

Legal Jurisdiction of DNA Test for Promulgation of Ḥudūd & Ta'zīr: Analytical Study

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Abstract

The DNA technology has been expanded to the horizons of various fields like genetic weapons, human expansion, patenting and inventions, biotechnology, and genetic engineering other than having its importance in the civil and criminal investigation. And it is still through the way of developments. In this research, the efforts have been made to prove that in the present scientific era DNA Printing Test could be helpful for the promulgation of ḥudūd and Ta'zīr, or it could be a source of justice for the victim of injustice along with the accurate identification of criminal without any doubt and suspicion? For this purpose, I have provided a detailed discussion about the promulgation of ḥudūd and Ta'zīr from prophetic era till now, and to try to relate the Scientific method of testimony to historical method, the study explores the resolutions of Islamic Fiqh Academies, opinions of modern scholars, decisions of muslims jurists in past, legal opinions of Islamic Organization for Medical Sciences, along with the reliability and authenticity of DNA Printing Test, to find out the solution. The methodology applied in the discussion is critical analysis based on inductive and deductive approaches.

Key words: DNA, Ḥudūd and Ta'zīr, Sharī'ah (Islamic Law), Punishment, DNA Printing Test

Introduction:

A comprehensive legal framework that governs different aspects of the life of Muslims, both individually and collectively is provided by *sharī'ah* (Islamic law). *Ibn-e-qayyim* states that Allah has made it clear in his *sharī'ah* (Islamic law) that the purpose is to establish equality among his servants and to do justice to the persons, so whichever way leads to fairness is religion's part and can never resist it.¹

Abū Ḥāmid al-Ghazālī (d. 1111) explained the aims of *sharī'ah* (Islamic Law) which concern with the protection of five objectives by saying that: The main purpose of the *sharī'ah* (Islamic Law) for promotion of the welfare of the persons, protecting their wealth (*māl*), their faith (*dīn*), their intellect (*‘aql*), their posterity (*nasl*), and their lives (*naḥs*). Whoever ensures the safety of these 5 serves in the public interest and is needed, and whoever hurts them is in public interest's profit and must be eliminated.²

Criminal behavior, considering its various harmful consequences, is detested by everyone. *sharī'ah* (Islamic Law) regulates social life, prevents injustice, protects rights and liberties, imparts justice, and guides societies. Therefore, the codification of law requires that people be warned so that they are accountable for their actions and avoid any excuse for ignorance of the law, which may make application of the principle a difficult task. According to *sharī'ah* the punishment is aimed at the protection of five main values of Islam; religion, life, mind, further generations, and property, which act as main objects of protection of Islamic law. Thus, punishment under the Islamic criminal law has a goal to restore social justice, protect

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morality, material and religious interests of the society and its members, and regulates the relations between society members, relations of a Muslim with Allah and law norms.

The goal of punishment as retribution defined by law and appointed by the court, which lies in the deliberate infliction of pain on a person convicted of the crime committed. Pain (penalty) is not the goal itself and it acts as means (intermediate goal) to achieve other goals of punishment. The main goal is the prevention of crime. It is achieved with the help of more concrete goals such as performance of justice, general and special prevention and correction of a criminal. Among all possible goals of punishment, he sees the ultimate goal of punishment in the correction of a criminal, and other goals are secondary toward this ultimate goal.

Definition of Crime in Islamic Law:

Crime is defined by Muslim jurists as legally prohibited acts, committed or omitted, for which God has prescribed *Hudūd* (singular *ḥad*) or *Ta'zīr* punishments³. *Hadd* derived from the Classical Arabic root (h-d-d) and its associated meaning of “the prevention and separation between two things,”⁴ In his Introduction to Islamic Law Joseph Schacht remarks: “The *Hadd* is a right or claim of Allah.”⁵ More simply, “the *Hadd* is a punishment decreed in the *sharī'ah* for (certain) fixed crimes,”⁶ *Hudūd'* is mentioned 14 times in the *Qur'ān* and Six of the 14 instances of *ḥudūd* in the *Qur'ān* occur in the context of marital relations. *Qur'ān* strictly emphasis on the importance of *ḥudūd*, and states in this reference:

Allah ordained these limits. So if you exceed the limits ordained by Allah, do not be disrespectful to them, such people are wrong (to yourself and others).⁷ The *ḥudūd* convictions are a teaching method for society and a factor for offenders. A teacher and denial of the biggest crimes of society is the law: adultery, murder, and theft.

