

A Religio-Legal Discourse of Mercy for Justice: A Qur'ānic Respose to the Western Critics

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Abstract:

This paper examined the concept of mercy and compassion in relation to justice and their mutual relationship from Qur'ānic perspective. It has been managed to find the mutual link of justice and mercy within the limitations of Islamic legal discourse. Is Islamic law strictly related to severity and punishment only and nothing to do with compassion and clemency as well as judgement of claim that God of Islam is merely the God of punishment and wrath or otherwise. Employing analytical method, justice-cum-mercy study has been taken into account consulting scholar's opinions and their vantage points regarding relevant Qur'ānic verses. The mutual association of mercy and justice in particular context is responsible for sustaining merciful milieu under the application of justice playing significant role towards rectification of human behaviour and smooth flow of social life. This evaluation may open the vistas of mental horizon towards a well-balanced and harmonic nexus of both functioning simultaneously to accomplish the objective of Sharī'ah. This discourse contributes well for uplifting of humanity and betterment of social life irrespective of race, colour and religion that may cause to bridge social bonds based upon tranquility among human races.

Keywords: Mercy, Justice, Religio-Legal Discourse, Contextual Domain

1. Introduction

This study comprises of an important discourse regarding mercy in relation to justice from Islamic perspective considering legal parameters

and Islamic jurisprudential epistemology. In order to study the concept of compassion and its impact upon juridical decisions, it is important to judge both domains from very beginning of Islamic history with later developments in different era taking into account the relevant contextual purview. Interpretive approaches of different scholars regarding relevant Qur'ānic verses have been visited with the aim of finding mutual nexus of both mercy and justice and their supplementary domain. Is there any corresponding and overlapping domain between the philosophies concerning aims and intensions of each either separately or collectively?

The concept of Divine Mercy (DM) and Divine Justice (DJ) is also important one in relation to the required practice in Islamic law considering mercy and justice in the same boat having proportional roles and input with respect to different contextual domain. The discourse with reference to the Islamic legal parameters encloses the discussion regarding mercy and justice, role of mercy toward punishments and limitations (*'Uqūbāt and Hudūd*), Divine Mercy vis-^{'azza}-^{wa jalla}-vis a brief reflection of fundamental principle of Islamic *Sharī'ah* and legal maxim, philosophy of Islamic punishment and its relation to Divine Mercy. Moreover, impact of mercy-cum-justice discourse may be measured in relation to human attitude, social order and amelioration. In this way different manifestations of Lord's Mercy and its expression in human actions based upon merciful dealing and legal decision may be understood visiting both concepts simultaneously from Islamic perspective.

It has been managed to surmount the objections concerning the Islamic concept of justice as well as complaints launched by opponents regarding Islamic law that the parameters of Islamic Legal System are strictly related to severity and ruthlessness only and nothing to do with mercy, compassion and clemency, in addition to the claim that God of Islam

is merely the God of punishment and wrath. It is important to note the repeated topic of media frequently regarding Islamic concept of justice discussing decapitation, floggings and stoning etc. out of context may create confusion regarding Islamic law and its universality. Hence, the study of mercy-cum-justice discourse with an integral whole philosophy and wisdom functioning behind *Sharī'ah* Law is required to be considered conducting research to find out what is the mutual relation and nexus between the concept of mercy in relation to justice from Islamic viewpoint? Is there any overlapping domain amongst parameters of both dimensions? What is impact of mercy upon the justice in Islamic legal fundamental and framework?

Similarly, side by side we may judge the concept of justice with the application of penalty in order to secure one from the bad impacts of immoral conduct. Taking into account, are there any future apparent and hidden impacts which leads to the catastrophic failure at the end, spreading its bad effects to the other, victimizing whole society. Islamic concept of justice and its application in order to take preventive measures confronting what is being done against the nature of humanity and cosmic order which is the ultimate objective of Divine Mercy. On the other hand, spreading disorder is actually a demand of torture to be sanctioned from Lord, which is against legal thought manifested through the Qur'ānic worldview concerning mercy. Therefore, study of mercy and justice and their mutual relationship in relation to objective of *Sharī'ah* may project the important relevant dimensions having unique identity.

2. Literature Review

It is important to know the gap and requirement of study examining literature concerning subject domain finding what has been done in this regard and what is the required to be added focusing current context? We

may observe closely relevant contribution of scholars in this regard, for example an important work done by Ḥamd bin Ḥussain bin Šāliḥ al-Ja‘īdī, in which author intended to find various aspects of compassion incorporated with the jurisprudential efforts and legal approach of companions (R.A). How they considered leniency and kindness for humanity taking into account what are the objectives of *Shariah*. The title of published work is, “*Mazāhir al-Raḥmah fī Mawāqif al-Nabī min Ijtihādāt al-Saḥābah al-faḥīah*”, consisted of about forty-four pages.¹ He employed descriptive method explaining number of events in which companions of Prophet [P.B.U.H] observed merciful dealing during the decision taken by them. They (R.A) exercised what was endorsed by Prophet and in addition to that compassionate reflections may also be observed from what judgements were given by Prophet [P.B.U.H] himself.

Author quoted number of reference like event of ‘Umar bin al-‘Āṣ (R.A) while he leaded prayer without taking bath in the presence of water due to severe coldness, Middle prayer (*Ṣalāt al-‘Aṣr*) performed by companions going to Banī Quraydah in two groups at different time, eating of river dead (fish etc.), concluding that mercy has been a pivotal point of Islamic Ijtihād of all time and era. He concentrated upon text and Scripture as well as Ijtihād when there is no texts (*nuṣūṣ*) to consult apparently. He further remarked that companions of Prophet practiced the merciful aspects while defining text and performing in accordance with it.

Another relevant approach is also important to be noted regarding the expression of mercy in relation to penalties especially theft punishment. This work consisted of fifty pages of published work. and compiled by Dr Alī bin ‘Abdul al-Azīz al-Khadhīrī, Jāmiā al-Malik al-Saud.² He discussed expression of mercy in the Islamic Law of punishment with reference to the criminal legislation focusing the act of theft (*saraqah*) and its punishment

from jurisprudential aspects. He managed to encounter the objections raised against legal boundaries of Islam. Employing deductive cum inductive methodology, he considered the doubts propagated by opponents as well as he discussed issues concerning implementation of limitations (*ḥudūd*) as a research problem. As a result Dr Khadhīrī commented that it is not the goal and objective of Islamic law and *Shar‘iah* to cut one’s hand off, it is very restrictive and based upon evaluation. He referred three years 1433 AH, 1434 AH and 1435 AH judgments in Saudi Arabia showing cases of theft occurred in these years and then he concluded that limitation (*ḥadd*) regarding amputation of hand has been executed very small in number.

