



## The concept of crime and punishment in Islam

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### Abstract

Islam proposes a society of righteousness and justice. Islam caters to people's need for peace and serenity and therefore takes every legal measure to safeguard the society against disruptive elements. The notion of punishments in Islam is not the primary laws. They are only to the declaratory laws which are always enforced as a condition or sequence as a vindication of the primary structure of Islamic society. Criminal behaviour is not tolerated in the Islamic order of society. Islam pursues its social objectives through reforming the individual in the first place. Shariah law has a role for individual rights, but those individual rights are exercised within a system that is primarily concerned with human relations. Islam does not disregard the relative responsibility of the criminal and the role of circumstances in commission of crimes. Islam stands out distinctly among the religions of the world in that its punishment and retribution laws are applied under exclusive rules and regulations. Islam ensures proportionality between crime and punishment. Islamic concept of punishment is perfectly justified as Islam not only takes every possible measure to prevent crimes but also inculcates commendable moral scruples in the criminals. The Islamic Criminal law has approved many crimes with providing deterrent, reformative, retaliate and other kinds of penalties in order to uphold peace in the society and reform the criminals. This paper deals with Islamic judicial system and criminal law to find out its significance and relevance to modern time.

**Keywords:** islam, crime, punishment, shariah, hudud, qiasa, tazir

### Introduction

Today, the world is witnessing a horrific scenario of crime, violence, killing and a determined attempt to destroy the very pillars of social order which sustain peace, tolerance, harmony and human dignity. Society must be protected from the activities of criminals and hoodlums. Social life must be peaceful and devoid of insecurity. Islam is the only philosophical system that tackles the problems directly and handles the correlation between moral issue and their human repercussion with the least sense of evasion. Islam is not merely a theological system, but also a way of life that contains a number of ethical and moral standards as well as legal norms implemented in life in society and state. Islam develops a strong sense of moral community, where religion is an influential social force generating social sanctions and that this contributes to a low crime rate. The Quranic knowledge offers first a determined solution of the problems, and then discusses their philosophical implications. Criminal accountability indicates that a person should bear the consequence of the crime which he commits intentionally with full consciousness of the significance and consequence thereof. Islamic criminal law holds accountability only those alive persons who are under responsibility. Under the deterrent philosophy, punishment should prevent other people from committing criminal acts. The punishment serves as an example to the rest of the society and it puts others on notice that criminal behaviour will not be tolerated and will be punished. Islamic concept of punishment is not driven by feeling of revenge or fury or malicious grudge. It is rather a means of purification and moral elevation. Islam instils it into

the mind of the criminal that the real judge is God Almighty Himself from whom he can never conceal his wrongdoings. Islam's law comprises a comprehensive outlook on life. Islamic concept of crime is universal, permanent, unchanging and unanimous among all the scholars and schools of law. This paper deals with Islamic judicial system and criminal law to find out its significance and relevance to modern time.

### Crime and Punishment

Punishment under law is fundamentally a technique of social control and its employment is justified to the extent that it actually protects such social justice as society through law. In the Holy Quran, there are two kinds of injunctions.

- 1. Moral:** Moral encompasses all the means of nurture of human personality.
- 2. Punitive:** Punitive means those laws the violation of which becomes a social crime and Moral means those laws which cannot be categorised as a social crime. The Quran says: "do not walk arrogantly on the earth <sup>[1]</sup>." The Quran ordains that his non-observance of this injunction is not a social crime. On the other hand, there is injunction in which it is said: "Do not go near adultery or fornication" <sup>[2]</sup>. It is apparent that the non-observance of this injunction is a social crime. However, the above said division is arbitrary only to understand the question under view, otherwise the basis of every Quranic injunctions aims at correction and importance of the morals and 'morals' encompasses all the means of nurture of human personality.

**Crime:** *'Hudud'* crimes are considered as the most serious, heinous and grave crimes under the Islamic Penal Law for which God has enacted deterrent and preventive punishments to deter others who have similar criminal tendencies and prevents the wrongdoer from offending again in the future. These are the offences against public morality termed in Islam as *'huquq Allah*, the claim of Allah and the Quran ordains strict implementation of *'hadud'* punishment.

**Punishment:** Punishments are the means used from time immemorial by the society to express its denunciation of the wrongdoing in order ensure welfare of the people and peace in the society. It is designed to perform one of the most basic duties of the state to protect the life, liberty and property of the citizens by reducing the commission of offences.