Classification of Crime and Punishment in Islamic Law:

According to Islamic jurisprudence, the prohibited acts and the punishments prescribed in Islamic law are divided into two categories: *Hadd* and *Ta'zīr*. The first is sub-divided into *ḥudūd* and *Qasās*. Hence Jurists generally discuss crimes in three categories - *Hadd* crimes, *Qasās* crimes, and *Ta'zīr* crimes. Those acts which infringe upon individual rights are torts and are referred to as *Ta'zīr* and *Qasās*.⁸

1 – Hudūd (Punishments Prescribed by the Holy Qur'an) Crimes:

These are the crimes for which there are punishments specified in the *Quran* and some cases inferred from *ḥadith*. Muslim philosophers consider them as the right of God to be neither deterred nor eradicated by the hurt parties or the ruling classes. The *ḥudūd* crimes are legally prescribed punishments for seven major crimes: which are following along with their penalties.

1. **Adultery:** Four witnesses or confession and its **Punishment** is Death by stoning if married; otherwise one hundred lashes.
2. **Slander (false accusation of adultery):** Unsupported accusation and its **Punishment** is eighty lashes and forty lashes for a slave.
3. **Apostasy:** Two witnesses or confessions and its **Punishment** is death by execution for a male and imprisonment until repentance for a female.

4. **Robbery:** Two witnesses or confessions and its **Punishment** are with homicide: death by beheading; otherwise cutting off the right hand and left foot.
5. **Drinking Alcohol:** Two witnesses or confessions and its **Punishment** are eighty lashes.
6. **Theft:** Two witnesses or confessions and its **Punishment** are first time offense: cutting off the hand of the thief. Second time: cutting off the hand of other hand and Third time: cutting off the foot
7. **Rebellion:** Two witnesses or confessions and its **Punishment** is Death if captured; if surrendered or arrested, state discretion (*Ta'zīr*).

Because of the serious nature of these crimes, Islamic law has made the quantum of proving these offenses very high; they must be proved beyond doubt before a defendant can be convicted.

2-Qasās (Law of Retaliation) Crimes:

These are crimes punishable by retaliation or blood money (*Dīyah*) both being fixed and described in the scripture. Executive authority is not given a choice to modify or alter these punishments; only the aggrieved party has the right to forgive, reduce the penalty or compound the offense against the accused person. *Qasās* crimes are intentional murder, manslaughter, causing death by mistake or accident, willfully causing simple or serious injury and causing hurt (simple or serious) by mistake or accident. Testimony of at least two trustworthy eye-witnesses is required to secure a conviction if there is no other factual evidence to consider'.⁹

3 - Ta'zīr (discretionary) Crimes:

These are crimes in which restricted actions are carried out by the legislature in the form of laws, acts or regulations, not included in divinely enacted laws. Because these crimes are not specified, so it does not specify their punishments. It will not be possible to specify all representations under this category. Only some of them have been mentioned as examples such as a break of trust, bribery, and usury. The decision of the legislature is left entirely to the authorities provided that the Legislature is under the needs of the society and its proper functioning, and defends its interests, maintains the social order, and other joint ventures of the society. Protection interests within the bounds of basic Islamic legal principles. It gives the right of pardon to the head of the state or the judge on condition that pardon granted should not conflict with the right of the injured or affected party. The victim can also allow pardon only if it is not damaging to the interests of society. It leads to the justification of the punishment imposed on the lawbreaker or criminal. One eyewitness or circumstantial evidence will be enough to prove the crime.¹⁰

Promulgation of *Hudūd* in Prophetic (ﷺ) Era:

So there are several reliable *Hadiths* which prove that the Prophet (ﷺ) had applied the punishments like flogging, stoning the married adulterer. For example; When the Jews came to Hazrat Muhammad (ﷺ) and told him, one of the women and men had illegal relationships. The Prophet then ordered that both of them should be stoned, and 'Abdullah bin 'Umar stated, "I saw the man leaning over the woman to shelter her from the

stones.”¹¹ Another example is when “a woman of *Ghāmid*, a branch of *Azd*, came to him and said: Messenger of Allah (ﷺ), purify me,” and She was then stoned to death.¹²

