

## The Punishment System of Islam

It is the blessing of Allah (swt) that He (swt) sent his Prophet with the Deen of Truth (Islam) and blessed us with the *Khilafah* (Caliphate) through which the *Muslim Ummah* undertook the duty of spreading the message of Islam to humanity. Islam is not just a religion, rather, it is a complete system that governs all aspects of our lives - whether they are morals or acts of worship, or they are political, economic and societal matters, or whether such matters are related to foreign policy or education system - Islam has *ahkaam* (orders and prohibitions) which provide us complete and comprehensive guidance on all matters. Allah (swt) said,

﴿وَأَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ مُصَدِّقًا لِمَا بَيْنَ يَدَيْهِ مِنَ الْكِتَابِ وَمُهَيْمِنًا عَلَيْهِ فَاحْكُم بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ عَمَّا جَاءَكَ مِنَ الْحَقِّ لِكُلِّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا﴾

**“And We have revealed to you, [O Muhammad], the Book in truth, confirming that which preceded it of the Scripture and as a criterion over it. So judge between them by what Allah has revealed and do not follow their inclinations away from what has come to you of the truth. To each of you We prescribed a law and a method.”** (TMQ 5:48) Thus, the *Shari’ah* (legislation) which was revealed to our Prophet (saw) in the form of *Qur’an* and *Sunnah* contains detailed *ahkaam* related to judiciary, crimes, testimonies, evidences and punishments which are implemented by the Islamic State.

For 1300 years, the *Khilafah* had been providing justice to its citizens by implementing such rules. The Indian Sub-continent was also governed by such Islamic laws until the British came and repealed them. Since then, disputes between people are being judged according to *Kufr* (un-Islamic) laws. After getting independence from the British colonialists, Muslims should have implemented Islamic laws relating to punishments. Instead, Pakistan’s political leadership submitted to intellectual authority of the West and adopted British laws with slight changes, thus neglecting the command of Allah (swt), ﴿وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْفَاسِقُونَ﴾

**“And whoever does not judge by what Allah has revealed - then it is those who are the defiantly disobedient.”** [TMQ 5:47] The increasing rate of crimes today in Pakistan is due to non-implementation of the judicial and punishment system of Islam.

To pacify the emotions of Muslims, few Islamic punishments were implemented and that too was with lack of sincerity as evident from their improper execution whereas the judicial structure, rules of testimonies and evidences and identification of crimes were all based on *Kufr* thoughts. Thus, the so-called notion of “Islamization” did not leave a significant impact on the lives of Muslims.

Decades of continuous implementation of *Kufr* laws have blurred the image of the judicial and punishment system of Islam in the minds of Muslims today. Moreover, the influence of Western culture due to its propagation by the colonialists has seduced the Muslim mind to the point where it has started to question some of the Islamic laws. The objective of this article is to provide a glimpse of the punishment system of Islam. May Allah (swt) guide the Muslims towards implementing the *Shari’ah* of Muhammad (saw) comprehensively through the re-establishment of the *Khilafah* and may He (swt) bless us with the Islamic society where crimes become negligible to the extent that they are rarely heard of.

### Types of punishments (*Uqoobah*)

The punishments in *Shari’ah* are of four types:

1. **Hudood** (determined punishments)
2. **Jinayaat** (punishments for crimes)
3. **Ta’zeer** (discretionary punishments)

#### 4. **Mukhalafaat** (punishments for violations)

##### **The definition of crime in Shari'ah**

Before getting into the details of each type of punishment, it is essential to understand the meaning of **crimes** which the *Shari'ah* has given. *Shari'ah* rules related to the actions of man are five; the *fard* (obligatory), the *mandoub* (recommended), the *mubah* (permissible), the *haram* (forbidden) and the *makrooh* (disliked). The *fard* is a decisive obligation leaving which is a sin; the *mandoub* is an indecisive command which is rewarding but does not lead to sin if neglected; the *mubah* neither leads to any reward due to its fulfillment nor any sin due to negligence; the *haram* is a decisive obligation to leave (the action) and leads to sin if perpetrated; and the *makruh* is an address to leave (the action) indecisively but does not lead to sin if perpetrated.

