

Islamic Punishments: Aims, Sagacity and Basic Human Rights

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Abstract

This paper aims at establishing the thesis that Islamic penal code and punishments are in harmony with human nature. Allah Almighty has blessed us with a law that intends to correct mankind rather than to punish in a cruel manner. The references from Quran and Hadith have been presented in this regard. The opinions of eminent religious scholars are also given due weight age.

Keywords: Islamic Punishment, aims of Shari'a, Human Rights, Inhibition, Crime.

If we intend to improve a society we must pay attention to the improvement of individuals because an individual, as a unit, becomes the cause of correction or corruption in a society. That if the qualities of faith, piety, good manners and good deeds are inculcated in the individuals then the whole society can become a high standard society and a cradle of peace and security. The system of rectification which Islam has established begins with the improvement of an individual. If a person is void of faith and good deeds then he can never become a helpful part of a good society, moreover, that particular individual can become the cause of destruction to the whole family, society, city or country. A peaceful and fear free society is a basic right of any person. Islam also intends to give this basic right to all the persons living in an Islamic society, to make it pious, high standard and exemplary and to purge it from crimes, obscenities and evils.

So many books have introduced of Islamic punishments. A few of these books are important; *Risalah fil Hudood* by *Abdul Walid al-baji*, *Al-Tashree al-janai al-islami* by *Abdul Qadir Audah*, *Al-aqoobah fil fiqh al-islami* by *Abou Zuhra* and *Al-aqoobah fil islam* by *Abdul Rahman bin Abdul Aziz Al-dawood*. A renowned orientalist Joseph Schacht mentioned in his book "An Introduction to Islamic Law" all the Islamic law, the Islamic punishments briefly established a title. This research paper aims simply not to introduce Islamic punishments, rather in the context of basic human rights discussions have been on Islamic punishments, which is not present in any of the above mentioned books.

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Introduction:

In the present era, the idea that Islamic penalties or punishments are very severe and against basic human rights is propagated by the West but unfortunately some of our own Western-minded so-called scholars and rulers term Islamic penalties as barbaric and at the demand of promulgation of Islamic penalty system explain the level of morality of their nation in these words, “I do not want to make the whole nation helpless.” If we closely observe the philosophy of Islamic punishments, we realize that Islam intends to purge the society of all crimes and evils that’s why the penalties of crimes are so severe that no rebellious, cruel or anti-society person dares to exercise violence and tyranny over common people, to spread fear and chaos and to make lives of common people bitter and acrimonious. This system intends to purge the society of chaos, evil and enmity and to flourish pure and high moral values. It intends to take care of the property, life and basic rights of public and provides them calm, tranquil and prosperous life. The wisdom behind the open execution of Islamic punishments is that it is shameful for the guilty and admonitory for the rest of the people. The Holy Quran says:

﴿وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ﴾¹

“And let a party of the believers witness their punishment”

If the people, who term Islamic punishments as barbaric, visit the jails of present era and observe the punishments then they will come to know what ‘civilized’ punishments are. It has been presented by Maulana Maodudi as:

“According to present law, not only the court but also an ordinary superintendent can punish the prisoners with 30 strokes of whip if they disobey or show insolence. A special person is prepared to strike whips and that person drills it daily. The culprit is pinioned to a stand so that he may not wriggle. A flimsy cloth is left on his body to hide private parts. The executioner comes running and strikes with full power. A particular part of body (hips) is struck again and again to the extent that the flesh becomes minced and sometime the bone shows through.”(2)

On the contrary, Islam proposes less severe punishments and they are decreased sometimes according to the demand of circumstances and context because in Islam does not propose punishment for the sake of punishment but punishment for the sake of improvement or rectification. Due to this reason Islam prohibits the execution of punishments in extreme cold or heat. Pinioning for striking whips is prohibited and the whip used for flogging should not be very hard or very soft but of medium strength. This is proposed in an Hadith of Holy Prophet SAW:

“The Holy Prophet SAW ordered to bring a whip for flogging; it had become very soft because of frequent use. The Holy Prophet SAW told to bring a bit harder than that. Then a new whip was brought which had not softened yet. The Holy Prophet SAW asked to bring a whip of medium strength, and then a whip was

brought which had been used for animals. The Holy Prophet SAW executed the punishment with that whip”. (3)

If a culprit is very weak or ill and there is no hope of his recovery then he should be flogged once with a bough of hundred branches or with a broom having hundred sticks to fulfill the requirement of law. In the times of Holy Prophet SAW an old man was caught on charges of fornication. The Holy Prophet SAW proposed the punishment of bough with hundred branches for him and he SAW said:

أَنْ يَأْخُذُوا لَهُ مِائَةَ شِمْرًا خَ قَيْضِرْبُوهُ بِهَا ضَرْبَةً وَاحِدَةً⁴

[Bring a bough with hundred branches and strike him once.]

