



Journal of Islamic Thought and Civilization (JITC)

Volume 11 Issue 1, Spring 2021

pISSN: 2075-0943, eISSN: 2520-0313

Journal DOI: <https://doi.org/10.32350/jitc>

Issue DOI: <https://doi.org/10.32350/jitc.111>

Homepage: <https://journals.umt.edu.pk/index.php/JITC>

Journal QR Code:



Indexing



Article:

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Published:

Spring 2021

Article DOI:

<https://doi.org/10.32350/jitc.111.21>

QR Code:



Muhammad Afzal

Citation:

Afzal, Muhammad, and Muhammad Khubaib. “Flexibility in the implementation of Islamic criminal law in modern Islamic society in the light of Qur’ān and *Sunnah*.” *Journal of Islamic Thought and Civilization* 11, no. 1 (2021). 396-410.

[Crossref](#)

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Publisher Information:

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Estd. 1990

Flexibility in the Implementation of Islamic Criminal Law in Modern Islamic Society in the Light of Qur'ān and *Sunnah*

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Abstract

Islam holds the balance of justice in the right manner and insists on examining all the conditions and circumstances associated with the offence because Islam is the most natural way of life on account of its suitability, sustainability and flexibility towards human nature. No other legal system in the world has been created for the public interest, the way the Islamic law has been created. This paper focuses upon the flexibility in the implementation of Islamic criminal law (Hudūd) in modern society. Islam has made laws that aim to eliminate the causes of crime and not to antagonize the criminal. Sharia imposes preventive punishments which may appear cruel or rough if gazed at without proper consideration. But if contemplated closely, Islam does not execute such punishments unless it discovers that the crime was not justifiable or that the criminal was not acting under any obligation or certain circumstances. The Holy Prophet (SAW) was very careful in the establishment of Hudūd because not all crimes were of the same nature and therefore, the same punishments could not be enforced for them. Hence, while applying punishments to crimes; the Holy Prophet (SAW) took into consideration the nationality, personal situations, financial stature and status of the criminal. Thus the Hudūd of Allah would be established and the criminal would still have a path to correct him/her and seek forgiveness.

Keywords: flexibility, implementation, Islamic criminal law, Hudūd, Islamic society

Introduction

Sometimes humans use their powers wrongly which can cause rebellion and corruption in the land. In order to maintain peace and harmony, it is necessary to frame some measures such as those which would help to determine how much warning and payment would be necessary upon certain sins and crimes, as well as what methodology would be used for them. For the protection of the respect and honor of humans and their wealth, the Islamic *Sharī'ah* has itself enacted legislation and set up some punishments for major sins and crimes.

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Islamic jurisprudence divides crimes into offenses against God and those against man. Those who violate God's boundaries are associated with the punishments described in the Qur'an and in some cases in the hadith.¹ The punishments that *Shari'ah* has set up for crossing the boundaries of Allah are referred to as Hudud in the Islamic Jurisprudence.

Hudud punishments range from public whipping to publicly stoning to death and amputation of hands.² Hudud crimes cannot be forgiven by the state and punishment must be given in public.³ Those crimes for which Allah has enforced Hudud are the ones that give birth to catastrophe and chaos. Therefore, the punishment of the sins that the perpetrators have committed should be given in the presence of the masses, so that everyone may be made aware of the consequences of such actions.

2. The Utility and Importance of Enforcing Legal Punishment

The Holy Prophet (SAW) has highlighted the utility and significance of enforcing Hudud in the following words: "The establishment of boundaries in the land is better for the people than the rain that falls in the morning time for thirty days."⁴

2.1 Abstemiousness in the Establishment of Hudud

Most crimes are committed in helpless and emergency situations. In such case, a small penalty is sufficient. But if the crimes are of a serious nature that is causing social unrest in the society, then Hudud are imposed to eradicate the crime.

So explaining Hudud in the Holy Qur'an, Allah has kept a path of ease and facilitation open for the people, just like the concession that is kept in paying blood money, mentioned in the Qur'an as: O you who believe! Retaliation for the murdered is ordained upon you: the free for the free, the slave for the slave, the female for the female. But if he is forgiven by his kin, then grant any reasonable demand, and pay with good will. This is a concession from your Lord, and a mercy. But whoever commits aggression after that, a painful torment awaits him."⁵

Since the objective of *hadd* penalties is to protect public interest, they are labeled as claims of God (*huquq Allah*), which apply to the interests of private persons. Legal proceedings against those who commit *hadd* crimes can be initiated by any Muslim, including the *qa'di* himself. Moreover, once the procedure has been initiated, the victim

¹Silvia Tellenbach, *The Oxford Handbook of Criminal Law* (London: Oxford University Press, 2015), 251-253.

