

FIXED AND MANDATORY PUNISHMENTS IN SAHRIAH CRIMINAL LAW: AN INTRODUCTIVE AND ANALYTICAL STUDY

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Abstract

Islam has prescribed punishments for the reformation of society and prevention of crimes so that in future, no one else, including the offender dares to commit these crimes. Some of these punishments have been fixed by Allah Almighty, they are such mandatory punishments that cannot be changed or altered, it is called Hudood. Some have been fixed but given to the victim to choice, such as retribution. Some of the punishments referred to the government are called tazeer. According to the Hanafi School of thought, the Hudood are five. Hadd for adultery offense, Hadd for defamation (false accusations against another) offense, Hadd for theft offense, Hadd for highway robbery offense, Hadd for wine drinking offense:

Seeing the harm of the aforesaid crimes (puberty, Defamation, Wine drinking, theft, road robbery), Allah has made their punishments severe, along with the strict conditions of their proof, so that no one gets these penalties for a mere accusation. In this article, the introduction and analytical study of these five types of Hodood will be presented.

Keywords: Panel Code, Islam Criminal Law, fixed punishment, Hudood, Tazir

Introduction

In Islamic Law, every single act has a reward or punishment and penalty, but the reward or punishment is either in this world or in the Day of Judgment. So we understood that the punishment of a crime is two types in Islam: Punishment of Judgment Day by Almighty God and Punishment from Competent Authority in this world. The punishment hereafter is attributed to God Almighty, if he wishes he will punish the disobedient or the criminal, and if He wishes he will forgive and have mercy. God Almighty said: {Shall we make the obedient like criminals?} It is never fair and logical that the disobedient be equal to the obedient, and the deviant is equal to the upright, so the Day of Judgment the criminal person will be punished. The second type of Punishment and penalties are divided according to the crimes into four Types²:

(1) Hudud penalties: These are the penalties prescribed for hudud crimes. These crimes are crime against God, These Consists of those offenses Fixed in the Holy Quran and Hadiths with specified punishments that cannot be Changed or altered and forgiven.

(2) Penalties for retribution (Qisas) and blood money (Diyah): These are the penalties prescribed for retribution and compensation (blood money) crimes such as murder and bodily injury, but the

(3) Ta'azir penalties: These are the penalties prescribed for the crimes which do not fit into Hudood and Qisas Crimes.

(4) Expiation penalties (Kaffarat): These are the penalties prescribed for some crimes of retribution, blood money, and some crimes of condolences.

One of them, i.e. expiation, is related to a person's self. If he does, it is ok. If did not do, then the punishment will be in the hereafter. The other three are related to the legislative government and court. Therefore, in this paper these three will be discussed as Penal Code.

The interest of individuals and the public require the legislative and implementation of these penalties. Because all human beings differ in the necessity of its existence, the strong among them and the weak, the master among them and the ruler among them; Because it is a protection for them from the spread of corruption, and it blocks the doors of harm. Its legislation is designed to provide benefits and prevent harm.³

Definition of Crime in Shariah:

The Crime is every act that is prohibited by Shari'a. It consists of any disobedience to God's commandments. The origin of the crime is an assault on the human body, honor, mind, or money and property, which necessitates Qisas, Hadd, Tazir.⁴

Islamic Criminal Law:

There are three categories of punishment in Islamic Law:

1- Hudud: These are the legally determined punishments that are obligatory for God Almighty in the Sharia, i.e. that are required by the public interest: which is to ward off corruption from people, and to achieve maintenance and safety for them. The Hadd (this category of punishment) is different for different crimes which cannot be modified or altered. It is applied to seven crimes: adultery, defamation (false accusations against another), drinking intoxicant wine, theft, Highway robbery and apostasy⁵.

2 - Retaliation and blood money: As for retaliation, it is the punishment of the offender for the crime of murder, or intentionally wounding. As for blood money, it is the financial compensation that must be paid in lieu of oneself. Retribution has been legislated in observance of two rights: the general right of the public, and the specific right of the victim. Punishments for offenses in this category are mentioned in the Holy Quran, the victim or the victim's caretaker may pardon the offender. In such a situation, the offender may pay 'blood money' and be liable to punishment

3- Ta'zeer: It is the prescribed punishment for a sin or a felony for which there is no hadd or expiation, whether the felony is against the right of God Almighty, such as eating during the day in Ramadan and not praying, throwing filth in the way of people, and so on, or against a personal right of the servants, such as types of insults, beatings, and harm in any way and other different types of crimes against money and human that have no limit. The punishments of this category of crimes are not specifically indicated in the Holy Quran or in the Prophet's Sunnah; however, they are punishable because they represent acts of disobedience to God's commandments and lead to wrongdoing.