Over and above, an important literature contributed by **Anas Muṣṭafa Abū ‘Aṭā** communicating signs of mercy in the application of penalties from Islamic perspective.³ He discussed understanding of mercy in relation to jurisprudential penalties taking into consideration the circumstances of the offender and how to deal with him/her before, during, and after applying the jurisprudential punishment upon him/her. This research reveals the number of proofs and aspects that are related to the criminal’s health condition etc. in a way that ensures maintaining the spirit of justice and mercy. Hence, a sick criminal will not be punished until he gets recovered. One will not be insulted or cursed. It may also be observed the need for mercy when punishment is by no means exceeded either in the method or limit as well as when more than one jurisprudential punishment has also been deserved. Thus, with all these aspects in mind, one may find clear proofs that mercy is realized in the application of jurisprudential penalties in Islam.

Into the bargain, Dr ‘Abdullah bin Sālam Jāmiā Umm al-Qura published his work consisting about sixty one pages regarding expression of mercy in relation to five needs and necessities (*al-Dhrūrāt al-Khamsah*)

consulting *Sūrah al-Baqarah*.⁴ The objectives of paper was to know the need of mercy for human being from Qur'ānic perspective consulting *Sūrah al-Baqarah* focusing *al-Dhrūrāt al-Khamsah*. He showed Importance of Divine Mercy for man and society in daily life taking into account the objections on Islam regarding the concept of mercy. He adopted descriptive, inductive and analytical approaches with lengthy discussed about each protection but with brief conclusion. It may be added something more in the light of this developed discourse.

Ibrāhīm bin Fahd, a scholar having master degree in Islamic criminal justice. In his thesis, he discussed forgiveness concerning punishment and its impact upon Islamic law, completing his work under the supervision of Dr Muḥammad Faḍal al-Murād.⁵ He concluded referring merciful behaviour of the Prophet (P.B.U.H) and later on practiced by the companions. He said that one who forgive may get the grade of benevolence (*al-Iḥsān*). He co-related the forgiveness and the concept of mercy with the view of lessening of difficulties and increasing ease.

Similarly, Dr 'Abdul Al-Jabbār Muḥammad Qā'id al-Sabrī of Jāmi'a al-Ḥadīdah al-Yamenīah contributed publishing his work regarding different aspects of mercy upon the Islamic legal punishment.⁶ He furnished his study with different examples of Prophetic time when limitations (*ḥudūd*) had been eliminated because of compassion and merciful consideration either due to one's act of repentance or by dint of particular contextual domain. In concluding remarks, he remarked that Islamic concept of justice is totally based on mercy. He discussed various manifestations of mercy in relation to justice e.g. the door of repentance is opened always, it is not allowed to expose one's bad act, whereas forgiveness has been appreciated, and benefit of doubt may cause to take punishment away etc.

Furthermore, another addition in this regard may be studied in which mercy has been discussed in the light of Prophetic Stature (*Sīrah al-Muṣṭafa*) by Dr Amal bint Ismā‘īl at Umm al-Qura University.⁷ The research problem of this literature is penned as, ‘when we deal with our opponents and enemies we considered them not with mercy this resulted the anxiety and disturbance in the contemporary life whereas we have need to observe how Prophet (P.B.U.H) dealt with the foe and rival clans. She employed descriptive and deductive methodology for her findings. She quoted a person who was confined to be applied limit (*ḥadd*) of drinking (*shrāb*) during execution when one cursed him. Prophet replied don’t condemn he loves with Allah and His Apostle. During Implementing limit (*ḥadd*) on account of Ghamidiyyah fornication, one who (Khālīd bin Walīd R.A) abused her when he got her blood on the face, Prophet forbade him expressing the value of her repentance. She mentioned Prophetic dealing with disbelievers and their antagonism in the field of Ṭā’if as well as how kindly he (SWA) treated with Dhimmī (disbelievers subject to Islamic state). In the concluding remarks it has been added the realization of what are the requirements of mass concerning religions and secular life. It may be extended from national to international domain for peaceful living around the globe considering the merciful behaviour of Prophet (P.B.U.H) for whole creature. All these contributions are closely related to the subject study, however, the requirement and domain of this paper is different one with respect to various dimensions.

3. Fundamental Discourse and Epistemology

Prior to discuss the subject matter in detail we may study literal and technical concept of justice and mercy separately and then their mutual relationship to know how both supplements each other. The concept of

justice (*‘adal*) as discussed in lexica incorporates various dimensions with different derivatives of word *‘adal* from micro to that of macro level, for example equating thing with thing, justice in thought, weighing with the perception of balance as well as justice locating things at their deserving and rightful place. Al-Mu‘jam al-Wasīṭ explains straightening one’s affairs, justice in relation to measure and balance showing equally one thing with other and justice is that a person should be given what he deserves and vice versa. It integrates the concept of balance (*mīzān*), measuring (*mikyāl*) and judgment (*ḥukm*) etc. regarding different affairs. They further stated that justice is one out of four virtues i.e. wisdom, courage and chastity as acknowledged from ancient times by philosophers.⁸ While Lisān al-‘Arab puts that justice (*‘adal*) is opposite of unfairness, oppression, injustice and inequity. It also means decision fairly and judgment rightly. Ibn Manzūr further remarked as (*yuzakkūn al-Shahūd*) that is justice demands the process of witness should also be gone through purely and based upon transparency.⁹

Moreover, Al-Jurjānī put that justice is something of intermediary position without any inclination to less or more and middle order between the two extremes (*ifrāṭ wa al-tafrīṭ*) in relation to what is really required.¹⁰ However, Abdul Haseeb Ansari also remarked various concepts regarding justice “[for instance] it is an equal distribution of resources, putting thing to their right places and it prohibits discrimination in allocation of benefits and liabilities.”¹¹ So, concept of justice incorporates each and every dimensions of human life putting them right individually and collectively.

On the other hand, concerning mercy various roots have been mentioned in the Qur’ānic verses where trilateral roots (*infinitive form*), *rā ḥā mīm* (*r-ḥ-m*) are pointed out about three hundred times at different places concerning Divine Mercy and human acts of mercy as well.¹² Al-Jurjānī

commented that mercy is the willpower to convey and deliver what is worthy and upright (towards moral par-excellence) as well as to convey goodness (*khayr*) to others.¹³ while with different approaches Al-Maydānī put the two dimensions of mercy firstly of pain feelings for one who is afflicted with distress and secondly the feeling of pleasure for other those who have been bestowed with pleasure.¹⁴ Into the bargain, Dr Aḥmad Mukhtār quoted Prophetic Saying that, “*Be merciful with those who are on the Earth hence God will be merciful with you*”¹⁵ as and Qur’ānic verse “*To Allah, He hath inscribed for Himself [the rule of] Mercy,*”¹⁶ elaborating the concept of mercy added the day of the conquest of Mecca was the day of mercy and God as fair and just ruler (*Ḥākam*) for the wrongdoer and merciful to the weak. He also discussed Euthanasia and Mercy Killing in this regard.¹⁷ However, John Esposito stated that Divine Mercy pervades the life and milieu of believers whereas it also reflects in the creation and Lords dealings with the creatures as well as wonder of created nature.¹⁸ Hence, one may observe multidimensional aspects of mercy and its practical phases from creation to that of ultimate apex for human uplifting.

