

The Concept of Crimes and Punishments in Islamic Political and Legal Systems

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Abstract

It not very difficult to understand the Islamic political and legal system, because they are not difficult and complicated in nature. We know that without security and stability, the welfare and development of the people is impossible. In this research article, we try to make it simple to understand the Political and legal systems of Islam by drawing the comparison between the two systems--- the Islamic system and the Western system. The qualitative method of research is used to describe the comprehensive study of the Islamic legal system. The data is attained from the reliable sources. This research article will provide the proper and complete guideline to the researchers and the students of the Islamic law and the Political science as well.

Key Words: *They Islamic Political System, crimes, punishments, Haddood, Tazir*

Introduction

It is a core belief that the form of government in Islam envisaged by Quran is a constitutional republic and the Quran provides fundamental principles in framing the constitution. Islam condemns pure democracy, constitutional theocracy and any type of monarchy. It is manifest that in republic the power of the majority is limited and the man-made constitution derived from the collective human wisdom is supreme and above all. But in Islamic republic, the power of the majority is limited and the constitution derived from Quran is supreme and unchallengeable. The Khalifa is the head of the Islamic state who follows the Islamic constitution and laws derived from Quran and Sunnah and interpreted by the supreme judicial institution of the Islamic state. The political system in Islam is categorized into three main sub systems such as:

- 1) Legislative system
- 2) Judicial system
- 3) Administrative system

The Islamic state ruled under the final authority of the supreme judicial institution wants submission of its people to the Islamic laws for the purpose of safety and security of the people and the state as well. In this regard, the Quran says that those who submit to Allah and follow his guidance will have no fear and no grief. Another goal of the Islamic laws is the human development; welfare and prosperity because according to Quran, the obedience to Allah (rules and laws) leads people to their Falah (welfare and prosperity). So, the basic principle of Islamic ideology is that the Islamic republic has desire to establish a society wherein every individual must get an "opportunity to initiate" for the prosperity and welfare of the people and the ultimate goal of the society is to provide peace and security to every individual. While peace and security are impossible devoid of justice. Justice is the stamp of prophets of Allah and the key objectives of the divine laws were to maintain justice. The key requirement of the justice is that the justice must be meted out with impartiality and without favoritism because all are equal in the eyes of Islamic laws (Shariah). Fairness and equality are the fundamental principles of the Islamic polity. There is no distinction among the poor, the rich, the Khalifa, and the subject before the Islamic law (Shariah). Moreover, the Quran consolidates the concept of justice (Idl) with

the concept of Ihsan. However, in the light of the concept of justice and equity, every person bears the responsibility of the consequences of his actions. So far as a crime is concerned, it is inevitable in human society because human beings violate code of conduct prescribed for the members of the society. According to some sociologists, crime to some extent promotes social solidarity among the people establishing the society. Durkheim(1972) elaborated the inevitability and universality of the phenomenon of crime., He wrote:

“There is no society that is confronted with the problem of criminality. Its form changes, the acts thus characterized are not sure everywhere, but everywhere and always there have been men who behaved in such a way as to draw upon themselves penal repression. To classify crime among the phenomenon of normal sociology is not to say merely that it is inevitable, although regrettable phenomenon, due to incorrigible wickedness of men, it is also to affirm that is a factor in public health, as integral part of all healthy societies.”

However, the religious history tells us that crime begins from the history of man when Kabeel killed Habeel, it is regarded as the first crime in the history of mankind. Basically, crimes were considered as private matters. History tells us that the individual who committed crimes, even their families, were punished in retaliation. The concept of retribution is also visibly found in early laws. The code of Hammurabai (1900B.C), the Roman tablets of laws (450 B.C), Mosaic code prevalent in the early Greek society and laws of Tacitus (98 A.D) were framed on the basis of retribution to give personal justice. Later the legal concept of crime developed when the king, head of the state, realized that the king would take action against the wrong doers and the individual who was wronged should report the king. This was demise of the private revenge. Gradually, the system of payment of compensation took place and the system of imposing fine developed to compensate the owner of the stolen cow. In modern state system, the sociologists and jurists made many legal and non-legal definitions of crime because modern criminal justice system is based on the legal approach. Tappan(1916) defied crime in comprehensive way and gave legal definition of it. He defined crime as:

“Crime is an intentional act or omission in violation of criminal law committed without defense or justification and sanctioned by the state as a felony or misdemeanor.”