²"Hadd," *Oxford Dictionary of Islam* (London: Oxford University Press, 2012).

³Richard Terrill, *World Criminal Justice Systems: A Comparative Survey* (Oxfordshire: Routledge, 1984), 629

⁴Abdul Azim bin Abdul Qavi al-Munzari, *Al-Targhib wa al-Tarhib*, Book of Prescribed Punishments, Hadith no 3539, vol. 3 (Beirut: Dar al Kutub al Ilmiyah, 1417AH), 172.

⁵Al-Baqarah, 2:178.

cannot pardon the defendant, or conclude a settlement with him. Sentences for *hadd* crimes are regarded as fixed by God and therefore immutable.⁶

Regarding the nature of crimes like; adultery, false accusation of fornication (*qazaf*) and theft and their punishments, detailed explanations and discussions are present in the relevant reference books of hadiths, exegesis of the Qur'ān and Islamic jurisprudence. In the light of the knowledge from these sources it can be concluded that the aim of punishments in Islam is not just instilling fear but ridding the society from evils, eliminating the causes of crime and forming an air of peace and harmony all around.

2.2 The Line between the Severities of the Crime

Sometimes the biggest punishments can be made ordinary and at other times ordinary punishments can be made severe. The Holy Prophet (*SAW*) would always take into consideration the nature of the sins and crimes and would always make decisions which include the aspects of ease and capacity.

Shah Wali Ullah writes:

Be aware that the punishments of *qisās* (a life for a life) in the case of murder, stoning in the case of adultery, hands being cut of in the case of theft, were present in Sharia before our own. These three punishments have been continuous in the Heavenly Laws and have been agreed upon by the majority of Prophets and their nations worldwide. Hence, punishments like these should be enforced strongly and not be left behind. However, the Sharia applies another type of conduct in these punishments and two degrees have been explained in the punishments of these crimes. One is convenient law and second is severe punishment; the latter has the right to be enforced in the case of severe crimes whereas the former is a lower level punishment which has the right to be enforced in case of less severe crimes.⁷

Islamic criminal Laws (*Hudūd*) may appear difficult but when analyzed deeply, such punishments do not appear nearly as severe; in fact these will appear to be easy for the people.

In the case of establishing *Hudūd*, the severity of the crime and the conditions of the criminals are also taken into consideration. Whenever *Hudūd* are enforced, the eases and facilities provided by the Sharia law must not be overlooked. The events of enforcing *Hudūd* from the life of the Holy Prophet (*SAW*) prove how much tenderness, mercy and care was present in his heart for his *Ummah*.

2.3 The Spirit of Islamic Laws

From the events that occurred in the life of Holy Prophet (*SAW*), it is evident that the

⁶Rudolph Peters, *Crime and Punishment in Islamic Law* (Cambridge: Cambridge University Press, 2005), 54.

⁷Ahmad bin Abdul Rahim Shah waliullah Dehlavi, *Hujjatullah al-Baligha*, vol. 2 (Beirut: DarulJil, 2005), 245.

Punishment does not aim to find the excuse of punishment and the justification for punishment is searched more than a dozen times. Thus the spirit of Hudūd seems to be used by a spoon and a sniper instead of simply awarding punishment for the opportunity to get better arises. People are not allowed to be punished because of their offense simply so that their respect and honor remain intact. Hazrat Abu Hurairah (RA) reported; The Messenger of Allah (SAW) said, “Avert the infliction of the prescribed punishment as long as you find a way out (i.e. to avoid their infliction).”⁸

The clear indication of the apostle’s words is that the purpose of Hudūd in Islam is not to punish the sentence, but eliminate the crime, it is a matter of effort. Imam Ibn e Ma’ja mentioned two Hadīths to cover the crime in his *Sunan Ibn Maja*, under chapter, “Covering up the believer's mistake and giving him the benefit of the doubt”. There is a Hadīth from Abu Hurairah that the Messenger of Allah said; “Whoever conceals (the faults of) a Muslim, Allah will conceal him (his faults) in this world and the Day of Resurrection.”⁹

Another Hadīth narrated from Prophet (SAW) Abdullah bin Abbas that the Prophet (SAW) said; “Whoever conceals the (hidden) fault of his Muslim brother, Allah will conceal his faults on the Day of Resurrection. Whoever exposes the fault of his Muslim brother, Allah will expose his faults, until (so that) He shames him, due to it, in his (own) house.”¹⁰

