

Enforcement of Punishments and its Philosophy in the light of Shariah (A Research Review)

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ABSTRACT

Islam being a complete code of life emphasizes on equality, peace, harmony, righteousness and justice. To safeguard the society from disruptive elements Islam enforced punishments with their philosophical approach. According to *Shariah* the criminal behavior in Islamic society cannot be tolerated and offender gets punished according to Islamic criminal laws. The reason behind imposing of strict punishments under *Shariah* is to put the people in mindfulness that criminal behavior must be punished. These punishments are perfectly justified as Islam not only takes every possible measure to prevent violations but also indoctrinates commendable moral scruples in the offenders. For the reforms of criminals and in order to uphold harmony and peace in the society Islamic Criminal law has approved many offences with providing deterrent, reformative, retaliate and other kinds of penalties. This paper deals with Islamic criminal law and to find out its philosophical approach and wisdom.

KEYWORDS: *Islamic Criminal Law, Hudud, Philosophical Approach, Qisas, Tazirat,*

Introduction:

Islam is often viewed as an inherently violent and intolerant world religion by the western world as well as some Muslims because of the punishments fixed by the Quran and *Sunnah*. This is a misconception and a biased opinion. In *Shariah* every Punishment has some philosophical approach and wisdom for the betterment of society. Islamic punishments were set down to protect the optimum five elements of people's interests: *al-dharuriyat* (necessities). These are *deen* (belief), *an-Nafis* (life), *al-'aqil* (intellect), *al-mal* (wealth) and *an-nasil* (family and lineage), and to save a society from evils and riots.¹ The punishment according to *Shariah* serves as an example to the rest of the society, and it puts others on mindfulness that

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criminal behavior will be punished and will not be tolerated at any cost. Crime rates are much lower in Muslim countries like Saudi Arabia where Hudud punishments are imposed.

People are violating nature's laws and destroying very pillars of social systematic order in today's world. Humans are witnessing crime, killing, and violence every day. *Hudud* crimes are prevalent in society. To protect society from all these evils and to sustain peace, harmony, tolerance and human dignity, it is necessary to tackle these problems directly and handles the interrelationship between moral issue and their human consequence with the least sense of evasion. Islam is not only a theological structure but a complete code of life having standards of moral characters as well as legal norms to implement in state.² In pre-Arab times the poor were punished but the rich were forgiven due to which nations were destroyed. But After Islam the rules and punishments were same for all. If Islam also starts forgiving the rich and punishing the poor, this society will decline, and the real essence of Islam cannot achieve.

Hazrat Aisha R.A narrated:

"Usama R.A approached the Prophet ﷺ on behalf of a woman (who had committed theft). The Prophet ﷺ said, "The people before you were destroyed because they used to inflict the legal punishments on the poor and forgive the rich. By Him in Whose Hand my soul is! If Fatima (the daughter of the Prophet ﷺ did that (i.e. stole), I would cut off her hand".³

This is the beauty of Islam that no one is superior, all are equal. The offender gets punished either he/she is a son or daughter of the ruling Imam.

In a contemporary world, theory of punishment can be divided into two general philosophies: utilitarian and retributive. According to utilitarian theory of punishment, the offender gets punished so he can save himself from future wrongdoings while according to retributive theory the offender seeks punish because they deserve to be punished.⁴

In *Shariah* Punishments are fixed by Allah in the *Quran* or tell by the Holy Prophet ﷺ. Basically Punishments and crimes in *Shariah* are deal by Islamic criminal law.

In Islamic criminal law the word "*Jurm*", "*Jarima*" and "*Jinayah*" are used for crime and offence. According to Abdl Qadir Audah crime means,

"A crime is commitment or omission of an act which is forbidden by Shariah and punishment is recommended for it (either fixed or discretionary)."⁵

Classification of Crimes their punishments and philosophy in Shariah

In Islamic criminal law crimes have been classified into three kinds that are *Hudud*, Qisas and Tazirat.

Hudud

Hudud in Arabic is the plural of *ḥadd*, meaning limit or boundary, prevention, hindrance, restraint or prohibition. The *Quran* mentions the “limits of God” several times, warning Muslims of the sin of transgressing them and that they should not even approach them.⁶ *Hudud* are the most severe crimes against the will of Allah and the punishment of *hudud* crimes are fixed by *Shariah* and cannot be increased, decreased or altered. Following crimes are included in *Hudud* Punishment.

