

Philosophical Aspects of Punishment in Islamic Criminal Law

Md. Ahteshamul Haque

Lecturer at Showaib Nagar Kamil Madrasah, Jhenaidah - Bangladesh

&

M.Phil. Researcher at Department of Al-Fiqh and Legal Studies

Islamic University, Kushtia-7003, Bangladesh

DOI: <https://doi.org/10.5281/zenodo.10797000>

Published Date: 08-March-2024

Abstract: This paper explores at the philosophical aspects of punishment within the framework of Islamic criminal law. The aim of Islamic criminal law is to ensure that no one desires to commit a crime. As a result, Islamic criminal law serves as both a preventive and a curative measure. The severity of Islamic criminal punishment as outlined in the Quran and Sunnah, such as amputation of limbs, stoning to death, and the death penalty, has been criticized. However, in fact, society gives less attention to the more positive and judicious aspects of punishments, such as reconciliation, forgiveness, and the use of alternative punishments that aim to foster an amicable resolution between offenders and victims as opposed to resorting to physical punishment. The purpose of this article is to provide information about Islamic criminal law's idea and goals regarding punishments, which specifically focuses on the philosophical issues covered by the Quran and the Sunnah.

Keywords: Islamic Criminal Law, Philosophical Aspects, Crime, Punishment, Islam.

1. INTRODUCTION

The Islamic legal system has a distinctive approach to the concept of punishment, in which the prevention of crimes is prioritized over the consequences for those who commit them. If the preventative apparatus is determined to be deficient, the punishment may be entirely waived or modified, especially when the failure can be ascribed to the authority of the state. Islamic law in principle contains the obligation to carry out orders and leave all prohibitions. The benefits of the mandates and prohibitions are basically for the sake of human existence, both here on World and in the hereafter. The implementation of Islamic criminal law is expected to reduce crime in society. If there is a violation, the offender must be held accountable for the actions he committed in the form of punishment. When we discuss penalties for crime (jinayah), we talk about worldly penalties rather than ukhrawi penalties. Everyone who violates the law must be held accountable for his conduct. Criminal offenses can be committed alone or jointly in the form of a conspiracy. If the offence is committed solely by him, he must bear the consequences. A different situation arises when the criminal act is carried out by multiple individuals in the form of a conspiracy; in this case, the responsibility is, of course, shared. Because the punishments imposed on criminals are not intended to harass individuals, but to prevent crime from running rampant on the surface of the earth. To define Islamic crime and anticipate that the crime rate would always decline, it is envisaged that Islamic criminal sanctions will be able to eliminate crime in society¹.

In general, Islamic law maintains state barriers between crimes and their commissions, so that no reason can be given by anybody who breaches the barriers and enters Allah's restricted border to conduct the crime.

This paper analyzes into a topic concerning the philosophy of punishment in Islamic criminal law.

2. DEFINITION OF CRIME

In Islamic criminal law, there are two terminology pertaining to criminal matters, namely: al-jarimah and al-jinayah. The term Jarimah is derived from the words jarama which means al-zanbu (sin, faults, and crime). Al-Mawardi provided the following definition of jarimah: "Jarimah are syara' prohibitions that are punishable by hadd and ta'zir²." Jarimah, according to Muhammad Salim al-'Awa, is doing or leaving what the syara' has established regarding prohibition and legal sanctions for criminals³. This definition emphasizes that syara' prohibitions (al-mahzurat) must be treated in light of and in accordance with the principles of the (Shari'ah), otherwise it is difficult to describe the legal accidents of any act⁴. Subsequently, customary traditions as far as legalizing and criminalizing are concerned bear no significance unless endorsed by the (Shari'ah) as it is well known in the ambits of usul al-fiqh (origins of jurisprudence)⁵. The term Jinayah is occasionally used by Islamic jurists as a synonym for the word Jarimah, which linguistically implies the performance of a sinful or illicit act that results in punishment in this life or the Hereafter⁶. Jinayah is the noun (mashdar) of janaa (fi'il madhi/past tense). According to Abdul Qadir Awdah, jinayah in Islamic Shari'ah is an act that is forbidden by Syara, regardless of whether it endangers someone's life or property⁷. In the Hanafi School of fiqh, jinayah refers to the examination of the transgression committed against one's own life. While the chapter of al-ghashab discusses the sin of violating property⁸. Most jurists, however, use the term jinayah for acts whose aims are related to a person's soul (murder) and illegal acts of persecution (injury, beating, abortion). So the discussion of murder and persecution is put forward in chapters al jinayaat and aljarh or aldharb⁹. However, Al-Kasani gives a wider meaning to (jinayah) maintaining that it includes any "illegitimate act against a human being or quadruped animals or any other valuables, whether movables or immovables¹⁰." Ibn Qudamah gives the standard definition of (j'inayah) as he says, "(Jinayah) is any aggressive act inflicted on persons (body) or property (pecuniary belongings) but traditionally, it is restricted to the arena of bodies. But transgressions inflicted on properties are legally denominated as larceny, fraud, breach of trusteeship, burglary, pillage, loot, etc¹¹."

Based on the previous explanation, it seems that the term jinayah is equivalent with jarimah. However, in fiqh books, the term jinayah is more often used to discuss the crime of murder and persecution. While the use of the term jarimah is more directed to the discussion of hudud crimes (zina, qazf, sirqah, syurbu al-khamr, hirabah, baghyu and riddah)¹².

Therefore, it can be concluded that the term jinayah is used more frequently than jarimah. Because jinayah is the starting point for every discussion regarding jarimah. Not all talk about jinayah, which ends with a discussion of jarimah. The rules that the finger talks about are the rules that stipulate prohibitions and punishments. The prohibition is the first thing that comes up while discussing jinayah, however not all prohibitions discuss punishment (sanctions). Thus, jarimah deals with violating laws that have widespread sanctions, whereas jinayah concentrates more on the names for prohibited deeds¹³.

3. KEY COMPONENTS OF A CRIME

Criminal law in Islam When addressing the elements of a criminal act, both the general and specific elements are always addressed. General elements are those that must be present in all criminal acts. If one of them is missing, the crime does not take place legally. While special elements are only applicable to specific criminal offences. The following are the general aspects of Islamic criminal acts:

3.1 Legal Element: To be considered a crime, the following five requirements must be met by the legal element:

3.1.1 Legal Argument: The first conditions the existence of a valid Shariah argument that forbids the performance or non-performance of a certain action. If there is no specific legal provision of prohibition, there can be no crime.