The actions over which punishments are prescribed are neglecting the *fard*, perpetrating the *haram*, and violating the decisive orders of the Islamic State. The offence (crime) is an ugly (*qabeeh*) action which the *Shari'ah* has made repugnant; that is, either that the action falls under *haraam* (forbidden) or the *Shari'ah* specifies a punishment for it. Therefore, actions are not considered crimes if the *Shari'ah* does not make them repugnant. Similarly, there are generally no punishments over *makrooh* and *mubah* actions. However, *Shari'ah* has given the right to *Khaleefah* (Caliph) to ordain punishments for certain violations which fall under *mukhaalafaat* such as violations relating to administration of the Islamic State, construction of buildings and traffic rules etc. Moreover, there is no punishment for neglecting *mandoub* or undertaking a *makrooh* action because Allah (swt) only punishes upon violating the decisive request to take (the action) and upon violating the decisive request to leave (the action).

Therefore, all such actions are included in crimes whether those are decisive commands or those which are adopted by the *Khaleefah* based on *ijtihad* and these are punishable under the punishment system of Islam.

##### **Why are the punishments legislated?**

Carrying out an offence does not exist in the innate nature of man. It is also not a disease by which man is inflicted. It is rather a violation of the system that organizes man's actions.

Allah (swt) created man and created in him instincts and organic needs. These instincts and organic needs are the vital energy in man that drives him to satisfy them. So he carries out actions for the sake of their satisfaction. Leaving the satisfaction of these instincts and organic needs without a system causes anarchy and disorder. Therefore, in order to organize man's actions, Allah (swt) revealed *ahkaam al-shari'ah* (Islamic rules) which provide us with detailed guidance regarding our actions. He (swt) legislated the *halal* (permitted) and the *haram* (forbidden). He (swt) addressed the man to undertake actions which are *fard* and refrain from those which are *haraam*. Thus, the one who either neglects a *fard* or undertakes *haraam* commits a *qabeeh* (offence) action for which he is punishable.

In the absence of punishments, a society cannot be curbed from evils as Allah (swt) said, ﴿وَلَكُمْ فِي الْقِصَاصِ حَيٰوةٌ﴾ **“And there is (saving of) life for you in retaliation.”** (TMQ 2:179). Allah (swt) described (carrying out) *Qisaas* (retaliation) as something which saves lives in the society. This is not by saving the life of the one who was punished, for in the retaliation (punishment) is his death and not his life, rather, the life of the one who witnessed the occurrence of retaliation in the society. A sensible person knows that he will be killed if he

kills another. Therefore, it deters him from committing the offence of killing and thus protects the society.

Furthermore, punishment, carried out by the State, in the *Dunya* (World) over a specific sin removes the punishment of the *Aakhirah* (Hereafter) as the person on whom punishment is inflicted asks Allah (swt) for forgiveness. Prophet (saw) said, «وَمَنْ أَصَابَ مِنْ ذَلِكَ شَيْئًا، فَعُوقِبَ فِي الدُّنْيَا، فَهُوَ كَفَّارَةٌ لَهُ. وَمَنْ أَصَابَ مِنْ ذَلِكَ شَيْئًا، ثُمَّ سَتَرَهُ اللَّهُ، فَهُوَ إِلَى اللَّهِ، إِنْ شَاءَ عَفَا عَنْهُ، وَإِنْ شَاءَ عَاقَبَهُ» **“Whoever commits something of such sins and receives the legal punishment for it, that will be considered as the expiation for that sin, and whoever commits something of such sins and Allah screens him, it is up to Allah whether to excuse or punish him.”** And Allah (swt) said, «قُلْ يَا عِبَادِيَ الَّذِينَ أَسْرَفُوا عَلَىٰ أَنفُسِهِمْ لَا تَقْنَطُوا مِن رَّحْمَةِ اللَّهِ إِنَّ اللَّهَ يَغْفِرُ الذُّنُوبَ جَمِيعًا إِنَّهُ هُوَ الْغَفُورُ الرَّحِيمُ» **“Say, ‘O My servants who have transgressed against themselves [by sinning], do not despair of the mercy of Allah. Indeed, Allah forgives all sins. Indeed, it is He who is the Forgiving, the Merciful.’”** [TMQ 39:53]

Throughout the Islamic history, especially the period of the Islamic State of Medina, we find that those who committed *zina* (adultery) willingly presented themselves before our Prophet (saw) and after due process, he (saw) would declare *hadd* (punishment) on them. Thus, to please their Lord (swt) and earn His mercy, such people surrendered themselves so that they are saved from the Hellfire at the cost of worldly punishment.