As the fundamental principles of Islam recommend leniency, mercy and pardon in severe circumstances, and demand that strictness and cruelty is not allowed. Dr Wahbah al-Zuhaylī referred Qur’ānic verse that, “*We sent thee not, but as a mercy for all creatures.*”¹⁹ And Prophetic action towards those who had extremely hurt him but his reaction after the conquest of Makkah was that, “*Today, there is no blame on you, go, you are set free.*”²⁰ He rendered that, humanity, animals, jinn and even inanimate beings, and all creature have to be treated as directed (in Islamic injunctions) accordingly.²¹ However, mercy parallel to that of benevolence as added by Ansari that, “*‘Adl and Iḥsān should possibly go hand-in-hand. they cannot be separated in some situations.*”²²

We may examine mercy-cum-justice discussion collectively as there is no conflict in between justice and mercy and both are ethical pillars in Islam.²³ Another Islamic scholar discussed Islamic art that it was to express the positive dimension of *Tawhīd* (Oneness of God), probably the most salient aspect of the *transcendent* which the Islamic doctrine taught that God is infinite in every aspect in justice, in mercy, in knowledge and in love.²⁴ As El Fadl commented regarding this combination that, “In accordance with Muslim legal theory, the purpose of Islamic law is to achieve the people’s welfare in pursuit of abstract values, such as justice, compassion and mercy.”²⁵ Furthermore, Mawlānā Mawdūdī, said regarding social virtue that, “*The Islamic social virtue is grounded in the pursuit of piety, truth, justice, love, and mercy, wisdom, clemency (ḥilm) and selfless service to fellow-beings.*”²⁶ In addition to that Harun Yahya remarked that, “*Muslims have an honorable past with the justice, mercy, understanding, compassion, conscience they displayed and the noble values they possessed.*”²⁷

We may think that these elaborations encounter justice, mercy, injustice and one’s progress towards apex (*kamāl*) sustaining under the umbrella of justice with the utmost need of mercy. Both concepts from Islamic perspective guide humanity rectifying thought and actions putting them right with purpose purposeful life. It shows that both mercy and justice are supplementary to each other. Hence, the concept of mercy-cum-justice may be visited in substantial as well as in the procedural aspect of Islamic law.

4. Religio-Legal Discourse and Islamic Concept of Mercy and Justice

As this paper aims to examine the concept of mercy and compassion in relation to justice and their mutual relationship from Qur’ānic perspective. To make it easy we may study the subject theme dividing it

into further relevant portions dealing the situations separately, in order to comprehend mutual nexus of mercy and justice considering fundamental principles of Islamic law succinctly. However, following segments of the study incorporate mercy-cum-justice discourse in relation to legal maxims and principles, mode of penalties (*‘Uqūbāt and Hudūd*), capital punishments and different parameters of punishments and retribution for criminal acts in this regard.

4.1. Mercy-cum-Justice Discourse and Objectives of Islamic law

We may study briefly in order to find the mercy and justice nexus in relation to the objective of Islamic *Sharī‘ah* adding in the light of al-Raysuni remarks that, “Theory of objectives includes juristic theories, principles and rulings based upon Law of God consisting wisdom, mercy, justice, and equity.”²⁸ As Allah Almighty bestowed relaxation in Sharī‘ah Injunctions either mandamus or prohibition so that you may proceed further in His obligation, response and gratitude. As man has been created weak and unable to endure obligation strictness and act upon accordingly. So, leniency is the Divine Mercy and lessening of difficulties is the ‘supreme privilege’ of Islamic Shariah as expounded by Qur’ān.²⁹

Arguing that justice and what is required to acquire it, is the very central to inherently just God and Islam. Khaled El Fadl commented that “the prime objective for Muslims is to pursue the fulfillment of justice through the adherence to the need for mercy. Mercy is a state in which the individual is able to be just with oneself, and with others, by giving each their due. This opens the door to the concept of individual rights in Islam.”³⁰ Regarding the purpose and objectives of Prophetic merciful mission for whole mankind referring (21:107) and (10:57), Dr Hashim Kamali highlighted the correlation of justice with mercy and benevolence what Allah intends and wants for humankind.³¹ In another research paper he

referred the same Qur'ānic verse discussing the laws of the Qur'ān and the Sunnah, its function towards lessening of difficulty and mutual cooperation regarding man and society, commenting as:

*“Justice itself is a manifestation of God’s mercy as well as an objective of the Sharī‘ah in its own right. Compassion (rahmah) is manifested in the realization of benefit (maṣālahah) which the ‘Ulamā’ have generally considered to be the all-pervasive value and objective of the Sharī‘ah and is to all intents and purposes synonymous with rahmah.”*³²

We may quote Prophetic Ḥadīth that, *“One day of just ruler is better than twenty years of worship and one punishment based upon reality is better than (the profitable) raining for forty-days.”*³³ As rain has also been declared as a mercy as referred in the paper already, whereas this concept of justice based upon transparency and fairness is also like raining. It may be inferred that mercy and justice are mutually interlinked, their way of action may be slightly different but concerning objective and philosophy for social amelioration both are in the same boat.

Addressing philosophically the concept of Divine Justice As, Murtazā Muṭahrī put that, *“Divine Justice refers to taking care of privileges in relation to the benefits of existence and mercy should never be taken away from one as it (mercy) is responsible for his higher grade (for man) while injustice is subject to hindrance and removal of mercy.”*³⁴ Similarly, Bernard G Weiss discussing in *The Spirit of Islamic Law* with reference to verses (21:107), (7:156), (5:6), and (10:58) along with Prophet Saying *‘lā ḍarara wa lā ḍirār’* and added that if law given by God is missing in relation to the objective concerning well-being of addressee then rules are just like a blight upon the creature instead of mercy.³⁵

We may think that objective of *Sharī'ah* is exactly fit as per human natural tendencies and requirements. Mercy and justice correlates each other with aim of maximum benefit to the humanity with the ultimate unique purpose. Humanity may sustain well with the application of both with respect to their epistemological spheres.

