



CAPITAL PUNISHMENT IN ISLAM

An Analytical Study of 'Uqūbāt

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Abstract

Sharī'ah is principally based upon the benefit of the beings. That is why it holds that originally and essentially all beneficial actions are legitimate; all harmful ones illegitimate. Justice being the fundamental principle existing in every commandment of the Sharī'ah, its every rule bears witness to this generalization when it takes into consideration human nature and its general weaknesses and basic needs. The most essential divine attributes 'al-Raḥmān' and 'al-Raḥīm' signify extreme divine love which Allāh, the Creator, has for His creation. Hence the Sharī'ah law He has revealed must be based upon the principles of justice. As justice is central to each and every commandment of the Sharī'ah, this paper aims at highlighting not only the punishments prescribed in the Sharī'ah against crimes but also how these punishments are just and most effective in eradicating crime from the society.

Key Words - Sharī'ah, Justice, Islamic law, Punishment, Ḥadd, Qisās, Ta'zīr

1. INTRODUCTION

Islam has given perfect way to justice and welfare in favour of mankind by taking human needs and weaknesses into consideration and also by laying down the foundation of *Sharī'ah* on the welfare of common man. They constitute the prime values whose actualization is desirable in order to materialize the purpose of creation¹ and aim at preserving: (i) Life (ii) Progeny (iii) Property (iv) Honour (v) *Dīn* (Religion) (vi) and reason or rational knowledge. in the Islamic *Sharī'ah* "the murder of an individual is a crime against the whole community, or rather humanity."² On the other hand saving a life from unjust murder is a service to the humanity as if the whole humanity has been saved from injustice and peace and security has been safeguarded.

Not only this but even killing of the yet unborn fetus is prohibited: Once a woman killed another woman with a stone. She was pregnant and her fetus also died with the blow. This case was brought to the holy Prophet (*Sallallāhu 'alayhi wa sallam*). He decided that the killer woman should pay the *diyāh* (blood money) against the fetus by setting free a slave (male or female) and the *diyāh* of the slain woman should be paid by the killer's family members, her heirs and her son.³

Allāh (may He be Exalted) says:

وَلَا تَقْتُلُوا أَوْلَادَكُمْ حَشِيَّةَ إِمْلَاقٍ نَحْنُ نَرْزُقُهُمْ وَإِيَّاكُمْ إِنَّ قَتْلَهُمْ كَانَ خِطَاً كَبِيرًا

(Al-Qur'ān, Al-Isrā' 17:31)

“Kill not your children for fear of want: We shall provide, sustenance for them as well as for you. Verily the killing of them is a great sin.” (17:31)

Thus, infanticide for economic reasons, as was the practice of the Pagan Arabs especially, has been strictly prohibited by Islam as *Harām*. It is in Bukhārī and Muslim that Allāh’s Messenger (*Sallallāhu ‘alayhi wa sallam*), when asked by ‘Abdullāh b. Mas‘ūd about the grave sin named killing of children for fear of poverty as one of them (grave sins).⁴

2. ‘UQŪBĀT IN ISLAM

Islam classifies ‘*Uqūbāt* (punishments) in three ways: (i) *Hadd* (ii) *Qiyās* (iii) *Ta‘zir*

2.1 HADD (PI: HUDŪD)

In Arabic *hadd* means “limit” (which separates one thing from another or stops one thing from intruding into another).⁵

In the *Sharī‘ah hadd* is a punishment prescribed for the violation of *huqūq-Allah* (rights of Allah)⁶

Only those punishments are included in *hadd* which are fixed by the holy Qur’ān or the Messenger (*Sallallāhu ‘alayhi wa sallam*).⁷ Therefore those punishments against which *hadd* has been fixed are only six:

(i) theft (ii) dacoity (iii) fornication (iv) slandering chaste women (v) drinking of liquor and (vi) apostasy.⁸

Out of these six, ‘*Uqūbāt* (punishments) against (i) to (iv) have been prescribed by the holy Qur’ān whereas *hadd* against (v) and (vi) has been fixed by the *Sunnah*.

The holy Qur’ān prescribes cutting off of hands in case of theft, execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land in case of dacoity; flogging (for unmarried male or female) and stoning to death (for married male or female) in case of adultery; and flogging with eighty stripes and rejecting the offender’s evidence ever after in case of slandering chaste women (and men).