In another instance, “A man from *Banī Aslam* came to Hazrat Muhammad (ﷺ) when he was present in the mosque and called (the Prophet (ﷺ)) saying, O Allah's Messenger (ﷺ)! I have committed illegal relations. The Prophet (ﷺ) **turned his face from him to the other side**, the man then turned to the Prophet (ﷺ) and said, O Allah's Messenger (ﷺ)! I have committed illegal sexual intercourse. **The Prophet (ﷺ) turned his face (from him) to the other side**; the man turned to the Prophet (ﷺ) had turned his face, and again said his statement. **The Prophet (ﷺ) again turned his face (from him) to the other side**. The man turned again (and repeated his statement) for the 4th time. **So when the man had given witness four times against himself**, the Prophet (ﷺ) called him and said, Are you insane? He answered, No. Hazrat Muhammad (ﷺ) then said (to his companions), Go and stone him to death. The man was married. One of the companions of Prophet (ﷺ) said: I was among those who stoned him. We stoned him at the *Musalla* (praying place) in *Medina*. When the rocks hit him with their sharp edges, he escaped, but we grabbed him at *Al-Harra* and stoned him until he died.”¹³

Contemporary jurists *Muḥamed Abū Zahra* and *Mustafā Zarqā* do not favor the penalty of stoning, for example, *Mehmoud Shaltūt*, a great scholar and former President of the *Azhar* University, says that it can be considered as a “*Ta'zīr*” punishment awarded at the discretion of the judge and not as a “*Hadd*” ordained by the scripture.¹⁴ when they (*Khawārij*) objected stoning (*rajam*) near *Umar bin Abdul-Azīz* by saying that it is not mentioned in *Quran*, he replied to them that who described for you the number of prayers and quantity or percentage of almsgiving? They replied according to the actions of Prophet Muhammad (ﷺ) and their companions. *Umar bin Abdul-Azīz* replied it is also proved in the same way.¹⁵ *Allāma 'Alusī* describes *Khawārij* that it is their misconception about Islamic law, which is strictly condemn by all Muslim scholar.¹⁶

It is important to mention here when some people wanted to intercede for rich women who had committed a major theft but Prophet (ﷺ) denied their intercession and warned if any society does not practice the law equally, doubtlessly would be indulging in destruction. *Hadrat 'Aisha* stated: “The *Quraīsh* was worried about the woman who had committed theft and they said, Who will speak to the Messenger of Allah about her?” The Prophet (ﷺ) stated:

“Do you intercede regarding a punishment prescribed by Allah? The Prophet then stood up and addressed the people saying:”

“O people, those who came before you were destroyed because if a person of high status committed theft among them, they would spare him, but if a person of lower status committed theft, they would apply

the punishment upon him. By Allah, if *Fātima* the daughter of Muhammad (ﷺ) were to steal, I would have cut off her hand".¹⁷

But despite all this, several mitigating factors restrict the *hudūd* punishments. The practice of the Prophet (ﷺ) and his companions has allowed for several excuses that had uplifted the implication of punishments under certain conditions. *As-Sūyutī* stated that: "One rule of law states that legal punishments have been suspended through suspicion."¹⁸ In the slightest doubt, legal punishments are considered avoidable and should not be imposed. This is because it is better to release culprit rather than punish the innocent person." *Hadrat 'Aisha* stated that: Prophet (ﷺ) stated that: "possible, if he has a way out then leave him to his way, for if the Imam makes a mistake in forgiving it would be better than making mistake in punishment."¹⁹

Ibn Mas'ud, stated that: "Avoid flogging and applying the death penalty upon Muslims as much as you can".²⁰ *Abū Hurārah* narrated that the Hazrat Muhammad (ﷺ) stated that: "Ward off the legal punishments as much as you can." The *hudūd* are cautious and expressive of the values of Muslim society, but they are one last way. The law is a teacher and society condemns one of the biggest crimes: adultery, murder, and theft, and so the main goal is the prevention of crime.

