

THE PHILOSOPHY OF PUNISHMENTS

IN ISLAM

SPEECH BY

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The world today presents a horrific scenario of crime, violence, killing and a determined attempt to destroy the very pillars of social order which sustain peace, tolerance, harmony and human dignity. The lives of millions around the world have been ruined and they are going through an unbearable syndrome of traumatic suffering and ruthless devastation. The evil deployment of modern technology has given rise to a global institution of a criminal order which is the most critical challenge of the world today.

The world is dearly searching for ways to combat, control and check the raging storm of crime, and that makes it all the more pertinent to present this subject, the Philosophy of Punishments in Islam.

The translation of the verse of the Holy Quran which I have just recited is:

“These are the limits set by Allah, so approach them not. Thus, does Allah make His commandments clear to men so that they may become secure against evil.” (2:188)

According to Muslim perception, Islam is not only a religion but also a civilization and social order based upon revealed principles. Islam stands out distinctly among the religions of the world in that its punishment and retribution laws are applied under exclusive rules and regulations, dealing with matters related to obligations to Allah and obligations to human kind.

Under no circumstances has man the right to punish anyone for non-compliance with the obligations to Allah. So as a result of this distinction, Islam totally liberated man's obligations to worship from human intervention and interference.

God Almighty considers to be His right to punish as He so wishes the offenders who associate something with Him, apostasy, blasphemy, opposing Him and His Messenger, maligning Him and His Messenger and obstructing His Messenger in his prayer and in

his mission. Because of the severity and perfidy of these offences, God Almighty does not transfer the right of dispensing justice to such offenders to anyone - not even to His most beloved of Prophets. Instead, He tells the Holy Prophet, *'forgive them and turn away from them'*.

It is because God Almighty considers the offences to be so grave that no punishment in this world can do justice to the severity of the offences. God Almighty has prepared an abasing punishment for such people in the Hereafter as God Almighty says in the Holy Quran:

“On the Day of Resurrection, He will disgrace them; they will enter the gates of Hell to abide therein. Evil, indeed is the abode of the proud.” (16:28,30)

Before I embark upon the philosophy of punishments in Islam within the domain of human intervention, it may be useful to briefly state the contemporary thought on this subject. Theories of punishment can be divided into two general philosophies: utilitarian and retributive. The utilitarian theory of punishment seeks to punish offenders to discourage, or “deter”, future wrongdoing. The retributive theory seeks to punish offenders because they deserve to be punished.

Under the deterrent philosophy, punishment should prevent other people from committing criminal acts. The punishment serves as an example to the rest of the society, and it puts others on notice that criminal behaviour will not be tolerated and will be punished.

The other major rationale for punishment is denunciation. Under the denunciation theory, punishment should be an expression of societal condemnation.

For our guidance, Allah Almighty has revealed in the Holy Quran a complete code of life - a law to govern all dimensions of human life. This in Islam is known as 'Sharia'.

For the sources of 'Sharia', we then have the Holy Quran, which is the very word of God. Supplementary to it, we have Hadith, which are traditions of the Holy Prophet of Islam - the records of his actions and his sayings, from which we must derive help in arriving at legal decisions. If, in the unlikely event, there is nothing either in the Holy Quran or in the Hadith to answer the particular question before us, we have to follow the dictates of reason in accordance with certain definitive principles.

Explaining this, the Promised Messiah (Peace be upon him) says:

“In the Holy Quran the directives about civil, criminal and revenue matters fall into two categories. One category of those directives is aimed at detailing punishment for specific crimes. The second category is of directives which lay down procedures to be followed in time of court trial for other offences, so that the offence and punishment fit each other in the best possible manner. In such directives, rigid punishment is not mentioned for a specific offence. The Holy Quran lays down guiding rules according to which later interpreters of law are to carry out administration of law whenever new situations arise and for that, the Holy Quran provides a guiding principle:

‘And the recompense of an injury is an injury the like thereof.’ (42:41)

(Kitabul Bariyya, page 87)

With an understanding of the nature and source of Islamic law, we should know the definition of crimes and their categories under Islamic law.

The Holy Quran provides specific punishments for only four offences, that is, adultery, slandering, murder and theft.

These offences appear to have been selected to indicate that life, family institution, property, honour and social order have to be protected.

Hadrat Abu Hurairah (ra) narrates that the Holy Prophet (Peace and blessings of Allah be upon him) said, three things of a Muslim are unlawful for another Muslim- his blood, his honour and his wealth.