Allāh commands thus:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا نَكَالًا مِنَ اللَّهِ

(Al-Qur’ān, Al-Mā‘idah 5:38)

“As to the thief, male or female, cut off his or her hands: A retribution for their deed and exemplary punishment from Allah.” (5:38)

إِنَّمَا جِزَاؤُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ (2)

(Al-Qur’ān, Al-Mā‘idah 5:33)

“The punishment of those who wage war against Allah and His Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land.”⁹ (5:33)

الرَّانِيَةُ وَالرَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ (3)

(Al-Qur’ān, Al-Nūr 24:2)

“The woman and the man guilty fornication flog each of them with a hundred stripes.”¹⁰ (24:2)

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ (4)

(Al-Qur’ān, Al-Nūr 24:4)

“And those who launch a charge against chaste women, and produce not four witnesses (to support their allegations), —flog them with eighty stripes; and reject their evidence ever after: for such men are wicked transgressors.”¹¹ (24:4)

(5)

من بدل دينه فاقتلوا

“One who renounces his religion (Islam), kill him.”¹²

(6) Abū Sa‘īd says that Rasūlullāh (*Sallallāhu ‘alayhi wa sallam*) beat the drinker of wine with forty *darbāt* (strokes). Umar changed it into forty lashes and later when this crime increased, he accordingly increased the punishment to

eighty lashes after duly consulting the *Sahābah*. Keeping in view the difference of opinion among the *fuqahā'* (Jurists) regarding the number of lashes, it can be said, as also stated by 'Alī, that eighty lashes is the *hadd* prescribed by Umar with the consent of the *Sahābah*.¹³

2.2 QISĀS

Like *hudūd*, *qisās*, punishments are also fixed in the *Shari'ah* with the difference that while *hudūd* are prescribed against the violation of *huqūq*-Allah, *qisās* concerns *huqūq al-'Ibād*.¹⁴

In fact *qisās* is an equivalent punishment against an offence against private rights. Allah (may He be Exalted) says:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ، الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَىٰ بِالْأُنثَىٰ

(Al-Qur'ān, Al-Baqarah 2:178)

“O ye who believe! The law of equality is prescribed to you in cases of murder: the free for the free, the slave for the slave, the woman for the woman.” (2:178)

Those crimes for which *qisās* is prescribed include murder (deliberate) and causing harm to human body. The holy Qur'ān commands further:

وَكُتِبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ

(Al-Qur'ān, Al-Mā'idah 5:45)

“We ordained therein for them: life for life.” (5:45) الْقَتْلُ فِي الْقَتْلِ

(Al-Qur'ān, Al-Banī Isrā'īl 17:33)

“And if anyone is slain wrongfully, We have given his heir authority (to demand *Qisās* or to forgive): but let him not exceed bounds in the matter of taking life.” (17:33)

النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصًا

(Al-Qur'ān, Al-Mā'idah 5:45)

“Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and would equal for equal.” (5:45)

2.3 TA'ZĪR

The literal meaning of *ta'zīr* is helping somebody out of respect for him.¹⁵

Technically *ta'zīr* concerns those punishments which are not fixed by the *Shari'ah* but it remains upto the concerned authorities (the state, or the judicial magistrate etc.) to give a suitable punishment for a particular case.¹⁶ In case of those offences where no punishment has been fixed, (i.e., such cases are neither covered by the *hadd* nor the *qisās*) “or where, though the penalty is appointed but could not be imposed because of doubt, and non-imposition is likely to produce mischief, then the judge (Imām) shall have to act according to his own conclusions reached after due thought and reflection. Circumstances or affairs are of an infinite variety, hence, action according to one's own conclusions is definitely preferable.”¹⁷

Legally speaking, *hadd* expresses the correction appointed and specified by the *Sharī'ah* on account of the right of God, and hence the extension of the term *hadd* to *qisās* (retaliation) is not approved, since the later is due as a right of man, and not as a right of God; and in the same manner, the extension of *qisās* to *ta'zīr* (or discriminatory chastisement) is not approved, as *ta'zīr* is not specified or determined by any fixed rules of law, but committed to the discretion of the *Qādī*.¹⁸

In Islam the concept of punishment is related to faith and conscience, in its interaction with the belief of punishment in the life hereafter, the heavenly reward for abstention from wrongdoing and because punitive measures include repentance.