The Application of Ta'zīr for the Reformation of Society :

During the long period when Islamic laws were applied to a great extent, Muslim rulers did not codify all crimes but left to the executive and judicial authorities the task of defining *Ta'zīr* Crimes and determining appropriate penalties for them. One reason was that Islamic jurisprudence attributed extreme importance to the rational choice of judges. The more confidence and trust enjoyed by a judge for his insight and affinity to justice, the less the necessity for limitation of judicial discretion and restriction to the letters of legal provisions.²¹

There are two methods used to prove a crime in Islamic criminal law, restricted and another one is unconditional. The restriction should be imposed on *hudūd* and *Qasās* crimes where witnesses or a confession cannot prove a crime. The unconditional method applies to arbitrary (*Ta'zīr*) crimes. Any evidence is accepted by Judges in arbitrary crimes without any restriction to support their order.²²

The judge has more authority to accept other types of evidence in arbitrary crimes (*Ta'zīr*). For example, "if the crime can be proved by one witness and other circumstances. Non-contentious evidence can be admitted in all criminal cases except in *hudūd* and *Qasās* crimes since it requires the establishment of truth with the highest level of proof in the crimes mentioned under Islamic law."²³ The differences between the two types of crimes and their punishments are very conservative in Islamic law and in the jurisprudence about implementing harsh punishments in *hudūd* and *Qasās*. The nature of the crimes and punishment requires that the restriction be applied in *hudūd* and *Qasās* situations, while the judge has more discretion in both evidence and punishment in the case of discretionary crimes.

According to some *Hanafī* scholars, the whole of the *Sharī'ah* can indeed be set aside, if *shūrā* "Consultation and deliberation" leads to a consensus that the public good requires such an alteration. *Sharī'a* thus contains, at least in some traditional views, provisions for its

amendment,²⁴ and it occurred on many occasions in history till now. We admit is that there is a difference of opinion between Muslim jurists whether the testimony of a woman in matters of *hudūd* (punishments prescribed by the *holy Qur'ān*) and *qisās* (law of retaliation) is admissible or not.²⁵

If we look at the Prophetic era, we will find some instances when the Holy Prophet (ﷺ) solved the crime cases based on the testimony of only one woman, for example when an incident occurred. A woman was raped by an unknown person while she was going for the Morning Prayer. "After committing the abuse crime the rapist ran away, the woman started crying and someone ran after the perpetrator, other men joined in pursuit but mistakenly, they caught a man who was pursuing the culprit and the woman said that he was the culprit, the man protested but neglecting his protest, he was presented before the Holy Prophet (ﷺ). The woman accused him of committing the rape and the Prophet (ﷺ) sentenced him. When he was being taken for the execution, the real culprit appeared before the Prophet (ﷺ) and confessed to his crime."²⁶

In another instance, *Hazrat 'Anas* narrates that once "A girl was found with her head crushed between two stones. She was asked: Who has done this to you? Is it so and so? Is it so and so, until a Jew was named, and she gave a sign with her head. The Jew was caught and he admitted. So the Prophet (ﷺ) gave command that his head should be crushed with stones."²⁷

It is also mentionable that third caliph *Hazrat 'Usmān* was martyred, whose sole witness was his wife *Nā'ilah* and no one was present at that time who testified to the killers of the 3rd Caliph of Islam²⁸.

In this regard, there should be no discernment between women and men; for an instant, if a woman like *Hazrat Nā'ilah*, whose husband has been killed in front of her and she can testify to the killers in such a clear and definite manner, her testimony is not merely a refutation on this basis, there is no other woman and man, and one of the witnesses who testify here is that the *Sharī'ah* does not compel the court to follow a prescribed method to find out about a crime, even in the *hudūd* punishments or other crimes of the judiciary, is left at the judge's discretion whether he accepts someone as a witness or not. In *hudūd* Ordinances, 1979 punishments are an integral part of Islamic Criminal law, and the *hudūd* Orders were issued in 1979 in an attempt to bring criminal laws into Pakistan in compliance with the orders set out in Islam. Therefore, no specific number of witnesses have been appointed for the proof of any fact as per section 134 of Pakistan's proof of Law' Act, and even in the case of a severe need, the evidence of a person may also be tried as was the case with the Lahore High Court in *Fidā Hussaīns vs Nasīm Akhtar*.²⁹

In Pakistan, one woman is raped after every two hours one woman is subjected to gang rape every eight hours, one out of every 12,500 women are raped.³⁰ Due to a lack of eyewitnesses or proper evidence, they could not meet justice and most of them hopelessly committed suicide. It is the principal obligation of a state to provide justice to the weak and prevent them from any kind of injustice and brutality.