Mentioning these Hadīths under the aforementioned chapter, the objective of Imam Ibn e Māja was that the concealment is better than propagating. There is another interpretation of the Holy Prophet (SAW) about the convenience in Hudūd which Hazrat Abdullah bin Abbas (RA) narrated from the Prophet (SAW) said: “Do not impose Hudūd on doubts.”¹¹ In explaining the same concept, Hazrat Ayshah (RA) explains. The Prophet (SAW) said; “Avert the legal penalties from the Muslims as much as possible, if he has a way out then leave him to his way, for if the Imam makes a mistake in forgiving it would be better than making mistake in punishment.”¹²

In Islam, the purpose of enforcement is to keep the law and order situation in order and not to punish it immediately. Therefore, by Prophet (SAW) decree, it can be argued that even the crimes of the Almighty should be avoided so that the scope of ease and convenience can be opened.

⁸Ibn e Mājah, *Al-Sunan*, “The chapters on Legal Punishments,” Hadith no. 2545, vol. 2 (Egypt: Dar Ihyaal-Kutab al-Arabiah, 1988), 850.

⁹Ibid., Hadith no. 2544.

¹⁰Ibid., Hadith no. 2546.

¹¹Muhammad bin Ali al-Shawkani, *Nayl al Awtār*, “Book of Prescribed Punishments,” vol. 7, Hadith no. 3116 (Egypt: Dar-ul-Hadith, 1993), 125.

¹²Ali bin Umar al-Daraqutni, *Sunan al-Daraqutni*, “Book of Prescribed Punishments and Blood Money,” vol.4, Hadith no. 3097 (Beirut: Moasasat al-Risalah, 2004).

2.4 Ease in Applying the Legal Punishment of Fornication

Hudūd can never be implemented on doubt basis. In fact strong evidences are required to enforce the legal punishment. A slight reduction in the evidence of crime will remove the punishment. Muhammad Qutb stated: “Islam prescribes that both adulterer and adulteress should be stoned but it does not inflict such punishment unless they are married persons and upon conclusive evidence by four eye witnesses i.e. when two married persons flagrantly commit such a heinous crime.”¹³

Shar‘īah Islamic laws set strict rules for the enforcement of Hudūd so these conditions are seen; it can be extremely difficult to prove the adultery. That is why in the Apostle’s epoch, only a few cases of imposed legal punishment occurred, and in these cases the aspect of mercy rather than punishment seems to prevail.

Ma‘ez came to the Holy Prophet (SAW) and said; Oh Messenger of Allah I have committed adultery you make the decision of Allah upon me Prophet turned away from him, he said again I have committed adultery Prophet (SAW) turned his back again. He even mentioned it four times then Prophet (SAW) said “take him and stone him.” when the stone hit him, he shouted louder and harder. Abdullah bin Anas from his village turned towards him and hit the donkey’s shank and the people kept on shouting till he was killed. His escape was also reported before the Prophet. He (SAW) said; “why did you not leave him? May be he would repent and Allah would accept his repentance.” Oh, the guide (who guided the sinner you must go to the Holy Prophet (SAW) and request him to make Allah’s decision) of a nonsense. I wish you were covered up. It was better than punished.¹⁴

That is, when Prophet (SAW) found out that they were running away, He (SAW) spoke about them “why did you not leave him? May be he would repent and Allah would accept his repentance.” how deadly and smooth these words are. If there was an opportunity for repentance, it would have been possible for Almighty Allah to forgive him rather than punish him. The companion who sent him to the Prophet (SAW) also said him that is, it was better to be punished than to cover up and he would have escaped punishment.

Al-Shaykh al-Attaiyyeb Ahmed wrote: “The intention is that the Prophet (SAW) also wanted to ignore this man’s sin and gave the same command to Hazzal.” But when he insisted on confessing sins about himself, he was neither mad nor drunk and his he did not refrain from sin. The Prophet (SAW) ordered that the legal punishment be set on it. When it was imposed, the Companions *R.A* informed the Prophet (SAW) of what he had done. He (SAW) says; “Why didn’t you guys leave it? Maybe he would have repented to Allah.”¹⁵

¹³Muhammad Qutb, *Islam, the Misunderstood Religion*, 97, Online: <http://www.islambasics.com>

¹⁴Ahmad bin Husain al-Bayhaqi, *Al-Sunan al-Kubra*, “Book of Prescribed Punishments,” Hadith no. 16958 (Beirut: Dar-ul-Kutab al-Ilmiyah, 2003).

¹⁵Al-Sheikh al-Tayyab Ahmad, *Sharah Riaz ul Salheen*, vol. 6 (Beirut: Dar al-Kutub al Ilmiyah, 2012), 12.

