

CRIME & PUNISHMENT IN ISLAM

Security and stability are basic human needs, no less important than food and clothing. Without security and stability, a human being is not able to properly conduct his daily life, let alone come up with new ideas or contribute to the development of a high level of civilization.

Man has been conscious of the need for security since the beginning of his life on Earth, and he has continuously expressed his awareness of this need in many ways. With the formation and evolution of human society, he has expressed this and other needs through the establishment of a state and the formation of laws. This was accomplished in order to ensure general security, settle disputes and conflicts that threaten society, and oppose external threats to its security posed by other nations. The development of these man-made laws did not come to completion except in the last few centuries as the result of a long process of trial and error.

By contrast, the Law of Islam was sent down to Muhammad, may the mercy and blessings of God be upon him, in its complete form as part of His final message to humanity. Islamic Law pays the most careful attention to this matter and provides a complete legal system. It takes into consideration the changing circumstances of society as well as the constancy and permanence of human nature. Consequently, it contains comprehensive principles and general rules suitable for dealing with all the problems and circumstances that life may bring in any time or place.

Likewise, it has set down immutable punishments for certain crimes that are not affected by changing conditions and circumstances. In this way, Islamic Law combines between stability, flexibility, and firmness.

From what angle does Islam approach combating crime? What are the principles that the Islamic penal code is based upon? What are the distinguishing features of this code? What are the measures that it employs to combat crime? What types of punishments exist in Islam? What are the objectives behind their being legislated? These are the questions that will be dealt with in the following pages.

The Islamic Approach to Combating Crime

The ultimate objective of every Islamic legal injunction is to secure the welfare of humanity in this world and the next by establishing a righteous society. This is a society that worships God

and flourishes on the Earth, one that wields the forces of nature to build a civilization wherein every human being can live in a climate of peace, justice and security. This is a civilization that allows a person to fulfill his every spiritual, intellectual, and material need and cultivate every aspect of his being. This supreme objective is articulated by the Quran in many places. God says:

“We have sent our Messengers with clear signs and have sent down with them the book and the criterion so that man can establish justice. And we sent down iron of great strength and many benefits for man...” (Quran 57:25)

And He says:

“...God wants ease for you, not hardship...” (Quran 2:185)

And He says:

“God wants to make things clear for you and to guide you to the ways of those before you and to forgive you. God is the All knowing, the Wise. God wants to forgive you and wants those who follow their desires to turn wholeheartedly towards (what is right). God wants to lighten your burdens, and He has created man weak.” (Quran 4:26-28)

And He says:

“God commands justice, righteousness, and spending on ones relatives, and prohibits licentiousness, wrongdoing, and injustice...” (Quran 16:90)

Since the Islamic legal injunctions are aimed at achieving human welfare, they can all be referred back to universal principles which are necessary for human welfare to be secured. These universal principles are:

1. The preservation of life.
2. The preservation of religion.
3. The preservation of reason.
4. The preservation of lineage.
5. The preservation of property.

The Islamic penal system is aimed at preserving these five universal necessities. To preserve life, it prescribes the law of retribution. To preserve religion, it prescribes the punishment for apostasy. To preserve reason, it prescribes the punishment for drinking. To preserve lineage, it prescribes the punishment for fornication. To preserve wealth, it prescribes the punishment for theft. To protect all of them, it prescribes the punishment for highway robbery.

It should therefore become clear to us why the crimes for which Islam for which the Law has prescribed fixed punishments are as follows:

1. Transgression against life (murder or assault).
2. Transgression against property (theft).
3. Transgression against lineage (fornication and false accusations of adultery).
4. Transgression against reason (using intoxicants).
5. Transgression against religion (apostasy).
6. Transgression against all of these universal needs (highway robbery).