Ibn-e-Taymīyyah writes in this reference that "Allah will support the just state even if it is led by unbelievers, but He will not support the oppressive state even if it is led by believers".³¹

Ibn-e- qayyīm explains, therefore, any matter that leads to cruelty, mercy for oppression, profit for corruption, and foolishness for foolishness is not part of the law even if it was introduced into it by interpretation.³² And *Qur'ān* states that "in [the law of] just retribution, O you who are endowed with insight, there is life for you, so that you might remain conscious of God!"³³

At the heart of the discussion, we turn in to the biomedical technological developments associated with the discovery of deoxyribonucleic acid (DNA) testing, for providing the justice to the weak and to avoid the society to brutality, and from gross violations of human rights, the Identifying an offender and connecting them to a crime is a fundamental commitment that DNA-technology helps. Often offenders inadvertently drop off blood, hair, skin cells, and a lot of genetic evidence on crime, if they are collected and compared with a criminal's DNA by VNTR ³⁴ Patterns with the DNA of a criminal, he can be spontaneously identified.

I am trying to show that this article is not limited to Islamic legal studies but may also be in the ongoing academic endeavors to identify, define, or develop the current debate in the emerging field of Islamic bioethics.

Introduction of DNA:

One of the breakthroughs of modern biomedical technology is the discovery of DNA printing. It launched a new phase of research in the life sciences and facilitated the launch of the Human Genome Project. DNA printing is mainly used for identity verification. It is used, which includes both paternity and public identification purposes, particularly in criminal and other criminal investigations. In the history of humanity for the first time, DNA tests have made it possible to uncover unusual genetic information accurately, and in proper definition, "It is a technique used especially for identification (as for forensic purposed by extracting and identifying the base-pair pattern of an individual's DNA called also DNA typing, genetic fingerprinting."³⁵

The primary building block for an individual's entire genetic structure is DNA or Deoxyribonucleic Acid. It is the main component of each cell in the body of an individual; an individual's DNA is the same in each cell. DNA profiling is a new technique to identify a person on the bases of his genes as no two persons have the same sub-genetic structure. It is also known as genetically fingerprinting and is not concerned with the conventional process of fingerprinting. This technique detects and displays a DNA pattern, which is unique to every person as simple tracks of bands like a bar code found on food packing. DNA is the powerful tool because everyone's DNA is different, except for identical twins, DNA Printing works on the principle that every individual in this word can be differentiated and identified at the molecular level based on DNA the genetically material which inherits from his parents and which is identical in every cell.³⁶

Components & Characteristics of DNA:

DNA is present in skin cells, blood cells, organs, semen, tissues, muscles, brain cells, teeth, hair, feces, perspiration, saliva, mucus, fingernails, urine, bone, etc. It consists of 4 building blocks known as bases. The building blocks are Thymine, Guanine, Adenine, and Cytosine. These are commonly referred to as T, T, A, C. It is the order of these building blocks that determines the genetic characteristics of every individual.³⁷

In Rape Cases, there are enormous applications of DNA. After the commission of the crime, if the sample is collected and sealed after collecting from the accused and both samples are verified in the DNA laboratory, this can be ascertained more accurately, if these two samples are completely matching.³⁸ In the United States, the laws that identify DNA evidence as admissible in criminal cases are issued by many states.³⁹

DNA is a fundamental base of human characteristic even it also exist after his death that's why man's recognition is possible after his death because of it. It is commonly used nowadays. Shirelle describes that "the history of DNA discovery goes back to 1953 when Francis H.C. Crick and James D. the double-helix structure of DNA is identified as the basic genetic repository of living organisms by Watson. Each individual has his/her DNA, which is present in each cell of the body, whether it is a blood cell, a sperm cell, or a skin cell. Only identical twins have similar DNA blueprint."⁴⁰

- DNA is the same in the whole body except eyes. It has resistance against, environment, and pollution it can be stored for a time and its results can be computerized for a long period. It can identify sex. Murder theft and robbery can easily depict. It is a much easy way to achieve accurate results.
- Governments began allowing DNA samples to be collected from criminals, stored in national electronic databases of DNA profiles, against which samples from crime scenes can be easily checked.⁴¹
- Through it can identify the paternity or maternity, and identify the blood relationship between two persons, whether they are real brothers or sisters and about their ancestors.
- It can detect bacteria and other organisms that can contaminate air, water, soil, and food, and may also match organ donors in transplant programs with recipients
- We can say that no area of human life has been left untouched by the use and application of DNA Technology. It has become an essential part of our life. The present study will debate about the legal authenticity of DNA test for the promulgation of *Hudūd*, *Qasūs* and *Ta'zīr* in society and how it could help provide justice to the victimized person with the accurate identification of criminal without any doubt and suspicion.