**Criminal Law in Islamic Perspective:** Crime is considered as a serious moral problem in Islam, and is closely linked to peace and harmony of human life. Criminal actions were divided into four categories:

1. Crimes against physical life, such as injuring people or murdering them.
2. Crimes against property, such as robbery, vandalism, etc.
3. Crimes against descendants, such as adultery.
4. Crimes against human virtues and chastity, such as false accusation of unchastely, drinking alcohol or apostasy.

The Holy Quran, as the paramount source of Islamic Law having no more than 80 verses dealing with strictly legal matters, ordains to the effect. The Quran, the epitome of Islamic legislation and the divine inspiring of wisdom and the *Sunnah*, the tradition of the Prophet are the primary sources of Islamic Law. In Islamic law offences have been divided into three categories according to complex criteria that combine the gravity of the penalty prescribed, the manner and the method used in incriminating and punishing, and the nature of the interest affected by the prohibited act <sup>[3]</sup>.

**The Principles of Islamic Law:** The Islamic law *Shariah* specifies the law of God and provides guidance for the directive of life in the best interests of man. Its objectives are to show the best way to man and provide him with the ways and means to fulfil his needs in the most prosperous and most beneficial way. There is nothing in it which tends to waste your powers, or to overwhelm your natural needs and desires, or to kill your moral urges and emotions <sup>[4]</sup>. The *Shariah* criminal law is basically divided in to three main categories of the crimes. These are *Hudud*, *Qiyas*, and *Tazir*.

**Hudud:** The first category is *hudud* crimes. These crimes are penalized by the community and punishable by fixed penalties as required in the *Qur'an* and the *Sunnah* <sup>[5]</sup>. Both crime and punishment are precisely determined with some flexibility for the judge, depending upon the intent of the accused and the quality of the evidence. Crimes against God in Islamic penal system are called *hudud*. Actually these crimes are violations of "natural law" as interpreted within the specific cultures of the Islamic State. *Hudud* crimes as violations of God's rights must merit divine displeasure. Declaration of war against an Islamic state is interpreted as making war against Allah and

his messenger. This is clearly stated in the Holy Quran: "The only reward of those who make war upon Allah and his messenger and strive after corruption in the land will be that they will be killed or crucified, or have their hands and feet on alternate sides cut off, or will be expelled out of the land <sup>[7]</sup>."

**1. Fornication:** Fornication means sexual intercourse outside marriage and the punishment in the Quran is 100 lashes. "Men are strip to the waist women have their clothes bound tightly and flogging is carried out with a leather whip. The punishment of flogging is ordered in the Quran. The Quran says: "The woman and the man guilty for fornication flog each of them with a hundred lashes: let not compassion move you in their case in a matter prescribed by Allah <sup>[8]</sup>."

**2. Adultery:** Adultery means extra-marital sex. The Islam prescribed its punishment stoning to death for people convicted of adultery. Islamic criminal jurisprudence stipulates two conditions that must be met before the judgment is executed. The first is that there must be confession by four eye witnesses. It must be a voluntary confession without any element of duress. The sentence can only be executed if it has been repeated four times at different court sessions. Secondly, it is the duty of the court to establish the fact through examination of all confessions that there was actual penetration of the male's penis into the female's vagina. Islamic law insists that the four eye witnesses must confirm physical observation of the actual intercourse directly. Adultery and fornication from the Islamic perspective are not personal and private prerogative. It is a serious violation of the normative principles of society. It is a dishonor and violent aggression against the family of the woman. Adultery and fornication are called *zina*. False accusation of charges of *zina* is punishable for the offense of defamation '*qazaf*'. Defamation threatens the legitimacy of a woman's child; the Quran prescribes eighty lashes for a free citizen and forty lashes for a slave: The Quran says: "And those who cast it up on women in wedlock, and bring not four witnesses scourge them with eighty stripes <sup>[9]</sup>."

**3. Theft:** The crime of theft is explicitly condemned in Islamic penal system. The act of stealing must be intensive and deliberate. The thief must be aware that the property belongs to someone else. The property must have been kept in a secured place which the thief has forcefully broken. The crime of theft is viewed as a shocking experience, for someone to violate the sanctity of another person's abode either at night through forcible entry, and then stealthily abscond with his property. The punishment for theft is stated in the Quran as follows: "As to the thief, male or female, cut off his or her hands <sup>[9]</sup>. Amputation of the hand is based on strict conditions. The value of the stolen item must be considered to determine whether it is in the public interest to prosecute the case. The minimum value '*Nisab*' for the stolen good in Islamic criminal law must be at least a quarter of a dinar or the equivalent. The stolen property must not be ownerless or unclaimed property. The property must have been kept in a secured safe keeping '*hirz*'. The idea of '*hirz*' implies safekeeping in a place like a residential apartment and safekeeping by way of physical security over the item.