It is admitted fact that a person is not punished his thoughts. Similarly, in Islamic school of thought, an individual cannot be punished for thinking about committing a crime and until action in practical is done .no crime is said to have been committed. But Mens Rea, criminal intent is necessary to determine whether an act is or is not a crime. The prophet (PBUH) says:

“(the reward of) deeds depend upon intentions and every person will get the reward according to what he intends.”

Recently American law institute described the four tiers of culpability such as:

- 1 purposely
- 2 knowingly
- 3 recklessly
- Negligently

The model penal code elaborates “crime as a person is not guilty of an offence unless he acted purposely, knowingly, recklessly, or negligently. Kenny (2016) argued that every crime includes three characteristics such as:

- (1) it is a harm brought about by human conduct and the sovereign desires to prevent it.
- (2) The threat of punishment is one of the measures of prevention selected
- (3) The legal proceedings are employed to decide whether the act of the accused person cause harm or not. If it causes harm the accused person, according to law, .is to be held punishable for doing so. Keetan (1949) described three main types of standards to define crime which are as under:

- 1 Public injury.
- 2 Mens Rea Test
- 3 Sanctions test

Black - Odgers (1911) defined crime on the basis of the first standard as a wrongful act of such a kind that state deems it necessary in the interest of public to repress , for its repetition would be harmful to the community as a whole . Holdsworth (1903) argued that any illegal act of a person does not constitute crime unless it is performed with a criminal mind. By this way, he defined crime on the basis of second standard elaborated by Keeten. Kenny (2016) again defined crime on the basis of the third standard. He defined as “a wrong whose

sanction is preventive, land is in no way remissible by any private person, but in remissible by the crown alone, if remissible at all.” Austin and Stephen (1859) described crime as “an act or omission that the law punishes.” Mercier (1919) viewed crime as “a crime is an act of which criminal legislation prescribes sanction aimed at protection of society, which includes the offender.” Blackstone stated “crime is an act committed in violation of a public law forbidding or commanding it.” He argued that public law expresses public rights and duties due to the whole community. On the other hand, the Islamic law described five fundamental values such as:

- 1 Faith
- 2 Religion
- 3 Life
- 4 Property
- 5 Honor.

Shariah considers crime, ‘an act or omission of an act occurs against each these fundamental values.’ Al-Mawardi defined as: “unlawful acts for which punishment have been provided (directly or indirectly) by God either fixed or discretionary”. According to the above-mentioned definition of Al-Mawardi, a crime is only violation of the law prescribed by Shariah. Muslim scholars used the words ‘Al- Jarimah’ and ‘Al – Janiayah’ for crime. Abdul Qadir Audah described crime in the following words. “A crime is the commission or omission of an act which is forbidden by the shariah and punishment is recommended for it”. This definition consists of three parts such as:

- 1) Commission or omission of an act
- 2) Violation of shariah.
- 3) Prescribed punishment.

It means that a crime is clearly violation of shariah i-e Quran, Sunnah and Ijma. However, the Islamic law focuses on two types of violations such as:

- 1) Express violation
- 2) Implied violation.

The clear violation of the text of shariah known as express violation and the violation of the laws and rules of the Islamic state framed for the welfare, development and prosperity of the general public is known as the implied violation.

Punishments and kinds of punishments

Punishments are necessary to maintain the administration of justice, peace and tranquility in the society. It prevents the powerful people and wrong-doers from usurping the natural rights of the poor and weak segment of the society. If the competent authority or the head of the state or the administrative system of the state fails to implement punishments, the injustice and “The law of the jungle” will prevail in the society. During various dynasties in history, the competent authorities, the rulers and the kings protected the lives, property and rights of the people and they put the wrong-doer to punishments in order to avenge the revenge of victims at state expenses because the state was responsible to safeguard its subjects. There are various types of punishments and most punishments are similar to each other in different periods of history. However, punishments are mainly divided into two categories in accordance with the Roman criminal law.