History & Reliability of DNA Technology in Criminal Investigation :

DNA Technology is of great use in the criminal cases related to Rape, Murder, Kidnapping, Robbery, and Theft, etc. and in cases where the body is in mutilated condition as in Tandoor Case, their DNA test is the only scope for investigation.⁴²

The use of DNA technology in criminal profiling emerged in the mid-1980s.⁴³ Since then, it has changed all the evidence of fingerprints, especially in sexual offenses.⁴⁴ In the case of Robert Melias in England in 1987, he became the first person to commit a crime (rape) based on DNA evidence.⁴⁵ In November 1987, a Circuit Court in Orange County, Florida, one of the first uses of DNA in a criminal case in the United States, Tommy Lee Andrews was convicted of rape after being matched with a blood sample, symptoms found in a rape victim.⁴⁶ Symptoms found in rape victim An analysis of most cases in which DNA-based evidence was introduced shows that the jury considers the statistical analysis of these samples to be extremely reliable.⁴⁷ Interestingly, no court has denied the DNA evidence on

scientific grounds. When DNA is disputed with evidence, however, it is usually due to contextual contamination of potential samples, the importance of statistical significance, or laboratory error.⁴⁸

Nobody argues against its reliability because of the widespread use of this technique in medical science for a longer period. The probability result is so high and positives that it leads to certainty. Frequency is another component of reliability with which a technique produces false results. But if there is a flaw in the process of DNA printing as evidence, it will usually lead to a result rather than an invalid result. Control samples are provided with the main sample to avoid the error. These prove its reliability. DNA evidence will be in its success path with strong and refute legislation and reputed laboratories with standardized operational procedures. Each sample should be carefully labeled with appropriate seals and identification marks. These will leave no space for conflict or injustice. During the collection, preservation, and transportation of biological samples from the crime scene, carelessness or ignorance of proper handling process, to the DNA analysis laboratory can render a specimen unfit for analysis.

Recommendations of Islamic Fiqh Academies about DNA Printing Test:

Islamic Organization for Medical Sciences (Kuwait); Islamic Jurisprudence Council (Muslim World League, Mecca); and International Islamic Jurisprudence Academy (Islamic Cooperation Organization, Jeddah). These organizations have become important forums that set the standard for traditional legal issues and provide guidance, such as legal litigation, fatwas, and court decisions. These councils include prominent experts in both Islamic law and related scientific fields.

The Islamic Fiqh Academy Jeddah started its discussion in its 17th session. On the 7th day (January-10-1998), the session had given the decision about the importance of the different forensic applications of DNA fingerprinting.

- Just state will allow the DNA printing test when the court has demanded, and these all tests will examine in those forensic laboratories which are certified by the State.
- Especially the private sector will be discouraged for DNA Printing Test, and to earn profit through it because its outcomes are very disastrous for society.
- The state will design a committee for DNA printing tests. In the DNA Printing Test committee, prominent experts in both Islamic law and related scientific fields will add more honest prosecutors; the prosecutor should carefully monitor investigative activities to ensure that DNA typing evidence is admissible if it is compatible. The laboratory must be well equipped with the latest technology and technicians must be highly skilled.
- The laboratory is also responsible for conducting standard DNA Tests and accurately interpreting and reporting results and without prejudice, and laboratory must function in collecting samples properly and promptly with proper documentation authorized by law and proposed legislation, to avoid any kind of fraud, forgery misconception and injustice, further laboratories will deeply testify the results. Then the results could realistic.⁴⁹

Appropriate standards should be followed, and tests will adequately perform by an organized forensic laboratory working certified by the State, and the state will also provide the police officers must be properly trained for collecting samples for the DNA test, from the crime scene. It is also stated that DNA printing tests will examine from different authentic laboratories of the same sample, to check its transparency and one laboratory will unaware of other laboratory results.⁵⁰

It is important to notice here that recommendation of DNA Printing Test according to the instructions of Islamic fiqh councils from different authentic forensic laboratories by keeping in view the privacy factor, it matches with the teachings of Prophet (ﷺ) when a man of *Banū Aslam* had confessed his sin in front of him, the Prophet (ﷺ) confirmed his confession about committed sin by turning his face towards four different directions or four times. That is why, DNA printing test from four different authentic forensic laboratories by following the given rules and regulations, provide more authenticity for the identification of accurate criminal according to *Sharī'ah*'s perspective.

