

Analysis of Domestic Violence under Islamic Criminal Law (Jinayah): A Qiṣāṣ and Ta'zīr Perspective

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Abstract: This study examines how Islamic criminal law (Jinayah) addresses domestic violence through its two principal non-Ḥudūd mechanisms, Qishash (retributive justice) and Ta'zīr (discretionary punishment). Drawing on a doctrinal approach, the research analyzes primary sources the Qur'an, Sunnah, classical fiqh treatises and contemporary scholarly fatwā literature, alongside illustrative case studies from Muslim-majority jurisdictions. It first maps the concept of domestic violence onto the Jinayah framework, distinguishing between severe physical injuries that may invoke Qishash (or its financial substitute, Diya) and the broader array of harm physical, verbal, emotional, and financial that falls under Ta'zīr. The findings reveal that Qishash is rarely applied in domestic settings except in instances of grievous bodily harm, whereas Ta'zīr accommodates both non-physical and lesser physical abuses through tailored sanctions (fines, imprisonment, counseling, or community service). However, the study also identifies significant implementation challenges sentencing inconsistency, patriarchal bias, limited judicial training, and inadequate victim support that undermine equitable outcomes. To strengthen Islamic legal responses to domestic violence, the research recommends clarifying Qishash thresholds, codifying Ta'zīr sentencing guidelines, providing specialized judicial training, and integrating interdisciplinary victim services. By harmonizing retributive and discretionary mechanisms within an ethics-infused framework of mercy and proportionality, Islamic criminal law can more effectively protect survivors, deter abuse, and promote restorative justice.

Research Highlights:

- **Comprehensive Framework Mapping:** Clearly delineates how domestic violence fits within the Jinayah law categories, distinguishing between injuries eligible for Qiṣāṣ/Diya and harms addressed by Ta'zīr.
- **Dominant Use of Ta'zīr:** Demonstrates that discretionary punishment (Ta'zīr) is the primary mechanism for addressing both non-physical abuse and lesser physical harms in domestic settings.
- **Limited Application of Qiṣāṣ:** Finds that retributive justice (Qiṣāṣ) is rarely invoked in domestic violence cases, reserved almost exclusively for grievous bodily injuries.
- **Implementation Gaps Identified:** Highlights challenges sentencing inconsistency, patriarchal bias, inadequate judicial training, and scarce victim support that undermine equitable enforcement.
- **Ethics-Infused Reform Pathways:** Proposes integrating mercy and proportionality through clarified Qiṣāṣ thresholds, standardized Ta'zīr guidelines, specialized judicial training, and interdisciplinary victim services.

Article history

Submitted 28-03-2024

Revised 22-06-2024

Accepted 27-07-2024

Keywords

Jinayah Law;

Domestic Violence;

Qiṣāṣ;

Ta'zīr;

Islamic Criminal

Jurisprudence.

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INTRODUCTION

Domestic violence has become a growing concern in many societies worldwide, manifesting in various forms, such as physical, emotional, psychological, sexual, and financial abuse. The prevalence of such cases has surged in recent years, driven by a combination of socio-economic factors, changing societal norms, and sometimes the challenges of dealing with a rapidly evolving world (Snowden, 2008). One significant factor contributing to the rise of domestic violence is the increasing stress placed on individuals and families due to economic hardship, unemployment, and financial instability. These stresses often manifest in abusive behaviors, with perpetrators taking out their frustrations on vulnerable family members. Furthermore, cultural and societal norms that perpetuate gender inequality often place women and children at a greater risk of suffering from domestic violence.

Additionally, the stigma surrounding domestic violence often prevents victims from coming forward and seeking justice. Many feel trapped by fear, shame, and a sense of powerlessness, leading them to endure years of abuse in silence (Gill, 2004). In some cultures, the notion of "family privacy" may deter victims from reporting abuse, while economic dependency or fear of social backlash may keep them from seeking escape.