- 1) Capital punishments.
- 2) Non capital punishments.

Capital punishments

It includes death punishments and other type of punishments adopted and executed in different crimes.

(i) Death punishments.

- 1) Crucifixion of slaves
- 2) Burning
- 3) De capitation
- 4) Burying alive
- 5) Fight with wild beasts

(ii) Deprivation of freedom of life.

(iii) Forfeiture of citizenship.

Non -Capital punishments

- 1.Relegatio (transportation for life or for a lesser to an island)
- 2.Exilium (restriction to a particular place)
- 3.Deportio (transportation with confiscation of property)
- 4.Corporal punishment (flogging or beating with sticks)
- 5.Imprisonment (for a specific time)
- 6.Degradation of rank
- 7.Fines
- 8.Suspension from practice

Objectives of Punishments

Deterrent Punishments.

Basically, punishments are deterrent. Its object is to suppress crime by making an offender an example and warning to call.

Preventive Punishment

Secondly, punishment is preventive or disabling. Its primary objective is to deter by fear and the second objective is to prevent a repetition of wrong doing by disabling the wrong doers.

Reformative / Curative Punishment

Thirdly, punishment is reformative. It is said that offences are committed through the influence of motives upon character, and may be prevented either punishment the character of a casual offender is changed.

Retributive Punishment

Fourthly, the objective of the punishment is retribution. By adopting this approach, the young and first offenders are given the concession of probation and parole. The prisoners are rendered the incentive of remission if they have changed their conduct and character. These methods are adopted so that the prisoners can be transformed into better citizens.

Division of punishments in Islam.

In Islamic penal system, punishments are classified into various categories on the basis of the nature of the crime.

1.Original Punishments

Some punishments such as retaliation for murder, hundred lashes (flogging) or Rajm for adultery and amputation of hands for theft are fixed by shariah and no king or no parliament or no government can change or annul these punishments.

2. Substitutory Punishments

There are some punishments in Islam which are awarded as a substitute for original and primary punishment. Blood money as a substitute for Qisas (death punishment) may be awarded on the account of technical hitch. In this case, the crime of murder is originally liable to the two fixed punishments. The replacement of Qisas becomes inevitable if legal heirs of the murderer are agreed upon to receive the Blood money. However, the punishment of Hadd or Qisas is suspended and the substitution takes place.

3.Dependent and Derivative Punishments

Some punishments are awarded only in cases where criminal has committed an offence, subject to the imposition of original punishment. In cases the nature of the crime attracts the infliction of the original punishment but due to some technical and legal reasons, the original punishments are suspended and derived punishments are awarded in place of it. These punishments are not independently conceived.

4.Completive Punishments

These punishments add anything substantial to the original punishments but they only contribute to the completion and effective materialization of their objectives.

5.Invariable Punishments

However, some punishments are invariable because they are unchangeable and the state cannot possess any authority to increase or decrease it quantity.

6.Invariable punishments;

In addition to invariable punishments, some punishments are variable and changeable. Therefore, the punishments are categorized on the account of the heinousness of the criminal element. The quantity of

punishments can be increased and decreased on the basis of the proportion of the revulsion generated by the crime. In this case, the state possesses the discretionary authorities.

7.Obligatory Punishments

In the case of some crimes, if proved, the execution of the punishment is obligatory on the state devoid of any alteration and substitution. In Islam some punishments involve an element of selection and option. For example, various punishments are prescribed for the same crime and the court has an option to select with anyone of these or any two of them jointly. No doubt, the selection depends on the gravity of a criminal act. For instance, in the cases of robbery, dacoity, sedition and rebellion, the holy Quran prescribed four punishments which are as under

- 1) Decapitation
- 2) Execution of hanging
- 3) Execution of imputation of hands and feet of opposite sides
- 4) Imprisonment and Transportation.

It is the discretionary power of the court to opt either of these four or a combination of two of them.