The punishment, therefore, aims at crime prevention, deterrence and rehabilitation.¹⁹

The holy Qur'ān in clear words brings forth the reality that faith in God's absolute Justice on the Day of Judgment can prove to be the most effective deterrent against crime:

وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاءُ جَهَنَّمَ خَالِدًا فِيهَا وَغَضِبَ اللَّهُ عَلَيْهِ وَلَعَنَهُ وَأَعَدَّ لَهُ عَذَابًا عَظِيمًا

(Al-Qur'ān, Al-Nisā' 4:93)

“And he who kills a believer willfully, he requital is Hell as an abider therein, and Allah shall be wroth with him and shall curse him and shall prepare for him a torment terrible.”

(4:93)

Allāh (may He be Exalted) “not only punishes but forgives”. Since His ‘Will or Plan’ ‘is the true standard of righteousness and justice, it is His Will ‘that can really define the bounds or forgiveness or punishment.’ Hence like punishment, forgiveness also plays its own role:

فَمَنْ تَابَ مِنْ بَعْدِ ظُلْمِهِ وَأَصْلَحَ فَإِنَّ اللَّهَ يَتُوبُ عَلَيْهِ إِنَّ اللَّهَ عَفُورٌ رَحِيمٌ

(Al-Qur'ān, Al-Mā'idah 5:39)

“But if the thief repents after his crime, and amend his conduct, Allah turneth to him in forgiveness; for Allah if Oft forgiving, Most Merciful.” (5:39)

That is because the original design in the institution of punishment is not to legitimize widespread killing and “barbarity” in the name of law but to stop people from the commission of offensive actions. “And the absolution of the person punished is not the original design of it as is evident from its being awarded to infidels in the same manner as to Muslims.”²⁰

Faith and belief also plays its role in preventing and controlling crime in society when the *Sharī'ah*, while on one hand takes every step to discourage crime and punish criminals, encourages doing of commendable deeds on the other, thereby helping to build up a just and peaceful order:

مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا

(Al-Qur'ān, Al-Mā'idah 5:32)

“Whoso kills a person, except for a person, or for corruption in the land, it shall be as if he had killed all mankind, and whoso brings life to one, it shall be as if he had brought life to all mankind.” (5:32)

One may ask that *'Uqūbah* (punishment) in Islam cause great harm to the offender and in case of *qisās*, it not only puts the offender to trouble but also (in murder cases) decreases a member from the whole human society. Hence, by their nature, the *'Uqūbāt* in Islam seem to have been designed for causing harm to mankind.

In response to the above argument, it is pertinent to know as to why the criminal should be punished. Two reasons can be there for which a criminal should be punished:

- I. by violating *huqūq-Allah* (private rights) or *huqūq al-'Ibād* (public rights), a criminal commits injustice against the individual as well as the society. For example, by taking an innocent life, a murderer not only commits injustice against the individual he has murdered but also with the society of which the later was a member.
- II. if the criminal is left unpunished, it will amount to harming the whole society. That, in other words mean; the killer's death is the society's life. The holy Qur'ān testifies:

وَلَكُمْ فِي الْقِصَاصِ حَيَوةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ

(Al-Qur'ān, Al-Baqarah 2:179)

“In the Law of Equality there is (saving of) life to you. O ye men of understanding; that ye may restrain yourselves.” (2:179)

Explaining how *qisas* restrains from crime, A. M. Daryābādī writes:

“The knowledge of the Law of retaliation restrains from intentional slaughter or culpable homicide and so is a source of life to two persons. Islam, the ideal-practical religion of humanity, does fully recognize the need of a law of retaliation, in sharp distinction from an unqualified *justalionis* which makes endless every affair when once it has been started, and which is at best suited only to the savage stages of society.”²¹

But for the institution of *‘Uqūbāt*, a criminal would always roam freely fulfilling his nefarious designs without any fear of being punished in the same manner he committed the crime. Thus, a mere imprisonment for some time for the crime of murder does not serve the purpose of law as the criminal, after suffering the imprisonment, comes out jail. This may at times raise strong feelings of hatred and vengeance among the heirs of the murdered, giving, in turn, rise to an unending chain of murders and counter murders. However, *qisās* may have its own limitations. Therefore, though recognizing it in theory, the holy Qur’ān discourages this form of remedy in every possible way. Allāh ﷻ has, hence, allowed His stern justice to be mingled with mercy²² when after ordaining *qisās*, He says:

فَمَنْ غُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبِعْ بِالْمَعْرُوفِ وَأَدَاءُ إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ فَمَنْ اعْتَدَىٰ بَعْدَ ذَلِكَ فَعَلَهُ عَذَابٌ أَلِيمٌ

(Al-Qur’ān, Al-Baqarah 2:178)

“Yet whoso is pardoned aught by his brother, let the service be honourable and payment with kindness. This is an alleviation from your Lord and a mercy; so whoso will transgress hereafter, for him shall be a torment afflictive.” (2:178)

Thus “the whole penalty can be remitted if the aggrieved party agrees, out of brotherly love.”²³

While Islam considers the murder of an individual as a heinous crime, it also legitimizes lawful vengeance in order to meet the demand of justice and peace in society.²⁴

One import thing is that although the heirs of the murdered have every right to take *qisās*, “they can compound with the offender for money, or, if they choose, pardon him.”²⁵ But if they choose retaliation, then there is consensus that they cannot kill the murderer with their own hands, but the state may impose the punishment because it is not always easy to determine where *qisās* is actually applicable and also because there are high chances that heirs of the offended may transgress the prescribed limits of the law and may in turn become oppressors themselves.²⁶

Hence, the essence of the institution of *‘uqūbāt*, especially the law of *qisās* is insistence on justice, impartial and unalloyed, and a negation of all iniquities. No favour or partiality is to be shown in this respect.²⁷

Let us consider one more Qur’ānic *Āyah*:

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ

(Al-Qur’ān, Al-Banī Isrā’īl 17:33)

“Nor take life—which Allah (may He be Exalted) has made sacred—except for just cause.” (17:33)

This *Āyah* says that although life is sacred and it is most heinous to take any life, but a person can be killed if the cause is just. That means if a person kills any other person or spreads *fasād* in the land (5:32), he can be killed in retaliation and also for mischief itself becomes responsible for the loss of so many lives. The holy Qur’ān testifies:

وَالْفِتْنَةُ أَشَدُّ مِنَ الْقَتْلِ

(Al-Qur’ān, Al-Baqarah 2:191)

“Tumult and oppression are worse than slaughter.”²⁸ (2:191)

Thus, the law has every reason to end up one mischievous life for saving hundreds.²⁹

Now, since Islam stands for equality of mankind, that is why the law of *qisās* “only takes account of three conditions in civil society: free for free, slave for slave, woman for woman (2:178). Among freemen or woman, all are equal: you cannot ask that because a wealthy; or high-born, or influential man is killed, his life is equal to two or three lives among the poor or the lowly. Nor, in cases of murder, can you go into the value or abilities of a slave. A woman is mentioned separately because her position is different. She does not form a third class, but a division in the other two

classes. One life having been lost, do not waste many lives in retaliation: at most, let the law take one life under strictly prescribed conditions.³⁰

Since punishment in Islam is not primarily fixed to harm the criminal but it aims at eradicating crime from society. True, the offender, when punished, suffers for his evil deeds, but it basically sets an example for the whole society, ‘to demonstrate that all those who dare violate the divine injunctions have to suffer severe penalties. Thus, they constitute an effective instrument for the prevention of crime, an admonition to all and a directive to the people to refrain from actions carrying divine displeasure’.³¹

So, the ‘*uqūbāt*’ have a special place in the arrangements prescribed for the smooth functioning of a just society and in fact are a means to carry out the duty of eradicating evils of every kind and variety.³²

Now, before trying to find out why such severe punishments as cutting off of hands, stoning to death etc. have been prescribed in Islam, it is adequate to mention the basic purpose of the *Sharī‘ah*.³³

Briefly, the society Islamic *Sharī‘ah* intends to establish is primarily based upon the principles of justice and peace.