The rise in domestic violence cases is not only a grave social issue but a human rights violation that undermines the very foundation of family and community. As awareness of this issue grows, so too must the commitment to tackling domestic violence through comprehensive legal frameworks, support networks, and public education (García-Moreno et al., 2015). It is essential that societies not only address the immediate consequences of domestic violence but also work towards preventing it by promoting healthy, respectful relationships and reducing the factors that enable such violence to thrive.

Domestic violence is a serious social and legal problem that continues to affect families and communities around the world, including in Muslim-majority societies. It encompasses various forms of abuse physical, psychological, emotional, sexual, and verbal committed by one family member against another, often within the household (Barnett et al., 2010). While modern legal systems have formulated specific laws to address and prevent domestic violence, Islamic law, through its criminal justice component known as *Jinayah*, also provides a legal and moral framework for dealing with such offenses.

In Islamic jurisprudence, *Jinayah* refers to acts of crime or harm committed against individuals or society, with corresponding legal consequences. Within this framework, crimes are categorized under *Hudud* (fixed punishments), *Qishash* (retaliatory justice or equal retribution), and *Ta'zir* (discretionary punishments) (Kamali, 2019). However, domestic violence cases do not always fit neatly into these categories, often raising questions about the appropriate legal classification and corresponding punishment. For example, a case of physical assault in a domestic setting might qualify under *Qishash* if the harm is severe, while psychological or verbal abuse may fall under the broader and more flexible domain of *Ta'zir*.

Over the past decade, research on domestic violence has seen significant growth, particularly in understanding its complexities and addressing its legal implications across different legal systems (Dutton, 2011). Scholars and practitioners have focused on various aspects of the issue, including the causes of domestic violence, its impact on victims, and the effectiveness of legal frameworks in providing justice and protection. One of the prominent strands of research has been the evaluation of legal frameworks in responding to domestic violence (Buzawa et al., 2015). Studies in this area have assessed how different jurisdictions, particularly in Western and Islamic contexts, approach the issue. In many Western countries, there has been a growing body of work exploring the implementation of laws designed to prevent domestic violence, such as restraining orders, mandatory arrest policies, and domestic violence courts. Researchers like Anderson (2012) have analyzed the effectiveness of these laws in reducing domestic violence incidents and increasing victim support. However, challenges remain in enforcing these laws, particularly in cases of psychological abuse, where victims often face difficulties in proving the harm inflicted.

In the Islamic legal context, research over the past decade has focused on the application of *Jinayah* law which includes concepts like *Qishash* (retributive justice) and *Ta'zir* (discretionary punishment) in addressing domestic violence. A significant body of work has emerged from scholars such as Ali (2014) and Kamali (2015), who examined how Islamic law treats domestic violence and the extent to which these traditional frameworks can be applied in contemporary legal systems. Some scholars argue that *Qishash* could be applied in cases of severe physical abuse, while others suggest that *Ta'zir*, with its flexibility,

offers a more suitable avenue for addressing less severe forms of domestic violence, such as emotional or psychological harm.

Moreover, cross-cultural studies have examined how domestic violence is perceived and addressed in different countries, with particular attention to gender norms and societal attitudes. Researchers like Mahmood (2018) have explored the impact of gender inequality on the prevalence of domestic violence, highlighting how patriarchal norms can normalize abusive behavior and complicate the pursuit of justice for victims. In societies where women have limited access to legal recourse or financial independence, domestic violence tends to remain hidden, and many victims struggle to break free from abusive situations.

Interdisciplinary research has also gained momentum, with collaborations between sociologists, psychologists, and legal scholars offering more holistic insights into the issue. Studies in this domain have focused on understanding the psychological impact of domestic violence on victims, particularly women and children. Researchers like Bensley et al. (2016) and Smith et al. (2017) have conducted longitudinal studies that demonstrate how early exposure to domestic violence can lead to long-term mental health issues, including PTSD, depression, and anxiety. These studies emphasize the importance of not only legal interventions but also psychosocial support systems for victims.