The Muslim legislators and jurists have defined crime as going against or beyond the commands and prohibitions laid down in the Holy Quran. In other words, crossing the 'hadd' which is Arabic for the limits or the bounds fixed by God. All such crimes, since they are violations of the rules made by God Almighty, are considered crimes against religion.

A cursory glance is enough to realise the horrific, extensive and extremely profound impact these crimes have upon society and as a result of not taking appropriate measures to check and prevent them, society is ruined and destroyed.

In fact, these are the four crimes which have dominated society and are responsible for most of the suffering and misery that is witnessed in the world today.

In Islamic law, offences are divided into two major groups: Firstly, crimes for which 'Hadd' punishments ordained by God are given.

Secondly, other crimes such as homicide, assault and damage to property etcetera, punishments for which include retaliation, expiation and disciplinary action.

However, Islam also provides guidelines on how to determine criminal liability. For example, all acts are judged by their motives and intentions. (Bukhari).

The Holy Quran uses the word 'kasab' for commission of crime, which implies a deliberate effort. If there is no intention to violate or exceed the limits then there is no criminal liability and the act is pardonable.

Any act carried out in ignorance and without adequate knowledge deserves pardon.

God Almighty says in The Holy Quran:

“Verily, Allah accepts the repentance of only those who do evil in ignorance and then repent soon after. These are they to whom Allah turns with mercy; and Allah is All-Knowing, Wise.” (4 :18)

Hadrat Ayesha (ra) narrates that the Holy Prophet (Peace and blessings of Allah be upon him) said: Try as far as possible to save a Muslim from punishment. If there can be a way to save him, then think of settling the matter. For the Imam to make a mistake in forgiving and acquitting is better than making a mistake in giving punishment (Tirmidhi Abwab AlHudood).

God Almighty has also stated that nobody shall be punished for the act of another and punishments laid out in Islam are proportionate to the crime.

In The Holy Quran God says:

“ Whoso does a good deed shall have ten times as much; but he who does an evil deed, shall have only a like reward; and they shall not be wronged.” (6:161)

Hadrat Ibn Abbas (ra) narrates that the Holy Prophet (Peace and blessings of Allah be upon him) said: stop the enforcement of ‘hudood’ (limits) because of doubts. That is, do not make haste in issuing a ‘hadd’ punishment to anyone. Rather, if there is a possibility of doubt, make it a base for pardon.

That makes it abundantly clear that punishments in Islam are not for revenge, but reformation, and must not exceed the extent of the offence.

To prevent crime, Islam aims at eliminating the conditions that produce it.

It seeks to remove the very root-cause of all crime by working a complete moral reformation in man. It blocks all approaches to crime. The phrase used in the Holy Qur’an is, do not go near the evil; do not go near the limits of Allah.

Thus Islam's highest priority is building and sustaining a virtuous society with excellent morals, and that indeed is the philosophy of punishments in Islam.

Chastity as moral virtue holds a very high place in the code of Islamic laws that govern relations between sexes. Islam views with extreme disapprobation the slightest breach of these laws. It is Islam's very great sensitiveness about chastity that is reflected in the punishment prescribed for adultery or fornication.

God Almighty says in The Holy Quran:

“And go not nigh unto adultery; surely, it is a manifest indecency and evil way.” (17:33)

The unimaginable suffering and malignancy that arises out of the disorder and tumult from the act of adultery makes a long catalogue. The unrestrained and wrong means of reproduction causes immense trauma and unrest with both social and psychological disarray, which is not generally the case as a result of other crimes. Today, in the world, the ruin of families on a large scale, the weakening of family connections, and the growing lack of loyalty and trust in relationships; the growing pandemic of divorces and the sense of being rejected; moreover the spread of horrific venereal diseases such as AIDS, can be blamed on this one offence of adultery.

Islam regards adultery as one of the most heinous of all social crimes and looks upon chastity of a man or a woman as one of his or her most precious possessions. For the establishment of the kingdom of God, Islam strongly condemns this most deadly of all social crimes which if not checked and suppressed, can bring about total disintegration and destruction of society. The Holy Quran seeks to close all those avenues through which this evil can find its way among a people and severely punishes the act of adultery and condemns the guilty parties as social pariahs.