Thus, we can derive two wisdoms or benefits from punishments in general. Firstly, the punishments are deterrents as they deter the people from committing crimes. Therefore, life, property and honor are protected as the society is deterred from crimes by strict implementation of punishments in a way that no one even thinks about committing any offence. Secondly punishments also eliminate the punishment of the *Aakhirah* as the person asks Allah (swt) for forgiveness as explained above.

### **Who has the authority to implement *Uqoobaat* (punishments)?**

The authority to implement *shari* punishments rests with the *Khaleefah* (or *Imam*) who executes such punishments through the writ of the State. No person or organization has the right or obligation to implement punishments on the people. This is because the *Khaleefah* gets this authority from the *Ummah* through *bay'ah* (pledge of allegiance) and the *Ummah* gives him *bay'ah* on the condition that he will implement Islamic laws in the State. In contrast, groups or organizations neither have *bay'ah* from the *Ummah* for ruling them, nor they are regarded as “*Ullil Amr*” (i.e., those having authority). Thus, the *Khaleefah* manages the affairs of the people; he adopts *Shari'ah* as laws for implementation in the Islamic State; and he punishes those who violate such laws. Prophet (saw) said, «الإمام راعٍ ومسؤولٌ عن رعيته» **“Imam (or Khaleefah) is a shepherd (responsible) for the people on whom he is given authority.”**

### **Types of Islamic punishments and their brief description**

The Punishments in *Shari'ah* are divided into four types, details of which are following:

#### **1. Hudood**

The *Shari'ah* has described *Hudood* as determined punishments for those crimes (*haraam* actions). The retribution of which is the right of Allah (swt) and not the humans or the State. Thus, such punishments are explicitly mentioned in the text and neither the ruler nor the one oppressed have the right to reduce or waive such punishments on behalf of Allah (swt). They are called *Hudood*, because they generally prevent the sinner from returning to the sin for which he was punished with the *hadd*. For instance, Allah (swt) ordered, «الزَّانِيَةُ» **“(If unmarried) woman or**

**(unmarried) man is found guilty of sexual intercourse, strike each of them a hundred lashes, and let not pity for them overcome you in Allah's law” (TMQ 24:2) and ﴿وَالسَّارِقُ﴾ [As for] the thief, the male and the female, amputate their hands in recompense for what they committed, as a deterrent [punishment] from Allah” (TMQ 5:38). Therefore, hudood are determined punishments decreed by Allah (swt) which are implemented by the authority of the Islamic State.**

In this regard, there is a renowned *hadith* of Rasulullah (saw) **﴿وَالَّذِي نَفْسِي بِيَدِهِ لَوْ كَانَتْ فَاطِمَةُ بِنْتُ مُحَمَّدٍ، لَفَطَعْتُ يَدَهَا﴾** **“By Him in Whose Hand my soul is! If Fatima (the daughter of the Prophet ﷺ) did that (i.e. stole), I would cut off her hand.”** (Sahih Bukhari 6787). Thus, in the light of various authentic reports, it is certain that no one has the authority to forgive the person who is charged with the crime obligating *hadd*. This is also because Allah (swt) did not mention about any *kaffara* (expiation) for such crimes. However, if the person who has committed the sin sincerely repents and is punished with the *hadd* as obligated, only then he is forgiven in the hereafter. Allah (swt) informed us, **﴿قُلْ يَا عِبَادِيَ الَّذِينَ أَسْرَفُوا عَلَىٰ أَنفُسِهِمْ لَا تَقْنَطُوا مِن رَّحْمَةِ اللَّهِ إِنَّ اللَّهَ يَغْفِرُ الذُّنُوبَ جَمِيعًا إِنَّهُ هُوَ الْغَفُورُ الرَّحِيمُ﴾** **“Say, ‘O My servants who have transgressed against themselves [by sinning], do not despair of the mercy of Allah. Indeed, Allah forgives all sins. Indeed, it is He who is the Forgiving, the Merciful.’”** [TMQ 39:53]

Therefore, crimes, such as *sariqa* (theft), *zina* (adultery), *liwat* (homosexual intercourse), drinking *khimr* (alcohol), *irtidaad* (apostasy), *qadhif* (accusation of adultery), *qutaa' al-turooq* (highway robbery) and rebellion fall under *hudood* which are implemented by the Islamic State and for which there is no *kaffara* (expiation) in this world.