Conclusion:

The very concept of punishment relies on these justifications that Commitment of a crime by an individual causes harm to the interests of either another individual, or society as a whole, or the individual him /herself. A crime may sometimes cause harm to the interests of all three together. Punishment, as a reaction to crime, is an attempt to repair the harm thus caused.

Particularly when we analyze the present condition of the society and realize that sometimes lack of evidence and the absence of the witnesses in the courts cause a major source of injustice or delay in the provision of justice for the victim. Then doubtlessly the society would face the vicious and disastrous situation and the sentiments of hate, dissatisfaction, tension, and stress would have prevailed. In such circumstances, the DNA printing test will be considered a blessing of the scientific era because DNA printing test has become an invaluable instrument in the search for justice. It plays an important role at a different level during the period of a criminal case, from the starting of a criminal investigation until the fact would not be verified. Considering the social, legal, and scientific facts, the Medical Sciences and the Islamic Jurisprudence Council, which are the main forum for set standards and provide guidelines for traditional legal issues such as legal discourse, and judicial decisions, must play their role for further improvement and convenience for the transparent procedure. That is why, if properly abide by the rules and regulations given by the Islamic Fiqh Councils, then the importance of DNA technology in the administration of justice in any society and any part of the world could be not denied.

EndNotes:

¹Ibn-e- qayyīm, *Zād al Ma'ādī* Hady Khayīr al-'Ibād, 5 vols., ed. 'Imād Zakī al-Bārūdī and Khayrī Sa'd (Cairo: al-Maktabah al-Tawfiqīyah, n.d.), 5:370

²Abū Ḥāmid al-Ghazālī, *al-Mustaṣfā min 'ilm al-uṣūl* (Cairo: al-Maktabah al-Tijāriyyah, 1937), 1:139–40

³Abūl Hassan Al-Māwardī, *Ahkām al Sultānīyah*, (Beirut: Dār al-kutub al-'ilmīya, 1998) p.219.

⁴Abd al-Rahmān al-Jazīrī, *Kitāb al-Fiqh 'alā al-Madāhib al-arba'a*, (Beirut: Dār al-kutub al-'ilmīya, 2001), v.47

⁵Joseph Schacht, *Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 176.