Sharia details of Hudud (Fixed punishments) in the hanafic School of Thought:

There are five Types of Hudud according to Hafic Scholars:

1. Hadd for adultery offense,
2. Hadd for defamation (false accusations against another) offense,
3. Hadd for theft offense,
4. Hadd for highway robbery offense,
5. Hadd for wine drinking offense.

1. Hadd for adultery offense:

The punishment for adultery is of two types: flogging and stoning⁶.

The reason for the obligation of each of them is adultery, but they differ in the condition, which is Ihsan, so Ihsan is a condition for the obligation of stoning, not a condition for the obligation of flogging.

Ihsan has two types: the Ihsan of stoning, and the Ihsan of defamation. The Ihsan of stoning is a term - in the Sharia - for the combination of qualities that the Shari'a considered for the obligation of stoning, which are seven: sound mind, puberty, freedom, Islam, valid marriage, and the fact that all Muslim spouses have these qualities, which is that they are all sane, adults, free and Muslims. The existence of all these qualities is a condition for stoning to death; because each of them is married, and entering into a valid marriage after all the conditions is later than it.

After that, it is necessary to know about adultery in Sharia.

So adultery in Islam is a name for unlawful sexual intercourse in the vaginal opening of a living woman of those who don't have the reality of ownership and its suspicion, and about the right of ownership and about the reality and suspicion of marriage, and about the suspicion of suspicion in where the ownership and marriage are all suspected.⁷

The basis for considering suspicions in this regard is the well-known hadith, which is his saying - may God's prayers and peace be upon him: "Suspend/ Dismiss the Hudud with doubts."⁸ And because the hadd punishment is an integrated punishment, so it needs for an integrated felony, and intercourse in the vaginal opening without property, nor marriage is not an integrated felony; Except when the whole suspicion is gone,

Therefore, the Hanafis say:

If a teenage boy or an insane person has sexual intercourse with a non-mahram woman, there is no punishment for him. Because their act is not described as Haram (forbidden), so intercourse with them is not adultery, and likewise intercourse in the anus in the female or male does not necessitate the hadd according to Abu Hanifa, even if it is forbidden. For lack of intercourse in the vagina, so it was not adultery, and likewise the intercourse with a dead woman does not necessitate the hadd, but he will be punished with tazir due to non-existence of sexual intercourse with a living woman. Likewise, sexual intercourse with animals does not require the Hadd, even if it is forbidden due to the lack of sexual intercourse in the vagina of a woman, so it is not adultery As well as intercourse due to coercion does not require the Hadd.

The same applies to intercourse in the Non Muslim Country, and in the area of rebels, so the Hadd punishment is not required, so that whoever commits adultery in the Non Muslim Country or the area of rebels and then goes out to us, the Hadd punishment is not carried out against him. Likewise, intercourse with a menstruating woman, postpartum women, the fasting woman, the Mahram woman, the insane, and the one who has intercourse with suspicion, does not require Hadd, even if it is forbidden;

Likewise, intercourse with a woman whom he married without witnesses or without a guardian according to someone who does not permit it, does not necessitate hadd punishment. Because the scholars differed, among them someone said: It is permissible to marry without witness and guardianship, so their disagreement creates doubt. Likewise, if he marries his mahrams, or the fifth, or his wife's sister, and he has intercourse with her - there is no Hadd punishment for him according to Abu Hanifa, even if he knows about the prohibition.

Hadd Punishment:

The punishment for adultery is of two types: stoning for a married woman, and flogging for an unmarried woman.