As far as the nature of punishment is concerned the Holy Quran says:

‘The adulteress and the adulterer (or the fornicatoress and the fornicator), flog each one of them with a hundred stripes.’ (24:3)

Flogging and not stoning to death is therefore the punishment prescribed by Islam for adultery or fornication. Nowhere in the Holy Quran has stoning to death been laid down as punishment of adultery and for that matter for any other crime, however serious. The misconception seems to be due to a few cases recorded in the hadith when married persons guilty of adultery were stoned to death by the order of the Holy Prophet. One of these few cases was that of a Jew and a Jewess who were stoned to death in accordance with the Mosaic law. (Bukhari).

It was invariably the Holy Prophet’s (peace be upon him) practice that he abided by the law of the Torah in deciding cases until a new Commandment was revealed to him.

It is mentioned in St. John Chapter 8, V:4-5 of the Bible and I quote:

‘they say unto him, Master, this woman was taken in adultery, in the very act. Now Moses in the law commanded us, that such should be stoned’.

The misconception has persisted among certain schools of Muslim religious thought that flogging is punishment for unmarried persons only and that punishments for married adulterer and adulteress is stoning to death.

In principle and sensibly in accordance with this directive, Jesus (Peace be upon him) must be followed faithfully to this day. It is however, another matter that it is not adhered to. In the light of this explanation, we witness an interesting scenario in this age, where the Jewish and Christian States, against their religious teachings, do not stone the adulterers to death, but some Muslim States in contrast to the teaching of the Holy Quran, impose the punishment of stoning to death for adultery.

There is another outstanding difference between the punishments imposed by Islam and by other religions. It is that the harsher the punishment imposed by Islam, in the same tone, it imposes vigorous preventive measures to be taken to save people from committing that offence and at the same time very strict rules for the conviction of an offender so that no innocent is convicted. In the case of adultery, the strict condition of four witnesses who actually watched the act is to ensure that there is absolutely not an iota of doubt in the allegation.

Moreover, the integrity and the credibility of the witnesses is of utmost importance, not only that the witnesses have a track record of being truthful but they should have a reputation of being civilized and respectable. All these measures are to guarantee that no one innocent of crime is victimized. Not only that, the Islamic laws pertaining to witnesses are so tough that there is no example of it in any other witness rules and regulations in the world.

Hadrat Ayesha (ra) narrates that the Holy Prophet (Peace and blessings of Allah be upon him) said: the witness of a man or a woman who is guilty of breach of trust is invalid and also that of the man and the woman who have received 'hadd' punishment and also the one who is malicious and who has been a false witness on record and the one who is dependent upon those for whom he is standing as a witness and a person who could be alleged to be a relative or an heir of the one he is giving witness for. (Tirmidhi Kital Ashahadat).

What a wonderful teaching for safeguarding the honour of the innocent and protecting the integrity and purity of the society in stark contradiction to the so-called Islamic States where witnesses and justice are a commercial commodity.

The other social evil, second to adultery in heinousness, which eats into the vitals of human society, is the slandering of innocent people. Islam also views with extreme disfavour this social evil which has become so common in the so-called civilized modern

society, and severely punishes the accusers.

God Almighty says:

‘And those who calumniate chaste women but bring not four witnesses - flog them with eighty stripes and never admit their evidence thereafter, and it is they that are transgressors.’ (24:5)

Here, the Holy Quran mentions three forms of punishment in an ascending order which are to be meted out to a slanderer.

Firstly, the physical punishment of scourging. Then, disgrace of being branded as a perjurer and a liar which invalidates his or her evidence, and the spiritual stigma of being adjudged as a transgressor.

In case the accuser cannot produce the necessary evidence in support of his charge, the charge would be considered as false and the accuser would render himself liable to the prescribed punishment. Whatever the facts of the case, the woman with whom adultery is alleged to have been committed will be held innocent as long as the required evidence is not produced. The law, in fact, is intended to suppress with a strong hand the offence of slandering and scandal-mongering. The commandment contained in the Holy Quran covers both men and women without any distinction.

The third offence set out in the Holy Quran is murder. Allah says;

‘O ye who believe, equitable retaliation in the matter of the slain is prescribed for you. The free man for the free man, and the slave for the slave and the female for the female. But if one is granted any remission by one’s brother, then pursuing the matter for the realisation of the blood money shall be done with fairness and the murderer shall pay him the blood money in a handsome manner. This is an alleviation from your Lord and a mercy and whoso transgresses thereafter, for him there shall be a grievous punishment.’

(2:179).