- 4. Drinking of Alcohol:** Islam has described the offense of drinking alcohol as “the mother of all vices”. Since alcoholic intoxication can lead to the commission of other offenses. In the Hadith, Ibn Umar quoted the Prophet when he said: “Every intoxicant is wine ‘*khamr*’ and every intoxicant is forbidden <sup>[10]</sup>. Jabir also reported that Prophet Muhammad said: “If a large amount of anything causes intoxication, a small amount of it is prohibited” <sup>[11]</sup> The punishment for alcoholism and public intoxication from the *Hadith* is 80 lashes. This punishment was not provided for in the Quran. Aras bin Malik reported that when a drunkard was brought before Prophet Muhammad, he directed that the man be punished with 40 stripes with two palm branches <sup>[11]</sup>. Anas Abu bakar reported that Caliph Umar, consulted for a consensus on the punishment for drinking alcohol and Abdur-Rahman bin Auf said: “The mildest punishment for drinking wine is 80 stripes <sup>[12]</sup>.”
- 5. Robbery: (*hirabah*)** The crime of *hirabah* includes armed robbery, forcible entry into houses or business premises with weapons and harassing innocent people with weapons. According to Islamic criminal law, armed robbery is synonymous with waging war against the society. The punishment ranges from amputation to execution, depending on the charges and evidence before the court. The Quran says: “The punishment of those who wage war against Allah and His Messenger, and strive with might for mischief through the land is execution or crucifixion, or cutting of hands and feet from opposite sides, or exile from the land <sup>[13]</sup>. The *Shariah* court is at liberty to determine the ratio decided to suit the crime. If the robber seizes money and kill his victim, the sentence may be killing and crucifixion. If the robber threatens and takes money without killing and assault, the punishment is amputation of his hand and leg. If he kills his victim without taking money, he will be executed. If he threatens innocent people without murder, the sentence may be exile.
- 6. Murder: (*Qesas*)** *Qesas* means “equality”. *Qesas* crimes include murder, voluntary and involuntary killings, intentional and unintentional physical injuries. Murder is considered the most grievous offense in Islamic criminal law. The Quran says: “do not kill the person God has forbidden to kill except with justification <sup>[14]</sup>. The Quran stated in another place: “take not life which Allah hath made sacred, except by way of justice and law <sup>[15]</sup>”. According Islamic law, homicide can be divided in tow categories:

1. ‘*Qatle al-‘amd*’: (Intentional killing)
2. ‘*Qatle al-khat’a*’: (Mistaken Killing)

‘*Qate al-‘amd*’ that is intentional killing is prohibited because life is sacred and cannot be taken except through a death sentence handed down by a Islamic *Shariah* court of competent jurisdiction, in an Islamic State. Ibn Mas’ud reported that Prophet Muhammad once said: The blood of a Muslim who testifies that there is no god but Allah and that I am Allah’s messenger may not be lawfully shed but for one of the three reasons: a married man who commits fornication; a life for a life; and one who turns away from his religion, and abandons the community <sup>[16]</sup>.

‘*Qatt al-khata*’ killing by mistake is a lethal act which mistakenly causes death. Killing by mistake ‘*Qatle al-khat’a*’ does not form part of *qisas* and is not punished by a death penalty. The Quran forbids Muslims from killing another Muslim, except mistakenly. The Quran states the Islamic viewpoint: “Never should a believer kill a believer, except by mistake. It is ordained that he should free a believing slave, and pay compensation to the deceased family, unless they remit freely. If the deceased belonged to people at war with you, and he was a believer, the freeing of a believing slave is enough. If he belonged to people with whom you have a treaty of mutual alliance, compensation should be paid to his family, and a believing slave be freed. For those who find this beyond their means, a fast for two consecutive months is prescribed <sup>[17]</sup>. It is a criminal offense for a Muslim to kill a non-Muslim who belonged to a state which has a pact with the Islamic state known as ‘*Mu’ahid*’. The punishment in this case is death penalty. In the case of killing by mistake, the punishment ranges from religious expiation such as fasting, alms-giving, and making free of slaves and blood money. Homicide by independent cause which may include situations like a collapsed wall or someone falls into a pit. In both cases the owner is strictly liable and must be made to pay a fine.

