

Crime and Punishment in Islam (part 1 of 2)

Description: First of two lessons that gives an introduction to the Islamic penal system and explains some of its features and forms of punishment.

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Objectives

- To learn the concept of the Five Necessities.
- To learn the features of the Islamic penal system.
- To learn about the different forms of punishment.

Arabic Terms:

- *Qadi* - A Muslim judge who renders legal decisions according to the *Shariah*.

Introduction

The criminal or penal law is the body of law that regulates the power of the state to inflict punishment on persons in order to enforce compliance with certain rules. Such rules typically protect public interests and values that society regards as crucial. Criminal laws, therefore, give an insight into what a society and its rulers regard as its core values.



Rather than a uniform and unequivocal formulation of the law, Islamic criminal law is a scholarly discourse consisting of the opinions of religious scholars, who argue, on the basis of the texts of the Quran, the Prophetic narrations and the consensus of the first generations of Muslim scholars, what the law should be.

The levels of implementation of Islamic criminal law and the involvement of the different law-enforcing authorities (such as the *qadi*, the ruler and the executive officials) have historically varied from region to region and from dynasty to dynasty.

The *application* of Islamic criminal law has come to an end except for some instances like Saudi Arabia. Its doctrine, however, lives on. It is studied by Islamic scholars, and discussed and taught to students.

The Five Necessities

The ultimate objective of every Islamic instruction and piece of law is securing the welfare of humanity and creating a just and balanced society. It does so by emphasizing the welfare in this world and success in the next one with the goal of bringing an egalitarian society. Having understood this point, **all** Islamic laws can therefore be referred back to five universal principles that are deemed necessary for human welfare. They are preservation of:

1. Life
2. Religion
3. Reason
4. Lineage
5. Property

The Islamic penal code is **also** aimed at preserving these five universal principles. To explain it further, the Islamic law of retribution aims to preserve life, the punishment of apostasy is meant to preserve religion, the punishment of consuming alcohol is to preserve the mind, the laws against fornication are to preserve lineage, and the punishment for theft is to preserve wealth. To protect all five necessities, it prescribes the punishment for highway robbery. Therefore, Islam's fixed punishments for the following crimes:

1. Transgression against life whether it is in the form of murder or assault.
2. Transgression against religion through apostasy.
3. Transgression against reason by the use of intoxicants.
4. Transgression against lineage through fornication or even a false accusation of adultery.
5. Transgression against property in the form of theft.
6. Transgression against all of these universal needs (highway robbery).

Features of Islamic Penal System

1. The beauty of Islamic teachings is that its external checks and balances coincide with the moral compass of human beings that serves as an inner deterrent. Islamic Law, when dealing with

social problems such as crime, does not rely merely on legislation and external deterrents in the form of punishments. It lays greater emphasis on the internal compass by placing the greatest emphasis on man's own moral capacity. It does so by developing the faculty of conscience from childhood so that he can value moral character as an adult. Islam promises salvation to those who do good but warns those who practice wrong, thereby inspiring faith in God, hope in His mercy, and fear of His punishment to renounce immoral conduct and harming others whilst inculcating morality and a desire to do good to others.

2. Islam creates a balanced relationship between the individual and the society. While the divine Law protects society by legislating strict punishments as deterrents against crimes, it does not marginalize the individual for the sake of society. On the contrary, Islam gives priority to protecting individual freedom and rights. It does so by providing safeguards that leave no excuse for a person to resort to criminal behavior. It does not set out to punish without first preparing for the individual a situation conducive to a virtuous life.

Forms of Punishment

Islamic Law is based on two principles:

- a) Unchanging basic tenets
- b) Changing secondary laws

For the permanent aspects of life, Islamic Law established fixed statutes. For the changing aspects of life that are affected by social development and advances in human knowledge, Islamic Law provides general principles and universal rules that are applicable to different social setups and circumstances.

When these principles are applied to the penal system, Islamic Law comes with clear texts prescribing fixed punishments for those crimes that exist in every society because they are tied to the constant and unchanging human nature.

When dealing with other crimes, Islamic Law lays down the general principle that decisively prohibit them, but leaves the punishment to be decided by the legitimate political authority. The political authority can take the circumstances of the criminal into consideration and determine the most effective way to safeguard society.

Thus, punishments in Islamic Law are divided into three types:

1. Prescribed punishments
2. Retribution
3. Discretionary punishments

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