In the present era, the crime rate in Saudi Arabia is very low and one of its reasons is the promulgation of Islamic penalties. Because if a culprit is made an example then other mischievous elements and criminals become fearful and avoid evils and the society becomes a cradle of peace. Holy Prophet SAW said:

”عن ابي هريرة قال قال رسول الله ﷺ: حديد يعمل به في الارض خير لاهل الارض من ان يمطروا اربعين صباحاً“⁵

“If one inhibition is executed on earth then it is better for the people of earth than rain of continuous forty days in morning and evening”

There is no doubt that the penalties for crimes are very severe in Islamic Shria’ for the prevention of crimes but great care should be taken in the execution of these penalties rather the Holy Prophet SAW said:

”عن عائشة قالت قال رسول الله ﷺ: ادروا الحدود عن المسلمين ما استطتم فان كان له مخرج فخلوا سبيله فان الامام ان يخطى في العفو خير من ان يخطى في العقوبة“⁶

“Hazrat Aeysha R.A narrated that the Holy Prophet SAW said that the execution of inhibitions should be avoided as much as possible. If there is a little chance in the acquittal of guilty then let him get acquitted because it is better for the ruler to commit mistake in forgiving the guilty than committing mistake in giving punishment”

A little doubt makes the inhibition null and void, Holy Prophet SAW said:

”ادفعوا الحدود ما وجدتم له مدفعاً“⁷

“Avoid inhibition if there is a little doubt in the evidence of crime”

Another famous hadith is an evidence that Sharia’ does not want to punish human beings but it wants to chastise them. Hazrat Ma’iz bin Malik Aslami R.A committed fornication with a slave woman and he admitted his mistake in front of Hazrat Hazzal bin Naeem R.A. Hazzal bin Naeem R.A advised him to go to Holy

Prophet SAW and admit his sin to find some way out. When Hazrat Muhammad SAW came to know about this he said to Hazrat Hazzal bin Naeem R.A:

”لو سترته بثوبك كان خيراً لك“⁸

“Had you concealed his sin it would have been better for you”

It becomes clear from the above mention hadith that the ultimate goal of Islamic Shari’a is not to keep on punishing and flogging people but to establish a peaceful and evil-free society where it is difficult to commit sins and easy to do good deeds. The secret of prosperity and welfare of other human beings lies in this penal code of Islam, as it is stated in Holy Quran:

﴿وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ﴾⁹

“And there is (a saving of) life for you in Al-Qiss (the Law of Equality in punishment), O men of understanding, that you may become Al-Muttaqn (the pious)”

Islamic punishments are a blessing for humanity. Abdullah bin Ibrahim Al Ansari has described the philosophy of Islamic penalties very comprehensively:

”انما شرعت رحمة من الله تعالى بعباده نهى صادرة عن رحمة الخلق والاحسان

اليهم ولهذا ينبغي لمن يعاقب الناس على ذنوبهم ان يقعد بذلك الرحمة والاحسان

اليهم كما يقعد الوالد تاديب ولده وكما يقعد الطبيب معالجة المريض“¹⁰

“The punishments of Shari’a are a blessing of Allah Almighty and a favor for His creature. So everyone who is deployed on executing punishments should treat the culprits with same favor and beneficence as a father shows in punishing his son and as doctor shows in the treatment of his patient”

In the light of above mentioned hadiths and the sayings of Sahaba R.A a person having common sense and a little knowledge can understand the goal of Shari’a in the matter of punishments. Only two things can stop a person from committing crimes; one is fear of Allah and the second is fear of punishment. Islam trains individuals in such a way that one stays away from sins for fear of Allah. And the people who are good by nature they naturally hate crimes and those who are wicked by nature abstain from crimes because of fear of punishment. It means that Shari’a intends to stop the wicked and mischievous elements with the fear of punishment from creating chaos in a pious society. Only laws cannot make people good because a lot of ways can be adopted to by-pass and violate law.