1. ***Qisas*:** The second category consists of *qisas* and *diyya* crimes. In Islamic law, the punishment prescribed for murder and the infliction of injury is named *qisas*, that is inflicting on the culprit an injury exactly equal to the injury he/she inflicted upon his/her victim. The right to demand retribution or compensation lies with the victim or, in cases of homicide, the victim’s next of kin. Sometimes, the relationship between this person and the offender can prevent retaliation. *Qisas* and *diyya* crimes fall into two categories: homicide and battery. These crimes are thus treated in Islamic law as private, not public, offences. *Qisas* is crime involving the taking of life or the causing of bodily harm punishable by retaliation or blood money ‘*diya*.’ The victim or his relative has the right to forgive or reduce the penalty of the accused person.
2. ***Ta’azir*:** The third category of crimes in Islamic law is called ‘*ta’azir*’ crimes. These crimes are punishable by penalties left to the discretion of the ruler or the judge *Qadhi*. They are not specified by the *Quran* or *Sunnah*; any act that infringes private or community interests of the public order can be subject to *ta’azir*. *Ta’azir* or discretionary punishment in Islam is broad and is left to the presiding court. *Ta’azir* literally means prohibition. It is the duty of public authorities to lay down rules penalizing such conduct. These rules must be draw their inspiration from the *Shariah*. The example of a *ta’azir* crime is the trafficking of persons. It is not defined in the *Quran* or the *Sunnah* but it constitutes clear violation of the right to personal security, one of the five essentials of Islam. *Ta’azir* is used for three types of cases:

Criminal acts which must by their very nature be sanctioned by penalties which relate to *hudud*, for example attempted adultery, illicit cohabitation or simple robbery;

1. Criminal acts normally punished by *hudud*, but where by reason of doubt for procedural reasons or because of the

situation of the accused the *hudud* punishment is replaced by *ta'azir*;

2. All acts under the provisions of the law, which are not punished by *hudud*.

The Islamic penal system must be understood and interpreted in the light of the above characteristics of the *Shariah*'s penal prescriptions. But these characteristics are dependent on the choice of applicable sources of law their ranking and interrelationship and are subject to the rules of interpretation most widely recognized as *Usul al-fiqh* <sup>[18]</sup>.

### **Equality before the Islamic law**

Islam stress equality and unity, there is an acknowledgement that all people are not born equal. Human equality is important because it promotes unity and prevents factions within society. Islam follows every aspect of human psychological and social life so as to give full confirmation to the idea of equality. Equality before the law means equality amongst equals. It does not provide that what is aimed at is an absolute equality of treatment to all persons in disregard in every conceivable. This principle applies equally to criminal legislation and to its application. Circumstances of the differences such as age, sex, education and so on and so forth as may be found amongst people in general. Indeed, the aim of the doctrine of equality before the law is to ensure that invidious distinction or arbitrary discrimination shall not be made by the state between a citizen and a citizen who belongs to the same group. Thus, crimes and punishment must apply equally. This also extends to criminal proceedings. The principle is not, however, deemed to be violated with respect to the individualization of penalties, particularly *ta'azir* offences where the theory of correction and rehabilitation applies. The principle of equality guarantees that the judge will not abuse his discretionary powers. It is a form of control over the disparity of sentences and abuse of power. While that principle appears more procedural in nature, it is also substantive because it precludes legislation which could be unequal in its purposes. Scope and application are subject to those legitimate distinctions made pursuant to the legally valid need to preserve Islam. Islam provides a system of equality. Discrimination between rich and poor in awarding punishment is prohibited. In order to avoid the discrimination Islam provide a legal system which is lacking of imposing any monetary fine or penalty.