4.2. Mercy and Justice Nexus with regard to Fundamental Principles

The foundational principles of Islamic law based upon the ingredients known as avoidance of hardship (*'Adam-i ḥaraj*), lessening of difficulty (*qillat-i taklīf*), graduality (*tadriīj*), repeal and change (*naskh o taghyīr*), exceptional permissibility (*rukḥṣah*) and presumption of general permissibility (*'Uṣūl-i Ibāḥat*) in addition to the secondary sources of Islamic legal system. We may concentrate that all these requirements of Islamic law have manifestations of mercy depending upon their relevant contextual domain. Scholars have different opinions, for example, in order to attain the objectives, *Sharī'ah* identifies three areas which constitute the component parts of mercy, namely to educate the individual, to establish justice and to realize benefit (*maṣālahah*) for the people.³⁶ Furthermore, Ḥassan 'Alī al-Shāzī said that one of the requirements of justice and mercy is to prove guilt and continuity of implementation of punishment in the societies. There should be the permanent (constitutional) fundamentals for whole humanity which do not change by changing of time and space. So that should people adopt their lives in a way that avoids them from being subject to punishment. And they should be able to manage their thoughts, intellect, and life affairs according to the objective of *Sharī'ah*.³⁷ Ibn Qayyim al-Jawzīyyah explains that the *Sharī'ah* aims at safeguarding public interest in this world as well as for the world Hereafter, it is the system of full-fledged justice, mercy, favour (*mṣāliḥ*) and wisdom. what is of its opposite is not *Shari'ah*.³⁸ He encountered mercy, justice, wisdom

and interests (*mṣāliḥ*) as a mutually linked discussing fundamentals principles of Islamic legal aspects.

Hence, these fundamentals (*thawābit*) in relation to (*mutaghayyirāt*) play significant role in any interpretations and applications regarding legal perspectives. Islamic law incorporate various aspects of human life as Wael B. Hallaq said that objective of the law in the Muslim philosophy is to foster living in peace, first with oneself, and second with and in society.”³⁹ Abu Zuhra discussed the principle of mercy as fundamental one for social structuring what is obvious from the revealed injunctions regarding justice for the establishment of system of balance, equity and fairness (*qist and mīzān*). There is no any resistance and conflict of justice with mercy whereas mercy is the objective of justice.⁴⁰ Referring verse *Sūrah al-Ḥadīd* (57:25) and Prophet Saying he highlighted that fundamental message of prophets as mercy. Both mercy and justice are accompanying one another without any resistance and conflict between them and (the application of) justice in real sense is actually (an expression of) mercy in real sense.⁴¹ Dr Khaled Abou El Fadl discussed mutual relation of mercy and justice as universal moral values and objective. Allah Almighty wants that humanity should be just and merciful and these attributes originate from God.⁴² So, there is no harm and affiliation in the basic principles due to having divine origin. Henceforth, there are various dimension of mercy as Ḥassan ‘Alī Al-Shāzli commented that, “And accepting the repentance of the wrongdoer is mercy, as punishments are averted due to suspicion is mercy, as well as the application of penalties for the criminals is also (an expression of) mercy with humanity”⁴³

Similarly, we may visit mercy and justice in different basic terms and elaborations, e.g. restitution i.e. payment made for damage or loss which is the principle of *lex-talionis* (*qiṣāṣ*) in Islam is limited one.

Likewise, punishment of fixed limitations (*ḥudūd*) are mandatory for deterrence, retribution and expiation. Another modes of punishment is discretionary (*ta'zīr*) either for reform or deterrence by judge or authority in *Siāsah al-Shar'īah*. The ease and mercy in the law of dealing and worship (*'Ibādah*) are also there where one has not bound to act within the only limits do's and don'ts. Number of classification are in Islamic *Shar'īah* for performance of any deed, flexible as per human nature.

We may derived that *Istiḥsān*,⁴⁴ *Istiṣlāh*, *Masāliḥ Murslah*, *Istiṣhāb* and *'Urf-o-Ādat* etc. so, in the Islamic legislation, foundational structure of law, its reconstructive, re-interpretative ability and power of implementation, everywhere one may find multiple dimensions of mercy which are directly or indirectly related to the Divine Mercy functioning apparently as well as metaphysically in Islamic legal parameters considering the human rights. Strictness is for human wellbeing can be applied conditionally with specific context and situations. However, there is no harm and affiliation in the basic principles due to having divine origin.

4.3. Subject Discourse and Legal Maxims (*al-qawā'id al-fiqhīyah*)

Legal maxims may play the vital role in decisions concerning Islamic law projecting the objective of *Sharī'ah*. There are number of maxims (*qawā'id*), specific in expressions and words but having broad-spectrum in meaning. Some legal maxims have been categorized as fundamental while some other are secondary. These epithetic expressions are source to understand, philosophy associated with legal conception, helpful for making the judgement rightly, application of rules and jurisprudence involved in the overall insight. For example, *'Al-Darar Yuzāl'* that is injury and harm must be eliminated or *'Al-Darar Yuzāl bi-mithlihī*, i.e. harm should not be removed with the same gravity of harm. In Islamic legal objective it demands removing harm and difficulty before it

taken place, lessening harm when it befalls and taking preventive measure controlling the expansion and enlargement of harm. We may study Qur'ānic verses (2: 188,229,233) and (4:29) working behind this maxim. These legal principles can be declared as an expression of mercy in the domain of Islamic concept of justice.

Scholars of Islamic law elaborated these principles correlating their concepts with Qur'ānic verses and Ḥadīth. Dr Muṣṭafā Aḥmad Al-Zarqā interpreted number of legal maxims, for example, he discussed '*al-ḍurūrāt Tabīḥu 'I-Maḥḍūrāt*'⁴⁵ in the light of Qur'ānic verses, "...except under compulsion of necessity..."⁴⁶. Similarly, '*Al-Mashaqqah tajlīb al-Taisīr*' means "*Hardship begets facility*" a legal principle in the light of Qur'ānic verse (2:185) and (94:6), pondering over all these legal maxims one may grasp the mutual function of mercy and justice.

As when we discuss principle of general permissibility (*'Uṣūl-i Ibāḥat*), the function of mercy in relation to justice can also be observed. Similarly, the effect of context is important one, sometime when there is a silence on legalization and no injunctions were revealed with the indication of tolerating permissibility. As stated in the Qur'ān that, "*O ye who believe! Ask not questions about things which, if made plain to you, may cause you trouble. But if ye ask about things when the Koran is being revealed, they will be made plain to you, Allah will forgive those: For Allah is Oft-Forgiving, Most Forbearing.*"⁴⁷

That is the meaning of what the *Sharī'ah* is silent about, it is an expression of mercy and compassion for those charged with it (*mukallifīn*) as indicated in Ḥadīth that, "*Verily Allah Almighty, has laid down religious obligations (farā'idh), so do not neglect them, and He has set limits (ḥudūd), so do not overstep them, and He has forbidden some things, so do*

not violate them, and He is remained silent about some things and affairs, out of compassion for you, not forgetfulness - so do not seek after them.”⁴⁸

In the light of this verse Safraz Bacchus discussed with reference of Qur’ānic verses and Prophet Saying, quoting the action of Syedna Umar (R.A) regarding suspension of punishment of theft in the year of famine. As well as he did not apply limit (*ḥadd*) against a slave examining that his master had failed to provide sufficient food to him.⁴⁹ In this regard “*al-ḍarutāt tabīḥu ‘l-Makhzūrāt*” is an important maxim. Another legal maxim ‘*al-Ḥudūd tadra’u bi ‘l-Shubhāt*’ that is “Ḥudūd penalty are to be warded off due to doubtful matter”, the concept has been taken from Prophetic Ḥadīth, ‘*lā ḍarara wa lā ḍirār*’ that is “there should be neither harming nor reciprocating harm.”