Distinguishing Features of the Islamic Penal System

In the aforementioned principles, Islamic Law and contemporary law coincide, though Islamic Law has the distinction of being first. However, the Islamic penal system also has unique virtues and distinguishing features, among the most important of which are the following:

1. The inner deterrent of man's moral conscience is fully integrated with external supervision.

This is due to the fact that Islamic Law, when dealing with social problems such as crime, does not rely merely on legislation and external deterrents. It focuses more on the internal deterrent, placing the greatest emphasis on man's moral conscience. It endeavors to develop this conscience within a person from childhood so that he can be brought up with the noblest moral character.

It promises success and salvation for those who work righteousness and warns wrongdoers of an evil fate. In this way, it stirs up emotions, making a criminal renounce his ways by inspiring him

with faith in God, hope for divine mercy, fear of divine punishment, adherence to moral virtues, love for others, and a desire to do good to others and refrain from causing injury and harm.

2. It has a balanced outlook with respect to the relationship between the individual and society.

This becomes clear from the fact that while the Divine Law protects society by legislating punishments and preventative measures against crimes, it does not marginalize the individual for the sake of society. On the contrary, its priority is the protection of the individual, his freedom, and his rights. It provides every safeguard to leave no excuse for a person to have to resort to crime. It does not set out to punish without first preparing for the individual a situation conducive to a virtuous and happy life.

Forms of Punishment in Islam

Islamic Law, in confronting the problems of life and setting down solutions for them, is established on two complimentary principles. These are: the stability and permanence of its basic tenets on the one hand and the dynamism of its subsidiary injunctions on the other.

For the unchanging aspects of life, Islamic Law brings fixed statutes. For the dynamic aspects of life that are affected by social development, broadening horizons, and advances in knowledge, Islamic Law comes with general principles and universal rules capable of being applied in a number of different ways and in a variety of circumstances.

When we apply these principles to the penal system, we find that Islamic Law has come with clear texts prescribing fixed punishments for those crimes that no society is free of, crimes that do not vary in their forms because they are connected with the constant and unchanging factors of human nature.

Islamic Law confronts other crimes by stating the general principle that decisively indicates their prohibition, leaving the punishment to be decided by the proper political authority in society. The political authority can then take the particular circumstances of the criminal into consideration and determine the most effective way to protect society from harm. In accordance with this principle, punishments in Islamic Law are of three types:

1. Prescribed punishments
2. Retribution

3. Discretionary punishments

1. Prescribed Punishments

Crimes that fall under this category can be defined as legally prohibited acts that God forcibly prevents by way of fixed, predetermined punishments, the execution of which is considered the right of God.

These punishments have certain peculiarities that set them apart from others. Among these are the following:

1. These punishments can neither be increased nor decreased.
2. These punishments cannot be waived by the judge, the political authority, or the victim after their associated crimes have been brought to the attention of the governing body. Before these crimes are brought before the state, it may be possible for the victim to pardon the criminal if the damage done was only personal.
3. These punishments are the 'right of God', meaning that the legal right involved is of a general nature where the greater welfare of society is considered.

The following crimes fall under the jurisdiction of the fixed punishments:

1. Theft

Theft is defined as covertly taking the wealth of another party from its secure location with the intention of taking possession of it.

2. Highway Robbery

Highway robbery is defined as the activity of an individual or a group of individuals who go out in strength into the public thoroughfare with the intention of preventing passage or with the intention of seizing the property of passers-by or otherwise inflicting upon them bodily harm.

3. Fornication and Adultery

This is defined as any case where a man has coitus with a woman who is unlawful to him. Any relationship between a man and a woman that is not inclusive of coitus does not fall under this category and does not mandate the prescribed, fixed punishment.

4. False Accusation

This is defined as accusing the chaste, innocent person of fornication or adultery. It also includes denying the lineage of a person from his father (which implies that his parents committed fornication or adultery). False accusation includes any claim of fornication or adultery that is not backed up by a proof acceptable to Islamic Law.