Aims and range of Islamic Punishments:

Islamic punishments are executed to rectify corruption and to take care of status and respect of human beings. They aim at reformation and prosperity of a confused and anxious society and take it from depths of corruption and chaos to the heights of piety and virtue.

If we observe Islamic punishments in the light of the aims of Shari'a then it becomes crystal clear that the promulgation of Islamic penal code in fact upholds human rights because the five things which are secured by Shari'a are in fact basic human rights. Therefore, the aim of Islamic punishments is also the security of those five things. Islamic punishments, especially inhibitions, are hereby observed in the light of the aims of Shari'a.

I. Security of Religion:

The first and most important aim of Shari'a is the security and protection of religion. The special relation between Allah and His creatures is called religion and its nature, lineaments and limitations are described in Holy Quran and hadiths. When we look at Islamic punishments, especially the inhibitions, we come to know that the aim of inhibition of apostasy is security and protection of religion. Lexically, apostasy means to revert from one's ideas. Allah says in Holy Quran:

﴿وَلَا تَوَلَّوْا عَلَىٰ أَدْبَارِكُمْ فَتَنقَلِبُوا خَاسِرِينَ﴾¹¹

“And turn not back (in flight) for then you will be returned as losers”

In terminology, it means to revert from Islam to disbelief.

In the light of Quran, hadith and ijma' apostasy is prohibited. Allah says:

﴿وَمَنْ يَرْتَدِدْ مِنْكُمْ عَنْ دِينِهِ فَيَمُتْ وَهُوَ كَافِرٌ فَأُولَٰئِكَ حَبِطَتْ أَعْمَالُهُمْ فِي الدُّنْيَا

وَالْآخِرَةِ وَأُولَٰئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ﴾¹²

“And whosoever of you turns back from his religion and dies as a disbeliever, then his deeds will be lost in this life and in the Hereafter, and they will be the dwellers of the Fire. They will abide therein forever”

This verse refers to the punishment in the hereafter however the punishment in this world is ordained by Holy Prophet SAW as:

”من بدل دينه فاقتلوه“¹³

“The person who leaves Islam should be killed”

In another hadith the Holy Prophet SAW said:

”عن عبد الله قال قال رسول الله ﷺ: لا يحل دم رجل مسلم يشهد أن لا إله إلا الله

وأنى رسول الله إلا باحدى ثلاث الشيب الزانى، والنفس بالنفس، والتارك لدينه

المفارق للجماعة“¹⁴

The execution of inhibition of apostasy is for the sake of security of religion and this punishment is so severe because apostasy is considered rebellion. There is no compulsion on anyone to embrace Islam as Allah Almighty says, “There is

no compulsion to embrace Islam.” One is free whether to embrace Islam or not but once one embraces Islam one’s personal will ends and then any deviation from Islamic principles will be considered rebellion and the punishment of rebellion is death penalty according to all laws.

II. Security of life:

The security of life is the second great aim of Shari’a in promulgation of Islamic penal code. In Shari’a every human being is given security of life and his blood is sacred:

﴿مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا﴾¹⁵

“If anyone killed a person not in retaliation of murder, or (and) to spread mischief in the land - it would be as if he killed all mankind, and if anyone saved a life, it would be as if he saved the life of all mankind”

The sole aim of inhibition of murder is the safety of human life and property and this is the most important of basic human rights. Allah Almighty says in Holy Quran:

﴿إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعُونَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُنَقَّطَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ﴾¹⁶

“The recompense of those who wage war against Allah and His Messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off on the opposite sides, or be exiled from the land. That is their disgrace in this world, and a great torment is theirs in the Hereafter”

Besides this, the law of retaliation in Islamic penal laws is in fact a security to property and life of human beings and in this security lies the respect of humanity. Holy Quran depicts this idea as:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأَنْثَى بِالْأُنثَى فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبِعْ بِالْمَعْرُوفِ وَأَدَاءُ إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ فَمَنِ اعْتَدَى بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ وَالْقِصَاصُ حَيَاةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ﴾¹⁷

“O you who believe! Al-Qisas (the Law of Equality in punishment) is prescribed for you in case of murder: the free for the free, the slave for the slave, and the female for the female. But if the killer is forgiven by the brother (or the relatives, etc.) of the killed against blood money, then adhering to it with fairness and payment of the blood money, to the heir should be made in fairness. This is an alleviation and a mercy from your Lord. So after this whoever transgresses the limits (i.e. kills the killer after taking the blood money), he shall have a painful torment. And there is (a saving of) life for you in Al-Qisas (the Law of Equality in punishment), O men of understanding, that you may become Al-Muttaqeen”

Here the punishment is termed as life and the reason behind this is that in the death of one murderer is the safety of whole society. If a murderer is set free then the relatives of the murdered person will get angry. It is quite natural and as a reaction to this a series of murder can begin. Though the law of retaliation is not in harmony with latest Western civilization and contemporary secular ideas but its spirit can only be understood in the societies where the tribal and family system is intact.