3.1.2 Prescription of Punishment: The second criterion concerns the imposition of punishment. The mere existence of a legal prohibited argument is insufficient to accuse and penalize a person. As a result, the legal argument in favour of prohibition must be supplemented by a recommendation for either a fixed or discretionary form of punishment. Hence, there can be no crime without the prescription of punishment.

3.1.3 Enforcement of Law: The third condition is that legal restrictions and penalties must be announced or put into effect either before to or during the commission of the offence. Any conduct that was carried out before to its declaration as illegal or prior to the imposition of its punishment cannot be considered a crime, and the perpetrator is therefore released from all criminal responsibility¹⁴.

3.1.4 Place of Commission of Act: The fourth requirement is concerned with the special factor. It means that the crime must be committed in a location where Islamic law is genuinely enforced. In the event that an individual carried out a

prohibited action in a location that was not under the de facto jurisdiction of an Islamic State, such an act could not be prosecuted and carried out due to the complete inapplicability of Islamic law to the offence¹⁵.

3.1.5 Mukallaf (Legally Capable): Islamic penal law does not differentiate between the subordinates and superordinates, the high and the low, the rich and the poor, the officials and the citizens, etc. Islamic penal law is universally applied to all segments of society, but Western and modern law acknowledges certain privileges and exclusions that benefit the privileged class¹⁶.

The legal provisions requiring the presence of this element in Islamic punishment can be found in Allah's word: "And We will not punish until We send a Messenger¹⁷."

3.2 Material Element: This element of crime constitutes the commission of criminal activities, whether in the form of actual actions or attitudes of not doing¹⁸. The following hadith of the Prophet shows the provisions for the existence of this element in Islamic punishment. Abu Hurairah (r.a) reported that the Messenger of Allah (PBUH) said: "Verily Allah forgives or is triggered by someone as long as he does not do or utter words¹⁹."

3.3 Penal Element: This element of crime refers to the basis, reason, and grades of criminal and penal culpability, as well as the significance of purpose, intention, ignorance, error, and other major variables that affect the doer's legal capability. This element is also related to the conditions and specific situations that establish exclusions from legal accountability. The following hadith of the Prophet demonstrates how this aspect was determined: Aisyah (r.a) reported that Rasulullah (SAW) said: " (sins) are forgiven for my ummah from three things, namely: and young children until they reach puberty, people sleep until they wake up and from crazy people until they are healthy²⁰."

From the above discussion it can be said that each of these elements must be present in all illegal acts without distinguishing one another. Furthermore, each jarimah (criminal act) is characterized by unique characteristics that vary from one crime to another. This difference arises due to the different nature of the crime committed by a person. The Fuqaha' usually talk about this particular element when discussing the subject matter of these kinds of crimes.

4. THE CONCEPT OF PUNISHMENT

The word for punishment in Islam is "Uqubah²¹." The word 'Uqubah' is derived from the word 'Aqabah,' which is synonymous with "khalafahu wa jaa biagabihi." Its meaning is together with and come behind. It involves exchanging as much as feasible in order to achieve a desired outcome or specified course of action. It refers to the act of disregarding or disobeying the instructions or restrictions set by the lawgiver, in relation to the community requirements²². According to Ahmad Warson Munawir, the word 'Uqubah' which means "torture or punishment". Torture in this term means "the punishment for acts that violate the provisions shari'ah established for the benefit of society²³." "Uqubah' or punishment can also be termed to the word 'al-iqab' as contained in the holy Qur'an. The word "al-iqab' preceded by the word "syadiid, which means "the most, so and so". This word shows the meaning of evil and doom that is really sad. Almighty Allah says "And whoever opposes Allah and His Messenger – indeed, Allah is severe in penalty²⁴." However, Abu Ja'far gives a wider meaning to (Uqubah) maintaining that "the suffering that people suffer due to crime is called punishment²⁵." Mufti Amimul Ihsan defines punishment as the suffering that the criminal has to suffer in this world or in the hereafter as a reward after committing a crime²⁶. Dr. Ali Rashid gives the standard definition of (Uqubah) as he says, "it (punishment) is the consequence which the law prescribes for the interest and necessity of the community against a person, to whom responsibility is assigned in the Penal Code, for which the punishment of any offense is mentioned²⁷."

Based on the understanding of the Arabic language as stipulated above, it can be understood that the punishment (Uqubah) are all forms of torment, sanctions or the like that is imposed on a person as a result of his actions which violate such rule or regulation either set by Allah (SAW) in the words of his or regulation, norms, or legislation agreed on the community.

5. CATEGORIES OF CRIMES AND PUNISHMENTS

In Islam, when specific fundamental rights are infringed, the offence is referred to as 'Maasiat', which means crime or offence. This violation leads to the establishment of certain alternative public rights in the form of uqubaat or punishments²⁸. There are essentially two ideas that are utilized by Islamic Penology in order to defend the issues that are faced by the society and to demarcate the answers to such issues. The first is "the stability and permanence of its fundamental tenets," and the second is "the dynamism of its subsidiary injunctions²⁹." There are some aspects and crimes which are most common to all kinds of communities. Islamic law brings fixed statutes and punishments for them³⁰. In regard to various dynamic

circumstances that arise from social progress, expanding perspectives, and knowledge acquisition, Islam seeks to resolve them through the application of universally applicable principles that are adaptable to diverse situations. With the exception of the aforementioned two categories, all other types of criminal activity are subject to general Islamic principles that prohibit such felonies and delegate their punishment to the appropriate political authority of the state³¹. The political authority will subsequently assess the situation and determine the most efficient course of action to protect society from harm. As stated in the preceding principles, there are three sorts of crimes and punishments in Islamic jurisprudence³². Such as:

5.1 Prescribed Punishments: The Arabic name for it is 'Hadd' or 'Hudud'. Hadd (hudud) literally means “limit”, or “restriction”. In Islamic law, the term is frequently used to refer to the boundaries of appropriate behaviour and the penalties for significant transgressions³³. The Qur'an contains precise descriptions of several crimes along with their corresponding punishments. These offences are considered offences committed directly against Allah, and the implementation of the specified punishments for these crimes is the prerogative of Allah³⁴. These crimes have certain innate characteristics. Since these are the "Right of Allah," they have general legal rights that unquestionably pertain to the welfare of the community. It is impossible for anyone to increase or decrease such penalties. These offences and punishments cannot be altered or exempted by any judge or political authority³⁵. But the victim can pardon the offender and the offender can get rid of the offence when the damage is only personal. If a non-Muslim who has been convicted under Hadd converts to Islam, they may be acquitted from the crimes committed against Allah and these are the exceptions in this regard³⁶. Following offences are treated as 'Hadd': Theft, Highway Robbery, Fornication and Adultery, False Accusation, Drinking, Apostasy³⁷.