5. Drinking

One of the most important objectives of Islam is the realization of human welfare and the avoidance of what is harmful. Because of this, it “permits good things and prohibits harmful things.” Islam, thus, protects the lives of people as well as their rational faculties, wealth, and reputations. The prohibition of wine and the punishment for drinking it are among the laws that clearly show Islam’s concern for these matters, because wine is destructive of all the universal needs, having the potential to destroy life, wealth, intellect, reputation, and religion.

Allah says:

“O you who believe! Verily wine, gambling, idols, and divination are but the abominations of Satan’s handiwork, so abandon these things that perchance you will be successful. Satan only wishes to cause enmity and hatred between you through wine and gambling and to prevent you from the remembrance of God and prayer. Will you not then desist?” (Quran 5:90-91)

6. Apostasy

Apostasy is defined as a Muslim making a statement or performing an action that takes him out of the fold of Islam. The punishment prescribed for it in the Sunnah is execution, and it came as a remedy for a problem that existed at the time of the Prophet, may the mercy and blessings of God be upon him. This problem was that a group of people would publicly enter into Islam together then leave Islam together in order to cause doubt and uncertainty in the hearts of the believers.

The Quran relates this event to us:

“A group from the People of the Scripture said: ‘Believe in what is revealed to those who believe at the beginning of the day, then disbelieve at the end of the day, so perhaps they might return from faith.’” (Quran 3:72)

Thus, the prescribed punishment for apostasy was instituted so that apostasy could not be used as a means of causing doubt in Islam.

At the same time, the apostate is given time to repent, so if he has a misconception or is in doubt about something, then his cause of doubt can be removed and the truth clarified to him. He is encouraged to repent for three days.

2. Retribution

This is the second type of punishment in Islamic Law. This is where the perpetrator of the crime is punished with the same injury that he caused to the victim. If the criminal killed the victim, then he is killed. If he cut off or injured a limb of the victim, then his own limb will be cut off or injured if it is possible without killing the criminal. Specialists are used to make this determination.

Important Rules Regarding Retribution

1. Retribution is not lawful except where the killing or injury was done deliberately. There is no retribution for accidentally killing or injuring someone. God says:

“O you who believe, retribution is prescribed for you in the case of murder...” (Quran 2:178)

And He says:

“...There is retribution in wounds...” (Quran 5:45)

2. In the crimes where the criminal directly transgresses against another, Islam has given the wish of the victim or his family an important role in deciding whether or not the punishment should be carried out. Islam permits the victim to pardon the perpetrator, because the punishment

in these crimes is considered the right of the victim. Islam even encourages pardon, promising a reward in the hereafter for the one who does. God says:

“If anyone waives the right to retaliation out of charity, it shall be an expiation for him.” (Quran 5:45)

The pardon can either be to the payment of blood money, a fixed, monetary compensation, or can be total, where no worldly compensation is demanded. God says:

“To forgive it is closer to piety...” (Quran 2:237)

3. The punishment must be carried out by the government. The family of the victim cannot carry it out.

The Wisdom behind Retribution:

With regard to Islamic punishments in general, and retribution in specific, we find that they have two complementary characteristics. The first of these is the severity of the punishment. This is in order to discourage the crime and limit its occurrence.

The second characteristic is the difficulty of establishing guilt, reducing the opportunities for carrying out the punishment, and protecting the accused. In this vein, we see the principle that punishments are waived in the presence of doubt, and that the benefit of the doubt is always given to the accused. Some prescribed punishments are even waived on the grounds of repentance, as we can see in the case of highway robbery. This is also seen in the permissibility of pardon in the case of retribution and the fact that pardon is encouraged and preferred.

These two elements complement each other in that crime is effectively discouraged, protecting society, and the rights of the accused are safeguarded by the fact that speculation and accusations cannot be grounds for punishment, and that the accused enjoys the greatest guarantee of justice and being spared the punishment whenever possible. Most people will abstain from committing crime, because of the severity of the punishment, and the punishments for these crimes will

rarely be carried out. In this way, the general security of society and the rights of the individual are equally realized.