### **Purposes of Punishment under Islamic Law**

The main object of punishment in Islam is to prevent the commission of crime. For this purpose Islam provides a system of imposing harsh punishment on the criminals. Islamic law educate the people about the outcome of the punishment and thus prevent and deter them from committing the crimes. The Quran describe the *Haduds* as exemplary punishments from God. It means that these penalties imposed upon the person are exemplary in nature. They become examples for those who have criminal mentality. The like-minded criminals become aware of the fact that committing crime is not worthy business. The unique salient features of *Shariah* law shows the significance of Islamic law over the western legal system. One of the unique features of *Shariah* law is that there is no rule for imprisoning the offender. The

imprisonment is a disapproved kind punishment in Islamic legal system. The purpose of criminal responsibility is to ensure protection the public interest and make peace in the society because the commission of offences is harmful to collective order and system of beliefs as well as to the life, property, honour and feelings of the individual interest. Islam accords complete judicial autonomy to the various sections of the community in order to protect and preserve their own personal and religious affairs. It allows every community to have its own tribunals to judge its civil as well as criminal cases and leaves it to the discretion of the parties to take the case to their own judicial tribunal or to the Muslim judiciary <sup>[19]</sup>. Allah had mentioned "If they do come to you, either judge between them, or decline to interfere. If you decline, they cannot hurt you in the least. If you judge, judge in equity between them. The Quran says: "God loves those who judge in equity <sup>[20]</sup>." Islam always prefers pardon than causing punishment swearing a better return in the hereafter life. The pardon can be also by blood money. Islam also realizes reformation and like the other legal system aims to keep the social order stable and widespread and save the community from the threat of various crimes. The wisdom behind the punishments is either the offender who has been convicted and faced punishment he will most likely not repeat the crime again in future or who watched the execution of punishment or heard about it, he also avoid himself safe from crime. The purpose of punishment is to recompense of crime. It means that the offender is always given highest chance to defend himself which lastly results in awarding him a perfect, fair and actual sentence <sup>[21]</sup>. *Shariah* law focuses on the individual as well as the good of the community. The primary objective of Islamic penal system is to protect society from the dangers of crime.

One of the core objectives of Islamic punishment is its deterrent capacity. The *Shariah* has recommended that punishment should be executed publicly because public display of imposition of sentence possesses a deterrent effect. As a sequence of this public demonstration, all those who had even the slightest inclination towards the commission of crime would restrain themselves in the view of the punishment it entails. In order to achieve this objective, *Shariah* has clearly commanded that the fixed punishment of Islam should not be reduced or mitigate even under pressure of the sentiment of mercy. This deterrent and exemplary aspect of Islamic punishment has a psychological impact on all those who have criminal inclination and propensities.

### **Islamic Legal System**

The Quran is designated as the supreme law or the supreme constitution of the state. The *Quran* is the foundation of *Shariah* law, as supplemented and elucidated by the equally authoritative mandates of the *Sunnah*. Together, the *Quran* and *Sunnah* provide clear guidance on the fundamentals of Islam, such as moral values practical duties and other devotional matters. In the area of criminal law, however, the *Quran* and *Sunnah* are generally flexible and proscribe only a few specific offenses, known as *hudud*. As *Shariah* law derived from the *Quran* and the acts of the Prophet by way of the *Sunnah*, *Shariah* law is intertwined with morality. *Shariah* divides its dictates into five different shades of obligation,

obligatory, recommended, reprehensible, permissible and forbidden. As a *legal* system, however, *Shariah* law treats religious and moral transgression different from legal transgressions in that only the legal rules of *Shariah* are justifiable. The Islamic legal system, known as *Shariah* law, has its foundations in the *Quran* and in the *Sunnah* <sup>[22]</sup>, In Islamic criminal law the criminal accountability and responsibility rests on three bases, namely.

1. The person commits a forbidden act.
2. The person commits a crime with his free consent.
3. The person who commits an offence is mature and sound and can differentiate between the correct and wrong.

Islamic legal system based on Islamic belief. The ethical and moral principles consist of trust '*amanah*', justice '*adalah*'. This legal system consists of constitutional law, civil law, criminal law, and other laws. Islamic legal discourse can be very flexible and innovative. In the case Islamic legal system, crime is a violation of the law prescribed the *Shariah*. It is immaterial whether the law is expressly or impliedly revealed or formulated under the revealed authority. This is the reason that in Islamic legal system neither the concept of law nor the concept of crime is variable.