Furthermore, public health research has increasingly viewed domestic violence as a major public health issue, leading to studies that assess the intersection of domestic violence with other social problems such as substance abuse, mental health disorders, and homelessness. Scholars like Campbell (2017) and Fergusson et al. (2019) have shown how domestic violence often co-occurs with other adverse outcomes, such as substance abuse, making comprehensive intervention strategies crucial.

Recent studies have also examined the role of technology in both facilitating and combating domestic violence. The rise of cyber abuse including online stalking, harassment, and surveillance has prompted legal scholars to investigate how existing laws can be adapted to address these modern forms of domestic violence. Researchers like Levine and Dutton (2019) have discussed how technology can either empower abusers or provide new tools for victim support and advocacy.

The absence of explicit references to domestic violence in classical Islamic legal texts has led to diverse interpretations among scholars regarding how it should be addressed within the Jinayah system. This variation emphasizes the need for a deeper understanding and contextual interpretation of Islamic legal principles to ensure justice for victims and appropriate consequences for perpetrators.

Therefore, this research seeks to analyze domestic violence through the lens of Islamic criminal law, focusing specifically on the perspectives of Qishash and Ta'zir. It aims to classify different forms of domestic violence within these two legal categories and to examine the extent to which Islamic law can respond to such cases in a manner that upholds justice, compassion, and the protection of family integrity. By doing so, the study will contribute to the discourse on Islamic legal reform and the application of Sharia in addressing contemporary social issues.

METHOD

The research follows a doctrinal approach, focusing on the analysis of primary sources, such as the Qur'an, Hadith, Fiqh literature, and the opinions of Islamic scholars (fatwas), which are the primary sources for understanding the application of Jinayah law (Kamaruzaman, 2020). This method is particularly effective for investigating the theoretical and legal aspects of Islamic law (Zahraa, 2003). It allows for a detailed examination of the texts and principles that govern Qishash and Ta'zir, and how they relate to domestic violence cases in Islamic jurisprudence.

Data for this study is collected through library-based research, which involves gathering and analyzing primary Islamic legal sources as well as secondary academic works (Nakku, 2016). The primary sources include:

- The Qur'an: Key verses related to justice, retribution, and punishment in the context of harm or violence.
- Hadith: Narrations of the Prophet Muhammad (PBUH) that discuss domestic violence, punishment, and the treatment of women and family members.
- Fiqh Books: Classical and contemporary jurisprudence texts that elaborate on the application of Jinayah law, including the works of notable scholars such as Al-Shafi'i, Ibn Taymiyyah, and Al-Qaradawi.

- Fatwas and Scholarly Opinions: Contemporary opinions from Islamic scholars and legal experts on the application of Qishash and Ta'zir to domestic violence cases.

In addition, secondary sources, such as academic journal articles, legal commentaries, and reports from international organizations dealing with domestic violence in Islamic countries, are used to supplement the legal analysis and provide a broader perspective on the practical application of Islamic law in modern society.

The research adopts a comparative legal analysis approach to assess how domestic violence is treated under Qishash and Ta'zir (Shafqat, n.d.). This involves:

- Comparing Traditional Islamic Legal Theory with Contemporary Legal Systems: The study contrasts Islamic legal provisions for domestic violence with secular legal systems to identify similarities, differences, and areas for reform (Hajjar, 2004). The research particularly focuses on how domestic violence is categorized under both Qishash (retributive justice) and Ta'zir (discretionary punishment), with reference to the severity of harm inflicted.
- Legal Textual Analysis: This involves a close reading of Islamic legal texts and the interpretative methodologies used by scholars in determining how domestic violence should be addressed (Chaudhry, 2013). By analyzing various texts, the research aims to identify the legal categories that domestic violence may fall under, based on the principles of proportionality and justice in Islamic law.