The Code of Islamic Penal Law

Islamic law is created by Almighty Allah. It is complete, comprehensive and permanent and free from all lacunae and shortcomings. It is unchangeable and not subject to all alterations and amendment. It is pertinent to know that the Islamic law requires that the society must be shaped in accordance with the order and injunction of Almighty Allah and the Holy prophet. The Islamic criminal system is based on the theory that there are two parts of punishments i-e the fixed part of the punishments named as Hadd and unfixed part of punishments named as Tazir. Ibn -Abdin () in Radd – ul -Mukhtar argued that the Hadd means the punishments like beating ,cutting of hand , stoning to death or(Qisas) prescribed by Quran, Sunah and Ijma.

Offences of Hadd .

1 Adultery

The first Quranic verse which deals with the punishment of adultery is:

“Punish those men who are guilty of unbecoming conduct, but if they repeat and amend themselves, then leave them alone.”

The Hadd of Adultery committed by the married male and female is determined by the Holly Prophet. The Quran states:

“Confront those women who are guilty of unbecoming conduct to four witnesses. If they bear witness (and establish the commission of crime), then confine the women to their houses till they die or God provides for them some way out”.

In the third verse, the first two punishments of adultery were repealed. Finly, the punishment of hundred lashes was prescribed. The Quran says:

“Flog the adulteress and the adulterer, each one of them, with a hundred stripes.”

2.Slander.

The word Qazf means to ‘throw anything’

The Holy Quran has prescribed eighty strips as a punishment for the slander.

“The penalty of those who accuse chaste women of adultery and then bring not four witness is flogging with eighty stripes. Do not admit their evidence afterwards for surely they are transgressors.”

So, the Quran establishes the Hadd of eighty stripes for slander.

3 Theft.

Theft is defined as;

“Theft is stealing anything from the custody of anybody else surreptitiously.”

The punishment of theft is based on the Quranic verse:

“Cut off the hands of the man who steals and of the women who steals in retribution of their offence as an exemplary punishment from Allah. Allah is mighty, wise.”

4 Robbery and Dacoity.

Robbery (Al- Harabah) is defined as ‘when any one or more persons sufficiently equipped, make show of force for the purpose of taking away the property of another and attack him or cause wrongful restraint or put fear of death in him or hurt such person or persons, it is called Al – Harabah .” Hadd of robbery and dacoity is prescribed in Quran as:

“Certainly the punishment of those who fight against Allah and His message and are actively engage in creating disorder in the land is that, they should be decapitated or their hands and their feet be chopped off on alternate sides or they should be placed under arrest or expelled from the land.”

5. Drinking

The prohibition of drinking was revealed in gradual process. In the first place, the Quranic verses discourage and prohibit drinking.

‘They ask you about drinking and gambling. Tell them there is great harm in both and also some profit for people, but their harm is greater than their profit’.

In the second place, the drinking was disapproved on the account of its harmful intoxicating effects.

“O believers, you should not approach prayer when you are not in full possession of your mental faculties, until you realize the true import of your supplication.”

In the third place, the Quran expressly declared the prohibitory aspects of drinking and gambling and places them at par with the acts of shirk.

“O believers, drinking, gambling, idols and dividing arrows are but abominations. So turn wholly away from each one of them so that you may prosper. Satan desires only to create enmity and hatred between you by means of drinking and gambling and to keep you from the remembrance of Allah and from prayer. Will you, then, desist (from these act)”.

There is complete consensus on the issue that drinking is liable to Hadd. Imam Abu Hanifa, Imam Malik, Imam Ahmad Bin Hanbal and Jafri jurists accepted the view that the Hadd of drinking is 80 (eighty) stripes.

6 Apostasy.

Apostasy means Irtidad and Irtidad is known as “giving up and deviating from Islam.”

Apostasy is liable to Hadd and its Hadd is death sentence. The Quranic verses support it.

” But if they break faith after pledging it and ridicule your religion, then decapitate the leader of disbelief so that they may be restrained from this act, for they have no regard for their pledged word”.

In this regard, the Holy Prophet said:

“whosoever changes his religion (of Islam), and deviates from it , award him the death sentence.”