Hence, there are number of Qur’ānic verses and Prophetic Saying as a working philosophy behind the different modes of Islamic law. For instance, Qur’ānic references (2:185), (2:256), (2:286), (4:28), (7:157), (22:78) and (44:58) are some important examples in this regard. In relation to the study of legal maxim, one may be able to grasp the mutual nexus of mercy and justice what can be seen everywhere in the religio-legal discourse from Islamic perspective as imbued in the legal maxims.

4.4. Mercy-cum-Justice Discourse *vis-à-vis* Islamic Legal

Punishments

Mercy-cum-justice study regarding legal punishments (*Uqūbāt and Ḥudūd*) inclines to accomplish and fulfill the requirements assigned by objective of *Sharī‘ah*. Although regarding fixed limitations (*Ḥudūd*) there are different opinions of scholars regarding these offenses of six type. Muḥammad Salim El-Awa excluded alcohol drinking and apostasy arguing that these are not strictly defined by Qur’ān and Ḥadīth.⁵⁰ While Doi put one more counting as seventh one which is running away from battlefield

during *Jihād*,⁵¹ Although scholars differed, but here the question of sentence is important to be addressed focusing the relation of mercy with justice. Holy Prophet [P.B.U.H] said that, “*A legal punishment that is carried out in the land is better for the people of that land than if it were to rain for forty days.*”⁵² We may understand the application of legal penalty is an act of mercy and compassion when we study this Ḥadīth in relation to Qur’ānic verses e.g. (42:28) and (30:50) stating rain as Divine Mercy. Ibn Taymiyya also commented that establishment of limitation (*ḥadd*) is (an expression) of Divine Mercy.⁵³

One may easily understand the application of *ḥadd* considering an instance added by al-Gazzālī that amputation of the leprous hand is bad act apparently but invisible abundant goodness is behind, as a safety of the whole body. If the cutting one’s hand off is omitted, the destruction of the complete body would have occurred.⁵⁴ He quoted also Prophetic Saying, ‘*my mercy precedes and overpowers my wrath,*’⁵⁵ from this discourse it may be grasped the mutual link of mercy, justice and wisdom behind divine injunctions. Furthermore, Bakr bin ‘Abdullah Abū Zayd also added that, “He (Allah Almighty) forbade his servants to take pity on them (culprits) in the religious matters, so that establishing the *ḥadd* in order to prevent them as well as application of these injunctions of *Sharī‘ah* is in fact the mercy of God. Whereas Divine Mercy doesn’t prevent Lord to award required punishment, hence, there shouldn’t be any hindrance to apply *ḥadd*.⁵⁶ He further remarked that, it is not appropriate as per Divine wisdom to exercise His consent and willing in the place where punishment and anger is required, and does not put His anger and punishment where consent and mercy is required. Both dimensions are related to Him up to extent (what He knows). So, do not pay attention to the what are the unrevealed words of Allah⁵⁷ what is undisclosed by Him.⁵⁸

Legal punishments (*Uqūbāt and Ḥudūd*) concerning theft has been declared in the verse, “*As to the thief, Male or female, cut off his or her hands: a punishment by way of example, from Allah, for their crime: and Allah is Exalted in power. But if the thief repents after his crime, and amends his conduct, Allah turneth to him in forgiveness; for Allah is Oft-forgiving, Most Merciful.*”⁵⁹

In the light of these verses Ibn-Taymiyyah commented that one should know that establishing limit (*ḥadd*) is an act of (*jihād*) and (manifestation of) Divine Mercy to His servants. So the ruler and authority should be strong in establishing the limit (*ḥadd*). In the matter of religion, they should not show kindness suspending punishment, with the intention to stop people from committing erroneous acts, this may cause the bestowal of mercy on them.⁶⁰ Furthermore he mentioned in *Al-Fatāwa al-Kubrah: Kitāb al-Jināyāt* that the penalties have been prescribed by Allah Almighty as a mercy. These are issued on the basis of mercy with creatures and benevolence with them. Therefore, those (authorities) who are implementing punishments upon people for their sins should have adopt benevolence and merciful behaviour treating them such as the father wants to discipline his son, and doctor intends to treat the patient.⁶¹

‘Abdul al-Qādir ‘Awdah remarked in this regard that the punishment in the *Sharī‘ah* is intended to reform and rectify the criminal and to bless him with mercy and benevolence, kindness and mercy to him, so he should not neglect the matter of the accused in estimating and assessing the punishment, and this is what the scientific theory tends to.⁶² Indicating the sanctity of Islamic punishment, Islamic scholar, ‘Abdul al-Raḥmān bin ‘Abdul al-Khāliq, discussing the universality of (‘*Uqūbāt and Ḥudūd*’) of Islamic legal system. He analyzed different penalty comparatively commented that the prison sentence is not in accordance with

human nature and hence null and void, as well as legitimately contradictory as compared to the *Shar‘īah* penalties, corrective measures, merciful and compassionate that God has legalized, then how can we attempt to cloth it (prison sentence) the dress of Shariah?”⁶³

Aḥmad Fathī al-Bahnsī considered ta‘zīr and *al-Sīāsah al-Sharī‘ah* both are identical and head of state may exercise it conditionally when required.⁶⁴ The involvement of mercy and justice mutually at crucial situation is also there as stated by Muḥammad Ṭahir Maṣṣūrī finding *Wahbah al-Zuhaylī* contribution as, “he stressed that Islamic concept of war is to assist the oppressed one and is dictated by the ideals of mercy, decency, justice, and universal moral values. This is a war which, according to him, is fought to punish those who violate peace in the world.”⁶⁵

We may put that Islamic Legal System is incorporated with the sense of merciful dealing very relevant to the human nature with balance and equality taking into account overall betterment of whole humanity saving social rhythm. Either in peaceful environment or in the state of war nexus of mercy and justice contributes well in accordance with Islamic legal values. Comparatively Islamic law is unique one for ultimate better end of criminal in this world or the world Hereafter. What prestige and respect the wrongdoer has even during and after the implementation of *ḥadd*. Hence, the injunctions of *Shar‘īah* are based upon the wisdom providing welfare and prosperity to the whole humanity.

