



EFFICACY OF PUNISHMENT UNDER ISLAMIC LAW- AN OVERVIEW

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ABSTRACT

Wrongdoing has been unavoidable in each general public, so is the situation with Muslim society. To control the wrongdoing there is a need a discipline for each wrong dedicated or excluded by a person. Islam as a religion has likewise recommended the discipline for each wrong dedicated by the individuals from the general public. The fundamental and primary wellspring of the discipline in Islam is the Holy Quran, which manages the direct of the individuals from the general public according to divine standards. The point of this article is to feature the Concept of Crime and the viability of discipline under Islamic Law.

KEYWORDS : *Crime, Deterrence, Islam, Punishment, Taz'ir, Hudud, Qisas.*

INTRODUCTION

Wrong doing has been inescapable in each general public, so is the situation with Muslim society. To control the wrongdoing there is a need a discipline for each wrong dedicated or excluded by a person. Islam as a religion has additionally recommended the discipline for each wrong dedicated by the individuals from the general public. The fundamental and primary wellspring of the discipline in Islam is the Holy Quran, which directs the lead of the individuals from the general public according to divine guidelines. Wrongdoing and discipline in Islam is classified into settled and optional. Hadd (plural hudud) and qisas are violations where the discipline is attributed by Allah (SWT) and is along these lines unchangeable. Hudud wrongdoing comprises of zina (unlawful intercourse), qadhif (misleading incrimination of zina), drinking intoxicants (shurb al-khamr), burglary (sariqa), theft (hiraba), renunciation (ridda), and defiance (baqhy). Discipline for the wrongdoing submitted will be forced just when the proof is built up past all sensible uncertainty. This depends on the hadith of the Prophet (SAW): *'_set aside hudud disciplines in instances of uncertainty'*. Qisas is wrongdoing including the taking of life or the causing of substantial damage deserving of countering or blood cash (diya); the person in question or his relative have the privilege to excuse or lessen the punishment of the charged individual. At long last, ta'zir or optional discipline in Islam is expansive and is left to the managing court. Ta'zir truly implies denial. In situations where no explicit discipline is endorsed, the judge is approved to exact such discipline on the offender as is by all accounts most appropriate in perspective of the conditions of every specific case. This type of optional discipline is called ta'zir or reprimand. It is remedial discipline lower than hadd and it winds up pertinent in cases which don't bring about hadd. Having said the abovementioned, this article talks about the issue on the execution of hudud laws in Malaysia .

CONCEPT OF CRIME

The Arabic word wrongdoing "Jarimah" is gotten from the root "Jarm" which has two implications: severance and benefit. It appears that in the days of yore this word was utilized for a benefit from a disdained deed. Later it implied submitting something incorrectly and wicked. Thus the accompanying Quranic section:

*What's more, o individuals!
Let not or contradict (from you).
Cause to sin in case you endure,
A destiny like that,
of the general population of Noah . "*

At the end of the day 'don't give yourselves a chance to be diverted with question in case you endure discipline and face the destiny of your antecedents who dismissed their prophets.' In another Quranic stanza we read the accompanying:

"What's more, let not the scorn of others, to you make you swerve to stress, and leave from equity. Be only; that is by devotion . "

Along these lines the word Jarimah might be utilized for any deed in opposition to right and Justice. The words "ijram" and "ajram" are gotten from a similar root. The main word implies the exact out of "perpetrating wrongdoing" and the second one is the past tense which implies [he/she] "carried out a crime." So the semantic origin of the Arabic word jarimah is any deed that is hated. Presently as every one of the laws of Islam are endorsed by the lawmaker any noncompliance to God's rules is viewed as a wrongdoing. At the end of the day, "wrongdoing" is a precluded deed that could be rebuffed whenever submitted. A man who ceases from acting in consistency with what God has announced might be rebuffed as carrying out a criminal demonstration. Be that as it may, this meaning of wrongdoing is fairly broad for both this word and "sin" and 'wrong doing' infer a similar importance, i.e. defiance God's instructions regardless of the reality whether the discipline is dispensed in this world or later after death. As per a few law specialists there is further contrast between wrongdoing, sin and wrong doing. Wrongdoing is culpable in this world by the official .

CONCEPT OF PUNISHMENT IN ISLAMIC LAW

The guideline on which discipline is situated in is shariah come from two essential rates.. The one which is in struggle with wrongdoing in complete dismissal of the guilty party's individual, and the other considering the wrongdoer while being inconsistent with the wrongdoing in the meantime. The main arrangement of standards are essentially worried about the refutation of wrongdoing to the rejection of the guilty party and is intended to protect the general public against rate of wrongdoing while the second set identifies with the identity of the wrongdoer and go for his remedy.