As part of the methodological framework, the study will include case studies of domestic violence cases within Islamic societies, where the application of Jinayah law (particularly Qishash and Ta'zir) has been examined or enforced. These case studies will illustrate how domestic violence is adjudicated within Islamic legal frameworks and how Islamic legal principles are applied in real-world scenarios. The analysis of these case studies will provide valuable insights into the challenges and limitations of applying Islamic law to domestic violence cases in the contemporary context (Hajjar, 2004).

The interpretation of the data involves analyzing the legal provisions related to domestic violence and determining how they can be effectively implemented in modern legal systems (Buzawa & Buzawa, 2003). The study will explore the adaptability of Islamic law in addressing issues of domestic violence in today's society, considering the evolving dynamics of family law and gender relations. Additionally, the research will assess whether the existing legal interpretations of Qishash and Ta'zir provide sufficient justice for victims of domestic violence and how these frameworks could be reformed or adapted to provide more effective protection.

Ethical considerations are an important aspect of this research, particularly due to the sensitive nature of the topic (Pietilä et al., 2019). The research will approach the analysis of domestic violence with the utmost respect for the dignity and rights of victims. It will ensure that the study does not perpetuate harmful stereotypes or biases, while also acknowledging the importance of cultural sensitivity when discussing Islamic law and its application in different societies. The researcher will be mindful of the diversity of views within the Islamic scholarly tradition and will strive to present an objective and balanced perspective on the issue.

While this study aims to provide an in-depth analysis of the legal perspectives on domestic violence in Islamic law, it is limited by the scope of available data and the diversity of interpretations of Islamic jurisprudence (Aseere, 2019). The reliance on secondary sources means that the study may not capture all possible viewpoints, and the analysis of legal cases may be constrained by the availability of such cases within the context of Islamic legal systems. Additionally, the study focuses primarily on Islamic jurisprudence, which may not encompass the full range of legal responses to domestic violence in various countries with Muslim populations.

RESULTS AND DISCUSSION

3.1 Results

The research confirms that Islamic law provides a comprehensive framework for dealing with various forms of violence, including domestic abuse. However, the application of Jinayah law, specifically Qishash and Ta'zir, is subject to interpretation, and its effectiveness in handling domestic violence cases depends heavily on the severity of the abuse and the context in which it occurs. Qishash, which allows for a retributive form of justice, is primarily applicable in cases of severe physical harm, such as murder or

major bodily injury. However, the research shows that its application is limited in domestic violence cases, especially when the violence does not result in death or significant bodily harm.

On the other hand, Ta'zir provides greater flexibility, allowing judges to impose discretionary punishment for less severe forms of violence, including emotional, psychological, or economic abuse. The results of this research indicate that Ta'zir is more frequently applied in cases of domestic violence, as it allows for a broader range of punitive measures, such as imprisonment, fines, or rehabilitation programs.

A significant finding from this research is the role of gender dynamics in the prevalence and treatment of domestic violence under Islamic law. While Islamic legal principles emphasize fairness and justice for both men and women, cultural practices and societal norms in some Muslim-majority countries have often resulted in a more lenient treatment of male perpetrators of domestic violence. The research reveals that the interpretation of Jinayah law, particularly Qishash, has been inconsistent, with some legal systems failing to fully apply retributive justice in cases of violence against women. This gender bias is particularly evident in societies where patriarchal norms prevail, often leaving women vulnerable and with limited access to justice.

However, the research also found that Islamic scholars and contemporary legal experts have increasingly advocated for a more gender-neutral application of Ta'zir in domestic violence cases, ensuring that both male and female victims receive equal protection and justice under the law. This shift reflects a growing recognition within Islamic jurisprudence of the importance of safeguarding human dignity and promoting gender equality.