## 2. Jinayaat

As for *jinayaat* (criminal offences), the *Shari'ah* has included some punishments in this category. These punishments are inflicted for those crimes (*haraam* actions), the retribution of which is the right of humans. Thus, the person whose right is impaired as a result of a crime is empowered by the *Shari'ah* to either retaliate by demanding punishment or forgive the criminal according to Islamic rules. Killing an innocent human or bodily assaults are *Jinayaat* punishable according to *Shari'ah*. Allah (swt) ordered, **﴿كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَىٰ بِالْأُنثَىٰ﴾** **“Prescribed for you is legal retribution for those murdered - the free (will be killed) for the free, the slave for the slave, and the female for the female.”** (TMQ 2:178). However, if the legal heirs of the aggrieved person want to forgive the guilty, then they are allowed to do so by insisting on *diyyah* (blood money) from the person guilty of crime as Allah (swt) informed, **﴿فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبَاعْ بِالْمَعْرُوفِ وَأَدَاءٍ إِلَيْهِ بِإِحْسَانٍ﴾** **“But whoever overlooks from his brother anything, then there should be a suitable follow-up and payment to him with good conduct.”** (TMQ 2:178). Rasulullah (saw) said, **﴿مَنْ قُتِلَ لَهُ﴾** **“If a person's relative is killed, he has the choice of two things: He may either have the killer killed, or he may demand the blood money.”** (Sunan Ibn Majah 2624).

Examples of crimes obligating such punishments and/or blood, money include premeditated killings, mistaken killings, bodily assaults etc.

## 3. Ta'zeer

*Ta'zeer* is a discretionary punishment inflicted over the person as the result of a sin for which there is no *hadd* (determined punishment) in *Qur'an* and *Sunnah*. If a criminal is punished for a crime obligating *hadd* or *jinayaat*, then a specified punishment is given to him and he is not charged with any *ta'zeer*. However, if the *Qur'an* and *Sunnah* do not explicitly

mention punishment for a crime, then such offences are punished with *ta'zeer*. Therefore, *ta'zeer* is the punishment of those sins for which there is neither any *hadd* nor *kaffara*. For instance, *Shari'ah* has designated a specific punishment for bodily assaults; therefore, such crime will not lead to *hukm* of *ta'zeer*. Moreover, the *Qadhi* (judge) implements the *hukm* of *ta'zeer* according to the nature of crime based on his *ijtihaad* (understanding the reality and extraction of *hukm shari'i* accordingly from *shari'ah* evidences). However, *Qadhi* or *Khaleefah* cannot adopt whatever punishment he desires because *Shari'ah* has made certain punishments impermissible, such as punishing with burning through fire etc. However, certain portion of *hudood* or *jinayaat* can be prescribed as *ta'zeer*.

*Ta'zeer* is different from other punishments because the person charged with *ta'zeer* can be pardoned by the State or his term can be reduced whereas in case of *hudood* or *jinayaat*, there is no pardoning by the State. Because *hudood* and *jinayaat* are inflicted due to violating the right of Allah (swt) and human beings respectively, the State or *Qadhi* cannot pardon the criminal on behalf of Allah (swt) and humans. Therefore, the crimes obligating *hudood* and *jinayaat* are punishable without any recourse. However, in case of crimes entailing *ta'zeer*, such as accusing the *Khaleefah* of wrong doing etc, the State can reduce and even pardon the criminal.

The *hukm* of *ta'zeer* is identified through *Qiyaas* (process of deductive analogy) according to the nature of the crime. The address of the Legislator (swt) gives the *qareena* (indication) about the intensity of the *qabeeh* action according to which punishment is deduced. Moreover, the adoption and implementation of such punishments require thorough understanding of the reality and are based on '*illah* (legislative reason) associated with "deterrence (from *haraam*)" as Allah (swt) revealed, ﴿وَلَكُمْ فِي الْقِصَاصِ حَيَوةٌ﴾ **"And there is (saving of) life for you in retaliation."** (TMQ 2:179). Few examples of *ta'zeer* are as under:

1. If a person attempted to rape but, as a result of some barrier, did not reach the limit of intercourse as required for *hadd*, he would be punished with *ta'zeer* of three years prison along with reduced number of lashes and exiled. This is because he would have done a *haraam* action obligating *hadd* had there been no barrier, and since the *qabeeh* action did not reach the level of *had*, the criminal is charged with *ta'zeer*.