The fundamental concept behind hadd offences is to discourage individuals and others from engaging in similar act³⁸. Moreover, in order to ensure the deterrent impact of the penalties, they should be executed in a public manner. Even though this punishment is severe and rigorous, it must be administered according to strict rules; if there is even the slightest doubt, it cannot be applied. This was the case with al-Ghamidiyyah, “who went to the Prophet to confess her adultery and request to be stoned in order to be cleansed of her transgression. The Prophet declines to order her execution by stoning on account of her pregnancy. The implementation of the hadd punishment was deferred until after the birth of the child. After the child was born, the punishment was postponed until the kid was weaned, at which point the Prophet decided to stone her and a companion agreed to take care of the child and bring him up³⁹.”

The punishment may even be substituted. During a period of famine, Umar ibn al-Khattab intervened to prevent the implementation of hadd punishment for the crime of theft (sariqah) inside the Muslim community⁴⁰. Another case is connected to the ruling rendered by 'Umar, who overturned the offender's hand amputation after discovering that the criminal was compelled to steal to feed his hunger⁴¹.

5.2 Retributory Punishments: These are known to as 'Qisas' or 'blood-fine'. The punishment prescribed under Islamic law for murder and personal injury is known as qisas (retaliation)⁴². When addressing qisas offenses, Islamic criminal law accords precedence to the aggrieved party.

Qisas has a dual nature. However, there is an additional penalty known as diyat that must be given to the victim or his family⁴³. The contemporary science of victimology exhibits a parallel with the principle of diyat (blood money), as victim compensation advocates for the decriminalization of the offence and provides reparation to the victim in lieu of the conventional penalty of imprisonment. Retributive justice entails imposing an equivalent level of harm on the offender as was inflicted onto the victim⁴⁴.

Furthermore, the application of qisas is refuted by the Qur'an's explicit preference for diyat (blood money) and forgiveness. This preference exemplifies the continuity between temporal law and religion, as the punishment for the transgressor is the expiation of his transgression⁴⁵. The verse of Qur'an states “And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution. But whoever gives [up his right as] charity, it is an expiation for him. And whoever does not judge by what Allah has revealed - then it is those who are the wrongdoers⁴⁶.”

Therefore, the combination of forgiveness and diyat (blood money) creates a powerful material and spiritual incentive to give up qisas.

5.3 Discretionary Punishments: The Arabic term for these is "Tazir⁴⁷." Ta'zir is defined by Al-Mawardi as “a punishment which is inflicted in case of offenses for which punishment has not been prescribed in the Qur'an and Sunnah⁴⁸.” This is

considered the right of the community. It covers those issues which are not part of the qisas or hudud, but which affect the right of the community such as shouting in the streets, cheating in the market place etc⁴⁹. The judge supervising the case will carefully examine the gravity and nature of the offense and determine an appropriate penalty based on his own ijthad (personal reasoning). The penalties might vary from a warning notice to capital sentence⁵⁰. One well-known instance occurred during the reign of "Umar ibn al-Khattab, when he punished a scholar for providing a false testimony. He ordered that the scholar should have his head shaved, his face painted black, and be paraded semi-clothed in front of the people while sitting backwards on a donkey⁵¹."

6. PHILOSOPHICAL ASPECTS OF PUNISHMENT IN ISLAMIC CRIMINAL LAW

Undoubtedly, Islamic punishments are the most significant when compared to any other system of punishments ever implemented in human society. Punishments serve as a method to advance the moral principles and overall well-being of human civilization⁵². The philosophy of Islamic punishments differs significantly from and is considered superior to the penal philosophy advocated by Western criminologists⁵³. To comprehend this concept, it is imperative that we examine the subject from the following perspectives:

6.1 The Philosophy of Objects: The purpose of punishment according to Islamic law may be predicated on two fundamental tenets, namely: protection of human honour, intellect, offspring etc. and protection of the society as a whole⁵⁴. Islam establishes penalties to safeguard and ensure six issues for all citizens of the state, regardless of whether they are Muslim or not. These issues are belief, honor, mind, property, life, and offspring⁵⁵. Islam provides protection for the things that people consider to be of the utmost importance by providing all of these safeguards. Those who are considered to be responsible for the misuse of any of these securities are subject to punishment⁵⁶. The philosophy of objects of Islamic punishments diverges significantly, as it is rooted upon a comprehensive perspective and assessment. Therefore, Islamic punishments exhibit the following features concurrently and synchronically:

6.1.1 Retributive Nature: The primary aim of Islamic penalties is to administer a penalty to the offender that corresponds to the severity of their wrongdoing, as a kind of retribution for the offense they have committed⁵⁷. Because committing of a crime is a violation of a divine commandment, it requires the imposition of punishment. It is based on the assumption that every action must be met with either a positive or negative reaction⁵⁸. The Holy Qur'an also explicitly addresses this issue, stating that "As to the thief, male or female, cut off his or her hands. This is a retribution, by way of example, from Allah, for their crime: and Allah is exalted in power⁵⁹."

As stated in a verse of the Qur'an, the penalty of hand amputation is merely a retribution for the theft offense. The concept of retribution is fundamental to the Islamic philosophy of punishment, which holds that punishment is bestowed by Allah Almighty on the explicit presumption that punishment is necessary to rectify the suffering caused by a sinful or criminal act⁶⁰. The imposition of sanctions through the Shariah for transgressions and offenses is driven not only by personal vengeance but also by social and moral considerations⁶¹. Its main goal is to make the criminal and the society as a whole, of which the criminal happens to be a member, feel intense loathing and disgust. This principle is an expression of disapproval, disapprobation, and denunciation of the illegal act as stated in Islamic law⁶².

6.1.2 Preventive Nature: Islamic penalties simultaneously serve as prevention by causing physical anguish and impairment⁶³. For example, death penalties, amputation of hands or feet, imprisonments, transportation, confinements, etc. The criminals are deterred from committing the crime again either because of a permanent or temporary incapacity⁶⁴.

The Qur'an categorizes robbery as an act of mischief and disruption in society, and provides guidelines for the appropriate punishments for this crime. It states: "And they create mischief and disruption in the world⁶⁵."

Preventive imprisonment has been mandated as a form of punishment for this transgression, as stated in the Hudud: "These people should be removed from the hub of activity⁶⁶." This verse from the Qur'an elucidates that incarceration or transportation is prescribed as punishment to deter the offender from causing further unrest⁶⁷.