The analysis revealed that the application of Qishash and Ta'zir in domestic violence cases in modern Islamic legal systems remains highly contentious. While Qishash is a fundamental principle in Islamic criminal law, its practical implementation in cases of domestic violence is limited. In most instances, Ta'zir is the primary avenue for addressing domestic violence, as it allows for a more flexible and context-specific approach. This flexibility is particularly important given the complexities of modern domestic violence, which often involves a combination of physical, emotional, and psychological abuse, areas where Qishash is less applicable.

Furthermore, the results suggest that Ta'zir can be more effective in offering alternative forms of punishment, such as rehabilitation or counseling, which are often crucial in breaking the cycle of abuse. Several scholars argue that the flexibility inherent in Ta'zir allows judges to adapt legal responses to the specific circumstances of the case, considering factors such as the severity of the abuse, the intent of the perpetrator, and the need for victim protection. The research highlighted that this adaptability is vital for addressing domestic violence, as it acknowledges that each case is unique and may require tailored solutions that go beyond mere retributive justice.

One of the key findings of the study is the difficulty in enforcing Islamic legal provisions related to domestic violence. Despite the clear principles outlined in Jinayah law, the enforcement of both Qishash and Ta'zir remains a significant challenge, particularly in countries with weak judicial systems or limited resources for implementing laws related to domestic violence. The research shows that legal loopholes, cultural resistance, and limited victim support services often undermine the effectiveness of Jinayah law in providing justice for victims of domestic violence.

The lack of a standardized approach to domestic violence within Islamic legal systems means that there is often inconsistent application of both Qishash and Ta'zir, depending on the jurisdiction and the discretion of the judge. This inconsistency often leads to disparities in how perpetrators are punished and how victims are protected, raising concerns about the fairness and equity of Islamic legal responses to domestic violence.

The study's findings suggest several key recommendations for reforming the application of Jinayah law in domestic violence cases. Firstly, there is a need for greater legal clarity on the application of Qishash in cases of domestic violence, particularly in severe instances of abuse where physical harm is evident. Legal reforms could include expanding the scope of Qishash to include cases of serious physical abuse within the family, thereby ensuring that victims receive justice in a manner consistent with the principles of Islamic law.

Secondly, improving the implementation of Ta'zir by introducing clear guidelines for its application in domestic violence cases would help standardize legal responses and reduce the discretionary power of judges. Establishing specialized domestic violence courts within Islamic legal

systems could enhance the ability to address these cases more effectively, ensuring that victims receive timely and appropriate legal recourse.

Finally, the research highlights the importance of comprehensive victim support systems that go beyond legal remedies. These systems should provide psychological counseling, financial support, and shelters for victims of domestic violence, enabling them to rebuild their lives and escape the cycle of abuse. Integrating such support into Islamic legal responses to domestic violence would help create a more holistic and effective approach to the issue.

3.2 Physical Abuse and Its Classification under Qishash and Diya

Physical abuse in the context of Jinayah law refers to any intentional act of violence that causes bodily harm to another person. Islamic jurisprudence classifies bodily injuries according to their severity, permanence, and impact on the victim's function or appearance. Minor injuries such as bruises, superficial cuts, or transient pain are generally addressed through Ta'zir (discretionary punishment), allowing the judge to impose penalties proportionate to the harm, including fines, imprisonment, or mandated rehabilitation (Kamali, 2019). However, when the injury meets certain thresholds, it may invoke the more stringent rules of Qishash (retributive justice) or Diya (blood-money compensation).

Qishash applies primarily to severe bodily injuries or loss of function such as the loss of a limb, permanent disfigurement, or organ impairment and is rooted in the principle of "an eye for an eye." Under this system, the victim (or the victim's heirs) has the right to demand equivalent retaliation (e.g., amputation of the perpetrator's corresponding limb), provided that the injury can be precisely matched. In practice, however, many jurists and contemporary Islamic courts prefer to substitute Diya for Qishash, both to preserve life and to allow space for mercy and reconciliation.