Another such incident is that of a woman in the covenant of the Prophet (SAW) who demanded the release by the Messenger of Allah. And she came and told the Apostle (SAW) that she committed adultery, and as a result has become pregnant. The Prophet (SAW) repeatedly ignores and warned that when the baby is born, then she comes.¹⁶ These two events are largely related to consistent adultery and adulterers confessed of their sin and four times after confessing he demanded the release of the ceiling despite their confession, Prophet (SAW) repeatedly turned away and established the legal punishment after the clearly confession of the sin. The Prophet's (SAW) behavior at both the occasions show that the punishment was not simply a target to be imposed but punishment was for the prevention of sin or crime.

Both cases support the convenience, ease and convenience of implementation within the Hudūd. Because in both these cases the Prophet (SAW) did not ask Ma'ez R.A for this woman's name whom they would have committed adultery. And likewise the woman of the Ghamidiā tribe was not asked who you committed adultery with. If the punishment was to be purpose of Islam then Prophet (SAW) must ask the name and make the legal punishment on them. Hudūd is not projected to be that the search for excuse for punishment sentences, rather the spirit of Islamic laws is opposite.

2.5 Detection of Sins and Prohibition of Publicity

Hazrat Abu Hurairah (RA) narrated: "I heard the Prophet (SAW) say: There is forgiveness for everyone in Muhammad and except for the Mujahirīn (Publicist). It is as if someone in the darkness of the night committed a sin, and in the morning his Lord concealed it. He says that people have sinned like this in the night and that the night his Lord had covered the veil and he was under the veil of his Lord and in the morning he opened the veil of his Lord."¹⁷ This Hadīth proves that if Allah conceals a sin, none should reveal it. If a person advertises after sin and does not try to cover it then there is no forgiveness with Allah.

How much did the Prophet (SAW) himself cover up the sins and crimes of the people? This is explained by the Hadīth narrated by Hazrat Anas (R.A), he reported:

When I was with the Prophet (SAW), a person came and said the Messenger of Allah I have committed transgression, so set a limit on me, The Prophet did not ask him about this (sin), then when the time for prayer came, this man prayed with the Prophet. When the Messenger of Allah finished the prayer, then the man stood in front of him and said: O Messenger of Allah, I have become a transgressor of a sin so set limits according to the Book of Allah,

¹⁶Ahmad bin Shuaib an-Nasai, *Al-Sunan al-Kubra*, "Book of Stoning to Death (Rajam)," vol. 6 (Beirut: Moasat al-Risalah, 2001), 432.

¹⁷Ahmad bin Husain al-Bayhaqi, *Al-Sunan al-Saghīr*, "Book of Drinking," Hadith no. 2728, vol. 3 (Karachi: Jamia al-DarasatullIslamia, 1989), 347.

He (SAW) said that you have not prayed with us. He said yes, Prophet (SAW) said that Allah forgave your sins and your limits.¹⁸

That is, The Prophet (SAW) was so unconscious of his sin that he did not even interrogate about crime, what he had committed? It may also mean that this man might have committed a serious crime, but the words of the Hadīth are clear. That man had demanded the imposition of decree. If there has not been a serious matter, he would not have demanded a legal punishment, surely there would be a severe crime which was mentioned in Sharia, he was repeatedly insisting on the implementation of the decree.

Shaykh Ibn e Battal wrote to elaborate it “Imam Mohlib and others explained that, when the man confessed that he had reached the Islamic punishment and he did not state the crime, the Prophet (SAW) did not even interrogate for its explanation or description. This indicates that the discovery of Hudūd is not a determination. On the contrary, it’s better to cover it, as if the Prophet (SAW) thought it was about discovering something “hidden” about it that’s why He (SAW) avoided it. His statement was that the Prophet (SAW) raised suspicion that would be of punishment, because the Prophet (SAW) used to make effort with the believers kindly and compassionately, and it is possible that the sin on which this man is assuming the sentence is not enforced, ablution and prayers have become its atonement. It is not possible to impose a penalty without specifying the corruption. Therefore, the judge must not enforce it without investigation. Because of doubts, the penalty is not established but it is terminated, and this thing is also obligatory if a man commits a sin, he should cover it, don’t tell anyone else maybe Allah Almighty can cover it. Hadīth is narrated from the Prophet (SAW) “Whoever veils the Muslims, Allah will cover him.” So it is better for a man to hide his sins than to hide the sins of other.”¹⁹

3. The Importance of the Strength is to implement the Sentence

In the light of Hadīths which belong to the criminal law, this thing is clear that the manifesto of Islamic laws is to promote the relaxation and ease. The Prophet (SAW) would prefer forgiveness rather than punishment. That is why, even where crime was convicted, He has tried not to cause any inconvenience and burden to the people. Another important example of the penalty and adopting of ease is found in the Hadīth of the Prophet (SAW) which further enhances the spot of the ease for humans.

