

# Crime and Punishment in Islam (part 2 of 2)

**Description:** A more detailed explanation of the forms of punishment and an explanation on the objectives of the Islamic penal system.

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## Objectives

- To learn about the prescribed punishments for *hadd* crimes, retribution, and discretionary punishments.
- To learn about the three objectives of the Islamic penal system.

## Arabic Terms

- *Hadd* - fixed offences.
- *Shubha* - uncertainty.
- *Sunnah* - The word *Sunnah* has several meanings depending on the area of study however the meaning is generally accepted to be, whatever was reported that the Prophet said, did, or approved.

## Types of Punishments in Islamic Law

### 1- Prescribed Punishments for *Hadd* Crimes

*Hadd* crimes are defined as offences with fixed, mandatory punishments that are based on the Quran or the *Sunnah* of Prophet Muhammad, may the mercy and blessings of Allah be upon him. The principal purpose of the institution of prescribing these punishments is to deter acts harmful to the fabric of the society.



A distinctive feature of the law of *hadd* crimes is that the doctrine has made it extremely difficult to obtain a conviction. This is achieved by three factors:

- (1) Strict rules of evidence to prove these crimes.

- (2) Extensive use of the notion of *shubha* (uncertainty) in determining crimes to suspend the strict punishments in most circumstances.
- (3) Limiting the definition of the crimes that carry the strict prescribed punishments so that many similar infractions fall outside the scope and cannot be punished with fixed penalties, but only at the discretion of the judge.

The crimes with fixed punishments are:

- Theft
- Highway robbery
- Unlawful sexual intercourse
- Unfounded accusation of unlawful sexual intercourse (slander, calumny, defamation)
- Drinking of alcohol
- Apostasy

Apostasy is defined as a Muslim making a statement or performing an action that takes him out of the fold of Islam. Its punishment was meant to be a remedy for problems that existed at the time of Prophet Muhammad. A group of tricksters would publicly enter Islam then abandon it in order to create uncertainty among the believers and make common people question the faith. The Quran relates this reality:

**“A group from the People of the Scripture said: ‘Believe in what is revealed to those who believe at the beginning of the day, then disbelieve at the end of the day, so perhaps they might return from faith.’” (Quran 3:72)**

The prescribed punishment for apostasy was instituted to deter such behavior.

## 2- Retribution

This is another form of punishment in Islamic Law. The perpetrator of the crime is punished with the same injury that he caused to the victim. The criminal is killed if the criminal killed the victim. If he severed or injured a limb of the victim, then his own limb will be cut off or injured if it is possible without killing the criminal. Specialists are used to make this determination.

## 3- Discretionary Punishments

These are punishments that are not fixed by Islamic Law. They are for crimes that either infringe on the rights of Allah or the rights of an individual, but do not have fixed punishments or set expiations in the texts of the Quran or the *Sunnah*. They are the most flexible type of punishment because they take into consideration the needs of society and changing conditions. Islamic Law has defined different types of discretionary punishments ranging from reprimands to flogging, monetary fines, and imprisonment.

# Objectives of the Islamic Penal System

**First Objective:** Islam seeks to **protect** the society from crime. Rampant criminal behavior makes the society unsafe to live in and endangers its very survival if left unchecked. Islam seeks to establish social cohesion and **security**, thereby promoting **peace**. It has legislated punishments that are meant to discourage crime. This purpose is mentioned in the following verse that discusses retribution and its effect on society:

**“There is (preservation of) life for you in retribution, O people of understanding, that you may become pious.” (Quran 2:179)**

A criminal will think twice if he knows the negative consequences of his crime. Awareness of the punishment will give pause to the criminal to abstain from committing the crime in two ways:

- a) The criminal who has already been subject to the punishment will most likely not repeat the crime again.
- b) As for the rest of society, their awareness of the effects of this punishment will keep them from falling into the crime.

To thwart criminal behavior, Islam requires publicly announcing as to when it will be carried out based on the verse of the Quran:

**“...A group of the believers should witness the punishment.” (Quran 24:2)**

**Second Objective:** Islam actually aims to **reform** the criminal. The Quran often mentions **repentance** in association with the crimes to highlight the fact that the door to repentance is always open. In some cases, Islam has made repentance a means of waiving a fixed punishment. For example, in reference to the punishment for highway robbery, Allah says in the Quran:

**“...except for those who repent before you take hold of them. Then know that Allah is the Forgiving, the Merciful.” (Quran 5:34)**

Allah says regarding the punishment for fornication:

**“It they both repent and mend their ways, then leave them alone. Verily, Allah is the Acceptor of repentance, the Merciful.” (Quran 4:16)**

Allah says after mentioning the punishment for false accusation:

“... except for those who **repent** afterwards and makes amends, then indeed Allah is the Forgiving, the Merciful.”

Allah also says after mentioning the prescribed punishment for theft:

**“Whoever repents after his wrongdoing and makes amends, then indeed Allah will accept his repentance and indeed God is the**

## **Forgiving, the Merciful.” (Quran 5:39)**

This objective is more relevant to discretionary punishments where the judge takes into consideration the circumstances of the criminal and what will ensure his reformation.

**Third Objective:** The punishment is a **recompense** for the crime. It is undesirable to treat a criminal lightly who threatens the security of the society. The criminal should receive his just recompense. It is the right of society and its individual members to be secure. The Quran mentions this objective in conjunction with a number of punishments. For instance, Allah says:

**“The thieves, male and female, cut off their hands as a recompense for what they have earned...” (Quran 5:38)**

**“The recompense for those who wage violent transgression against Allah and His Messenger and who go forth spreading corruption in the Earth is that they should be killed or crucified or that their hands and feet should be cut off on alternate sides or that they should be sent into exile...” (Quran 5:33)**

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