In 12 Nabawiyy (the 12th year of Prophethood of Rasūlullāh (*Sallallāhu ‘alayhi wa sallam*)) was made the first *bay‘ah* of ‘Aqabah on the conditions that the people (present at the occasion) of Madīnāh:

- I. would worship Allāh alone and would not ascribe any partner to Him.
- II. would not steal nor would commit adultery.
- III. would not kill their children.
- IV. would obey Allāh’s Messenger (*Sallallāhu ‘alayhi wa sallam*) in every respect.³⁴

When Heraculius asked Abū Sufyān as to what the Messenger (*Sallallāhu ‘alayhi wa sallam*) invited them towards, he replied that he invited them to worship none but Allāh and not to assign partners to Him, not to follow their ancestors (in polytheism), to pray *Salāh*, to speak truth, to guard chastity and to strengthen kinship.³⁵

Similarly, when Mafrūq Shaybānī asked Allāh’s Rasūl (*Sallallāhu ‘alayhi wa sallam*) as to what he invited people towards, he replied: I invite people to accept that there is no god but Allāh and that I am the Messenger of Allāh. Then Mafrūq asked: what more do you invite to? In reply he recited this *Āyah* to him:

فَلْتَعَالُوا أُنْثَىٰ مَا حَرَّمَ رَبُّكُمْ عَلَيْكُمْ أَلَّا تُشْرِكُوا بِهِ شَيْئًا وَبِالْوَالِدَيْنِ إِحْسَانًا وَلَا تَقْتُلُوا أَوْلَادَكُمْ مِنْ إِمْلَاقٍ بَحْنٍ تَرَزُّقُكُمْ وَإِيَّاهُمْ تَوَلَّوْا الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَّنَ وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ ذَلِكَمْ وَصْنُكُمْ بِهِ لَعَلَّكُمْ تَعْقِلُونَ

(Al-Qur’ān, Al-An’ām 6:151)

“Come I will rehearse what Allah hath (really) prohibited you from: join not anything with Him: Be good to your parents; kill not your children on a plea of want; We provide sustenance for you and for them; come not nigh to indecent deeds, whether open or secret; take not life, which Allah hath made sacred, except by way of justice and law: thus doth he command you that ye may learn wisdom.” (6:151)

Then Mafrūq again asked: what more do you invite to? The Messenger (*Sallallāhu ‘alayhi wa sallam*) in reply recited this *Āyah* to him:

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَائِي ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَالْبَغْيِ

(Al-Qur’ān, Al-Nahl 16:90)

“Allāh commands justice, the doing of good, and giving to kith and kin, and He forbids all indecent deeds, and evil and rebellion: He instructs you that ye may receive admonition.” (16:90)

Therefore, as in the *Sharī‘ah*, there is a systematic interrelationship between its commandments with justice being central to the whole system, there can be no gainsaying the fact that the ‘*uqūbāt*’ have been prescribed for the safety and preservation of individual as well as collective social life.

Hence in punishing the criminal, the overall impact on the society caused by the crime he commits is taken into consideration.³⁶

Shah Waliyyullah maintains:

For some crimes Allāh (may He be Exalted) has prescribed *hadd*. Such crimes make very disastrous impact on society and cause *fasād* on earth. Man’s self is inclined towards such vices and (if not checked) they become his second

nature. Very often the offended person cannot keep away the harm from him.... In such crimes warning the criminals about the chastisement of the Day of Judgment is not sufficient but it needs to curse them and punish them sternly so such examples remain always before people and they may not dare commit such crimes.³⁷

That implies that the punishment itself must be so effective that the desired goal is successfully achieved. Hence effective punishments can be of two kinds:

i. those inflicting bodily pain, and ii. those inflicting psychological pain.

An effective punishment can be that containing both the aspects at the same time.³⁸ Therefore, when hand of a thief is chopped off, it gives him bodily pain, meets the plea of the oppressed with justice, on one hand, and discourages other people to the extent that for the pain and shame the punishment brings, none of them dares to commit the same crime in normal conditions.³⁹

Adultery and murder are closely related to each other. While killing of an innocent person, results in the loss of one life, adultery results in the loss of whole generation:

- I. it destroys the basis of the family
- II. illegal sexual relationships are not usually made for reproducing offspring but they are made for fulfilling lust. This results in the decrease of human population as the graph of marriages goes on decreasing.
- III. in case any number of illegitimate children survives, they don't prove beneficial for the society as they live among uncertain relations.⁴⁰
- IV. hence, it works against the interests of children born or to be born
- V. it may cause murders and feuds and loss of reputation and property
- VI. it loosens permanently the bonds of society.⁴¹

'Not only', therefore, 'should it be avoided as a sin, but any approach to temptation to it should be avoided.'⁴²

That is perhaps why the holy Qur'an surprisingly mentions murder and fornication simultaneous at many places. The following *Āyah*, for example, testify this:

وَلَا تَقْرَبُوا الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَنَ ۗ وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ

(Al-Qur'an, Al-An'am 6:151)

"Come not nigh to indecent deeds, whether open or secret; take not life, which Allah hath made sacred, except by way of justice and law." (6:151)

وَلَا تَقْرَبُوا الزَّوْجَىٰ إِنَّهُ كَانَ فَاحِشَةً ۖ وَسَاءَ سَبِيلًا ۚ 32 وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ

(Al-Qur'an, Al-Isrā' 17:32-33)

"Nor come nigh to adultery: for it is an indecent (deed) and an evil way. Nor take life—which Allah has made sacred—except for just cause." (17:32-33)

وَالَّذِينَ لَا يَدْعُونَ مَعَ اللَّهِ إِلَهًا آخَرَ وَلَا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَلَا يَزْنُونَ

(Al-Qur'an, Al-Furqān 25:68)

"Those who invoke not, with Allah, any other god, nor slay such life as Allah has made sacred, except for just cause, nor commit fornication." (25:68)

The three crimes mentioned and expressly condoned in the above quoted *Āyah* are: (1) "false worship, which is a crime against Allah; (2) the taking of life, which is a crime against our fellow creatures; (3) fornication, which is a crime against our self-respect, against ourselves"... "All the three crimes are especially detestable and infamous, and as ignominy will be added to other punishments, the penalty will be double that of ordinary punishment."⁴³

Islam believes in freedom of thought. That is why that it abhors coercion in matters of faith. The holy Qur'an testifies in these words:

لَا إِكْرَاهَ فِي الدِّينِ ۚ قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ

(Al-Qur'an, Al-Baqarah 2:256)

“Let there be no compulsion in religion; truth stands out clear from error.” (2:256)

Now, according to this *Āyah* “compulsion is incompatible with religion because –religion depends upon faith and free will”⁴⁴ and forced faith is no faith at all, then why does Islam prescribe death penalty for a previously Muslim person for recantation? In fact Islam does not believe in compelling a non-Muslim to become Muslim. It rather hold that the Islamic Message should be presented before him in pure and pristine form and no force should be used:

أَدْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحُكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ وَجَادِلْهُمْ بِالَّتِي هِيَ أَحْسَنُ

(Al-Qur’ān, Al-Nahl 16:125)

“Invite (all) to the way of thy Lord with wisdom and beautiful preaching; and argue with them in ways that are best and most gracious.” (16:125)

But it also makes great difference between a non-Muslim who rejects the message of Islam and a Muslim who rejects Islam after having accepted it as Allah’s Religion.

Since Islam stand for the “reconciliation of reason and revelation”⁴⁵, it therefore holds that the apostates should first be tried to convince rationally if they have got any doubt in their mind about the truthfulness of Islam.⁴⁶ If they return back, and repent, they should be forgiven,⁴⁷ and if they still reject, for no genuine reason, they should be killed. Why? Because, now, Islam considers them as rebels.⁴⁸

Freedom of thought in Islam has its own meaning in a specific perspective. But if this right is exploited for immorality and if any element other than the ‘purely ideational’ is permitted to influence the deciding process of the mind, as in case of the apostate who has no genuine grievance against Islam, (and if he has, he is necessarily to be convinced), this right becomes vitiated.⁴⁹ Thus apostacy leads to subversion in a just and peaceful society where the non-Muslims as *dhimmi*s enjoy the same rights as human beings as do the Muslims.

3. CONCLUSION

One of the most important aspects of the *Shari’ah* of Islam is that whereas it prescribes severe punishments, it also takes extreme caution in their imposition. As far as possible people are saved from prescribed punishments. Allāh’s Messenger (*Sallallāhu ‘alayhi wa sallam*) directed the judges in these words:

ادروا الحدود بالشبهات

“Shut off prescribed penalties by doubts.”⁵⁰

Following this ‘Umar declared:

لان اغطل الحدود بالشبهات احب الي من ان اقيمها بالشبهات

“It is better for me to eliminate the prescribed punishments by doubts than to impose them in the face of doubts.”⁵¹

Secondly, where the guilt of the accused is not proved beyond doubt, the *‘uqūbāt* will not be imposed. The evidence must be of a high probative value, definitely supporting the allegations against the accused, in the absence of such evidence, *ta‘zirāt* (statutory penalties) can be prescribed by law if there is evidence to support such a decision.