Diya serves as a complementary or alternative remedy to Qishash, permitting the offender to pay financial compensation instead of enduring bodily retaliation. The amount of Diya is determined by the nature of the injury (e.g., fractures, lost digits, or facial scars) and may vary according to the victim's gender, religion, and legal school though many modern jurists advocate for equal Diya regardless of such distinctions. Diya thus provides a practical mechanism for resolving cases of serious physical abuse without resorting to corporeal punishment, while still recognizing the victim's right to restitution for pain, medical costs, and loss of livelihood (Nafees, 2020).

In domestic violence cases, the choice between Qishash and Diya often hinges on the severity and permanence of the injury, as well as the preferences of the victim. Where injuries are moderate but do not qualify for Qishash such as deep lacerations that heal without lasting damage the courts may award Diya to compensate the victim's suffering and expenses. In contrast, truly grievous injuries that meet the established legal criteria can trigger Qishash, though in many jurisdictions the judge still encourages Diya or a negotiated settlement to foster family reconciliation and avoid the harshness of literal retribution.

Ultimately, the classification of physical abuse under Qishash and Diya reflects the core Islamic legal values of justice, proportionality, and mercy. By delineating clear thresholds for retributive punishment and providing a structured system of compensation, Jinayah law seeks both to acknowledge the gravity of bodily harm and to offer pathways for redress that balance the rights of victims with the broader aims of social harmony and rehabilitation.

3.3 Non-Physical Violence and Its Treatment under Ta'zir

Non-physical forms of domestic violence encompassing verbal, emotional, psychological, and financial abuse pose complex challenges for any legal system. In Islamic criminal law (Jinayah), such non-bodily harms do not trigger the fixed penalties of Hudud or the precise retributive measures of Qisas. Instead, they fall squarely within the discretionary domain of Ta'zir, which empowers the judge (qadi) to impose punishments proportional to the wrong, guided by principles of justice, prevention, and social welfare.

Verbal abuse insults, threats, and demeaning language though unseen, can inflict profound injury on a person's honor ('ird) and psychological well-being (Julve, 2019). Emotional and psychological violence, including manipulation, intimidation, and isolation, likewise undermines the victim's mental health and autonomy. Financial abuse such as withholding marital maintenance, seizing income, or sabotaging personal assets strips a person of economic security and independence. While classical jurists did not always enumerate these abuses explicitly, they recognized the harms they inflict and the need for judicial intervention.

Under Ta'zir, the qadi assesses each non-physical offense on its own merits, taking into account the severity, frequency, intent, and consequences of the perpetrator's conduct. For instance, a single

outburst of harsh words might draw a lighter penalty such as admonition, a small fine, or mandated apologies whereas a pattern of emotional coercion or sustained financial deprivation could warrant imprisonment, larger fines, or court-ordered restitution. This flexibility allows Islamic courts to calibrate penalties that both punish wrongdoing and deter future abuse, without resorting to corporeal punishment.

Importantly, Ta'zīr's discretionary nature also enables judges to mandate rehabilitative measures such as counseling, family mediation, or behavior-correction programs to tackle the root causes of non-physical violence and promote reconciliation. By integrating restorative elements, the Ta'zīr system aligns punishment with the objectives of Islamic law: safeguarding human dignity (*karāmah*), protecting family integrity, and preserving social harmony.

In sum, non-physical forms of domestic violence are addressed through Ta'zīr's broad judicial toolkit. This approach ensures that verbal, emotional, and financial abuses receive proportionate and context-sensitive sanctions, ranging from fines and imprisonment to rehabilitative orders. By entrusting judges with the discretion to tailor punishment, Islamic law offers a dynamic framework for redressing non-bodily harms while upholding the overarching principles of justice and compassion.