6.1.3 Deterrent Nature: The third objective of Islamic punishment is its deterrent capacity. The Shariah has advised that the penalties be carried out in public because it has a deterring impact when punishments are displayed in that way⁶⁸. As a result of the public demonstration, individuals with the slightest propensity to engage in criminal behavior would abstain due to the severe penalties associated with such behavior⁶⁹. To accomplish this goal, Shariah has explicitly mandated that the prescribed penalties of Islam should not be diminished or alleviated, even in the face of the influence of compassionate

feelings⁷⁰. It is stated in Holy Qur'an: "Let not compassion move you in their case, in a matter prescribed by Allah, if you believe in Allah and the Last Day⁷¹."

The instruction of the Qur'an states that if the guilt of the offender is established, the offender must be punished at any cost⁷². Furthermore, the punishment should not be altered with compassion or leniency. This is because any such tincturing or blending may cause the effectiveness of the punishment to be compromised⁷³.

Therefore, the imposition of severe punishments serves the objective of instilling a sense of dread in the general public as a means of preventing criminal behavior⁷⁴. The deterrent and exemplary nature of Islamic punishment has a psychological effect on those with criminal tendencies. They restrain their criminal inclinations due to the apprehension of the subsequent penalty and the accompanying public exhibition of its implementation⁷⁵. This is the main reason for assembling the people when the adulterers are to be punished. The same goal is achieved by having the offender's cut hands and feet hung and then stoning them in broad daylight⁷⁶.

6.1.4 Redressive Nature: In the majority of criminal cases, the victim tends to seek revenge⁷⁷. If this desire for revenge is not addressed and eliminated through proper resolution, it becomes difficult to control the proliferation of criminal activities, particularly those involving murder or serious bodily harm⁷⁸. If these crimes are not rectified, they will result in an incessant cycle of tension and violence, with murders and counter-murders occurring between the involved parties⁷⁹.

The Islamic penal system is characterized by its landmark feature of declaring all offences in this category as compoundable offences⁸⁰. Furthermore, the punishments assigned for these violations are notable for their exceptional level of balance and equilibrium as it is stated by the Holy Qur'an: "O believers: The law of retaliation is prescribed to you in cases of murder; the free for the free, the slave for the slave, the woman for the woman. But if any remission is made by the brother of the slain, then grant any reasonable demand and compensate him with handsome gratitude. This is a concession and a mercy from your Lord. After this whoever exceeds the limits shall be in grave penalty. In the law of equality and retaliation there is (saving of) life to you, you men of understanding that you may restrain yourselves⁸¹."

The purpose of this law of Qisas is to appease vengeance by redressing the aggrieved party through imposing the same physical harm or punishment on the offender as he did on the victim⁸². The law of eye for eye, ear for ear, limb for limb and life for life is the best way of redressing the physical feeling of revenge⁸³. Furthermore, due to the compoundability characteristic of this offence, the aggrieved party is entitled to receive blood money as retaliation rather than physical harm, should it prefer to be compensated monetarily⁸⁴. Subsequently, the aggrieved party is presented with the choice of either seeking restitution to appease his sense of vengeance or forgiving the offender in its entirety⁸⁵. The state should respect the right of the aggrieved party and allow them to seek satisfaction and redress in the manner of their choosing in order to prevent the spread of evil in society⁸⁶. Therefore, redressive punishment holds significant importance within the Islamic system of sanctions.

6.1.5 Restitutive Nature: The penalties of blood money and monetary restitution, which are mandated as alternatives to retaliation also feature a restorative nature⁸⁷. When the victim's need for vengeance is justly gratified on his own demand in accordance with the parameters given by Shariah, then the victim cannot intend to commit the crime again⁸⁸. This idea is stressed in the verse: "But if any remission is made by the brother of the slain, then grant any reasonable demand and compensate him with handsome gratitude. This is a concession and a mercy from your Lord. After this whoever exceeds the limits shall be in a grave penalty⁸⁹." This verse indicates that the monetary compensation that is deemed to be handsome gratitude is, in fact, the restoration of the person who has been wronged. After the aggrieved party has received this allowed level of satisfaction, he or she does not have the right to further satisfy his or her desire for revenge because such an act would amount to exceeding the limits of Shariah. This act would in itself be considered a crime⁹⁰. Thus the law of retaliation gives redressive character to the punishment whereas the law of blood money gives restitutive character to the punishment⁹¹.

6.1.6 Reformatory Nature: The reformatory theory of Islamic law is manifested by the discretionary punishment that the Qadi, or judge, is authorised to impose⁹². The reformatory approach is disregarded in the justification of Hadd punishment in Islamic law due to the fact that Hadd penalties are derived from Allah's decrees. He alone has prescribed these punishments for the stated crimes. And He said: "Should He not know He that created and He is the Subtle the Aware⁹³."

In spite of this fact, however, a renowned scholar of Hanbali School of law, Ibn Qayyim, said that the hadd punishments are of reformatory as well as retributive and deterrent value. He mentioned the widely accepted belief among Muslim jurists that a person who has been punished for a wrongdoing in this life will not be punished for it in the hereafter⁹⁴. Although

Ibn Qayyim provides this explanation and there is some support from reliable sources, it is important to note that, from a penological perspective, this does not necessarily mean that hadd penalties have a reformatory aspect in the way that the term "reform" is commonly interpreted in legal literature⁹⁵. However, there is one exception to this perspective, specifically regarding the punishment for Hirabah, which refers to highway robbery. In this case, Allah gives discretion to the Imam to select one of the authorized punishments for this transgression⁹⁶. If the judge chooses nafy, which is equivalent to exile in modern terms, the offender may be banished or imprisoned until they rectify their actions, demonstrate good conduct, and no longer appear likely to engage in other criminal activities. This method of punishment is explicitly mandated to enhance and reform the criminal character. Therefore, in this context, one might assert that it is intended for reformation and, as a result, it deviates from the overall ideology of hadd penalties⁹⁷.

6.1.7 Expiative Nature: The Islamic penal system includes a number of punishments that have an expiatory nature, providing the criminal with a means of moral and spiritual purification through the use of certain punishments. This concept has always held a significant position in the various philosophical and theological teachings that are practised all over the world. The implementation of the expiatory punishment for offences that are not subject to Hudud or Qisās alleviates the burden of guilt that is placed on the individual who committed the offence⁹⁸. For example, the expiation prescribed for breaking fast, for dishonouring the oath and for the commission of some prohibited acts during the performance of Hajj, etc. The Islamic penal system is notable for its capacity to maintain a harmonious equilibrium between the material and spiritual dimensions of human existence. It achieves this by imposing physical punishments to address earthly responsibilities and expiatory punishments to address spiritual obligations⁹⁹.