The verse makes no distinction between different classes of persons in connection with the law of retaliation. The punishment applies to all offenders who might be guilty of murder, no matter of what rank or station in life or of what religion. Any person, irrespective of his cast or creed and irrespective of his station, must be put to death for the murder of any other person unless pardoned by the relatives of the victim and unless the pardon has the sanction of the authorities.

This verse comprises a very important principle of civil law, that is, equality of man and necessity of awarding proportionate punishment to all offenders without distinction. Unless an offender is forgiven by the relatives of his victim under circumstances that are expected to lead to improvement and betterment of conditions, punishment for the slain as prescribed is obligatory. The authorities responsible for law and order are bound to punish the offender according to the requirements of law, having no right to pardon him of their own accord. On the other hand, the heirs of the murdered person are not entitled to take the law into their own hands and inflict the punishment on the guilty person themselves.

So Islam simultaneously retains the punishment of death for murder but in some cases without depriving anyone of their right an exceptional form of punishment has also been created. This exceptional form is also based on profound wisdom; It is possible that the heirs of the murdered victim may be entirely dependant upon the person murdered for their subsistence. In such a situation capital punishment cannot fulfil a practical basic need of the family's welfare. Thus, for making provision of claiming ransom in lieu of capital punishment, Islam offers a practical choice to the grieved family.

Basically, Islam structures a society which is founded on the spirit of true fraternity where the blood of a Muslim is unlawful upon another Muslim.

What a beautiful teaching imbued with the love of Allah and humanity condoning purity

of heart and mind and emphasising the fact that in Islam punishment is a forceful positive power of rectification and reformation for the sustenance of a pure God loving society.

The fourth offence that is mentioned is stealing.

The punishment prescribed for theft may again to some appear to be too severe. However, as I just mentioned, punishment if it is to be deterrent and effect change, has to be exemplary. God Almighty says in the Holy Quran:

“And as for the man who steals and the woman who steals, cut off their hands in retribution of their offence as an exemplary punishment from Allah. And Allah is Mighty, Wise.” (5 :39)

It is better to be severe to one and save a thousand than to be indulgent to all and ruin many. He certainly is a good surgeon who does not hesitate to amputate a rotten limb to save the whole body.

However, to understand the philosophy of this punishment, it would be helpful to comprehend the background of the society which Islam envisages to establish. A knowledge of the financial guarantee which an Islamic economic system provides to every citizen of the country is also necessary.

As far as the structure of society is concerned, Islam builds it on simple living, truth, righteousness and abstinence from absurdities of life and senseless customs. Islam establishes a society which is pure of such frolics and has the least causes which could be held responsible to tempt someone to steal. These are the aspects of the society which irrespective of religion or belief are to be observed by every subject of an Islamic State. As far as Muslims are concerned, there is emphasis on worship and purity of heart and sight, and the moral teaching provides details regarding obligations to humans.

In the light of all that, if the residents of a country are truly Muslims, the thought of

stealing should be unimaginable. However, it is sad that in the real situation, such a scenario is difficult to present.

The Muslim States have sadly become the hubs and breeding grounds of evil crime, fraud and falsehood, leave alone theft and robbery.

In these circumstances, there can be no better punishment than the one imposed by Islam, that is, the punishment of cutting the hands. Such a punishment becomes a warning indicator and a deterrent for others.

Moreover, this punishment has a very powerful effective force for the prevention of stealing.

In the early history of Islam, there were extreme rare cases of cutting the hands because the punishment prescribed was deterrent and was put in force; Consequently, there were hardly any thieves. But when one was caught, he was dealt with scrupulously and the punishment enforced rigidly. The Holy Prophet (Peace and blessings of Allah be upon him) strictly forbade allowance of any concession or favour in the matter of 'hadd' punishments without any distinction.

We are told in a hadith, narrated by Hadrat Ayesha (ra), that a woman from a noble family once committed theft. The Quraish were very embarrassed and disturbed by the incident. They sent Osama bin Zaid to the Holy Prophet to seek forgiveness for the woman. Hudur (Peace be upon him) was deeply offended and said, 'How dare you intercede in the matter of limits fixed by Allah?' Hudur stood up and addressed: 'People before you were destroyed because when a prominent and influential person committed theft he was not apprehended and when an ordinary person committed theft he was given the severest punishment! By God, if the daughter of Muhammad (Peace be upon him) committed theft, I shall cut her hands and not allow any concession at all!' (Muslim Kitab AlHudood Ba'ab Qata Assariq).