Hazrat Sohail Bin Hanif (R.A) said:

He was told by some Helpers (Ansar) companions of the Holy Prophet (SAW) that one of them was ill. Even weakly the meat from above it was exhausted and only the skin on his bone was left, In this case a slave girl went to him; so when he saw her, he wished and he had intercourse with slave girl. When the people of his nation went to see him, he told them

¹⁸Bukhari, *Sahih al-Bukhari*, “Limits and Punishments set by Allah (Hudūd),” Chapter: If a person confesses but does not specify the sin can the ruler screen it for him? Hadith no. 6823.

¹⁹Ali bin Khalaf in Bitāl, *Sharah Sahih al-Bukhari*, vol. 8 (al-Riaz: Maktaba al-Rasheed, 2003), 444.

about it. He said, “Ask the Holy Prophet (SAW) for a decree about it.” They mentioned this to the Messenger of Allah and said “we have never seen anyone so weak as a person who has weaknesses over him. If we lift it up to you, the bone will split and it has nothing but skin on its bones. The Holy Prophet (SAW) ordered him to take a hundred shoots and kill them all at once.”²⁰

Imam al-Shawkani (RA) has said that this Hadīth when employs the punishment strength and power, the big and small will be regarded. There will be no penalties that would result in any risk of harm. In fact, a way will be followed that the sentence of Allah will be followed and the harm can be avoided.²¹

The Messenger of Allah (SAW) was sent advent by Allah as ‘easier teacher’ always used to be an easy and convenient way for people. Imam al-Bukhari has cited under the chapter “To carry out the legal punishment; and to take revenge on those who transgress Allah’s limits and boundaries” the Hadīth narrated by Sayyeda Aisha (RA) she said: “Whenever the Prophet (SAW) was given the authority between the two orders, He adopted the simplest form unless it is a sin, if it was a matter of sin, He would have been far away. By Allah, He never avenges himself, unless violated Allah’s prohibited limit. When it is violated, He will seek revenge for Allah.”²²

Intention of Imam Bukhari (RA) to mention this Hadīth in the aforementioned chapter is that it should be noted that the Holy Prophet (SAW) preferred the ease and comfort of the implementation of penalty because he did never wish to punish anyone since he had kindness, forgiveness and soft corner for everyone.

Furthermore the Hadīths that appear to be strict in the execution of punishments are related to the nature of the crime? Sometimes lesser punishment is not possible, petite punishment does not prove effective for ending evil and corruption in society. Therefore, it is also necessary to award a harsh punishment that will eliminate the courageous wrongdoings.

For all these reasons it can be said that the Holy Prophet (SAW) did not like to see any man in distress and ache. Despite the fact that apostate (SAW) has set strict rules and regulations to protect humans from teasers and to protect their lives and property, He also explains the principles and methods of their application so as not to offend any human

²⁰Abu Dawud Sulayman bin Al-Ashath, *Al-Sunan*, “Book of Prescribed Punishments,” (Kitab Al-Hudūd), Chapter: Carrying out had (punishment) in the masjid, Hadīth no. 4472.

²¹Muhammad bin Ali al-Shawkani, *Nayl al Awṭār*, Book of Prescribed Punishments, vol.7, Hadith no. 3130.

²²Bukhari, *Sahih al-Bukhari*, “Limits and Punishments set by Allah (Hudūd),” Chapter: To carry out the legal punishment; and to take revenge on those who transgress Allah’s limits and boundaries, Hadith no. 6786.

being. The protocols of Sharia should not trouble anyone rather mercy need be demonstrated. Prophet (SAW) said; “Avoid hitting someone's face when you hit him.”²³

This Hadīth has been written by Sheikh al-Bayhaqi under the chapter of the lash and beatings attribute. The purpose of explaining this Hadīth under this chapter was that if a person is punished then the rules of punishment should not be ignored. The Messenger of Allah (peace and blessings of Allah be upon him) commanded this, with ease and awe that the purpose of punishment, it should not be to humiliate a person, but to maintain an atmosphere of peace.