The ruling in the beginning was confinement in homes, reproach and insult with the tongue, as God Almighty said: {So seize them in the homes}⁹ and He said: {Then hurt them}¹⁰ Then this was abrogated by the hadith of Ubadah bin Al-Samit that the Prophet - may God's prayers and peace be upon him - said:

"خذوا عني قد جعل الله لهن سبيلا البكر بالبكر جلد مائة ونفى سنة والثيب بالثيب جلد مائة والرجم"¹¹

"Take from me, God has made for them a way. There are hundred floggings and a year's expatriation for the adultery of Unmarried with Unmarried, and hundred floggings and stoning for adultery of Married with married". This was before the revelation of Surat Al-Nur, as evidenced by His saying, "Take from me." If it had been after its revelation, he would have said, "Take it from God Almighty." Then this was abrogated by Vers:

{So flog each one of them with a hundred lashes". So the last ruling of Allah is flogging for the unmarried and stoning for the married. As for flogging, it is agreed upon among the scholars, and as for stoning, it is a legal punishment against the married person, proven by the Sunnah, except the Kharijites, who deny stoning. Because they do not accept the hadith, if it is not Mutawatir¹³.

Stoning proofs:

Stoning is established by the Sunnah and the Analogical reasoning.

Sunnah: it is the well-known hadith, which is his saying - peace and blessings be upon him - "

لا يجل دم امرئ مسلم إلا بإحدى معان ثلاث: كفر بعد إيمان، وزنا بعد إحصان، وقتل نفس بغير حق"¹⁴

The blood of a Muslim is not lawful except in one of three meanings: blasphemy after (Iman) faith, fornication after marriage, and killing a person without solid right."

And it was narrated that "he - peace and blessings be upon him - stoned Maiz and he was married."

Analogical reasoning: it is that if the married person is provided with impediments to fornication, then if he commits it with the availability of impediments - his adultery becomes extremely ugly, so he is punished with what is the ultimate in worldly punishments, which is stoning. Because the penalty is commensurate with the crime. Therefore, God Almighty threatened the wives of the Prophet - upon him be peace and blessings - with doubling the punishment if they committed an indecency

يَا نِسَاءَ النَّبِيِّ مَنْ يَأْتِ مِنْكُنَّ بِفَاحِشَةٍ مُبَيَّنَةٍ يُضَاعَفْ لَهَا الْعَذَابُ ضِعْفَيْنِ¹⁵

Translation: "O wives of the Prophet, whoever among you commits an open indecency; the punishment will be doubled for her". In Quran for the greatness of their crime; To get it with the availability of barriers in them; for the greatness of God's blessings upon them; Because they obtained the companionship of the Messenger of God and sleep with him, so their crime was very ugly, so they were promised double punishment. Likewise here,

Combination of flogging and stoning:

It does not combine flogging and stoning according to the majority of Jurists, and some Jurist said: It combines both; because prophet - peace be upon him" said: "Unmarried with unmarried are flogged a hundred times, and stoned."

The legal source the majority of jurists that he - upon him be peace and blessings be upon him - stoned Maiz and did not flog him." And because adultery is one felony, it requires only one punishment, and flogging and stoning each of them is a punishment separately, so they are not obligatory for a single felony, Because the mandatory in fornication is flogging it is established by the verse of flogging; And because the adultery of an unmarried person does not reach the extreme of ugliness, so its punishment will no be double. The flogging is enough.

Combination of flogging and exiling from the land:

The Jurists disagreed about it. Hanafic said: It does not combine between these two punishments unless the imam/ Judge/Government sees a public interest in this combination. If he wants, he can combine, and Shafi'i said: These two will be combined, as evidenced by what was narrated that the messenger of God said: "The unmarried with unmarried is punished a hundred floggings, and a year's exile." And it is narrated from Umar that he flogged and exiled, It was also narrated about Ali and No one from the Companions of Prophet denounced them, so it was Ijma (the third legal source of Islamic Jurisprudence).

The evidence of Hanafic Jurist is the saying of God Almighty:

الزانية والزاني فاجلدوا كل واحد منهما مائة جلدة¹⁶

{So flog each one of the adulteress and the adulterer a hundred lashes}¹⁷.

In this verse, the God Almighty ordered the flogging of the adulteress and the adulterer, and he did not mention exiling, so whoever obligated it has added to the book of God - the Almighty - and the addition to it is abrogation, and it is not permissible to abrogate the Quran with the Hadith e wahid.

and the action of the Companions is to be understood that they saw that as a public interest in exiling, therefore, it was narrated from Umar that he exiled a man, and he joined the Romans, Then Umar said: "I will never exile after that"¹⁸.

So we say in it: The imam can exile if he sees the interest in exile, and the Exile is a Tazir punishment, not a part of Hadd punishment.