Otherwise, the accused will not be punished at all.⁵²

“Thirdly, the standard to which evidence and testimony should conform, to justify the imposition of prescribed penalties, is also very high and, impeachable proof is a condition precedent for the award thereof. Extreme caution is the rule for the evaluation of the probative value of evidence and testimony produced against an accused. Consequently, the sphere of prescribed penalties is reduced considerably.”⁵³

References

¹ *Introduction to Islām*, Centre Cultural Islamique, Paris, Pub. No. 1, 1388 H.

² Daryabādī, *Tafsir al-Qur’ān* (Eng.), Lukhnow, 1994., p. 425.

³ *Bukhari*, Kitāb al-Diyat, and also *Muslim*, Bāb al-Qassāmah,

⁴ Ibn. Kathīr, *Tafsir ibn Kathīr* (Ur.), Delhi, n.d., vol.3, part 15, P.42.

⁵ Rāghib Isfahānī, *al-Mufradāt fī Gharīb al-Qurʾān*, word *hadd*, p. 333, الحد حاجز بين الشيبين الذي يمنع احتلاط احدهما بالآخر, A doorkeeper is called *haddād* because he stops from entering the door. See Al-Tanqih al-Durūrī fī masāʾil al-Qudūrī (Ar.), Delhi, Kutub Khanah Rashidiyyah, 1333 A.H., *kitāb al-Hudūd*, P. 214.

⁶ As previously said elsewhere in this work above that man has to perform two-fold obligation: on one hand he has to abide by the commandments of his Creator, on the other he has to fulfill his responsibilities towards His creation. Accordingly, rights are divided into two kinds: (i) those which relate to Allāh, which in turn relate to the people collectively as the purpose of Allāh's *Shari'ah* is the welfare of His creation. (cf. *Maqāsid al-Shari'ah* above), (ii) those which concern the people individually while the first kind of rights is termed *huqūq-Allah* (in Western legal philosophy's 'public rights') and concerns the obligations of a person to Allah, the second kind of rights is termed *huqūq al-'Ibād* (in western legal philosophy: 'private rights') referring to the obligations of a person to fellow men. See M. Taqī Aminī, *Time changes and Islamic Law*, Delhi, IAD, 1988, P. 90-91 and also Justice Tanzīl al-Rahmān, *Jurm wa sazā kā Islāmī falsafah* (Ur.), Delhi, DQ, 1988, P. 13.

⁷ Tanzīl al-Rahmān, loc.cit.

⁸ There is difference of opinion regarding the crime of rebellion as to whether it falls within the ambit of *hadd*. Those who hold that it is a crime against which *hadd* has been prescribed in the holy Qurʾān maintain that the ninth *Āyah* of *Surah al-Hujurat*, 49 pertains to the rebels also. But history as well as fiqh sources reveal that there has been no fixed punishment given to the rebels. As such rebellion falls within the ambit of *ta'zīrāt* not *hudūd*. See for detail *Ma'ārif al-Qurʾān*, vol. 8, P. 111-12 and also Dr. A. A. Āmir, *Islam Mayn Jurm wa sazā*, Delhi, DQ, vol. 1, P. 42 -52.

⁹ The *Jamhūr* (i.e., the majority of 'Ulamā' constituting the mainstream) hold that this *Āyah* pertains to robbers and dacoits in general although it was revealed about those who renounced Islam during the time of Rasūlullāh and fled away with some camel and were arrested and their hands and feet were ordered to be cut off and their eyes to be separated away with hot rods. See A. A. Āmir, op. cit., vol. 1, P.21.

¹⁰ This punishment is for a free, sensible and mature man and woman not married or not made intercourse yet if married. As for married persons, their punishment according to *Sunnah*, is *rajm* (stoning to death). See Ibn Quddāmah, *Al-Mugni*, Egypt, 1348 H., vol 10, P. 120-21, vide A. A. 'Āmir, op. cit., vol. 1, P. 29.

¹¹ This *Āyah*, by consensus of opinion, also covers slandering chaste men. "Chaste women have been specifically mentioned, according to commentators, because slandering them is more abhorrent." See A. Y. 'Alī, op. cit., Ex. n., 2958.

¹² Ibn Hajar al-'Asqalānī, *Fath al-Bārī*, "Istitābah al-murtaddīn wa al-mu'ānīdīn wa al-murtaddah wa istitābatuhum", vol. 12, P. 331.