4.5. Mercy-cum-Justice Study with Reference to Capital Punishment

We may study some relevant Qur’ānic verses regarding capital punishment in order to find the mutual relationship of mercy and justice. A part of verse showing comparative sketch of religion regarding subject matter may be quoted briefly as, “*This is a concession (takhfīf) and a Mercy (rahmah) from your Lord.*”⁶⁶ In order to study the law of retaliation

historically from Qur'ānic perspective we may put Qurṭubī's remarks that for the people of the Torah, law of *lex talionis* was to kill in recompense and there was no other option for one who convicted of murder (law derived from Jewish Holy Book). And for the people of the Bible they were pardoned and there we no revenge for killing and blood money for murderer. But in Islam gravity of sentence has not only been mitigated giving relief but there also been options bestowed with well-balanced way either to kill in revenge or to compensate with blood money or pardon (depending upon the situation and context along with overall examination of case) which is, because of Divine Mercy.⁶⁷ 'Abdullah Yūsaf Alī regarding this verse in relation to next verse added that, "Islam has much mitigated the horrors of the pre-Islamic custom of retaliation. In order to meet the strict claims of justice, equality is prescribed, with a strong recommendation for mercy and forgiveness...[if] One life having been lost, do not waste many lives in retaliation."⁶⁸

Law of retaliation is declared in Qur'ān as life, "*wa-lakum fī 'l-qīṣāṣi ḥayātun yā- 'ulī 'l- 'albāb*",⁶⁹ according to Muḥammad Abū Zu'rah it means life based upon tranquility which cannot be contaminated by the crimes. Every victim will not get revenge because in this way it results as law of forests, weak will be deprived by mighty and there will be non-stop occurrence of sin and crime. Hence it is required to differentiate what is really deserving of mercy. It is necessary to take pity and mercy on the whole society with exception of the culprit having bad impact later on. (Without the application of justice) this may cause infectious disease spreading everywhere, here punishment is essential for social amelioration (which is an expression of mercy).⁷⁰ Regarding Islamic point of view declaring '*the mercy factor*' of magnanimity and high-mindedness, Dr El

Fadl elaborating in current context the topic “*The Death Penalty, Mercy and Islam*” put as:

*“The balance of justice, ethics, and, indeed, existence (al-mizan) is restored through the pursuit of the mercy factor. The Islamic vision of justice is premised on mercy and compassion, and the absolute sanctity of human life.”*⁷¹

Dr. Muhammad Habbash Director of the Centre for Islamic Studies in Damascus commented that “the Prophet guides Muslims to pardon and forgive offenders, to encourage repentance and mercy, and suspend the death penalty whenever possible. Shariah law explicitly encourages life over death through the overarching themes of forgiveness, mercy and repentance as alternatives to punishment and the undeniable protection of life as one of the five ‘indispensables’ in Islam”⁷²

Similar discussion regarding practice of statutory law in Pakistan with the review of different legal development where question of capital penalty is important one with the concept of mitigating of degree of intensity of punishment.⁷³ As Hisham M Ramadan added that, “*The application of the concept of mercy covers the entire sphere of judicial proceedings including the execution of a punishment.*”⁷⁴

On the other hand, some people may think that these punishments have severity for the perpetrators, and it has not been taken into account their (culprits) weakness, causes and situations due to which they have committed a crime. However, the student of Islamic jurisprudence knows in front of these objections that how (and up to what extent) Allah has eternal and infinite mercy with His creation sincerely.⁷⁵ However, different crime should neither be exclusively pardonable nor exclusively unpardonable.⁷⁶ Whereas, wisdom and philosophy behind this mercy-cum-justice relationship in the light of verse (2:178), Yūsuf ‘Alī commented

that, “at most, let the Law take one life under strictly prescribed conditions, and shut the door to private vengeance or tribal retaliation. But if the aggrieved party consents (and this condition of consent is laid down to prevent worse evils), forgiveness and brotherly love is better, and the door of mercy is kept open.”⁷⁷

It is necessary to address the motivating factors that results any heinous act, an utmost responsibility of state exercising *al-Sīāsah al-Sharī‘ah*. The law of *lex talionis* (*qiṣāṣ*) in Islam holds the same view, yet, it provides a possibility for forgiveness and mercy. It expresses justice to foster a good relationship among social bonds for practicing mercy. However, we may add from the vantage points of scholars in this regard that when death penalty is essential to be executed then it is necessary to adopt the slightest painful procedure which is an act of mercy fulfilling the need of justice.

5. Legal Impact of Subject Thesis on Human Behaviour and Social Order

It is important to know the impact of mercy and justice jointly with respect to Islamic legal system regarding human conduct and social amelioration. We may analyze in the light of Qur’ān and Prophetic Saying, as Allah Almighty addressed in the Holy Qur’ān that, “*We have already sent Our messengers with clear evidences and sent down with them the Scripture and the balance that the people may maintain [their affairs] in justice.*”⁷⁸ Islamic scholars discussed this philosophy in the light of Qur’ānic verses. For example, Syed Quṭb elaborating verse (49:9)⁷⁹ stated that this is a practical law made for safeguarding community from strife, disintegration and dispersal, it is suggested to resolve the issues by establishing justice and reform for reconciliation with the ultimate objective of acquiring Divine Mercy.⁸⁰ However, Kamali also discussed with

reference to commentary of Ibn kathīr concerning verse (2:143)⁸¹ and added that Islamic community “(*ummah*) is a forgiving and just community with the capacity to mediate between people and show forth in its very existence the mercy and justice of God.”⁸²

What has been derived by the scholars considering mercy and justice contemplating Islamic Scripture tending towards the lessening of difficulties for social life. Human basis of social life as accentuated by the Qur’ān with the concept of brotherhood, it provides complete laws for social betterment discouraging exploitation, injustice and cruelty. Dr. Fāṭimah Abdullah commented as:

*“Thus, Islam emphasizes justice and mercy as social duties. To do this we need to cultivate Islamic values and skills, good inter-personal relations, and a strong sense of ukhuwwah (brotherhood) that is grounded in love, mercy and justice as a benchmark of social relations.”*⁸³