Zina

Zina means the willful sexual intercourse between a man and a woman, who are not, and do not suspect to be, married with each other. The *Quran* deals with *zina* in several places. First is the general rule that commands Muslims not to commit *zina*.

Allah says in Holy Quran:

*“Do not come near adultery. Indeed, it is ever abomination and an evil way”.*⁷

In another verse the punishment of *zina* is described,

*“As for those of your women who commit illegal intercourse call four witnesses from among yourselves. If they testify, confine the offenders to their homes until they die or Allah ordains a ‘different’ way for them. And the two among you who commit this sin discipline them. If they repent and mend their ways, relieve them. Surely Allah is ever Accepting of Repentance, Most Merciful.”*⁸

In another verse which according to jurists and commentators is abrogated by the above verse is:

*“The adulterer and the adulteress found guilty of sexual intercourse – lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion of Allah, if you should believe in Allah and the Last Day. And let a group of the believers witness their punishment”.*⁹

Married persons are excluded according to Prophet Muhammad ﷺ and this verse only applies to unmarried.

According to *Hadith*,

“Ubadah b. as-Samit reported: Allah's Messenger (may peace be upon him) as saying: “Receive (teaching) from me, receive (teaching) from me. Allah has ordained a way for those

*(women). When an unmarried male commits adultery with an unmarried female (they should receive) one hundred lashes and banishment for one year. And in case of married male committing adultery with a married female, they shall receive one hundred lashes and be stoned to death”.*¹⁰

*“Abu Huraira reported that a person from amongst the Muslims came to Allah's Messenger (may peace be upon him) while he was in the mosque. He called him saying: Allah's Messenger. I have committed adultery. He (the Holy Prophet) turned away from him, He (again) came around facing him and said to him: Allah's Messenger, I have committed adultery. He (the Holy Prophet) turned away until he did that four times, and as he testified four times against his own self, Allah's Messenger (may peace be upon him) called him and said: Are you mad? He said: No. He (again) said: Are you married? He said: Yes. Thereupon Allah's Messenger (may peace be upon him) said: Take him and stone him. Ibn Shihab (one of the narrators) said: One who had heard Jabir b. 'Abdullah saying this informed me thus: I was one of those who stoned him. We stoned him at the place of prayer (either that of 'Id or a funeral). When the stones hurt him, he ran away. We caught him in the Harra and stoned him (to death). This hadith has been narrated through another chain of transmitters”.*¹¹

So according to *Shariah* punishment of *zina* for unmarried are 100 lashes and for married is “*Rajam*” stoning to death. And this punishment cannot be increased, decreased or altered at any case. The reason behind punishment in Islam is to prevent the commission of crime. For this purpose, Islam provides a system of imposing strict punishment on the offenders. Islamic law educates the people about the outcome of the punishment and thus prevent and deter them from committing the crimes. The Quran describe the *Haduds* as exemplary punishments from Allah. The survival of any *Ummah* depends on the implementation of the limits of Allah that are *Hududs*. Allah likes the same laws for all his servants so that in any state when the rich and poor have to undergo equal judicial accountability and punishment, the people there also have good feelings about government. According to *Hudud* crimes, in order to punish a criminal, it is necessary to choose a place where a large number of people can see the criminal being punished. It is also necessary that before punishing to announce the crime and the time of punishment so the lesson can be learned and the main goal can be achieved. When a criminal is publicly punished, the tragic consequences of that punishment do not disappear from the minds of people for many years, and no one will dare to commit crime again.¹²

Quran says in this regard

*“And let a group of the believers witness their punishment.”*¹³

Zina causes immense trauma and unrest on both social and psychological life of people. Moreover, the reason of spreading horrific disease such as AIDS is *Zina*. Islam emphasizes on “*Nikah*” and if any person commits adultery will be punished according to *Shariah*. *Zina*, according to Islam is the root cause of all evils which if never be punished can bring destruction in society. In fact, the purpose of Islam is not to punish anyone so harshly but to establish a righteous society. Otherwise, if easy conditions were set for proof of adultery (testimony etc) one would be punished every day. These punishments are just to learn a lesson. We have the example of the West where adultery is common and because of *Zina* the sanctity of sacred relationships is violated and strange diseases are being born day by day while the countries where people are given severe punishments there is generally law and order situation is much better.¹⁴