For the punishment of cutting the hands of a thief, Islam has also laid down limits on conditions such as that the stolen goods should not be edible on which the sustenance of life depends or pilfering or lifting. For such offences some other form of befitting punishment is meted out.

The philosophy of punishments in Islam indicates that Islam provides punishment only as a last resort and the purpose behind is reform brought about through a blending of human values and justice tempered with mercy. Encouraging forgiveness where it is likely to reform and improve things, providing severe punishment where there is clear disregard and exceeding the limit of law.

The Promised Messiah (Peace be upon him) says:

“Again there is apprehension that justice and mercy cannot both coexist in the entity of God because justice demands punishment while mercy calls for forgiveness. This is a trap in which the short sighted Christians are caught because of lack of judgement. They do not realise that God’s justice is a kind of mercy! It is entirely for the good of human beings. For instance, if God Almighty issues an order about a murderer from the point of view of His justice that such a criminal should die, it does not benefit God in any way. He issues such an order so that mankind should not put an end to itself by killing one another.

So it is God’s mercy towards mankind. God has promulgated such ‘human rights’ for social peace to prevail and that one group of humans must not oppress another group and create turmoil in the world. So all the rights and punishments which are there concerning property, life and reputation are in fact mercy towards mankind.” (Kitabul Bariyya, page 73).

It would be proper to conclude this presentation drawing attention that the four crimes which the Holy Quran has chosen and imposed ‘Hadd’ that is limits, on them are the ones which at present are the cause of unremitting and consuming anxiety for humanity.

Today, it is only the pristine pure Islam represented by the Ahmadiyya Community which offers the solution to all human anxieties. The Islamic system of punishments has the power to uproot crime and create an amazing atmosphere of peace and security.

The attempt to introduce the Islamic penal code in a Muslim or non-Muslim society which is ignorant of Islamic values, restrictions and prohibitions, would be like attempting to grow strawberries in the desert. Even in a country or society which is predominantly Muslim, introducing the Islamic penal code successfully would not be possible until that society has not within reason immersed in the spirit of Islamic values and morals. For example, if in an Islamic State falsehood is rampant, as unfortunately is the case today, and in reality most of the witnesses are liars, if the punishments of cutting hands for stealing and the punishment of a hundred stripes for adultery is imposed, it would be probable that the hands of many innocents will be cut and by giving false witness cause many pious souls to receive the beating of a hundred stripes.

Loyal and faithful following of the Holy Prophet (Peace and blessings of Allah be upon him) is possible only on the condition that first with vigorous effort and sacrifices, such a society should be established which truly deserves to be called an Islamic society, then of course the Islamic penal code would be an integral part of that society.

That is the society which was founded and established and irrigated and nurtured by the Messenger of this age, Hadrat Mirza Ghulam Ahmad, the Promised Messiah (Peace be upon him).

The Ahmadiyya Community today presents to the world a pristine pure model of Islam and it is moving on rapidly to encompass the entire world and that day is not far when the whole world will be enshrined by the blessings of Islam and a society will be established which will be governed by the rule of Allah's Law to ensure peace, purity, security, justice equity and prosperity for humanity with the extermination of criminal behaviour and enforce measures to preserve the sanctity and dignity of human life.

Expressing these aspirations regarding the Ahmadiyya Community, the Promised Messiah (peace be upon him) said:

“I pray continuously that all my followers may fear God Almighty and be steadfast in their prayers and prostrate themselves humbly before God with tears in their eyes in the middle of their nights and neglect not their duty to God, because God intends to make this Community a model for others, those who strive to reach the highest rung of the ladder of piety and purity and those who have truly given priority to faith over their worldly pursuits.” (Tadhkiratush Shahadatein- English Edition, pages. 73-74).

That is the mission of the Messenger of this age and that is the mission of the Ahmadiyya Community. Here today, this gathering presents the cosmos of that Islamic society where the Islamic punishments can effectively accomplish their purpose to lead humanity to reformation and righteousness.

That is the challenge for Ahmadis all over the world today, to strive on to bring entire humanity into the sanctuary of Khilafat-e-Ahmadiyya to secure it against evil and malice and save it from the punishments in this world and the Hereafter, and lead humanity to follow the order of the Holy Quran and its divine package to prosper in peace and purity for the love of Allah.

May Allah enable us to do so!

And our last words are, All praise belongs to Allah, Lord of all the worlds!

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