6.1.8 Denunciative Nature: The concept of denunciation in punishment is just an alternative form of retributive philosophy. Regarding denunciation theory in Islamic law, there is minimal distinction between it and the previously discussed retributive theory. It is imperative for the Muslim community to unequivocally denounce any criminal activity in order to prevent its recurrence in society¹⁰⁰. This principle is seen in the crimes that are subject to Ta'zir punishment, where a Qazi is able to decide based on his own judgement and what is best for the general public¹⁰¹.

6.2 Philosophy of Enforcement: Islamic system of punishments exemplifies another philosophical aspect which pertains to its mode of enforcement. Punishments do not constitute the fundamental laws in Islam. These rules are exclusively declaratory and are consistently implemented as a requirement or result, serving to uphold the fundamental framework of Islamic society¹⁰². Therefore, the Islamic state is committed to removing and eradicating the reasons that are the origin of criminal activity from the community. This is done in order to ensure that the necessary framework for social life can be established on unshakeable foundations¹⁰³. These factors are, for example, the environment of immorality, the conditions creating economic deadlock and deprivation, conditions generating social disparity etc. By enforcing the primary laws of Shariah, an attempt is made to extinguish these factors, because only through their elimination the enforcement of the penal system can produce the required results¹⁰⁴.

The fulfilment of the primary requirements results in the establishment of a religious atmosphere within the community, and the imposition of sanctions serves as a check on the maintenance of that religious atmosphere¹⁰⁵. In light of this, the impositional philosophy of Islamic penalties can be broken down into two distinct aspects: internal and external. At internal level it removes and eliminates the chances of the commission of crime and at external level it obviates the occurrence of criminal violation through the enforcement of punishments¹⁰⁶.

6.3 Philosophy of Severity: Orientalists and Western scholars commonly critique Islamic punishments for their perceived severity. They contended that Islamic punishments are very severe, cruel, barbarous and inhuman, and these punishments were formulated and applied in conditions more or less primitive, keeping in view the geo-physical climate of those times. Therefore, it is impermissible to implement them in the technologically advanced and civilised society of the twenty-first century¹⁰⁷. These criticisms are raised with a complete lack of knowledge and understanding of the system and concept of Islamic penalties.

The goals and purpose of Islamic punishments is to inflict harm upon the offender, not to subject him to humiliation. However, despite the fact that he has committed a crime and has been temporarily classified as a criminal, he is still fundamentally a human being and, as such, he is entitled to be treated as a human being¹⁰⁸.

The fundamental objective of Islamic penal law is to prioritize the welfare of the offender, based on the notion that it is preferable to forgive a criminal rather than to punish an innocent person. Therefore, a system of preconditions and pre-

requisites for the imposition of Islamic punishments, relating to substantive as well as to procedural penal laws, has been formulated to check the frequent application of severe punishments¹⁰⁹. Discretionary punishments are mostly granted as substitutes for predetermined punishments, serving as compelling evidence of the humanistic foundation of Islamic penalties¹¹⁰. Legal research conducted during different years of Islamic history demonstrates that the use of hudud has been extremely limited. This is in contrast to the statistics that are available for Western countries, where the variety of punishments and the frequency of their application are significantly more extensive¹¹¹.

In comparison to any other system of punishments that have ever been implemented over the course of human history, there is no question that Islamic punishments are the most significant. If a penalty effectively and conclusively deters crime, then, in accordance with Salmond, a prominent Western authority on Jurisprudence, the punishment of burning alive can be applied to all criminals¹¹². He unequivocally expressed that if the deterrent effects of severity were absolute and comprehensive, the best law would be the one that effectively eradicated the crime by the use of the most severe punishments. If human nature has the inherent quality that a credible threat of burning all wrongdoers alive could effectively deter all violations of the law, then it would be a fair and appropriate punishment for all crimes, ranging from acts of treason to minor theft¹¹³. In support of the discussion, we can quote the comments of Cordon Gaskell "Foreigners consider this amputation for theft a horrible punishment but even they admit that it has made Saudi Arabia the country with the lowest crime rate in the world¹¹⁴."

The allegation of severity and cruelty against Islamic punishments is, therefore, absolutely baseless, false and biased which is rooted either in sheer ignorance or scholastic dishonesty.

6.4 Philosophy of Efficacy: The Islamic system of penalties is very effective. The effectiveness of this acts on the following grounds:

6.4.1 Psychological Ground: The level of psychological efficacy of Islamic punishments is determined by the fact that the element of fear and the psychological feeling of insecurity of life, honour, and property are completely eliminated through their application, and a healthy psychological environment is created for the individuals through their enforcement. This is the determining factor in the psychological level of the effectiveness of Islamic punishments.

6.4.2 Moral Ground: The moral level is demonstrated by the fact that the criminal and sinful tendencies in the community are reduced to a minimum as a result of the implementation of Islamic punishments, which in turn provides the people with environments that are morally pure.

6.4.3 Social Ground: The social level is projected by the fact that, as a result of the full implementation of the Islamic penal system, the society experiences an ideal condition of peace, prosperity, and tranquilly. This is a necessary necessity for the individual and collective development of the members of the society.

6.4.4 Economic Ground: The economic level is demonstrated by the overcoming of economic deadlocks through the administration of Islamic punishments. Through the enforcement of punishments that provide security to the economic efforts of the people, the chances of violating the laws are drastically reduced, if not completely liquidated. This is accomplished by declaring illegal acts such as graft, theft, hoarding, smuggling interest, black marketing, embezzlement, and other similar activities as punishable offences. This is done because these illegal acts create an unnatural economic disparity in the society.

6.4.5 Political Ground: The implementation of punishments for crimes such as sedition, rebellion, apostasy, and other offences that threaten the integrity and cohesion of the state, as well as the ideological foundation upon which the state is founded, is a prominent example of the political level.

7. CONCLUSION

Islamic law of punishments are, therefore, not only civilized but also comprehensive and highly effective. The prescribed penalties outlined in the Qur'an and Al-Sunnah must be enforced. The purpose of the punishment is to arouse people from their evil deeds and instill in them the conviction that they must prevent themselves from engaging in any form of evil, regardless of whether or not others are able to witness it, because Allah is always monitoring them wherever they are¹¹⁵. If this is ingrained in each and every person, then immediately, there will be no evil on the surface of the earth, or at the very least, there would be a reduction in the amount of crime that occurs in the society.