Certainly the two arrangement of standards appear to repudiate one another, for if the general public is to be secured against wrongdoing, the individual of the criminal must be over looked, while if the guilty party is to paid due respect to social part of the issue should be disregarded. Be that as it may, the Islamic shariah has not just established its correctional framework on these apparently conflicting standards yet has additionally taken consideration to evacuate the clear error between them with the end goal to defend the network against wrongdoing in all conditions. For the shariah has embraced the standards of aggregate security in a flat out sense and has kept it in view in setting out every one of the disciplines. Appropriately every discipline is an adequate reprimand of the guilty party in extent as it keeps him from perpetrating wrongdoing again and fills in as a notice to other people so they may abstain from submitting it. In any case, if the rebuke of the criminal does not effectively make the general public unsusceptible from his evil impact or the contemplations of aggregate security request that he ought to be dispensed with, he will, of need, be annihilated or detained forever.

CONDITIONS OF PUNISHMENT

Discipline ought to fit in with the arrangements of the shariah. A discipline would be regarded as complying with the shariah just when it is justified by the wellspring of the shariah.. i.e. the Holy Quran, the Sunnah, or the Consensus, or else it is chosen by an administrative body. The basic state of granting discipline by the general population in power is that the disciplines are not repulsive to the shariah arrangements; else they would be void. The consequence of a discipline being one accommodated in the shariah would be that the court would not be skillful to grant another discipline, in spite of the fact that it might esteem such discipline superior to anything the one recommended in the shariah. A few people trust that the shariah has given oppressive power on the court or the judge in regard of discipline. This is a long way from being valid. Such an impression is the aftereffect of obliviousness. The truth is that the shariah arranges disciplines into hudud, qisas (striking back) and ta'zirs (reformatory disciplines). The punishments of hudud and qisas are in dynamically recommended. The court has no power as to these punishments when the offense is built up. It should grant them as they have been set down without rolling out any improvement. For example, the discipline endorsed for theft is removal of hand. In the event that the offense is demonstrated, the court can't pass any sentence other than removal of hand, except if there is something opposite thereto in the shariah.

As respects ta'zirs the court appreciates wide powers, yet they are not harsh. Here the courts have some caution and that prudence is to be practiced in a wise way. For the situation of ta'zir offenses, the shariah has set out an accumulation of punishments which run from reproach to the harshest discipline, for example, life detainment or execution. The court has been enabled to pick any punishment out of the above accumulation as it esteems fit for the wrongdoing and the guilty party and decide the quantum of discipline between the greatest and least points of confinement.

The activity of broad forces presented on the court isn't fundamental. The individual in power can set a limit on these forces if the general population great so requires. At the end of the day, arrangement for broad forces for the court is additionally subject to normal great.

2. Discipline ought to be close to home. Another basic state of discipline is that it ought to be restricted to the individual of the wrongdoer and ought not include any non-criminal.

3. Discipline ought to be of general nature. One of the conditions set down for punishment is that it ought to be of general nature and could be granted to every one of the general population alike, paying little mind to their status; for the ruler and ruled, the rich and poor, the ignorant and the informed are equivalent according to the Shariah.

In any case, this entire fairness in the Shariah as to discipline, concerns just hudud and Qisas; for punishment for the hudud and qisas offenses is resolved and in that capacity isn't amiable to change. In this way, any one who is blameworthy of such offense is resolved and thusly isn't agreeable to change. In this manner, any individual who is blameworthy of such an offense will get the settled discipline, whose quantum and nature would be the equivalent for every one of the general population. However, in the event that the discipline to be granted is Ta'zir than fairness in its quantum and nature isn't basic, for if uniformity in ta'zirs is treated as inflexible, a ta'zir would expect the character of a had.

CONCLUSION

The point here is that the impact of discipline ought to be equivalent and the impact delivered in this manner is prevention and reorganization. A few people may potentially be kept from submitting an offense just by terrorizing, while others couldn't be anticipated just by whipping and detainment. In this manner if a few people blameworthy of a similar offense are given diverse discipline in light of their conditions that make them stop from submitting the offense, at that point balance is set up. It might be all in all correct to express that the inconvenience of awesome discipline (hudud) improves and does not reduce a person's nobility and stature in the public arena and before Allah (SWT). As Khurram Murad appropriately expressed: Punishments are in this manner intended to keep the feeling of equity alive in the network by an open

disavowal of the demonstrations damaging the points of confinement set by God. They are relied upon to develop in the general public a profound sentiment of loathing for transgression against individual people, and along these lines against God - a transgression which, as per the al-Qur'an, is the underlying driver everything being equal and debasement in human life. 'As a last comment, it would be beneficial duplicating the perception made by Al-Marhum Ahmad Mohamad Ibrahim With the happening to the British and the presentation of the Penal Code dependent on the Indian Penal Code and the standards of English law, the Islamic Criminal Law stopped to be connected. A significant number of the Muslims never again know and value the reason and advantages of the Islamic Criminal Law and it isn't astonishing that there is misconstruing and bias against it.'

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