¹³ A. A. 'Āmir, op. cit., vol. 1, P. 37.

¹⁴ Al-Qudūrī, loc.cit. See also Dr. A. A. Amir, op. cit., vol. 1. P. 53.

¹⁵ *Al-Mufradāt*, word 'azara, عزير النصره مع التعظيم, P. 333.

¹⁶ A. A. Amir, op. cit., vol. 1, P. 15.

¹⁷ Taqī Aminī, *Time changes and Islamic Law*. Delhi, 1988, P. 90.

¹⁸ See *the Hedaya: Commentary of the Islamic Laws*, Tr. Charles Hamilton, Delhi, KB, 1985, vol. 2, P. 1-2.

¹⁹ 'Abd al-Rahīm, Gāfir Muhammad, "The Concept of Punishment in Islamic Law in Relation to the Contemporary Legal Trends", AJISS, Mar. 1990, vol. 7, No. 1, P. 124.

²⁰ *The Hedaya*, loc. cit.

²¹ Daryābādī, op. cit. vol., p. 112.

²² *Ibidem*.

²³ A. Y. Ali, *English Translation of the Meanings of the Holy Qurʾān*. Madinah Munawwarah, 1413H, Ex. n. 185.

²⁴ *Ibid*, P. 29.

²⁵ *Ibid*, P. 111.

²⁶ Mufti Shafī, *Ma'ārif al-Qurʾān*. Delhi, 1991.vol. 1, P. 381.

²⁷ Daryābādī, loc. cit.

²⁸ The term *al-fīmah* has a vast meaning. It has generally been translated as trial, temptation, tumult, sedition, oppression, persecution whereas "persecution" itself means the suppression of some opinion by violence, force, or threats. See A. Y. 'Alī, op.cit., Ex. n. 239.

²⁹ Mawdūdī, *Al-Jihād fī al-Islām*, P. 29-34.

³⁰ A. Y. Ali, Ex. n. 182.

³¹ Taqī Aminī, op. cit., P. 87-88.

³² *Ibid*, P. 91.

³³ For detail see *Maqāsid al-Shari'ah* above.

³⁴ Q. S. Mansūrporī, *Rahmatun li al-'Ālamīn*. Delhi, 1980, P. 77.

³⁵ *Taysīr al-Bukhārī*, "Kayfa bada'a al-wahyu", vol. 1, P. 10.

³⁶ Justice Tanzīl al-Rahmān, op. cit., P. 120-21.

³⁷ Shah Waliyyullah, *Hujatullāh al-Bāligah*, Deoband, 1986. "al-hudūd", vol. 2, P. 398.

³⁸ *Ibid*, P. 403.

³⁹ Mawlānā Asjad Qasimī Nadwi, "Islam Kā Jami'awr mu'aththir tarīn ta'zīrī nizām", *Muhaddith 'Asr*, Deoband, vol. 4, no. 11, P. 31.

⁴⁰ Tanzīl, op. cit., P. 121.

⁴¹ A. Y. Ali, op. cit., Ex. n. 2215.

⁴² *Ibidem*.

⁴³ A. Y. Ali, op. cit., Ex. n. 3128, 29.

⁴⁴ A. Y. Ali, Ex. n. 299.

⁴⁵ Ismā'īl R., *Islām and other Faiths*. USA, 1998., P. 320.

⁴⁶ Dr. Abdul Azīz Āmir, op. cit., P. 39.

⁴⁷ *Fath al-Bārī, kitāb al-Hudūd*, “Istitābah al-murtaddīn wa al-mu‘ānidīn wa qitāluhum,” vol. 12, P. 333.

⁴⁸ A. A. Mawdūdī, *Murtad ki sazā Islāmī Qānūn mayn*, Delhi, MMI, 1980, P. 37.

⁴⁹ *Islam and other Faiths*, P. 350.

⁵⁰ Mawlāna Abdul Hayy Lakhnawī, *Al-Hidāyah ma‘a al-Dirāyah* (Ar.) Commentary of Hidayāh, Deoband, Kutub Khana Rahimiyyah, 1357 H., “kitāb al-Hudūd,” P. 493. See also *Maqāsid al-Sharī‘ah* above.

⁵¹ Ibidem. See also Taqī Amīnī, op. cit., P. 89.

⁵² T. Amīnī, op. cit., P. 89.

⁵³ Ibidem.