Islam not only secures the life of human beings but secures human life with respect. Esteem and honor of human beings is as important as human life. If there is no security of honor of human beings then the security of life loses its meanings. If a man is alive without honor then it does not fulfill the spirit of security of life. Human life must be secured as a life of worthy creatures. Allah says:

﴿وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ﴾¹⁸

“And indeed We have honoured the Children of Adam”

The order of inhibition of calumny from the legislator is in fact the security of esteem and honor of human beings. Islam protects the honor and esteem of human beings and that is why it prohibits slander and its punishment is 80 whips and is inscribed in the Book of Allah:

﴿وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ ۝ إِلَّا الَّذِينَ تَابُوا مِنْ بَعْدِ ذَلِكَ وَأَصْحَابُوا
فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ﴾¹⁹

“And those who accuse chaste women, and produce not four witnesses, flog them with eighty stripes, and reject their testimony forever, they indeed are the Fsiqn (liars, rebellious, disobedient to Allah). Except those who repent thereafter and do righteous deeds, (for such) verily, Allah is Oft-Forgiving, Most Merciful.”

In this verse, Allah Almighty has described the punishment of slander and it depicts the severity of this crime in the eyes of Allah. On another occasion Allah says:

﴿إِنَّ الَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ الْغَافِلَاتِ الْمُؤْمِنَاتِ لَعُنُوا فِي الدُّنْيَا وَالْآخِرَةِ وَلَهُمْ عَذَابٌ

عَظِيمٌ﴾²⁰

“Verily, those who accuse chaste women, who never even think of anything touching their chastity and are good believers, are cursed in this life and in the Hereafter, and for them will be a great torment”

In the above mentioned verse Allah Almighty warns the calumnious person and declares him as far from the mercy of Allah. This tells that slander is a very detestable sin and is one of the great sins. The prohibition of this crime is also referred to in one of the saying of Holy Prophet SAW where it is considered among seven destructive sins. The Holy Prophet SAW said:

”عن ابي هريرة عن النبي ﷺ قال: اجتنبوا السبع الموبقات. قالوا يا رسول الله! وما

هن؟ قال: الشرك بالله، والسحر قتل النفس التي حرم الله الا بالحق واكل الربوا

واكل مال اليتيم والتولي يوم الزحف وقذف المحصنات الغافلات“²¹

“Narrated Hazrat Abu Hurairah, the Holy Prophet SAW said, “keep away from seven things,” Sahaba R.A asked what are those things? The Holy Prophet SAW replied, “To ascribe partners with Allah, to practice magic, to kill unjustly, to take usury, to take the property of orphans, to run away on the day of war and to slander about chaste and innocent women”

III. Protection of human wisdom:

The third aim of Shari’a is the protection of human wisdom. The thing which distinguishes man from animals, makes him a worthy creation and holds him answerable to the responsibilities enjoined by Shari’a is wisdom and thinking capacity of man that is why its protection is one of the basic aims of Shari’a. Any action, thing or knowledge that renders man insane is prohibited. The use of drugs and wine is strictly prohibited and all other actions that affect human wisdom like magic and other intoxicating things are prohibited in Shari’a. This prohibition is in fact the safety of human wisdom because the intoxicating things hamper the thinking capacity of human beings.

Allah Almighty has prohibited the use of wine to protect human wisdom because the most valuable thing for man is his wisdom which creates in him the spirit to attain high moral values and to abstain from bad habits, manners and immoral actions. Intoxication eclipses the wisdom of man and he plunges in the hell

of desires without considering his honor and value. He starts committing sins like violence, murder and cruelty. Wine is termed as ‘mother of sins’ because it is the root cause of destruction and chaos. Quran says that gambling and wine create envy and enmity among people and hamper them from offering prayer and remembrance of Allah and in the same place the strict prohibition of wine is declared:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ ٥ إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ وَيَصُدَّكُمْ عَن ذِكْرِ اللَّهِ وَعَنِ الصَّلَاةِ فَهَلْ أَنتُمْ مُنْتَهُونَ﴾²²

“O you who believe! Intoxicants (all kinds of alcoholic drinks), gambling, AlAnsb , and AlAzlm (arrows for seeking luck or decision) are an abomination of Shaitn’s (Satan) handiwork. So avoid (strictly all) that (abomination) in order that you may be successful. Shaitn (Satan) wants only to excite enmity and hatred between you with intoxicants (alcoholic drinks) and gambling, and hinder you from the remembrance of Allah and from As-Salt (the prayer). So, will you not then abstain?”