Qazaf

Literally *Qazf* means “To accuse” and technically it means to accuse any adult or sane Muslim of *zina* who has never committed *zina* or to refuse the legitimacy of child.¹⁵

The *Quran* states:

*“Those who accuse the chaste women (of fornication), but they do not produce four witnesses, flog them with eighty stripes and do not accept their any evidence any more. They are the sinners, except those who repent afterwards and mend their ways; then, Allah is All-Forgiving, Very-Merciful”.*¹⁶

It is clear from the above verse that a person who accused falsely will be liable to *hudd* punishment that is eighty stripes. False accusation on any Muslim without proof is another crime in Islam and the punishment of *Qazaf* is lashes so that people avoid accusing any chaste women.

The wisdom of Islam behind this punishment is that people do not start accusing because of any enmity which will lead to the deterioration of the society so there must be four witnesses for *Hadd Qazf*. But *hudd* can be imposed when the culprit and the offender fulfill the command given in the Qur'an, as in Surah An-Noor, the word chaste woman is explicitly mentioned. Now, if a man accuses a woman who has committed adultery before too, but that man could not prove her adultery, there is no limit on him, because he has not accused a chaste woman.

Saraqah

Saraqah or theft means to take someone's property secretly. It is a crime and liable to *hudd* punishment.¹⁷ Allah says in *Quran*:

*“As for a man or a woman who commits theft, cut off the hands of both to punish them for what they earned, a deterrent punishment from Allah. Allah is Mighty, Wise”.*¹⁸

According to four *Sunni* school of thoughts amputation of the right hand of the convict from the joint of the wrist is the punishment of *Saraqah*. The punishment prescribed for theft may again appear to be too dreadful. However, human experience shows that punishment, if it is to be deterrent, should be exemplary. But it is better to be dreadful to one and save a million than to be indulgent to all and ruin many. When one's hand is cut off due to theft, other members of society will learn from it. For the punishment of cutting the hand of a thief, Islam has also laid down limits on conditions such as that the stolen goods should not be edible that is on which the sustenance of life depends. A minor or an insane thief is also excused this punishment, as is the one who snatches something from someone by force or steals through deception or has committed embezzlement. To understand the philosophy of this punishment, it would be helpful to comprehend the background of the society which Islam envisages to establish. That's why Islam commands to pay *Zakat* so that wealth does not remain in the hands of few but also reaches the needy and they avoid thefts.¹⁹

Harabah

Harabah literally means to quarrel or to fight and technically it means to take away someone's property openly using threat or force. Highway robbery, bloodshed and dacoity are the example of *Harabah*.²⁰ In *Harabah* a person takes something openly while in *Saraqah* a person takes property secretly.

Quran states:

*“Those who fight against Allah and His Messenger and run about trying to spread disorder on the earth, their punishment is no other than that they shall be killed, or be crucified, or their hands and legs be cut off from different sides, or they be kept away from the land (they live in). That is a humiliation for them in this world, and for them there is a great punishment in the Hereafter; except those who repent before you overpower them. Then, be sure that Allah is Most-Forgiving, Very-Merciful”.*²¹

For proof of *Harabah* confession of the accused and testimony of the two witnesses is must. According to above Quranic verse the punishment of offender is death, crucifixion, amputation of hand and feet from opposite side or banishment. It depends the offender commits murder only or take away the property or both.

Allah has described in the Holy Qur'aan the punishment for those who spread corruption in the land. Quran says who spread mischief should be severely punished so that people learn a lesson and do not try to spread mischief again in a peaceful society.

Drinking Wine

Shariah gradually prohibited drinking wine *Quran* states in this regard

*“O you who believe! Do not go near Salāh when you are intoxicated....”*²²”²³

“They ask you ‘O Prophet’ about intoxicants and gambling. Say, “There is great evil in both, as well as some benefit for people—but the evil outweighs the benefit.”