In Islamic law, the concept of punishment is based on the idea that crime is crime and that it must be checked. Evil should not be underestimated, as it has the potential to engulf an entire society in its abhorrent fabric if left unfettered and unpunished. Islamic punishments, with their innovative combination of fixed prescriptions and discretionary options based on proportionate doses of mildness and severity, can effectively reduce crime, in contrast to the Western penal system, which has failed miserably in its attempts to control and curb the ever-increasing graph of crime. This is the only effective alternative to minimize crime.

REFERENCES

- ¹ Dr. Muhammad Mostafa Kamal, *Islamic Law: The Basic Problem Solvation*, (Dhaka: Islamic Foundation Bangladesh, 2006), p 11-15.
- ² Al Mawardi, *Al-Ahkam al-Sulthaniyah*, (Mesir: Mustha al-Bab al-Halabi, 1973), p.219.
- ³ Muhammad Salim Al-'Awa, *Fi Ushul al-Nizham al-Jinaai al-Islami* (Mesir: Dar al-Ma'arif, 1983), p.126.
- ⁴ Abd-al-Karim Zaydan: *Al-Madkhal Li Dirasat al-Shari'ah al-Islamiyyah*, 5th. ed., (Beirut: Makatabt Muassast al-Risalah, 1976), p396.
- ⁵ Abdul Wahab Khalaf, *Ilmu Ushul al-Fiqh*, (Jakarta: al-Nasyral-Majlis al-A'la Indonesia li al-Da'wah al-Islamiyah, t.th), p.201.
- ⁶ Ibn Manzur, *Lisan al-Arab*, Vol.XIV, (Egypt, 1300 A.H.), p. 154-55.
- ⁷ Abdul Qadir Awdah, *Al-Tasyri' al-Jinaii al-Islami*, (Beirut: Muassasah al-Risalah, 1992), vol.1, 66.
- ⁸ Al-Turi, *Takmilat al-Bahr al-Ra'iq*, Vol.VIII, (Beirut: Al-Matba'ah al-'Ilmryyah, 1st. ed.), p.327
- ⁹ Al-Turi, *Takmilat al-Bahr al-Ra'iq*, Vol.VIII, p.327, Ibn Ghanim, *Majma al Damanat*, p.165.
- ¹⁰ Al-Kasani, *Al-Badai*, (Beirut: Dar al-Kitab al-Arabi, 1982), Vol.VII, p.233.
- ¹¹ Ibn Qudamah, *Al-Mughni*, (Saudi Arabia: Riyad, 1980), Vol.IX, p.320.
- ¹² Abd-al-Karim Zaydan, *Al-Madkhal Li Dirasat al-Shari'ah al-Islamiyyah*, *ibid*, p 398.
- ¹³ Abu Zahrah, *Al-Jarimah Wal-Uqubat fil fiqh al-Islam*, (Cairo: Dar al-fikr Al-arabii), p.23-61.
- ¹⁴ Abdul Qadir Awdah, *Al-Tasyri' al-Jinaii al-Islami*, *ibid*, vol.1, 246-248.
- ¹⁵ Abd al-Khaliq al-Nawawi, *Al-Tashri al-Jinaii Fi al-Shariah al-Islamiyyah*, p.155.
- ¹⁶ Muhammad al-Thahir Ibn 'Ashur, *Maqashid al-Shari'ah al-Islamiyyah*, (jordan: Dar al-Nafais, 2001), p. 337-338.
- ¹⁷ *The Holy Qur'an*, Sura Al-Isra':15.
- ¹⁸ Abdul Qadir Awdah, *Al-Tasyri' al-jinaii al-Islami*, *ibid*, vol.1, 246-248.
- ¹⁹ Al-Tirmizy, *Sunan al-Tirmizi*, (Egypt: Dayrat al-Mayref, 1968), p. 89.
- ²⁰ Al-Tirmizi, *Sunan al-Tirmizi*, p.32.
- ²¹ Abdul Qadir Awdah, *Al-Tashriyat al-Jinai al-Islami Muqaranan bil qanun al-Wadai*, *ibid*, vol 1, p.634.
- ²² Abdul Qadir Awdah, *Al-Tashrih al-Jinai al-Islami*, *Ibid*, Vol. 1, p. 261.
- ²³ Ahmad Warson Munawir, *Al-Munawir: Dictionary Arabic-Indonesia*, (Pustaka Progressif, Surabaya, 1997), p.952.
- ²⁴ *The Holy Qur'an*, Sura Al-Anfal: 13.
- ²⁵ Abu Ja'far Ahmad Tahawi, *Al-Mawsu'at al-Fiqhiyah*, (Kuwait: Wazirat al-Awqaf, 2010 AD), Vol-30, p. 269.
- ²⁶ Mufti Muhammad Amimul Ihsan, *Qawaid al-Fiqh*, (Dhaka: Imdadiya Library, 1961), p. 383.
- ²⁷ Dr. Ali Rashid, *Mu'jiz al-Qanun al Jinayi*, (Egypt: Nuhja Press, 1957), p. 493.
- ²⁸ Abdul Rahim, *The Principles of Muhammadan Jurisprudence* (Madras: Luzac and Co., London, S.P.C.K. Depository, 1911), p. 361.
- ²⁹ Reburn Levy, *The Social Structure of Islam*, (Cambridge University Press: 1969), 1st Edition, p 150
- ³⁰ Abdul Rahim, *The Principles of Muhammadan Jurisprudence*, p. 363.
- ³¹ Reburn Levy, *The Social Structure of Islam*, p 150.