3. Discretionary Punishments

These are punishments that are not fixed by Islamic Law, for crimes that either infringe on the rights of God or the rights of an individual, but do not have a fixed punishment or a set expiation. Discretionary punishments are the broadest category of punishments, because the crimes that have fixed punishments are few in number and all other crimes fall under the scope of this last category.

They are the most flexible type of punishment, because they take into consideration the needs of society and changing social conditions. Consequently, they are flexible enough to realize the maximum general benefit to society, effectively reform the criminal, and reduce the harm that he causes.

Islamic Law has defined different types of discretionary punishments starting from exhortations and reprimands to flogging, to fines, and to imprisonment. These discretionary measures are left to the decision of the legal authorities within the general framework of Islamic Law and the universal purposes of Islam that balance between the right of society to be protected from crime and the right of the individual to have his freedoms protected.

The Objectives of the Islamic Penal System

The Islamic penal system has many objectives, the most important of which are as follows:

The First Objective: Islam seeks to protect society from the dangers of crime. It is common knowledge that if crimes are not countered with serious punishments, then society will be in grave danger. Islam seeks to make social stability and security widespread, making life in society secure and peaceful. It has made this consideration a platform for action, legislating punishments that will discourage crime. This purpose has been articulated by the following verse that discusses retribution and its effects on society:

“There is (preservation of) life for you in retribution, O people of understanding that you may become pious.” (Quran 2:179)

If the murderer, or any other criminal for that matter, knows the extent of the negative consequences for himself that his crime will cause, he will think a thousand times before committing it. Awareness of the punishment will cause the criminal to abstain from committing the crime in two ways. The criminal who has already been subject to the punishment will most likely not return to the crime again. As for the rest of society, their awareness of the effects of this punishment will keep them from falling into the crime. To realize a general effect from the punishment, Islam has established the principle of publicly announcing when it will be carried out. God says:

“...A group of the believers should witness the punishment.” (Quran 24:2)

The Second Objective: Islam seeks to reform the criminal. The Quran often makes mention of repentance in association with the crimes that it deals with, making it clear that the door to repentance is open whenever the criminal abandons his crime and behaves properly. It has made repentance a means of waiving a fixed punishment in some instances, like the punishment for highway robbery. God says:

“...except for those who repent before you take hold of them. Then know that God is the Forgiving, the Merciful.” (Quran 5:34)

God says regarding the punishment for fornication:

“It they both repent and mend their ways, then leave them alone. Verily, God is the Acceptor of repentance, the Merciful.” (Quran 4:16)

God says after mentioning the punishment for false accusation:

“... except for those who repent afterwards and makes amends, then verily God is the Forgiving, the Merciful.”

God says after mentioning the prescribed punishment for theft:

“Whoever repents after his wrongdoing and makes amends, then verily God will accept his repentance and verily God is the Forgiving, the Merciful.” (Quran 5:39)

This objective is seen more frequently with regard to discretionary punishments, whereby it is incumbent upon the judge to take into consideration the circumstances of the criminal and what will insure his betterment.

The Third Objective: The punishment is a recompense for the crime. It is undesirable to treat a criminal lightly who threatens the security of society with danger. The criminal should receive

his just recompense as long as he is pleased with taking the path of evil instead of the path of righteousness. It is the right of society to be secure in its safety and the safety of its individual members. The Quran has asserted this objective when mentioning a number of punishments. God says:

“The thieves, male and female, cut off their hands as a recompense for what they have earned...”
(Quran 5:38)

“The recompense for those who wage violent transgression against God and His Messenger and who go forth spreading corruption in the Earth is that they should be killed or crucified or that their hands and feet should be cut off on alternate sides or that they should be sent into exile...”
(Quran 5:33)