From individual role to that of state supervision and input, in this regard Hisham M Ramadan commented that “preventing crimes by elevating the social moral sense and influencing the criminal proceedings positively one may realize that in an Islamic state, negative feelings of hate and jealousy are to be eradicated by enforcing compassion and mercy between individuals.”⁸⁴ So, mercy based working is not something sensual only associated with kind feeling and emotions but it is somewhat of practical centered. Into the bargain, El Fadl added that mercy is not merely forgiveness or the willingness to ignore the faults and sins of people from Qur’ānic perspective. Mercy provides a stage to exercise what is required justly and it guides towards tolerance for human mutual relation.⁸⁵ what and who should be the real impact of mercy-cum-justice discourse regarding human behaviour maintaining beautiful social standard. Hence,

discussing ‘Law and Justice: A Comparative Appraisal’ Abdul Haseeb Ansari commented that, “Justice demands that in the evening his [laborer] wage should be paid soonest possible. But if compassion is added to it, he should be paid a little more... a Muslim divorcee should be paid dowry (*mihr*), money for maintaining her during *iddah* period... The last payment is kind of nicety and compassion shown to the lady who was his legally wedded wife.”⁸⁶

These are the working style for close relative to that of whole humanity in order to acquire Divine Mercy due to which human merciful behaviour may take place incorporating various dimension of social panacea for living with balance and justice. However, preventive (*ṣalbī*) measure are also there as Ḥassan ‘Alī Al-Shāzī mentioned that “mercy... declines evilness and malice from society... [it] can eliminate the causes of deteriorating relationships between the perpetrator and his family and the victim and his family”⁸⁷

We may discuss the question of mercy-cum-justice regarding behavior consulting briefly the views and comments of experts from relevant field of study. For example, B. F. Skinner and some other leading psychologists and students of behaviorism considering punishment immediately follows the undesirable behavior...without producing harmful side-affects. Therefore, the point can be made that the Qur’ān’s promises of severe punishment as an admonition to those who sin, could be a positive stimulus ... encouraging and fortifying the desired behavior.⁸⁸ Another aspect is also there in this regard, that at least some indications are also there that religious feelings (may be either of mercy and benevolence) influence prosocial behavior due to internalized prosocial values.⁸⁹ However, quoting scholars of behaviorism Zulfikar Ali Shah said that Omnipotence and Divine Mercy jointly reinforce each other, encouraging and invigorating the

behaviour what is required.⁹⁰ Quoting the verse (16:125) elaborating the legal discourse of Islamic philosophy of punishment where claiming mercy as one of the fundamental characteristics out of four, namely, effective advice (*Maw'izah*) recuperation (*Shifā'*) and guidance (*Hidāyah*), Dr Muḥammad Ṭāhir al-Qādrī remarked about the people whom Allah gifted mercy that, "*The manifestation of mercy in their lives is the sense of peace and harmony which they experience in daily (social) routine of their existence*"⁹¹

Analytically correlating another dimension which reinforce and encourage the concept of social betterment in relation to mercy and justice, Orman Sabri discussed justice from al-Ghazzālī point of view and he inferred that benevolence (*Iḥsān*) is an essential and counterpart of justice from human perspectives. Justice is mandatory act (*wājib*) and benevolence is a voluntary act of kindness (*mercy*) as also discussed in *ihyā' 'l-'Ulūm*.⁹² Moreover, justice expresses a minimum standard for behaviour in human relations, whereas benevolence is acting so as to benefit others and justice alone is not sufficient (without the concept of benevolence and mercy).⁹³ In current context, John Rawls also discussed the theory of justice in relation to benevolence which is an act of kindness and mercy, heroism and self-sacrifice.⁹⁴ We may equate the concept of justice cum benevolence as justice in relation to kindness and mercy.

The demands in order to get the panic situation normalize attaining peace in the social bonds after occurrence of mishap and creating love and brotherly living of social life, 'Abdullah Yūsaf Alī noted that, "*there should be no subterfuges, no bribes, no unseemly bye-play: otherwise the whole intention of mercy and peace is lost.*"⁹⁵

The relationship of mercy and justice is based upon well-balanced nexus in Islamic legal system with the aim of provision social enhancement

and public welfare. We may observe Qur'ānic verse in which Allah Almighty has stated that, “*And if We have mercy on them and remove the distress that has (afflicted) them, they will become hardened in their transgression wandering disorientated.*”⁹⁶ Hassan ‘Alī Al-Shāzli put that, “So the punishment in Islamic law has taken into account in relation to justice considering mercy and compassion, in view of developing and enhancing human relations and social ties between all people at the same time.”⁹⁷ It demands practicability, Wael B. Hallaq estimating historically practiced values added, “unwavering standard of justice concerning its unique feature in the lands of Islam where forbearance, mercy and forgiveness were important with characteristics respect to Sultanīc code, Sovereign’s will and law of *Shari‘ah*.”⁹⁸

We may add considering al-Sha‘rāwī interpretation in relation to the Qur’ānic verse (2:37) that Allah Almighty estimated the negligence of his creation and enacted for them sources of repentance with three stages. One out of them is to do in accordance with mercy... as if there is no mercy then there is no chance of forgiveness leaving defaulter no way to amend, it may cause to spread disorder leaving bad impacts on the social life.⁹⁹ Al-Sha‘rāwī views may be strengthened considering what Anderw Fiala considering both justice and forgiveness (mercy) as well-regarded quoted, “thus we arrived at an *a priori* that if a wrongdoer does not deserve forgiveness, then forgiveness becomes paradoxical.”¹⁰⁰ So, we may say that up to some limit it is estimated that justice plus objective of human prosperity is equal to mercy.

Similarly, Qur’ānic references e.g. (2: 216), (42:28), (96:6-7), (21:35), (3:142), (6:28) and (32:13), all these verses express the reality that Divine Injunction is full of wisdom. It is required to contemplate the meaning and objective associated with these verses inculcating thought to

the legal values.¹⁰¹ We may learn taking into account the mutual relationship of Divine Mercy and Divine Justice guiding humanity to adopt these instructions in their affairs. As it may be the demand of any culture and religion, as added by G. Murphy Jeffrie that both justice and mercy are moral virtues. We expect God as comic judge to manifest both justice and mercy, therefore may be expected in human judgement as well.¹⁰² Qur'ān also states it as *sibghtullah*,¹⁰³ So, humanity should act in accordance with the Lord's willingness.

We may comment, that the overall analytical review revolves around the influence of mercy and justice involvement rectifying human conduct enhancing and perfecting social values, encountering *Ṣalbī* and *Ījābī* aspect taking corrective measures. The impact of justice with the application of mercy adopting the method of punishment can eliminate the causes deteriorating human affairs as well as in in particular context this nexus plays important role to resolve issues existed between the perpetrator and his family and the victim and his family. In Islam mercy can never be set aside along with the highest demand of justice. Both are practical-oriented no just philosophies with the aim of safeguarding community from strife and conflict. Multiple dimensions either from behavioral sciences, panic situation to be normalized, ethical development or even in accordance with theological creed and legal study, this nexus is appreciated greatly presenting its remarkable impacts.