4. Ease in the Implementation of Stealing Penalty

In the matter of establishment of fine, the Holy messenger analyzed the incident very carefully and examined the nature of the crime, then He implemented the punishment. Sheikh Muhammad Qutb writes that Islam prescribes that a thief's hand should be cut, but such punishment is never inflicted where there is the slightest doubt that, the thief was impelled to crime by hunger.²⁴ Just look at the punishment of theft: In the Holy Qur'ān, the atonement for theft of men and women is stated in the cut off hand.

Allah says in Qur'ān: “And cut off the hands of a thief, whether male or female, as a reward for what they have earned. And a lesson from Allah is a terrible punishment. The power of Allah is supreme over all, and He is the All-Knower.”²⁵

The details found in the implementation of the Hudūd in the Prophet's (SAW) decrees, the Prophet (SAW) overrides the precautionary aspect of the case so as not to impose the penalty on minor theft. There are some cases of theft that were presented to Prophet (SAW). He ordered the non-enforcement of the fine, such as the consumption of food items and other instances. Some of these events are mentioned as example.

Hazrat Amar bin al-Aas R.A reported:

The Prophet (SAW) was questioned about the fruit hanging (on the tree) (whether it can be broken without permission). He said, “Whoever needs it, breaks it and does not gather them in the foot, then there is no harm in it.” And whoever brings forth (from the garden) some fruits, there is twice as much fruit on it and the punishment will be additional and whoever has stolen the fruits from the place where they are collected (heap) and if its quantity is equal to the value of the shield then his hand will be cut off.²⁶

²³Ahmad bin Husain al-Bayhaqi, *Al-Sunan al-Saghīr*, “Book of Drinking,” Hadith no. 2724 (Karachi: Jamia al-Darasat ul Islamia, 1989).

²⁴Muhamamd Qutb, *Islam, the Misunderstood Religion*, 97.

²⁵Al-Maidah, 5:38.

²⁶Abu Dawud Sulayman bin Al-Ashath, *Al-Sunan*, “Book of Prescribed Punishments” (Kitab Al-Hudūd), Chapter: For what the thief's hand is not to be cut off, vol.4, Hadith no. 4390.

Hazrat Ibadah ibn Sharhbil (R.A) reported:

When the starvation struck me, I went to a garden in Medina and planted a branch and I ate and tied some of his clothes on. So the owner of the garden came in. He hit me and took my clothes off. I (complaining) went to Holy Prophet (SAW). He said the gardener that he was ignorant, you did not guide him and he was hungry and you did not feed him. He said that he returned my cloth and gave me another one or half grain.²⁷

These Hadīths make it clear that there will not be a ceiling imposed on every theft. It is not even necessary to punish every crime because there is no mention of any penalty in these Hadīths. Rather in the case of Ibadah bin Sharhbeel (R.A) instead of punishment, he has also given some nourishment to suit his need and could be fulfilled.

4.1 Enactment of Alcohol

The purpose of enforcing the castigation is not to kill people rather, it is the end of the courage to violate law in order. In the covenant of Prophet Muhammad (SAW) since the Arabs used to drink alcohol and Allah Almighty had gradually revealed his forbidden, so that people do not have to be burdened with power and avoidance after the prohibition, only a few incidents of alcoholism occur in the covenant of Prophet, so Prophet Muhammad (SAW) put sentence on the bacchant, to prevent people from doing this forbidden act. The sinners were punished on alcohol, it was not a life-threatening act but rather a minor punishment.

Hazrat Abu Hurairah (R.A) narrated the occasion of the punishment of bacchant: "A man was brought to the Prophet who was drunk, He (SAW) asked to beat him, Hazrat Abu Hurairah stated that some of us were hitting him with his hands and some with his shoes and some with his clothes, When they had beat him, someone said, "May Allah disgrace you." Prophet (SAW) tells him not to say that and don't help the devil on him."²⁸ The prohibition of alcohol has been clearly stated in the Holy Qur'ān but Prophet (SAW) did not act out of anger and wrath even after committing this act but also a small punishment for the reformation, which is generally tolerable.

The purpose of prohibition of alcoholism is to break the habit and not to prioritize punishment another case of alcoholism is reported by Hazrat Umar bin Khattab (RA):

In the era of the Holy Prophet a person whose name was Abdullah and the title Hammar and used to laugh at the Prophet and the Prophet (SAW) had whipped him because of his drinking. One day he was brought back intoxicated. He (SAW) ordered to be flogged, he has been flogged, One of the people said: "May Allah curse him! "How much is it

²⁷Abu Dawud Sulayman bin Al-Ashath, *Al-Sunan*, "Book of Jihād (Kitab Al-Jihād)," Chapter: Regarding A Wayfarer Eating Dates And Drinking Milk He Passes By, Hadith no. 2620.