### Islamic Judicial System

Judiciary System in Islam is new concept for "crime" and "Punishment". It developed new institutions regarding crime and punishment. The holy Quran has good concept of Justice in every sphere of life particularly for common masses like women, poor and so on. It has very liberal rule and very democratic in nature. The judicial system and punishment of the Islamic state were implemented throughout every period from the time of the Prophet in Madina, when he established the first Islamic state. It settled the disputed between the people, protected the legitimate rights of the society and ensured that those in authority gave the residents of the state their dues in accordance with the *Shariah* of Islam. However, the strength and authority that the judiciary in Islam offers is not built upon harsh punishments or domination of the people <sup>[23]</sup>. Judiciary has been given a supreme and vast power in Islam. Independence of judiciary is a vital principle of the *Shariah* law. The Quran has stressed the importance of "*Adl*" in various contexts on various occasions indicating its great and deep significance in social relationships. The primary judicial function of judiciary is to determine disputes, whether between private persons or between a private person and a public authority. Judges must apply the law and are bound to follow Quranic Injunctions. In Islamic State, judiciary is the guardian of the constitution based on the Injunctions of the Quran and *Sunnah*. Independent judiciary performs its functions adequately and delivers its judgments in the light of Islamic law. Independence of judiciary can hardly become reality unless competent judges are appointed in the judiciary. The role of a judge is very crucial and critical because he has the power to award proper punishment to the criminals and also to decide civil as well as in criminal cases. Islam does not allow any discrimination because of race, color, language, and religious affiliation or social economic status. The Islamic Judicial system has evolved during fourteen centuries throughout different regions of the world with diverse

cultures. The dimensions of time, space and cultural diversity add to the complexities of a system whose depth and breadth are a real intellectual challenge.

### Justice in Islam

Justice is the most fundamental of all virtues for ordering interpersonal relations and establishing and maintaining a stable society. In fact, Justice is a moral virtue of individual character as well as a desirable quality of society. Justice plays an important role in man's life and also in the society as a whole. It encompasses all the aspects of human life and enables one to live in peace and harmony with other fellow beings. Justice is the basis of human life, as it is a source of all noble traits. It is safe enough to say that justice is the basic element in organized social life. Justice can be defined as fairness in the treatment to all people assigning rights and duties, honour and opportunities etc. It demands equal treatment to all. It means placing things in their rightful place. The concept of justice is fundamental to any ethical system; as such it is also fundamental to Islamic ethics. Justice, as expounded by the Quran, is one of the most fundamental virtues in Islam.

The Quran aims at building a better social order and being so it lays great emphasis on justice because it facilitates the establishment of social order and also enables peoples to develop their human qualities and high moral order among themselves and thereby can create a balance in their affairs and dealings with their fellow beings to establish justice. Islam is a religion which lays emphasis on every aspect of justice and enjoins on man to do all sorts of justice. For every aspect of justice there are several words like, '*adl*', '*qist*', '*mizan*' etc. used in the Quran <sup>[24]</sup>. Justice presupposes a number of basic principles such as the presumption of innocence, equality before the law, non-retroactivity of criminal law, individualization of punishment, and the conduct of legal proceedings in a lawful manner. Thus substantive justice and observance of proper procedures constitute the dual purpose of Islamic criminal justice. The Qur'an and sunna urge people over and over again to be just and to practise justice. The Quran forbids persecution and threatens to punish anyone who contemplates using it. Reading it, we find that the word 'justice' and all its derivatives in that sense are mentioned more than 20 times. The word 'persecution' and its derivatives are mentioned about 300 times, the word 'aggression' is mentioned 8 times while the words 'attack' and 'violate' are mentioned 20 times <sup>[25]</sup>. The Quran is the source of direction in all facets of life and is believed to be the very word of God is key to understanding social justice and human development in Islam. Sharia law provides the legislation necessary for firmly grounding the principles of social justice.

### Capital Punishment in Islam

Capital punishment, which takes a person's life that is found guilty of a capital offence by the courts of law, is considered to serve the main objectives of punishment. When a criminal is given a capital punishment, it dissuades not only the offender from repeating the crime but also deters others who have criminal tendencies. For people fear of death the most by putting the offender to death, fear is instilled in the minds of other criminals, the evil-doer is made an example and warning

to all that are like minded with him <sup>[26]</sup>. The Islamic Law provides death penalty as a deterrent for only seven serious crimes that harm individuals or threaten to destabilize the foundation of society as a means of controlling crime and protecting society. Islam prescribes capital punishment only for seven crimes mainly with a view to make the execution of the evil doer as an example and warning to all that are like minded with him and to disable himself to commit the same or other offences for the second time. According to Islamic Law, capital punishment may be imposed only for two kinds of crimes:

- A. Intentional murder: (*Qatle al-'amd*)
- B. Spreading mischief in the land: (*Fased fil-ard*)

#### (A) Intentional Murder

Murder is considered as a grave disobedience and transgression after polytheism. When person commits a murder, he violates three separate rights:

1. The right of victim and his family;
2. The right of the society to maintain peace, safety and tranquility;
3. The right of Allah.