2. Hadd of Wine drinking:

This had is flogging of 80 lashes according to Ahnaf. The reason for obligatory of this punishment is drinking. It is the drinking of wine in particular, so It is required by drinking, little and a lot of it is equal, and the obligation does not depend on obtaining intoxication from it¹⁹.

Requirements for the drinking Hadd:

1. Sound Mind

2. puberty

So there is no punishment for the insane and the boy who does not have sense.

3. Islam:

So there is no punishment for the Non-Muslim.

4. the lack of necessity in drinking:

So there is no punishment for someone who was forced to drink wine, nor for someone who was afflicted with malnutrition, it was like that, because the hadd punishment is a pure punishment, so it needs a pure felony, and the act of the Teen boy and the insane cannot be described as a felony, and the same applies to drinking due to the necessity of the hunger, and coercion is lawful. And drinking alcohol is permissible for the Non-Muslim according to most of our Jurists, so it is not a felony, and according to some of them, even if it was forbidden, we would have forbidden to punish them.

5. Remaining of Name of wine drink at the time of drinking:

Because the obligation to Hadd drinking is attached to it, even if the wine is mixed with water, then drank, and it is considered if the water predominates, there is no Hadd on it; Because the name of the wine is removed when the water predominates, and if the predominance is for the wine or if they are Equal then there is Hadd on it; Because the name of the wine remains.

Masculinity is not required for the Hadd punishment, So it will be imposed on both males and females.

3. Hadd of Defamation:

Defamation: According to Islamic law, Defamation is false accusations against another person for adultery, or denying lineage from his father.

Islamic Ruling on defamation:

Defamation is originally forbidden by the Qur'an, Sunnah, and Ijma.

As for the Book: Because God Almighty says

(إِنَّ الَّذِينَ يَزْمُونَ الْمُحْصَنَاتِ الْغَافِلَاتِ الْمُؤْمِنَاتِ لَعُنُوا فِي الدُّنْيَا وَالْآخِرَةِ وَلَهُمْ عَذَابٌ عَظِيمٌ)²⁰

(Indeed, those who accuse (Muhsina) chaste, Simple, believing women are cursed in this world and the Hereafter, and they will be given great punishment).

As for the Sunnah: according to the saying of the Prophet:"

(Avoid the seven killer things), and he mentioned among them (false accusations against another chaste, believing, unaware women)²¹.

Muslims have unanimously agreed to prohibit defamation and consider it a major sin.

Punishment for Defamation:

The Islamic law has decided that whoever accuses a chaste Muslim of adultery, and there is no evidence of his truthfulness in what he slandered, he shall be punished with two penalties:

- 1- Physical punishment: which is flogging eighty lashes, whether a man or a woman, according to the Almighty's words:

وَالَّذِينَ يَزْمُونَ الْمُحْصَنَاتِ ثُمَّ لَا يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً)²²

(And those who accuse chaste women and then do not produce four witnesses - flog them eighty lashes)

- 2- Moral punishment: This is the rejection of his testimony before the judiciary.

According to the Almighty's saying: وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا²³

(And do not accept their testimony ever)

Establishing the punishment for Defamation

The Hadd is proven by:

- 1- The testimony of two witnesses is needed.
2. Requirements for the obligation of the punishment:

Requirements for its obligation:

The requirements for punishment of defamation are eight:

First - Conditions for the slanderer: Two conditions are required for the slanderer: Sound mind and puberty.

Second: Conditions for the defamation word: Two conditions are required for the defamation word: that he slander through intercourse for which he is required to have hadd punishment, which is adultery, or that he be denied from his father.

Third: Conditions for the accused person: Four conditions are required for the accused person:

These are sound mind, puberty, Islam, and (Ihsan) chastity from the offensiveness committed by him/ her. As for the requirement of sound mind and puberty: because adultery is not imaginable by a teen boy or an insane person, so accusing them of adultery was a pure lie, and it requires tazir punishment, not Hadd punishment.

As for Islam and chastity from adultery: This is due to the Almighty's saying: {Indeed, those who accuse chaste, simple, believing women}²⁴ And simple women: those who are chaste from adultery. And according to the Almighty's saying (And those who accuse chaste women) [An-Nour 4]. The meaning of this is that he will not be flogged for slandering an unchaste person.

The interpretation of chastity from adultery is that the accused must not have had unlawful sexual intercourse during his lifetime.