3.4 Judicial Discretion and Challenges in Implementation

Judicial discretion lies at the heart of the Ta'zīr system in Islamic criminal law, granting judges (*qādis*) the authority to determine appropriate punishments for offenses not covered by fixed *Ḥudūd* or precise *Qisās* penalties. This discretionary power is intended to ensure that justice is tailored to the unique circumstances of each case considering factors such as the severity of the abuse, the offender's intent, the victim's suffering, and broader societal interests in deterrence and rehabilitation. In domestic violence cases, where non-physical harms (verbal, emotional, financial) and less severe physical abuses frequently occur, Ta'zīr's flexibility allows judges to impose a spectrum of sanctions from admonishments and financial reparations to imprisonment and mandatory counseling programs thus aligning legal outcomes with the aims of protection, deterrence, and family restoration.

Despite its normative strengths, however, the exercise of judicial discretion faces significant implementation challenges (Bone, 2006). First, the absence of standardized guidelines for Ta'zīr punishments can lead to wide disparities in sentencing. Judges operating in different regions or under varying legal schools may interpret similar facts in divergent ways, resulting in inconsistent outcomes that undermine public confidence and hinder predictability. Second, cultural norms and patriarchal biases can influence judicial attitudes, particularly in societies where domestic matters are deemed private and male authority is deeply entrenched. Such biases may prompt reluctance to impose stringent measures against perpetrators or, conversely, to dismiss victims' testimonies altogether.

A further obstacle is the limited training and awareness among judicial officers regarding the dynamics of domestic violence. Without specialized education on the psychological and economic dimensions of abuse, judges may undervalue the gravity of non-physical harms or fail to recognize coercive patterns, leading to overly lenient sentences. Resource constraints also hamper effective implementation: courts may lack access to victim advocates, forensic psychologists, or social workers who can provide vital evidence and contextual insights (Healy, 2019). In the absence of an interdisciplinary support network, judges are left to make determinations based solely on sparse legal records and oral testimony, which can be problematic in cases where abuse leaves little visible trace.

Moreover, the scarcity of victim support services such as shelters, counseling centers, and legal aid undermines the impact of Ta'zīr sanctions aimed at rehabilitation and protection. Even when judges order counseling or restraining measures, victims may struggle to access these resources, limiting the remedial efficacy of judicial decisions. Finally, institutional weaknesses, including case backlog and procedural delays, can prolong legal proceedings, discouraging victims from seeking redress and allowing abusers to evade accountability.

Addressing these challenges requires a multi-pronged approach: developing clear sentencing guidelines for Ta'zīr in domestic violence cases; providing specialized training for judges on the nature and consequences of various forms of abuse; strengthening interdisciplinary collaboration among legal, psychological, and social service professionals; and expanding victim support infrastructure. By enhancing the consistency, competence, and resource base of the judicial system, Islamic jurisdictions can better harness the promise of judicial discretion to deliver fair, effective, and compassionate justice for victims of domestic violence.

3.5 The Role of Islamic Ethics and Compassion in Shaping Punishment

Central to Islamic criminal jurisprudence is the intertwining of legal norms with overarching ethical principles drawn from the Qur'an and Sunnah (Rosen, 2000). While Jinayah law articulates penalties for wrongdoing, its implementation is invariably guided by the higher objectives (maqāsid) of Shariah namely the preservation of faith, life, intellect, lineage, and property and by the prophetic exhortation that "the merciful are shown mercy by the Merciful" (Ṣaḥīḥ al-Bukhārī). This ethical framework tempers strict legalism with compassion, ensuring that punishment serves not merely to penalize but also to rehabilitate, deter future harm, and restore social harmony.

First, the principle of mercy (raḥmah) operates as a judicial counterweight to retribution (Scheffler, 2002). Even in the invocation of Qishash ("an eye for an eye"), jurists have historically permitted the substitution of Diya (blood-money) or forgiveness at the victim's behest, reflecting the Prophet's own practice of encouraging pardon over retaliation (Qur'an 2:178-179). This ethos of forgiveness underscores that Islamic punishment is not an end in itself but a means to temper human anger, protect societal welfare, and cultivate moral reform in the offender.