Wine is singularly prohibited in this verse. It was prohibited through a gradual process. As far as the punishment of this sin is concerned, all the scholars agree that the penalty of wine drinking is flogging because Hazrat Anas Ibn e Malik R.A narrated a hadith of Holy Prophet SAW:

”أتى برجل قد شرب الخمر فجلبده بجريدين نحو أربعين“²³

“A drunkard was brought to the Holy Prophet SAW and he ordered to flog him with forty whips”

According to Imam Shafi’e the inhibition of drinking wine is forty whips and he determines it from the above mention hadith. Imam Abu Hanifa, Imam Malik and Sufian Sauri are of the opinion that the inhibition of drinking wine is eighty whips and they determine their opinion from the fact that in the time of Hazrat Umar R.A the ratio of wine drinking started increasing, he called the meeting of Sahaba and asked their opinion, Hazrat Abdur Rehman bin Auof R.A said that the least punishment is the inhibition of slander i.e. 80 whips so you must promulgate this punishment. Hazrat Ali R.A said that in intoxication a person does not know what he says and he slanders, so the inhibition of drinking wine should be the same as the inhibition of calumny. So, all the Sahaba agreed upon this penalty. (24)

IV. Protection of Progeny:

The fourth aim of Shari’a is the protection of family and progeny. The continuance of progeny and race depends upon the continuance of the institution of family. If the institution of family is demolished then the continuance of progeny and race will either end or will lose moral values which Islam intends to uphold.

Therefore, Islam considers it among the basic human rights and the penalty of fornication is a step towards protection and safety of progeny and the destruction of family system is such a big crime that its punishment is most strict:

﴿الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِئَةَ جَلْدَةٍ﴾²⁵

“The woman and the man guilty of illegal sexual intercourse, flog each of them with a hundred stripes”

This punishment is for unmarried men and women. However, the punishment for married men and women is to lapidate the guilty. It has evidences in hadiths:

Hazrat Ubadah bin Samit R.A reported Allah’s Messenger SAW as saying:

”خذوا عني خذوا عني قد جعل الله لهن سبيلا البكر بالبكر جلد مائة ونفي سنة والثيب بالثيب جلد مائة والرجم“²⁶ -

“Receive from me, receive 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”

Beside this, the incident of Ma’iz Aslami R.A is described in Bukhari and Muslim. Ghamdia or Juhania was lapidated when she admitted her crime. These incidents prove that according to Shari’a the punishment of adultery is to stone the guilty to death.

The West and the western minded people raise hue and cry on this punishment and say that it is barbaric and inhuman but they should also keep in mind that the system of witnesses is as strict for it as the punishment. This can be observed by the fact that in the whole era of Holy Prophet SAW no one was ever penalized on the basis of witnesses but all the guilty were punished when they admitted their crime, because the requirements of witnesses are very strict in this case. If a person becomes so vulgar that he commits his crime in the presence of four witnesses and the society can be affected by his crime then Shari’a does not allow the right of life to such a person. The body part affected by cancer is amputated so as to save the whole body from its effects even if it is very painful and likewise, there is no place for such a man in Islamic society lest he may take the whole society in its folds. There is no mercy for him. Allah says in Holy Quran:

﴿وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ﴾²⁷

“Let not pity withhold you in their case, in a punishment prescribed by Allah, if you believe in Allah and the Last Day”

In context of this verse Maulana Maudoodi writes:

“The fornicator should be given the punishment as ordained by Allah Almighty and his punishment should not be replaced with any other punishment. Any punishment given as replacement of lashes on grounds of mercy is disobedience and if it is replaced with the idea that it is barbaric then it is utter disbelief which can never be found along with faith in one heart. To believe in Allah and to term His punishments as barbaric is only possible for those who are most odious hypocrites”. (28)

