killing of the murderer for the murdered, who ever may be the murderer. The free is killed for the free, the slave for the slave and the woman for the woman. However, is a free man killed for a slave and is a man killed for a woman? i.e. if a free man kills a slave or a man kills a woman, does is the murderer killed in this situation for the murdered?

The answer to that is yes, the murderer is killed for the murdered whoever they may be, according to the following Dalaalah (دلالة Evidencing):

a. This verse is general with regard to Qisas for the murdered, ﴿كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ﴾ **“O you who have believed, prescribed for you is Legal Retribution for those murdered.”** i.e. It is Fard (فرض Obligated) upon you. Therefore, Qisas is a Qareenah (قرينة Indication) that Kataba (كتب Prescribed) indicates Talab Jaazim (طلب جازم Decisive Request). Accordingly, Qisas is Fard in the case of the murdered. “The murdered” is Lafz Aam (لفظ عام General Term) that applies for every murdered soul to be retaliated from its murderer, by undertaking the same as he or she did. This remains General unless it is made Specified on the basis of a Divine Text such as the Hadith of RasulAllah (saaw), «لا يُقْتَلُ وَالِدٌ بَوْلَدِهِ» **“No parent shall be retaliated for killing his/her child.”** [Tirmidhi, Ahmed] So, if a parent kills his/her child, he or she shall not be retaliated for that crime.

Also, such as the saying of RasulAllah (saaw), «لا يُقْتَلُ مُسْلِمٌ بِكَافِرٍ» **“No Muslim shall be retaliated for killing a Kafir (كافر non-Muslim)”** [Bukhari, Tirmidhi]. So, if a Muslim kills a Kafir Harbi (كافر حربي Belligerent Non-Muslim at War), he or she shall not be retaliated for that crime. We say Belligerent Non-Muslim because RasulAllah (saaw) excluded the Kafir Dhimmi (كافر ذمي Non-Muslim of the Oath of Protection) and Kafir Maahid (كافر معاهد Non Muslim Covenanted Protection) and the Divine Text regarding both of them is what was carried in another narration «لا يُقْتَلُ كَافِرٌ ذِمِّيٌّ وَلَا ذِمِّيٌّ بِكَافِرٍ وَلَا ذُو عَهْدٍ بِذِي عَهْدٍ» **“Neither a Muslim shall be retaliated for killing a Kafir nor the One Covenanted Protection during his Covenant.”** [Nisa’a] So, the Dhu Ahad (ذو عهد One Covenanted Protection) was used in Ataf (عطف Conjunction) with “Muslim,” so they are both Marfoo’a (مرفوع Nominative) in the grammatical case i.e. both are the subject. As for the aforementioned Kafir in the Hadith, he is neither the Kafir Convenanted Protection, nor the Kafir Dhimmi (كافر ذمي Non-Muslim of the Oath of Protection) by the legal principle of Min Babul Oola (من باب أولى Primary Expansion a fortiori). Thus the aforementioned Kafir is exclusively the Kafir Harbi for whom a Muslim shall not be retaliated for his/her killing.

The Mantooq (منطوق Literal Meaning) here is used to refer to killing the free man for the free man, the slave for the slave, the woman for the woman. As for the Mafhoom (مفهوم Understanding), it shall not be claimed that a free man should not be killed as a Retaliation for killing a slave and vice versa. In addition, it shall not be claimed that a man should not be killed as a Retaliation for killing a woman. This Mafhoom is rendered Mu’tal (معطل Inoperative) by the Hadith of RasulAllah (saaw), «الْمُسْلِمُونَ تَتَكَافَأُ دِمَاؤُهُمْ» **“All Muslims are equal in their blood”** [Abu Dawood, Nisa’i and Ahmed]. This includes man, woman, free and slave. Furthermore, the Prophet Muhammd says, «مَنْ قَتَلَ عَبْدَهُ قَتَلْنَا» **“Whoever kills his slave, we will kill him.”** [Tirmidhi, Nisa’i, Abu Dawood, Ibn Maajah and Ahmed]. Moreover, Omar (ra) acted in the presence of a large group of Companions by killing a group of perpetrators as a retribution for killing a single Muslim. In addition, Omar (ra) said of thus killing of seven for one, “If all the people of San’a participated in his killing, I would kill them all.” This means that the killer should be retaliated for killing someone no matter what type and number they are.