²⁸Bukhari, *Sahih al-Bukhari*, Limits and Punishments set by Allah (Hudood), Chapter: Beating with stalks of date-palm leaves and shoes, Hadith no. 6777.

(intoxicated),” The Prophet (SAW) said: Do not curse him. By Allah, I know that he loves Allah and His Messenger.²⁹

The purpose of the punishment in the epoch of the Prophet (SAW) was that to halt the habit of sin and not to kill. There are many cases that have been elaborated in the books of Hadīths which describe different punishments at different times, penalty depending on the nature of the crime and the circumstances.

Hazrat Anas bin Malik R.A narrated:

The Prophet (SAW) made whipped with the tree branch and with the shoes in the liquor range and Abu Bakar (RA) carried forty whips then when Hazrat Omar was chosen as the Caliph, he called the people and said to them, “Indeed, people from the villages have been closed, Musedded narrated that he said people have been closed from the villages and small towns. So how do you think about the extent the sentence of drinking alcohol?” Abdurrahman bin Auf RA suggested to him, “We think that you should set a light punishment on alcohol.” Hazrat Umar (R.A) ordered 80 whips to drink alcohol. Imam Abu Dawud explained that this Hadīth had been narrated by Ibn Abi Aruba from Qatadah. The Holy Prophet (SAW) smote forty whips with the two sticks and the sha’eba had reported from Qatadah that The Prophet (SAW) hit about forty with two sticks.³⁰

4.2 Lenience of Enforcement of Murder Chastisement

The murder, which causes anxiety, unrest and mischief in the society, is not caused by any other sin or crime. That is why Islamic Sharia has strictly forbidden killing of human beings. If a person kills someone, the heirs have been given the power to be tale and demons. Whether they convict the murderer for murder or they receive the retribution of the victim.

Allah Almighty says:

O, you who believe! retaliation is prescribed for you in the matter of the slain; the free for the free, and the slave for the slave, and the female for the female; but if any remission is made to any one by a (aggrieved) brother, then (the demand for the blood wit) should be made according to usage, and payment should be made to him in a good manner; this is an alleviation from your Lord and mercy; so whoever exceeds the limit after this, he shall have a painful chastisement. And there is life for you in the retaliation, O men of understanding, that you may guard your-selves (against evil).³¹

In Surah An-Nisa', concerning the bloodshed:

It is not for a believer to kill a believer unless (it be) by mistake. He who hath killed a believer by mistake must set free a believing slave, and pay the blood-money to the family

²⁹*Sahih al-Bukhari*, Limits and Punishments set by Allah (Hudood), Chapter: Cursing is disliked against the drunkard and he is not regarded as a non-Muslim, Hadith no. 6780.

³⁰Abu Dawud Sulayman bin Al-Ashath, *Al-Sunan*, Book of Prescribed Punishments (Kitab Al-Hudood), Chapter: Regarding the hadd (punishment) for drinking khamr, Hadith no. 4479.

³¹Al-Baqarah, 2:178-179.

of the slain, unless they remit it is as a charity. If he (the victim) be of a people hostile unto you, and he is a believer, then (the penance is) to set free a believing slave. And if his cometh of a folk between whom and you there is a covenant, then the blood-money must be paid unto this folk and (also) a believing slave must be set free. And who hath not to the where withal must fast two consecutive months. A penance from Allah. Allah is knower, wise.³²

In the case of the voluntary assassination and the wrongly killing is quite clear that if a person kills, then revenge is murdered, second option the sympathies for the heirs and the strengthening of them financially and the cause of the retribution which causes them financial loss. Third option is that the assassin is pardoned by the heirs so that his life can be saved. The Messenger of Allah (peace and blessings of Allah be upon him) preferred the aspect of compassion, gentleness, ease and goodness to his *Ummah*. Therefore, in many cases of killing the Prophet (SAW) gave the money as retribution to the heirs, so that they can be economically stable.

Hazrat Wa'il bin Hajar R.A explained the pattern of the Prophet (SAW) I was with the apostle that a killer man with a sore neck was brought in Wa'il said that the deceased's heir was called and said, "Do you forgive him?" "He said no, Prophet (SAW) said, are you ready to take retribution? He said no, He (SAW) said, would you kill him? He said yes, He (SAW) said, "Then take him when he turns to go back." So He (SAW) asked: do you forgive? He replied no, and then asked, "Do you take retribution?" Said "no". He asked, would you kill him? He replied yes. He ordered, "Then take it." When this happened for the fourth time, He (SAW) asked, "See if you can forgive him." So it will bear the burden of both its own and the victim's sins. Wa'il said; Then he forgave him (I saw the killer) that the brace was going down."³³

Hazrat Anas bin Malik R.A reported, "Whatever case of retaliation was discussed in court of the Messenger of Allah, He advised the heirs to forgive."³⁴ These Hadiths also imply that the Prophet (SAW) did not intend the chastisement, but he intended to eliminate the crime that is why the prophet used to encourage deceased's family to take retribution or forgive.