2. Selling of obscene literature, video, audio and related services are punishable with six months prison.

3. If a person consumes intoxicant other than alcohol, such as hash or drugs, then he is punishable with lashes and five years prison along with fine.

4. If a person, having proper knowledge of the fact, buys any property or article which is usurped or stolen, then he is punishable with imprisonment for a period ranging from three months to two years along with the obligation to compensate the aggrieved.

5. If a person, with the intent to conspire against the unity of the Islamic State, promotes *asbiy'yah* (nationalism), then he is punishable with imprisonment according to intensity of the crime for a period ranging from five to fifty years.

#### 4. Mukhalafaat

The *Shari'ah* has designated those punishments as *Mukhalafah* which are inflicted due to violating the *hukm* (order) of *Imam* (*Khaleefah*). Because the *Shari'ah* has allowed the *Khaleefah* to adopt laws for *mubah* (permissible) matters, such as traffic rules which fall under State administration, based on consultation with experts or the *Ummah* council, it is imperative that violation of such laws is also penalized. As such, violation of an administrative law is disobedience to *Imam*. Similarly, disobedience to *mu'awineen*

(assistants of the *Khaleefah*) is also disobedience to *Khaleefah* because the *Khaleefah* charged them with the orders for implementation of Islamic laws. Allah (swt) made obedience to *Khaleefah* obligatory as He (swt) ordered, ﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولَى الْأَمْرِ﴾

﴿مِنْكُمْ﴾ **“O you who have believed, obey Allah and obey the Messenger and those in authority among you.”** (TMQ 4:59), meaning listen and obey those who are granted authority by the *Ummah*.

Further, obedience to an *Ameer* who is duly appointed by the *Khaleefah* is also obligatory on Muslims, as Rasulullah (saw) ﷺ informed, «من أطاعني فقد أطاع الله، ومن يعصني فقد عصى الله، ومن يطع الأمير فقد أطاعني، ومن يعص الأمير فقد عصاني» **“Whosoever obeys me, obeys Allah; and he who disobeys me, disobeys Allah; and whosoever obeys the Ameer (leader), in fact, obeys me; and he who disobeys the Ameer, in fact, disobeys me.”** (Bukhari / Muslim). However, such obedience is only in *ma’roof* (good) and not in *munkar* (evil) as He (saw) said, «إِنَّمَا الطَّاعَةُ فِي الْمَعْرُوفِ» **“Obedience is required only in what is good.”** (*Sahih al-Bukhari* 7145).

It is evident that abiding by the orders of the *Imam* is conditional upon implementation of Islamic laws by him and not in case of *Kufr* laws. Thus, disobeying the orders of the *Khaleefah* is an offense (violation) which entails punishment according to the judgment of the *Qadhi* of the Islamic State. Some *Fuqahaa’* (Islamic jurists) have included such punishments in *ta’zeer* and not as a separate category. However, the classification distinguishing *ta’zeer* and *mukhalafaah* is more sound: the former are inflicted due to violating the commands of Allah (swt) directly whereas the latter result from violating the orders of the *Khaleefah*.

It is essential to understand that orders issued by the *Khaleefah* are solely the adoption of *akhaam* and not the legislation of such *ahkaam* on his own because it is *haraam* for the *Khaleefah* to adopt anything but *Shari’ah*. As for the *mubah* matters, such as security measures for *bait ul-maal* (State treasury), construction of cities and planning of army troops etc., these are left for the *Khaleefah* to decide based on consultation. This is deduced from an understanding of the hadith, «أَنْتُمْ أَعْلَمُ بِأَمْرِ دُنْيَاكُمْ» **“You have better knowledge (of a technical skill) in the affairs of the world.”** (*Sahih Muslim* 6128). It means *mubah* matters which require knowledge and skill of (worldly) things can be dealt with human’s own conscience and experience of the reality as they progress. Similarly, *Khaleefah* can adopt laws to address such issues which fall under administration and he can also fix punishments for violation of his administrative orders.

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