*“O you who believe! Wine, gambling, altars and divining arrows are filth, made up by Satan. Therefore, refrain from it, so that you may be successful”.*²⁴

According to a *Hadith*

*“Cursed is he who drinks, purchases, or sells wine and or other causes to drink it”.*²⁵

The punishment, however, is based on a *Hadith* Narrated Abu Salama:

*Abu Huraira said, "A man who drank wine was brought to the Prophet. The Prophet said, 'Beat him!'" Abu Huraira added, "So some of us beat him with our hands, and some with their shoes, and some with their garments (by twisting it) like a lash, and then when we finished, someone said to him, 'May Allah disgrace you!' On that the Prophet said, 'Do not say so, for you are helping Satan to overpower him”.*²⁶

At the time of Holy Prophet, the punishment of drinker was 40 stripes while at the time of Umar R.A it was 80 stripes because people were badly indulging in this bad habit. When a person is in a state of intoxication, the distinction between good and evil disappears. Therefore, all kinds of intoxicants are forbidden in Islam so that goodness may remain in a person and he may not turn to evil.

Rebellion

Literally it means behavior directed against the state and technically it means any person turn against the righteous Muslim ruler and disturb the peace of State. Such a person is called the rebel because he disobeys the government, relying on his own power and overthrows those who are in power. The concept of rebellion in Islamic law comes under the doctrine of *fasad fil’ard* (‘disturbing peace and order in the land’).²⁷

Obedience of a righteous ruler is compulsory in Islam and if anyone disobeys him, he will be punished according to *Shariah*.

“And if two parties or groups among the believers fall to fighting, then make peace between them both, but if one of them rebels against the other, then fight you (all) against the one that which rebels till it complies with the Command of Allah; then if it complies, then make reconciliation between

them justly, and be equitable. Verily! Allah loves those who are equitable."²⁸

According to *Shariah* the *hudd* punishment for Rebel is death if he is start using force. Rebel must be organized and must have a leader to command.

Irtadad

Irtadad or apostasy literally means a Muslim who intentionally or voluntarily abandons his religion and technically it means a sane or adult Muslim who uttered any word or done any act intentionally or voluntarily which contradicts any fundamental of Islam.²⁹

The punishment for all apostates is death after giving him opportunity to repent. This is a unanimous opinion of all jurists according to *Shariah* laws.³⁰

If enough evidence provided and crime is proven in any of the above crime then offender will be punished according to the Quranic laws. Any judge or political leader cannot waive these punishments because the punishments for these crimes are the "right of Allah" meaning that the legal right involved is of a general nature where the greater welfare and betterment of society is considered.

Qisas

The second type of crimes according to Islamic criminal law is *Qisas*. *Qisas* means to give such punishment to offender as he has caused to victim. In Islam the blood of a human being is most sacred. The murder of any person is most atrocious act and will be asked very firstly on the Day of Judgment. *Qisas* according to Islamic criminal law are the crimes whose punishment has been provided by way of retaliation or blood money. The punishment of these crimes can be altered or remitted by the victim or his legal heirs. The crimes come under *Qisas* are: Intentional murder, Quasi intentional murder, Murder as result of mistakes, and hurts.³¹

Qatl-al-Amd means a murder by a sane and adult person willfully and with the intention of causing death. Proof of *Qatl-al-Amd* is confession and two witnesses and punishment of intentional murder is *Qisas*. Quran states:

*"O you who believe, Qisas has been prescribed for you in the case of murdered people: The freeman (will be killed) for the freeman, the slave for the slave, and the female for the female. However, if one is somewhat forgiven by his brother, the recourse (of the latter) is to pursue the former (for blood money) with fairness, and the obligation (of the former) is to pay (it) to the latter in a nice way. That is a relief from your Lord, and a mercy. So, whoever transgresses after all that will have a painful punishment"*³²

In another verse Allah says in Quran:

*“Do not kill any person the life of whom is sanctified by Allah, except for a just reason. And whoever is killed unjustly, we have invested his heir with authority (of equal retaliation), but he must not cross the limit in the matter of killing. Surely, he will be helped.”*³³

The Holy Prophet said:

The heir of the victim in a murder case or the victim in case of hurt has three choices: basic punishment. To pardon him or to take *diyat*.

In quasi intentional murder someone intentionally makes another person the direct object of some action, not usually fatal, and the other person dies as a result of that action. It has three elements. The offender has no intention of death but only intention of harm, the weapon of offender is not likely to cause death and the victim dies in result of act of offender. The proof of *Qatl-shibah al amd* is confession and two witnesses. The punishment of this type of murder is *Diyat* or *Tazir*.