- ³² Tauqir Mohammad Khan and M. H. Syed, *Criminal Law in Islam* (Pentagon Press, 2007), p. 343.
- ³³ Al-Hedaya, Chapter-Evidence, (Dhaka: Islamic Foundation, 2007) Vol. IV, p.237
- ³⁴ Dr. Md. Ali Asgar Khan, Mokhlesur Rahman, Dr. Sheikh and Md. Lutfor Rahman, *Muslim Proshashon Babosthar Chromobikash*, (Rajshahi: Books Pavilion, 1989). p 313.
- ³⁵ Muhammad ‘Ata al-Sid, *Islamic Criminal Law: The Hudud*, (Malaysia, 1995), p. 30. Al-Kasani, *Badai’ al-Shanai’ Fi Tartib al-Shara’i*, (Bairut: Dar al-Kutb al-‘Ilmiyyah, 2003), p. ix.
- ³⁶ Dr. Md.Ali Asgar Khan, Mokhlesur Rahman,Dr.Sheikh and Md. Lutfor Rahman, *Muslim Proshashon Babosthar Chromobikash*, p. 315
- ³⁷ Dr. Ahmad Ali, *The Law of Punishment in Islam*, (Dhaka: Bangladesh Islamic Centre, 2015), p 51.
- ³⁸ Muhammad ‘Athiyyah al-Faituri, *‘Fiqh al-’Uqubah al-Haddiyyah Fi al-Tashri’ al-Jina’i al-Islami’*, p. 168.
- ³⁹ Muhammad Ibn ‘Ali Muhammad al-Shaukani, *Nail al-Authar*, vol. 11, (Cairo: Dar Ibn ‘Affan, 2005), p. 25
- ⁴⁰ Muhammad Sulayman Ghazzali, *‘Al-Mustasfa Min Ilm al-Usul’*, p. 180.
- ⁴¹ Muhammad Sulayman Ghazzali, *‘Al-Mustasfa Min Ilm al-Usul’*, p. 182.
- ⁴² Dr. Ahmad Ali, *The Law of Punishment in Islam*, p 229.
- ⁴³ Prof. Dr. Anwarullah, *The Criminal Law of Islam*, (Malaysia: A.S.Noordeen, 2002), p 31.
- ⁴⁴ M. Cherif Bassiouni and M. Cherif Bassiouni, *The Islamic Criminal Justice System*, (London: Oceana Publications, 1982).
- ⁴⁵ Dr. Ahmad Ali, *The Law of Punishment in Islam*, p 55.
- ⁴⁶ The Holy Qur’an, Sura al- Ma’idah: 45.
- ⁴⁷ Prof. Dr. Anwarullah, *The Criminal Law of Islam*, p 208.
- ⁴⁸ Abu al-Hasan al-Mawardi, *‘Al-Ahkam al-Sulthaniyya*, p. 310.
- ⁴⁹ Dr. Ahmad Ali, *The Law of Punishment in Islam*, p 312.
- ⁵⁰ Prof. Dr. Anwarullah, *The Criminal Law of Islam*, p 209-212.
- ⁵¹ See Muhammad Bahjat *‘Atibah, Muhadhara fi al-Fiqh al-Jina’i al-Islami*, (Ttp.: al-Ma’had al-‘Ali li al-Dirasat al-Islami, 2002), p. 391-394. See also Ahmad al-Hadhari, *Al-Siyasah al- Jina’iyyah fi Fiqh al- ‘Uqubat al-Islami al-Muqaran*, (Ttp.: Dar al-Jil, 1993), Vol. 1, p. 134-136.
- ⁵² Dr. Ahmad Ali, *The Law of Punishment in Islam*, p 355.
- ⁵³ Dr. Muhammad Mostafa Kamal, *Islamic Law: The Basic Problem Solvation*, p 11.
- ⁵⁴ Md. Abdul Halim, *The Legal System of Bangladesh*, (Dhaka: Md Yousuf Ali Khan, 2004), p. 49.
- ⁵⁵ Muhammad al-Thahir Ibn ‘Ashur, *Maqashid al-Shari’ah al-Islamiyyah*, p. 34.
- ⁵⁶ Abu Wahab Khalaf, *Ilmu Usul al-fiqh*, (Cairo: Dar“ilm, 1971), p.200. See also, Abu Zaharat, *Al-Jeereemat Wal-Uqubat fil fiqh al-Islam*, (Cairo: Dar al-fikr Al-arabii), p.37.
- ⁵⁷ Dr. Ali Rashed, *Mu’jam al-Qanun Al-Jina’i*, 4th edition (Egypt: Cairo, Al-Nohjah al-Arabiyah Press, Fujala, 1957), p. 494.
- ⁵⁸ Ibn Qayyim al-Jawziyya, *Al-Turuk Al-Hukumiyya*, (Beirut: Dar Al-Kitab al-Alamiyyah, undated), p. 267.
- ⁵⁹ The Holy Qur’an, Sura al- Ma’idah: 41.
- ⁶⁰ Abu Abdullah bin Ahmad al-Ansari: *Aljame li Ahkam al-Quran*, (Egypt: Cairo, Dar Ehiyi al-Turas al-Arabi,undated),p.120-128.
- ⁶¹ Dr. Muhammad Mostafa Kamal, *Islamic Law: The Basic Problem Solvation*, p 95.
- ⁶² Mohammed Salim Al-Awa, *Punishment in Islamic Law*, (Indianapolis, Indiana: American Trust Publication, 1982), p. 26-31.
- ⁶³ Kamal Uddin Ibn Hummam, *Commentary on Fathil Qadir*, vol.2, (Egypt: Dar Ehiyi al-Turas al-Arabi, 1992), p. 112.
- ⁶⁴ Dr. Yusuf Hamed Al Alim, *Al-Maqasid al-Ammah lish Shariatil Islamiyyah*, (Beirut: Dar al-Thaqafah, 1992), p. 125.
- ⁶⁵ The Holy Qur’an, Sura al- Ma’idah: 36.