2. ﴿مَنْ عَفَى لَّهُ مِنْ أَخِيهِ شَيْءٌ﴾ **“But whoever overlooks from his brother something”** in this verse there are two things:

a. The Italaaq (إطلاق Application) of the word أَخِيهِ **“his brother”** upon the Awliyaa’ (أولياء Guardians) of the murdered. In this there is encouragement of forgiveness, for it is as if the Guardians of the murdered were brothers of the killer. In this is a message for the guardian encouraging sympathy and forgiveness.

b. **“something”** is Dalaalah (دلالة Evidencing) that the occurrence of ‘something of Afoo’ (عفو Pardon) annuls Qisas (قصاص Retribution), i.e. ‘some Pardon’ annuls Retribution. This means that if just some of the Guardians of the murdered pardon, then Qisas is annulled. If just some of the heirs pardoned, then others would not be exempt from this Pardon, for this is ‘something of Pardon.’ Even though the Pardon is not completed by all the heirs of the guardians of the murdered, Retribution has been annulled and so in this way there is mercy from Allah as well as grace and ease. «ذَلِكَ تَخْفِيفٌ مِنْ رَبِّكُمْ وَرَحْمَةٌ» **“This is an alleviation from your Lord and a mercy.”**

3. If a complete Pardon or something of Pardon is to be granted, the deceased's Guardians should demand Bil Ma’roof (بالمعروف In a Reasonable Manner) from the murderer Diyah (دية Blood Money) for what he has caused. It is upon the killer is to compensate Bi Ihsaan (بإحسان With Kindness) for what he has caused, therefore soothing the souls and calming the hearts.

If the Awliyaa' (أولياء) Guardians) of the murdered pardon him, they can have Diah (دية Blood Money) if they want it, or they can choose to pardon him without it. In all cases, they are not forced to take anything for them, whether it is Qood (قود Retaliation), Diah or a pardon and they must never exceed beyond these as is stated by RasulAllah (saaw), «من أصيب بقتل أو خبل فإنه يختار، إما أن يقتص أو أن يعفو وإما أن يأخذ الدية فإن أراد الرابعة فخذوا على» "If a relative of anyone is killed, or if he suffers khabl, which means a wound, he may choose one of the three things: he may retaliate, or forgive, or receive compensation. But if he wishes a fourth (i.e. something more), hold his hands. After this whoever exceeds the limits, for him shall be the Fire of Jahannam to abide therein forever." [Abu Dawood, Ibn Maajah, Ad-Daraamee, Ahmed]

Therefore, whoever kills other than the murderer after that, or kills the murderer after issuing Pardon or taking Diah, then he has a painful punishment, either Qisas from him for who he has killed in this world, or the Fire of Hell in the Hereafter.

4. Then Allah clarified in the last verse that there is life in Qisas ﴿وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ﴾ "And there is for you in legal retribution [saving of] life, O you [people] of understanding, that you may become righteous." It means either:

a- The Mashroo'iyah (مشروعية Legality) of Qisas is that there is life for the murderer and the murdered in it because if the murderer knows that he will be killed if he killed, this would prompt him to refrain from killing so as not to kill. It was as if a life had been achieved for the murdered and for the murderer who would have killed him. In this case there is a concealed Legality before retribution, i.e., in the Tashree'a (تشريع Legislation) of Qisas there is life for the murderer and for the one who would have been killed.

b. Indeed in the Qisas – i.e. in the killing of the murderer – is life for some of the people who would have been killed if the murderer remained free without Retribution because his evil would have affected many of them. This is Takhsees (تخصيص Specification) of Qisas, because Qisas is a Lafz Aam (لفظ عام General Term) which became Khaas (خاص Specific) in killing the murderer and no others. Therefore in his killing, there is life for some of the people who could have been killed by the murderer, if he remained free without being spared from him and so he killed. In this case, the General (Qisas) is Specified to the murderer i.e. the meaning of Qisas here is in the Haqeeqah (حقيقة Real Meaning) of murder. Here, it is not an Idmaar (إضمار Ellipsis) in the sense of Tashree'a (تشريع Legislation), rather it is killing in the Haqeeqah (حقيقة Real Meaning). Moreover, it is a Real Meaning Specified for killing the killer.

This is because the Specified Real Meaning takes precedence over the Idmaar (إضمار Ellipsis), since Idmaar is equal in precedence to the Majaaz (مجاز Metaphor). And this is because the Qisas Specified to the murderer in the Real Meaning of his killing, takes precedence over Qisas in the Majaazi (مجازي Metaphorical Meaning) and thus also the Ellipsis of Legislation or Legality for the word Qisas. This is as is known in Usul ul-Fiqh (أصول الفقه Principles of Jurisprudence) in the subject of Tarjeeh (ترجيح Outweighing) of Dalaalat ul-Alfaaz (دلالات الألفاظ Semantics) in a single Daleel (دليل Evidence). Thus, the second meaning is the primary one and is Outweighed regarding this noble verse i.e. that in the killing of the killer, there is life for some of the people, who would have been killed if the killer remained free.

c- Indeed the ones who understand the greatness of life that results from Retribution are the owners of thinking, minds contemplating of the signs of Allah. Accordingly, Allah (swt) depicts them as such in His speech, for they are the people who realize His meaning, such that they are guard against falling into what mandates Qisas in particular or what mandates the wrath of Allah in general.