7. Sedition

Sedition is regarded as a heinous crime and liable to Hadd. The Holly Quran also regards it as a crime more dangerous than murder. In this regard, the Holy Quran states:

“Discord is more dangerous than murder”.

Many times, the Holy Prophet explained the legal consequences of sedition. He said:

“Anyone who takes up arms against us is not from us.

Qisas

Qisas is controversial among the Muslim jurists. According to some Muslim jurists, it is included in Hadood while other jurists have excluded it from Hadood. This punishment is prescribed by the Holy Quran for the crime of murder in the form of death sentence in order to balance the crime and punishment. The Holy Quran states:

“O believers, equitable retribution in matter of the murdered in prescribed for you, exact it from if he is the offender, from the slave if he is the offender and from the women if she is the offender. If the offender is granted some remission by the heir of the murdered, the agreed penalty should be equitably exacted and should be handsomely discharged. This is alleviation from your Lord and a mercy. Whoso transgresses thereafter, for him there is a grievous chastisement. There is safeguarding of life for you in the law of retribution. O men of understanding that you may have security.”

It is mentioned in the above verses that Allah has framed this law on the basis of equity and equality. The Islamic law describes the five kinds of murder such as;

- 1) Qatl –I - Amd. amounting to murder
- 2) Qatl –I - Amd not amounting to murder
- 3) Qatli – i- shibhi – amd
- 4) Qatli – i- Khata
- 5) Qatli -bis -sabab.

The Quran prescribed this punishment with reference to Tourat.

“And we made this law obligatory on them in case of murder that life should be taken for life”.

Diyat

The punishment of Qisas is also substituted with blood money. This provision of law was not found in revealed laws of Bani Israil. In this regard, the Quran states;

“There was the provision of Qisas in the laws of Bani Israil but there was no concept of blood money among them”.

First of all, the Quran gives the original light of Qisas to the heirs of murdered.

“Whoso was murdered unlawfully surely we have vested the right (to demand or forgive the Qisas) in his legal heir”.

But the main question is,” what is the specification of Diyat -I – Mughallazah (exorbitant) blood money.

The Holly Prophet said:

“Be sure that the blood money in qatal -I – khata and qatal -i- shabha -ul -amd is hundred camels”

Ta’zir

The most prominent Islamic scholar and jurist, Al-Mawardi defines Tazir as:

“Punishment inflicted in cases of offenses for which the law (Shariah) has not enacted written penalties. The rules relating to it differ depending upon who is inflicting it and upon whom it is inflicted. It has this point in common with written penalties it, too, is means of reprieve and reprimand which varies with the nature of the offense: however, it differs from them in other respects.”

Conclusion.

The whole Islamic political system is based on this Quranic verse;

“O Yee, believe, obey Allah, obey Prophet and those who are in authority”.

According to the legislative system of Islam, the constitution and laws are framed in the light of Quraan and Sunnah because the Quran emphasis on the importance of Shurah Bena Hum. In judicial system, the supreme judicial institution (the supreme court) interprets the constitution and laws in accordance with the sayings of the Holly Prophet, and Sunnah. Accordingly, the administrative system consists of the caliphate (Khalafat) and the public administration which run the Islamic state and implement the Islamic laws for the welfare and the betterment of the people . In Islamic legal system, crime is not considered to be performed unless the Shariah or the laws of the Islamic state are transgressed. While in secular legal system, the crime is deemed to be committed when the laws framed by the parliament and implemented by the secular government are violated. The secular laws are variable laws in nature. Similarly, in western laws, the offence of murder is not compoundable at any cost but in Islamic laws the offence of murder is compoundable by legal heirs of the murdered. However, such type of distinctions between the Western legal system and the Islamic legal system are due to their different assessment of human nature. The basic concept and structure of punishments in both systems is totally different. Since Islam believes in essential and inherent good nature of man. Undoubtedly, Islam gives an opportunity to the offender to change himself and become the good citizen of the state. Therefore, the mild punishment is awarded in the first place. In the nutshell, the objectives of the Islamic punishments are to safeguard the society from the mischief of the wrong doers.

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