- ⁶⁶ The Holy Qur'an, Sura al- Ma'idah: 36.
- ⁶⁷ Dr. Ahmad Ali, *The Law of Punishment in Islam*, p 58.
- ⁶⁸ Dr. Yusuf Hamed Al Alim, *Al-Maqasid al-Ammah lish Shariatil Islamiyyah*, p. 271-275.
- ⁶⁹ Dr. Fakhri Ahmed Okaz, *Falsafat al-Uqubat fi al-Shariah al-Islamiyyah*, 1st edition (Saudi Arabia, Okaz Library, 1402 AH), p.12.
- ⁷⁰ Mohammed Salim Al-Awa, *Punishment in Islamic Law* (Indianapolis, Indiana: American Trust Publication, 1982), p. 29-30.
- ⁷¹ The Holy Qur'an, Sura An-Nur: 02.
- ⁷² Burhan Uddin Khan, *Introduction to Criminology*, 1st ed. (Jashore: Bangladesh,1986) p. 121
- ⁷³ Dr. Mahmud Najeeb, *Ilam Al-Iqab*, (Egypt: Dar al Nuhja, 1967) p. 87-97.
- ⁷⁴ Dr. Ahmad Fathi Sarur, *Al-Siyasat al-Jina'iyya Fikratuha wa Majahebuha wa Takhtituha* (Egypt: Cairo, Dar al-Nuhjati al-Arabiyah, 1967), p.19-22.
- ⁷⁵ Dr. Fakhri Ahmed Okaz. *Falsafat al-Uqubat fi al-Shariah al-Islamiyyah*, p.51.
- ⁷⁶ Ibn Qayyim, *Ilmu Muwaqin*, (Cairo: Kullyut, Azilhari, 1968), Vol. II, P.37-55.
- ⁷⁷ Dr. Fakhri Ahmed Okaz. *Falsafat al-Uqubat fi al-Shariah al-Islamiyyah*, p.171.
- ⁷⁸ Dr. Zayd bin Abdul Karim, *Al-Abu an al-Anqubat fi al-Fiqhe al-Islami*, 1st edition (Riyadh: Darul Hadimah Library, 1400 AH), p. 282.
- ⁷⁹ Muhammad Abu Zahrah, *Al-Jareemal wal-uqubat fil fiqh Islam*, (Cairo: Daar-Fikr Al-Arabi, 1976), p. 175-176.
- ⁸⁰ Ibn Juzi, *Jadul Masir*, 1st edition, Vol. 1, (Beirut: Al-Maktab al-Islami Library 1984), p. 181.
- ⁸¹ The Holy Qur'an, Sura Ali 'Imran: 178-179.
- ⁸² Dr. Zayd bin Abdul Karim, *Al-Abu an al-Anqubat fi al-Fiqhe al-Islami*, p. 282.
- ⁸³ Muhammad Abu Zahrah, *Al-Jareemal wal-uqubat fil fiqh Islam*, p. 422.
- ⁸⁴ Ibn Qayyim, *Ilmu Muwaqin*, Vol. II, P.37-55.
- ⁸⁵ Dr. Fakhri Ahmed Okaz. *Falsafat al-Uqubat fi al-Shariah al-Islamiyyah*, p.171.
- ⁸⁶ Ibn Qayyim, *Ilmu Muwaqin*, Vol. II, P.37-55.
- ⁸⁷ Sayyid Sabiq, *Fiqh al-Sunnah*, vol.2, p 466.
- ⁸⁸ Muhammad Abu Zahrah, *Al-Jareemal wal-uqubat fil fiqh Islam*, p. 422.
- ⁸⁹ The Holy Qur'an, Sura Ali 'Imran: 178.
- ⁹⁰ Abu Bakr al-Jassas, *Ahkam al-Qur'an*, Vol.2, (Bairut:Dar al-ki al-Arabi, 1335 Hijri),p.224.
- ⁹¹ Ibn Qayyim, *Ilmu Muwaqin*, (Cairo: Kullyut, Azilhari, 1968), Vol. II, P.97.
- ⁹² Abdul-Qadir Awadah, *Al-Tashiri Al-Janayi Al-Islamiya*, Vol. 1, P. 688.
- ⁹³ The Holy Qur'an, Sura Al- Mulk: 14.
- ⁹⁴ Ibn Qayyim al-Jawziyya, *Al-Turuk Al-Hukumiyya*, p. 117.
- ⁹⁵ Ibn Taymiyyah, *Al-Siyasat al-Shariah*, p. 63.
- ⁹⁶ Justice Dr. Abdul Aziz Amer, *Al-Ta'zir fi al-Shariah al-Islamiyyah*, (Egypt and Mustafa al-Bari al-Halabi wa Awladhu Library, 1957) p. 255.
- ⁹⁷ Dr. Fakhri Ahmed Okaz. *Falsafat al-Uqubat fi al-Shariah al-Islamiyyah*, p.171.
- ⁹⁸ Ali Abdul Latif Mansoor, Article entitled "*Al-Ibadat Fi al Islam wa Asaruha*", (Journal of Islamic University of Madinah Monowara, Issue-12, 1403 Hijri), p. 123.
- ⁹⁹ Abdur Rahman al-Nahlawi, *Usul al-Tarbiyyah al-Islamiyyah wa Asalibuha*, p.50 & Ustad Abul A'la Mawdudi , *Mafahim al-Ilamiyyah Hawla al-Din wa al-Daulah* ,(Kuwait: Darul Qalam, 1367), p. 29-30.
- ¹⁰⁰ Ibn Qayyim al-Jawziyya, *Al-Turuk Al-Hukumiyya*, p. 291.
- ¹⁰¹ Dr. Fakhri Ahmed Okaz. *Falsafat al-Uqubat fi al-Shariah al-Islamiyyah*, p.344.

-
- ¹⁰² Dr. Muhammad Abdullah Darraj: *Addin*, (Egypt: Assayada, 1389 Hijri), p. 44, and Research Papers of Shaykh Mustafa Abdur Razzaq, Volume 1, (Riyadh: Dayrat al-Mayare ja al-Islamiyyah, undated), p. 79,
- ¹⁰³ Dr. Yusuf Hamed al-Alam, *Al-Muslihatul Amma lish Shariatil Islam*, (Riyad: Al Idaratul Ammah, 1994), p. 123.
- ¹⁰⁴ Abdul Qadir Awdah, *Al-Tashrih al-Jinai al-Islami*, Ibid, Vol. 1, p. 145-147.
- ¹⁰⁵ Afif Abdul Fattah Tabbara: *Al-Khataiya fi Nazril Islam*, vol.7, 7th edition, (Beirut: Lebanon, Darul Ilam Lil Ma'lain, 1983), p. 176
- ¹⁰⁶ Ibn Qayyim al-Jawziyya, *Al-Turuk Al-Hukumiyya*, p. 291.
- ¹⁰⁷ M. I. Siddiqi, *The Penal Law of Islam*, 2nd ed. (Lahore: Kazi Publications, 1985), p.83.
- ¹⁰⁸ Dr. Bahnam, *Al-Najriatu al-Ammah lil Qanun al-Jina'i*, (Egypt: Dayrat al-Mayref, 1968), p. 39.
- ¹⁰⁹ Dr. Mahmoud Najeeb Hosseini, *Ilm al-Iqab*, (Egypt: Dar al-Nuhja, 1967), p. 65.
- ¹¹⁰ Justice Dr. Abdul Aziz Amer, *Al-Ta'zir fi al-Shariah al-Islamiyyah*, p. 255.
- ¹¹¹ M. I. Siddiqi, *The Penal Law of Islam*, 2nd ed., p.87-95.
- ¹¹² Gazi Shamsur Rahman, *Criminology* (Dhaka: Pallab Publishers, 1984), p. 72.
- ¹¹³ Gazi Shamsur Rahman, *Criminology*, p. 72-73.
- ¹¹⁴ Readers' Digest, February, 1967.
- ¹¹⁵ Dr. Ahmad Ali, *The Law of Punishment in Islam*, p 355-356.