V. Protection of property and wealth:

The fifth basic aim of Shari'a is the protection of wealth and property of people and it is one of the basic human rights. The measures Shari'a has taken to this end include the inhibition of theft. Allah says in Holy Quran:

﴿وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ
حَكِيمٌ﴾²⁹

“Cut off (from the wrist joint) the (right) hand of the thief, male or female, as a recompense for that which they committed, a punishment by way of example from Allah. And Allah is All Powerful, All Wise”

There are two types of theft:

1. The theft of minor sort which does not fulfill the criteria of punishment of hand cutting. Its only qualifies penalty which is the payment of the double amount of the booty. Its proof is the hadith narrated by Hazrat Abdullah bin Amar bin Al A'as R.A:

“انه سئل عن الثمر المعلق فقال من اصاب بفيه من ذى حاجة غير متخذ خبنة فلا شيء عليه ومن خرج بشيء منه فعليه غرامة مثليه والعقوبة”³⁰

“The Holy Prophet SAW was asked about the fruits on trees, the Holy Prophet SAW said that if a needy eats it and does not conceal it then there is nothing against him and the one who takes it away should be fined and punished”

2. The theft at which the punishment becomes compulsory but here it should be understood that whether hand should be cut on all thefts or not. There are some conditions, if these condition are fulfilled then the punishment should be executed otherwise it is null and void and changed into penalty.

The amount of theft that requires punishment according to Holy Prophet SAW is:

“عن عائشة قال النبي: تقطع اليد في ربع دينار فصاعدا”³¹

“Narrated 'Aisha: The Prophet said, "The hand of a thief should be cut off for stealing a quarter of a Dinar”

Another hadith states:

”عن ابن عمر ان رسول الله ﷺ: قطع سارقا في مجن قيمته ثلاثة دراهم“³²

“Ibn e Umar reported that the Holy Prophet SAW cut off the hand of a thief (in case of theft) of a shield the price of which was three dirhams”

On another occasion the Holy Prophet SAW said:

”عن جابر عن النبي قال ليس على خائن ولا منتهب ولا مختلس قطع“³³

“The punishment of a perfidious, robber and a pick-pocket is not cutting of hand”

The Holy Prophet SAW said about the time of war:

”لا تقطع الايدي في السفر“³⁴

“There should not be the punishment of cutting of hand in the time of war”

It is clear from all the above mentioned hadiths that Shari'a tries its best to save people from the punishment of cutting of hands but if a person commits such a detestable sin then his hand must be cut to make him a sign of admonition for the masses. This will ensure the protection of wealth and property of people and it is a basic right of everyone in any society that is why Shari'a has prescribed such a severe punishment for theft.

The aims of Shari'a are very comprehensive and all the seven inhibitions tend to achieve these aims. It follows that as long as these inhibitions are followed we will keep on getting advantages of aims of Shari'a and basic human rights will remain safe.

Synthesis:

Allah is the creator of man and the Creator knows best about His creation and He knows that which punishment is better for their improvement and betterment. So the Islamic punishments are according to the nature of man because they are prescribed by our Creator. If a married fornicator is stoned to death then it is not violence and barbarism because it can be observed in newspapers every day that if a person sees someone with his wife he tries to kill them both for the sake of his honor. When Islam prescribes this punishment it is not violent or barbaric but its natural and accompanies improvement of a lot of moral and social aspects.

The punishments of hand cutting and ransom were exercised in times of ignorance and these were adopted because they were in accordance with nature of man and those punishments which were against nature were abandoned. So the punishment of hand cutting was neither severe nor was it exercised seldom. Abdul Qadir Audaht writes about Islamic punishments:

”ولعل السر في نجاح الشريعة ان عقوباتها وضعت على اساس طبيعة الانسان – وقد استقلت الشريعة طبيعة الانسان فوضت على اساسها عقوبات الجرائم عامة وعقوبات جرائم الحدود والقصاص خاصة“³⁵

“No doubt the secret of success of Shari’a lies in the execution of Islamic punishments which are in sheer accordance with nature, Shari’a has encompassed all the aspects of human nature and it has prescribed ordinary and soft punishments for ordinary crimes and has prescribed inhibitions and law of retaliation for heinous crimes on the basis of human nature”

It comes to forefront from the above discussion that the execution of Islamic punishments is a blessing for maintenance of peace in society. Only Islamic punishments can provide due safety to basic human rights as they are from Allah and conform to human nature. This penal code is not only theoretical but it was practiced upon by Shaba R.A who implemented it and established an exemplary society.

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