4.3 Facilitating in the Repentance for Offenders

If a person repents for his sin after committing a crime or sin, the door of repentance never closes. Even in the killing, the Prophet has maintained the hope of repentance for the murderer because the philosophy of the criminal law imposed by the Prophet (SAW) was that the crime could be abolished.

³²An-Nisah, 4:92.

³³Abu Dawud Sulayman bin al-Ashath, *Al-Sunan*, "Book of Types of Blood-Wit (Kitab Al-Diyat)," Chapter: The Imam Enjoining a Pardon in the Case of Bloodshed, Hadith no. 4499.

³⁴Ibn e Mājah, *Al-Sunan*, The Chapters on Blood Money, Hadith no. 2692.

Abu Saeed al-Khudri (R.A) narrated from the Holy Prophet (SAW) about the extent of forgiveness and repentance: “An Israeli man killed ninety men and then went out to investigate the crimes. He came to a saint and asked is my repentance was acceptable? Saint said “no” he killed this saint too and then he kept on asking for the criminalities. Someone said, “There is a scholar in the township. Go to him and ask him.” (So he walked, but on the way) he died (When he died, he turned his chest) toward the town (where he wanted to explore the matter). The angels of mercy and the angels of doom repeated in this regard the angels of mercy said that we would take his soul, because he was determined to repent. The angels of doom said that we would take his soul because he was a sinner. In the meantime, Allah ordered the town (wherever he wanted to repent) to be near it. And ordered the town (where he committed the sin) to go away and (to the angels) measure the distance of both settlements (See, this dead body is near which town) the dead was near the town (where he was going to repent). Allah forgave him.³⁵

The Holy Prophet (SAW) did not close the path of forgiveness and repentance to sinner in any crime. What could be simpler than that the Prophet (SAW) cited the example of a murderer who killed hundreds of people, and Allah accepted his repentance and forgiveness. Hafiz Ibn e Hajar (RA) wrote: “In this Hadīth, many sins, even after being killed, have the validity of repentance. This Hadīth will be summarized in this regard: If Allah forgives a murderer, he will himself be pleased with the slain heirs.”³⁶

In fact, all these Hadīths interpret that the Prophet's (SAW) method was not harsh but gentle in the legal punishment. It is known from Prophet's (SAW) view that reforms rather than punishments were preferred. Finding and punishing was not required rather, the purpose was to eliminate concealment and crime opportunities. Intimidation was not a purpose, but a correction of man.

5. Conclusion

Islam is actually a religion based on simple teachings. Its teachings take into account people's needs, difficulties, constraints, compulsions. People have been given the right to survive rather than be killed, and punishments have been given to eradicate the crime. Instead of creating constraints and difficulties, it is advisable to share and create now the question arises if religion is so well taken care of in ease and convenience in Islam then why do hardness, bitterness and hardship seems to prevail in the issues and boundaries? To explain the question of whether Islamic boundaries are based on prejudice or softness and compassion, we simply need to understand the basic purpose of these boundaries.

The purpose of punishment in *Sharī'ah* Islam is not to give maximum punishment to people; rather, it is intended to eliminate all opportunities that result in the imposition of

³⁵Bukhari, *Sahih al-Bukhari*, “Book of Hadiths of the Prophets,” Chapter: The tale of the Cave, Hadith no. 3470.

³⁶Ahmad bin Ali bin Hajar al-'Asqalani, *Fath al-Bari Sharh Sahih al-Bukhari*, vol. 6 (Beirut: Darulmarifah, 1379AH), 517.

punishment on people. The purpose of enforcement of Hudūd is not the punishment but the reform of the people. The Prophet's (SAW) teachings also make it clear that the purpose of Islam is not to find such excuses that people are punished for that. On the contrary, the thought and tact of these teachings make it clear that people have a preference for forgiveness. Instead of presenting the cases to the courts, it is advisable to cover the wrongs. Instead of hating people for the cause of crime, they have been ordered to reform. In deciding punishment or limitation, the aspect of mercy should prevail; in any case if doubts arise, there should be acts of forgiveness rather than punishment. Legal punishment should be given on the basis of solid and strong evidence.

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