Islam retains the punishment of death for murder but in some cases without depriving anyone of their right an exceptional form of punishment has also been created. This exceptional form is also based on profound wisdom; It is possible that the heirs of the murdered victim may be entirely dependent upon the person murdered for their subsistence. In such a situation capital punishment cannot fulfil a practical basic need of the family's welfare. Thus, for making provision of claiming ransom in lieu of capital punishment, Islam offers a practical choice to the grieved family The Islamic law stresses on the observance of strict equivalence in case of intentional murder. The Qur'an speaks of dreadful punishment in another place for noncompliance of Allah's prohibition of doing certain acts including taking one's 'sacred' life for unjust cause. The Quran says: *Those who invoke not, With Allah, any other god, Nor slay such life as Allah Has sacred, except For just cause, nor commit Fornication- and any that does This (not only meets punishment) (But) the penalty on the Day Of Judgment will be doubled To him, and he will dwell Therein in ignominy* <sup>[27]</sup>.

#### (B) Spreading Mischief in the Land

Spreading mischief in the land is wide-open to different interpretations, the jurists generally agree to include the following crimes in the expression that affect the community as a whole and destabilize the society:

1. Treason, traitors who try to plot the overthrowing of the Islamic Government and help the enemy of the Muslim community;
2. Apostasy, renouncing the religion of *Islam* 'riddah' and turning against it;
3. Fleeing the Battlefield in 'Jihad';
4. Committing highway robbery 'hirabah';
5. Commission of adultery 'zina' by a married man or woman 'muhsan'.
6. Homosexuality

1. **Rebellion (Al- Baghy):** Rebellion is the intentional and forceful overthrow or attempted overthrow of the righteous

and legitimate ruler or leader 'Imam' of the Islamic State. To oppose a Muslim ruler is a rebellious act provided the ruler is righteous and it is a punishable offence under Islamic administration of justice. The Qur'an enjoins: "O, who believe! Obey Allah, and obey the Messenger, and those charged with authority among you. If you differ in anything among yourselves, refer it To Allah and His Messenger, if you do believe in Allah and the Last Day: That is best, and most suitable for final determination.

2. **Apostasy: (Al-Riddah)** Apostasy of *Islam* means the rejection of and non-adherence to *Islam* in favor of any other religion either in action or words. Before deeds or words can be considered as a sign of apostasy they must be accompanied by doing away with faith and a precise refusal of *Islam* or showing a clear renunciation of the religion. The Qur'an declares about the apostate thus: "But those who reject Faith after they accepted it, And then go on adding To their defiance of faith- Never will their repentance Be accepted; for they Are those who have (of set purpose) gone astray" <sup>[28]</sup>.
3. **Fleeing from the Battlefield:** In the Quran, the word *Jihad* as a holy war is used in respect of waging it for the defense or cause of *Islam* against any aggression of the enemies. If a man goes for *jihad* and is stationed in the battlefield, for fighting against the enemies of *Islam*, it will then be obligatory for him to stand firm according to the instructions given and continue fighting the enemies. The Qur'an says: "O, you who believe, when you meet a force, be firm" <sup>[29]</sup>. The Quran further says: "O you, who believe, when you meet the unbelievers in hostile array, never turn your backs to them" <sup>[30]</sup>." Running away from the battlefield can endanger the fate of the territory of the Muslim community and enemies might wipe them out. Therefore, fleeing the battlefield is considered as a grave crime in *Islam*.
4. **Highway Robbery (Al- Hirabah):** Highway robbery 'al-hirabah' is a serious crime committed by an armed person or by a group of armed persons who attack innocent travelers or wayfarers on the highway (or any other place) for robbing their property by means of force when the victims are unable to receive any immediate help from the relevant authority. The Islamic jurists have explained the act of *hirabah* in the following categories:
  1. The robbers who could only kill but could not get away with their loot. Still it amounts to robbery.
  2. If they killed and took away the property, it is robbery.
  3. If they took away property with the use of force without killing.
  4. Even if they only frightened by using force without intention to rob, it still amounts to robbery <sup>[31]</sup>.
5. **Adultery: (Al- Zina)** Committed by a Married Man or Woman *Islam* enjoins purity of sexual life both for men and women by strictly prohibiting 'zina'. The Arabic word *zina* applies to both adultery, *Islam* considers 'zina' as a detestable act which disrupts the very fabric of the family-love, loyalty, senses of belonging, sharing and caring-jeopardizes the conjugal happiness, works as a potent reason for numerous evil acts like murders, feuds and crimes against person and property, creates confusion of paternity lineage and spreads various kinds of viral