6. Conclusion and Recommendations

After discussing different barriers to such research it may be commented that there are many reflections manifested through the mercy-cum-justice discourse lessening difficulties and increasing ease for humanity. This relationship is based upon well-balanced nexus in Islamic legal system with the aim of provision of social enhancement and public

welfare. So, mercy based working is not something only sensual associated with kind feeling and emotions but it is somewhat of practical centered for acquiring justice fairly. In the Islamic legislation, foundational structure of law, its reconstructive and re-interpretative ability and power of implementation, philosophy of legal maxims, everywhere one may find multiple phases of mercy which are directly or indirectly functioning in Islamic legal parameters apparently as well as metaphysically. Islamic Legal values are integrated with the sense of merciful dealing very relevant to the human nature with balance and equality taking into account how to get overall betterment of whole humanity protecting social rhythm.

However, tradition cum modern scholarship concerning mercy and its role is Islam law and justice, multiple elaborations epistemologically shed light on justice, mercy, injustice and one's progress towards apex (*kamāl*) sustaining under the umbrella of justice with the utmost need of mercy. It shows that both mercy and justice are supplementary to each other. Hence, the concept of mercy-cum-justice may be visited in substantial as well as in the procedural aspect of Islamic law. Either in peaceful environment or in the state of war nexus of mercy and justice contributes well in accordance with Islamic legal standards. What prestige and respect deserve the wrongdoer even during and after the implementation of *ḥadd* is an unparalleled and matchless characteristics of Islamic justice with merciful expression. Furthermore, comparatively Islamic law is unique one for ultimate better end of criminal in this world or in the world Hereafter.

In specific contextual domain limitation (*ḥudd*) can be eliminated, while in essential condition to exercise *ḥudd* for example to cut one's hand off, which is very restrictive and based upon transparent evaluation is Islamic law. Hence, the injunctions of *Shar'īah* are based upon the wisdom, peace, justice and mercy providing welfare and prosperity to the whole

humanity. This study also concludes that law of *lex talionis* (*qiṣāṣ*) and blood money provides a possibility for forgiveness and mercy. It expresses justice to foster a good relationship among social bonds for practicing mercy. On the other hand, strictness is for human well-being can be applied conditionally in specific context and situations. one may be able to grasp the mutual nexus of mercy and justice what can be seen everywhere in the religio-legal discourse from Islamic perspective as imbued in the legal principles, maxims and diligence (*Ijtihād*). However, there is no harm and affiliation in the basic principles of Islamic justice due to having divine origin. However, we may clinch from the vantage points of scholars in this regard that when death penalty is essential to be executed then it is necessary to adopt the slightest painful procedure which is an act of mercy fulfilling the need of justice.

However, harmonic relationship in between mercy and justice with respect their relevant implications and domains for legal applications may be called as a *sine qua non* for social impact. The demands in order to get the panic situation normalize attaining peace in the social bond after occurrence of mishap creating love and brotherly living of social life. While regarding overlapping domain amongst parameters of mercy and justice one may observe fundamentally that mercy has been a pivotal point of Islamic Ijtihād of all time and era. It can be noted, that objective of *Sharī'ah* is exactly fit as per human natural tendencies and requirements. We may think that all-inclusive and comprehensive view of the subject study displays that justice and mercy relationship may be equated as the relation of human body and spirit. Mercy also functions when one has to choose out of two valid options of punishments for culprits and execution of parameters of justice is also an act mercy shutting the door of bad consequences and aftermath. Western scholarship is required to contemplate mercy and justice with an

integral whole philosophy and wisdom functioning behind *Shari'ah* law. Before any allegation to be hurled against Islamic law, these discussed segments or similar study may be taken into account instead of just showing cliché-ridden stance to condemn Islamic penal code.

It is Recommended that our every dealing of daily life must be tempered with compassion and mercy this may stop humanity to put into the situation demanding serious inquiry. When we deal with other human or creature or even our enemies we have to consider them with mercy this resulted order and peace in culture and society. It is necessary to address and encounter the motivating factors that results any heinous act, an utmost responsibility of state exercising *al-Sīāsah al-Sharī'ah*. From Islamic point of view mercy does not interrupt the imposition of what is less than the just penalty or lesser than that of the required amount for social betterment and saving society from bad aftermath. Both concepts from Islamic perspective guide humanity rectifying thought and actions putting them right with purpose towards purposeful life. Hence, we have to step forward and retrieve the noble role mercy and justice mutually in accordance with the objectives of *Shari'ah*.

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38. Ibn Qayyim, Muhammad bin Abi Bakr, *'l-lām al-Mawq'īn 'an Rab 'l-'ālmīn*, Vol.3 (Beirut: Dār 'l-kutab al-Ilmiyyah 1991), p.11, 86
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40. Abū Zu'rah, Muḥammad, *Al-Jarīmah wa al-'aqūbah fī al-fiqh al-Islāmī*, (Egypt: Dār al-Fikr al-'Arabī Cairo 1998), p.7, 8
41. What is the true meanings of both mercy and justice, he quoted from the address of Syedna Abu Bakr (R.A) that *Beware that I consider that the weak among you is strong, until I have restored their rights, if God pleases, and the strong among is weak in my sight until I have wrested from him the rights of others, if God pleases?*
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44. As *Istiḥsān* is an important tool for abandonment of one ruling replacing with better one. Dr Muhammad Hashim Kamali considered *Istiḥsān* as a renovating factor for Islamic law. For more detail occasional paper 58, published by IRI IIUI 2004. Oriinally published in *Islamic Studies* 2004, 43:4, pp.561-581.
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48. Al-Mustadrak lil-Ḥākim : 4/129 Ḥadīth 7114, Masnad lil-Ṭabrānī 4/338 Ḥadīth 3492, al-Dār Quṭnī 4/184. May also be visited at <https://sunnah.com/nawawi> 40/30
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56. Abū Zayd, Bakr bin 'Abdullah, *Al-Ḥudūd wa 'l-Ta'zīrāt 'inda Ibn al-Qayyim: Dirāsah wa Mawazinah*, (Riadh Saudia Arabia: Dār al-'Aāsmah 1415), p115

57. Ibid., 354

58. It has also been declared in the Holy Qur'an (5:101) that, "O ye who believe! Ask not questions about things which, if made plain to you, may cause you trouble. But if ye ask about things when the Qur'an is being revealed, they will be made plain to you, Allah will forgive those: for Allah is Oft-forgiving, Most Forbearing."

59. Al-Qur'an (5: 38-39)

60. Ibn Taymiyyah, Aḥmad bin 'Abdul al-Ḥalīm, *Al-Sīāsah al-Shar'iah fī Iṣlāḥ al-Rā'ī wa al-Ra'īyah*, (Dār al Ma'rifah n-d), p.125 2. Majma' al-Fiḥ al-Islami 6/1509

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