- ⁶ Muhammad Rawwas Qalaji, *Mawsu'atfiqhAbiBakr al-Siddiq*(Beirut: Dar al-nafa'is, 1994), 98
72:229
- ⁸The discretionary'penalty provides a legal sanction for every sin for which there is neither a prescribed penalty nor penance. Mohamed S. El-Awwa, *Punishment in Islamic Law*, P.56.
- ⁹'Au 'dah, 'Abdul Q ādir, "At-Tashree' Al-Jināī Al-Islami" (Beirut: MusawwamātūrRisālah, 1997), 1:83
- ¹⁰ Ibid
- ¹¹ MuslimImāmBukhari, Al-Jāmi' Al-Sahīh, Book: kitābulhudūd, Volume 4, Book 56, [Number](#)
- ¹² 'Imām Muslim ,SahihMuslim,The Book of Legal Punishments,Chapter: One who confesses to Zina, Hadith 1692
- ¹³ 'ImāmBukhari, Al-Jāmi' Al-Sahīh, Book:Divorce, Chapter:A divorce given in a state of anger, under compulsion or under the effect of intoxicants or insanity, Hadith 196
- ¹⁴ Alī'AlīMansūr, hudūd Crimes , in the Islamic Criminal Justice System, USA : Ocena Publications, 1982,p.193
- ¹⁵ 'ibn al-Hammām,Fath al-Qadīr (Sharh al-Hidāya),Dār al-Kutub al-'Ilmiyyah, P:121,V:4
- ¹⁶ Allāma al-'AlūsīHanafi,Rūh al-Ma'ānīfīTafsīr al-Qur'ānil 'Adhīm, DārIhy ā al-Turāth al-'Arabī,P:78,V18
- ¹⁷ Source: Saḥīḥ Muslim 1688,
- ¹⁸ Jalal udDīnSūyutī, Fath Al-KabīrīDām al-Ziyāda'illā Al-Jāmi' al-Saghīr, (Cairo: Dār al-Manār, 2003)
- ¹⁹ 'ImāmTirmidhī, Al-Jāmi' Al-Tirmidhī,The Book on Legal Punishments (Al-Hudud),Chapter: What Has Been Related About Averting Legal Punishments, Hadith 1424
- ²⁰ Sunan al-Kubrā, Kitāb al ḥudūd,(Lahore: Maktaba'RahmanīyaGhaznīStrī't'UrdūBāzār, N.D.) Hadith 15686
- ²¹ Ahmed 'AbdelAzīz A l-Elfī, 'Al-Dāmānat Al-DarorīyaFil-Sharia A l-Islam ia', an article in Social Defense Series, Rabat, 1982,4:304.
- ²² Johansen, B. (2001–2002). Signs as evidence: the doctrine of IbnTaymiyya and IbnQayyim al Jawziyya on proof. *Islamic Law and Society*, 9, 2001–2002.
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- ²⁵ Alkāsānī, Bidā'y Al-Sanā'y, trans. Mūlānā Dr. 'AbdulWāhid ,8(Beirut: Al-Maktab Al-Islāmī, 1403Hj.)Vol.6, 659 (according to Ahl-i-Zāhir, women's testimony is admissible in all types of cases if the witness is consists of more than one woman along with a male testimony; to 'AbūHanīfa female witness is admissible in all cases but 'ImāmMālik says vice versa), 'IbnRushd, Bidāya'-tul-Mujtahid, 830.
- ²⁶ 'ImāmTirmidhī, Al-Jāmi' Al-Tirmidhī, Book on Legal Punishments, Chapter: What Has Been Relates About A Woman Who Is Forced To Commit Adultery, Hadith No. 1454; 'IbnQayyim, Attūrūk Al-Hikmīya', 86
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- ²⁸ al-Ṭabarī, AbūJa'farMuḥammad b. Jarīr, Tārīkh-i-Ṭabarī, trans. Sayyīd Muhammad Ibrāhīm M.A. Nidvī, Vol.2 (Karachi: Nafīs Academy 'Istrīchan Road, 1986), 464; Muhammad 'IbnSā'd, TabqātIbnSā'd, trans. 'Allāma'Abdullāh Al-'Amādī, Vol.2

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²⁹PLD 1979, Lahore: 328

³⁰ShahnāzKhān, "Locating the Feminist Voice: The Debate on the Zina Ordinance", ed. Sadaf Ahmed, Pakistani Women: Multiple Locations and Competing Narratives (Karachi: Oxford University Press, 2010), 147.

³¹Ibn-e-Taymīyah, Majmua al fatawa, (Lahore: Dār us-Salām, 2000), 28/63

³²Ibn al-Qayyim, Zād al-Ma'ādīHadyKhayr al-'Ibād, 5 vols., ed. 'ImādZakī al-Bārūdī and KhayrīSa'd (Cairo: al-Maktabah al-Tawfiqīyah, n.d.), 5:370.

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³⁴Most DNA testing involved one of two basic techniques: analysis of variable-number tandem repeats (VNTR), and polymerase chain reaction-based (PCR) methods. PCR is the newer of the two technologies.

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³⁷See, Article on DNA Technology, Available at <http://www.dna.gov/basics/biology> (Last accessed on: 3rd Jan., 2007)

³⁸See, Article available at <http://www.nytimes.com/1988/02/06/us/rapist-corivicted-on-dna-match.html> (Last accessed on: 12,h June, 2007) Published: February 06, 1988

³⁹Jean E. McEwen, "Genetic Information," 1:356-63

⁴⁰Shirelle Phelps and Jeffrey Lehman (eds.), "DNA Evidence," in West's Encyclopedia of American Law, 13 vols. (Detroit: Gale, 2005), 3:485-9.

⁴¹Eric T. Juengst, "DNA Identification," in Encyclopedia of Bioethics, ed. Stephen G. Post, 5 vols. (New York: Macmillan USA, 2004), 2:677-83.

⁴²Tandoor murder case: Trial court verdict published on October 28,2003 ,Available at<http://in.rediff.com/news/2003/oct/28tandoor.htm> (Last accessed on: 3rd March, 2007)

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