Qatl-al-khata means murder by mistake without intention to cause death or any harm. It has three elements: the offender must have no intention of harm or death, must have committed some fatal act, and the victim must have died as a result of act. The proof is confession and two witnesses. The punishment of murder by mistake is *diyat*.³⁴

In Quran Allah says

*“It is not for a believer (Muslim) to kill any believer, except by mistake. Whoever kills a believer by mistake, then, a believing slave has to be freed, and the blood money must be paid to his family, unless they forgo it.”*³⁵

The most important verse in this regard is

*“People of understanding, there is life for you in retribution that you may guard yourselves against violating the Law.”*³⁶

“This verse is an example of eloquence. This means that when qisas is implemented, the person who wants to kill someone will stop for fear that he will be killed in return. That way, they would both survive. Among the Arabs, when a person killed someone, the tribes of the two would erupt in rage and fight among themselves. In this way, it was the turn of a large number of murders. When Allah Almighty prescribed Qisas, all the people were satisfied and they stopped fighting among themselves. That's how he got his life.”³⁷

Tazirat

The third kind of crime in Islamic criminal law is *Tazirat* which literally means to honor, to protect, and to correct, to moderate, to avoid or to prevent while technically it means those crimes for which punishments has not been fixed by *Shariah* and their punishment have been left to the discretion of the

judge or legislator. The judge usually settled them according to circumstances. The crimes under *Tazir* are bribery, false evidence, interest, fraud in weight and measure, prohibition of certain edibles.³⁸

These crimes are punished by judges according to the nature of the crime. The greater the crime, the greater will be punishment. This punishment can be physical or financial. There may be imprisonment and deportation, or something else.

Conclusion

It is concluded that along with the statement of punishments in case of committing crimes, their motives are also highlighted in the Holy Qur'an. These purposes are basically twofold: one is that the culprit should avenge his crime, suffer the consequences of the heinous act he has committed, and not re-commit the haraam act which he has committed out of selfish desire. He should not dare and remove the fear of punishment from his heart. Secondly, these punishments should be a lesson for other people. It should always be fresh in their minds that if they have committed these crimes, they will have to suffer the same fate. This awareness will keep them from committing crimes and will not allow criminal mentality to flourish in them. Those who are not familiar with the wisdom and meaning of the criminal laws of Islam object to them from various angles. They see these punishments as barbaric and brutal, and in their view, they violate basic human rights. One objection is made very loudly that the punishments prescribed by Islam for various crimes are a manifestation of extreme cruelty. Today's advanced and civilized age cannot afford them. The objectors look at only one side of the problem. They do not look at the other side to see how much mischief these criminals cause in society and how much their existence stinks in a clean society. If there is an abscess in any part of the human body, an attempt is made to treat it. When the abscess is ripe, it is torn and the dirty material is taken out. If septic is transmitted to another organ the wound has become cancerous, then cutting off that organ is the only way to get relief and this is the requirement of sympathy and kindness from the patient. Similarly, if a criminal is making a healthy society sick because of his crime and there is a strong fear that his mischief will spread to other people, then treat him and if he is incurable, cut him off from the society. This is the requirement of wisdom and common sense. Another thing is said that the punishments prescribed by Islam are very humiliating and disgraceful. Even if the rationality of these punishments is acknowledged, the methods of enforcing them cannot be considered favorable in any way. The first thing in this regard is that no matter what the punishment is and no matter how easy it is, it is humiliating and disgraceful. If the crime of an individual or a society has not deteriorated, then he cannot consider any form of punishment worthy of pride and honor. Secondly, those cases in the Islamic criminal law have been adopted specifically to deter

other people, who have the germs of crime, from committing these crimes, seeing their humiliation and disgrace. One of the common objections to salutary punishments is that they violate basic human rights. A person may be the biggest culprit, but his life is respected and no other human being has the right to take his life. On the basis of the same argument, it is demanded that the death penalty be abolished. The life is respectable, but as much as the life of the murderer is respected, so was the life of the victim. If the murderer has violated this respect and sanctity, then he has also lost his right to live. While acknowledging the principle of 'Tit for Tat', Islam urges the heirs of the slain to forgive the killer with or without some *Diyat* in exchange for the life of the slain.

The commands that Allah Almighty has given to human beings to live in this world are for their own good, otherwise He is selfless. It is obvious that If all the Islamic countries of the world implement *Sharia*, then crime can be eradicated forever.

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