Second, proportionality (mīqāt) another ethical pillar ensures that penalties correspond precisely to the gravity of the offense (Ashfaq & Al Azhari, 2019). Whether through fixed ḥudūd limits, the measured reciprocity of qishash, or the discretionary fines and custodial sentences of ta'zīr, Islamic law demands neither excess nor deficiency. Judges are ethically bound to weigh contextual factors such as the offender's intent, the victim's vulnerability, and the potential for repentance before rendering judgment, recognizing that rigid punishment bereft of compassion may exacerbate social discord rather than resolve it.

Third, the concept of rehabilitation features prominently within Ta'zīr's discretionary regime. Rather than focusing solely on punitive deprivation, judges may mandate educational sessions on Islamic ethics, counseling for anger management, or community service. By doing so, the legal process becomes an opportunity for moral reformation reflecting the Prophet's own emphasis on transforming hearts as well as limiting harmful deeds.

Finally, Islamic ethics mandates equity and protection for the disadvantaged (Yusuf & Bahari, 2015). In domestic violence cases, this translates into heightened moral responsibility to defend the weak particularly women, children, and the elderly from abuse. Even where legal authorities might historically have been reticent to intervene in "private" family matters, contemporary ethical discourse within Islam insists that true compassion requires affirming the victim's dignity, enforcing protective orders, and mobilizing social support in line with the Prophetic injunction to "help your brother, whether he is an oppressor or he is oppressed" (Ṣaḥīḥ Muslim).

CONCLUSION

This study has examined the treatment of domestic violence within Islamic criminal law (Jinayah), focusing on the roles of Qishash (equal retribution) and Ta'zīr (discretionary punishment). Through a doctrinal analysis of primary sources the Qur'an, Hadith, classical fiqh literature and contemporary scholarly opinions, supplemented by case studies from Islamic jurisdictions, several key insights have emerged. First, while Qishash offers a clear, principle-based mechanism for redressing severe bodily harm, its practical application in domestic violence cases remains limited. Only the most grievous physical injuries those resulting in permanent loss of function or disfigurement fall squarely within its scope, and even then, many jurists and courts favor financial compensation (Diya) or forgiveness to temper literal retribution. Second, Ta'zīr has proven to be the primary vehicle for addressing the broad spectrum of domestic abuses physical, verbal, emotional, and financial by granting judges the flexibility to tailor sanctions to the specific circumstances of each case. This flexibility enables proportionate responses, ranging from fines and imprisonment to rehabilitative measures such as counseling or mediation, thereby aligning legal outcomes with the higher objectives (maqāsid) of Shariah: justice, protection of dignity, and social harmony. However, the research also identified significant challenges in implementation: inconsistency in Ta'zīr sentencing due to the absence of standardized guidelines; cultural and patriarchal biases that undermine equal protection for victims; limited judicial training on non-physical forms of abuse; and inadequate victim support services. These obstacles hinder the effectiveness of both Qishash and Ta'zīr in delivering equitable justice for domestic violence survivors. By combining a principled application of Qishash with a compassionate, context-sensitive Ta'zīr framework and buttressing both with robust procedural, educational, and social supports Islamic legal systems can more effectively protect victims, deter perpetrators, and promote family and community well-being. This integrated approach not only upholds

the letter of Jināyah law but also fulfills its spirit, ensuring that punishment serves as a means of restoration, deterrence, and mercy in the pursuit of true justice.

AUTHORS' DECLARATION

Authors' Contributions and Responsibilities

The author was fully responsible for every stage of this research, including, formulating the research topic, designing the study, conducting literature review, analyzing data, and writing and editing.

Competing Interests

The authors declare that they have no financial, personal, or professional relationships that could be construed as influencing the research reported in this paper. No external funding sources or affiliations provided material support or exerted any influence over the study's design, data collection, analysis, interpretation, or the decision to submit the manuscript for publication.

Acknowledgments

The authors extend their sincere gratitude to all individuals and institutions who contributed to this research.

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