diseases. Hence, *Islam* regulates the marriage institution, disciplines the sex behavior, disapproves adultery and prescribes severe punishment for it. The Qur'an expressly prohibits 'zina' specifying reasons: "Nor come to nigh [do not come nearer] to adultery, for it is a shameful (deed), And an evil opening the road, To other evils <sup>[32]</sup>." The Qur'an made it clear that those guilty of adultery must be given as punishment one hundred lashes: "The Woman and the man guilty of adultery or fornication flog each of them With a hundred stripes: Let not compassion move you In their case, in a matter Prescribed by Allah, if ye believe In Allah and the Last Day: And let a party Of the believers Witness their punishment <sup>[33]</sup>."

- 6. Homosexuality:** Homosexuality is an unnatural sexual act to satisfy one's sexual desire, which is a heinous crime in *Islam* although it is on the increase in the civilized western world. The Quran lay down to that effect: "We also sent Prophet Lut, He said to His people: Do ye commit lewdness. Such as no people in creation (ever) committed before you? <sup>[34]</sup> For ye practice your lasts On Men in preference To women: ye are indeed A people transgressing Beyond Bounds. Of all the creatures in the world, will ye Approach males <sup>[35]</sup>. And leave those whom Allah has created for you to your mates? Nay, ye are a people transgressing all limits <sup>[36]</sup>."

Capital offences in Islamic criminal justice system are called *hudud* meaning "restraint" or prohibition. These are offences that are specified in the Quran and Sunna. *Hudud* crimes are often seen as criminal behaviour against Allah, or public justice. Islamic courts do not have any discretionary power in the execution of *hudud* penalties. Once a prima facie case is established with evidences, and the conditions for applying the punishments are fulfilled the Islamic court is divested of discretionary powers. The capital punishment can only be given on the basis of direct and unimpeachable evidence avoiding conviction only on a single-witness testimony and reluctance to act upon the evidence of women only bear the testimony of the unique system of guilt-determination prescribed by the Qur'an and the *Sunnah*. The other capital offences are offences punishable by fixed punishments '*hudud*' as revealed in the Holy Qur'an and affirmed by the *Sunnah* or in order to attain peace and security for mankind. Islamic Law does not allow taking away someone's life on the basis of inadequate and unfitted circumstantial evidence. Usually two male witnesses or one male and two female witnesses are essential except in cases of adultery when four male eye witnesses of high moral character and standing in the community or deliberate four times confessions by the adulterers are required in order to make it more difficult to prove the offence of *zina* for inflicting the punishment of stoning to death <sup>[37]</sup>. It goes without saying that although Islam recognizes only minimum number of capital offences, the standard of proof it requires for the imposition of death penalty. Islam emphasizes on the sacredness and inviolability of human life. The Quran, the epitome of Islamic legislation and the divine inspiring of wisdom and the *Sunnah*, the tradition of the Prophet are the primary sources of Islamic Law. prescribe the capital punishment for several *hadd* (which

stands for a fixed and unchangeable punishment and *hudud* is plural of the Arabic word *hadd*) crimes and, as such, as a mandatory punishment cannot be decreased, altered or remitted by anyone, including the head of the state <sup>[38]</sup>.

### Conclusion

The Islamic jurisprudence embraced almost all forms of alternatives to original punishments known in the modern restorative justice systems. Today, the Islamic justice system could be part of the efforts towards developing common global restorative justice standards. Islamic law of punishment is the most consequential as compared to any system of punishments ever enforced inhuman history. Islamic system of punishment is neither barbarous nor unenforceable in the present civilized era. Islamic system of punishment is the most effective, efficacious and consequential system in the world. The psychological level of the efficacy of Islamic punishment is determined by the fact that the element of fear and the psychological feeling of insecurity of life. Through the complete enforcement of Islamic penal system, the society enjoys an ideal peace, prosperity and tranquillity which are essential requirement for the individual and collective growth of its members. The purpose of Islamic punishment is to establish and preserve clean society, a society based on the enviable principles of equality and justice. A society based on the sanctity of human life.

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