Whoever does not have to do the hadd punishment due to the failure of one of the above conditions will be punished with Tazir. Because he harmed someone who should not be harmed.

Is the punishment for defamation a right for God Almighty or for the human?

The Hanafi school of thought believes that it is a right of God: the victim in that case is the entire society. The purpose of the punishment is to protect the good reputation of the members of society, and based on this opinion: the imposition of punishment - as it brings benefit to society - is a right of God Almighty.

The consequence of this opinion is that the punishment is imposed on the offender, even if the victim does not appeal against him.

In other words: The dispute is not required to be brought to justice, and the victim does not have the right to pardon the offender.

When does the punishment for defamation waive for the defamer?

1-The defamer must provide testimony of four witnesses to prove what he slandered; According to the Almighty's saying (Then they did not bring four witnesses, so flog them)²⁵

2- That the accused person acknowledges the truthfulness of the slanderer in what he slandered. If he does so, there is no punishment, because that is more effective in establishing evidence.

If the slanderer is a husband, how can the punishment be waived from him?

If the husband defames his wife, then if they did "lian" (Four time cursing lair swearing by Allah), the punishment for them will be dropped, otherwise the penalty is valid.

Li'an linguistically: the word "lia'an" comes from the word lanah "cursing," which is expulsion and distancing oneself from good. Then it is used in cursing, meaning asking for a curse on the opponent, and cursing between spouses: if A man slanders his wife or accuses her of committing adultery with a man.

Terminologically: lian is cursing between spouses in a specific way.

4 Hadd of Theft

And in the Sharia according to Hanafic: "The taking of ten good dirhams by a sane, adult and healthy from tongue and eyes, or its equal amount, with intention from a person with a sound hand, which does not accelerate spoil in the Muslim Country, from a safe place with no suspicion in there."²⁶

Basic element of theft Hadd:

The basic element of theft is taking by way of concealment.²⁷ Therefore, taking by way of openness is not called theft. But it has different names in different stages and positions. It was narrated on the authority of Ali that he was asked about the embezzler and the plunderer, and he said: there is nothing.

Then taking concealment is of two types: direct, and helper:

The directness means take of thief the possessions and take them out of the safehouse himself, even if he entered the safekeeping and took possessions and carried it, or did not carry it until the owner saw him while he was in the safekeeping before he took it out, then there is no Hadd on it; Because theft will be completed by removing it from the safe place, and it is not there.

Helping in theft is when a group of thieves enter a man's house, take things, carry them on one's back, and take them out of the house: the analogy is that only the bearer in particular should be cut, but Jurists says: they should all be cut.

Hadd of theft:

As for theft, the established by the Quran is cutting hand. God Almighty said: "And the male and female thief, cut off their hands as a recompense for what they have committed, as a punishment from God."²⁸

After this, the scholars differed regarding the limit of theft hadd. The majority of jurists said: The person who deserves it should be cut off from the right hand from the wrist.

Requirements and conditions for theft:

The requirements are many types:

Some belong to the thief,

Some belong to the stolen item.

Some belong to the owner.

Some belong to the place of theft.

1. Requirements for Hadd of thief:

The eligibility for the obligation to cutting hand is: sane, puberty, So the hand of teen boy and the insane will not be cut; they will return the stolen thing or pay its market price. Because the felony is not a condition for the obligation to pay the price, even if the thief reaps a period of time, and recovers for the next, and if he stole in a state of insanity, it is not cut off, and if he stole in a state of recovery; Cuts. The maleness is not a condition for proving eligibility, so females are cut off. Likewise, Islam is not a condition, so the Muslim and the Non-Muslim are cut off due to the generality of the verse about theft.

2. The condition of the stolen item:

These conditions have many types:

1. The stolen thing should be absolute (Mal) money or valuable thing that has no fault in its statues, and there is no doubt of waste thing, So that is from what people finance, and they consider it money or value able thing; This is because what they do not finance is trivial and despicable. It was narrated on the authority of Aisha - may God be pleased with her - that she said:

لم تكن اليد تقطع على عهد رسول الله - صلى الله عليه وسلم - في الشيء التافه²⁹

"The hand was not cut off during the time of the Messenger of God in a trivial thing." This is a well-established legal statement. Therefore, there is no cut in hay, grass, reeds, or firewood.

2. The thief does not have ownership over it, and there is no suspicion or doubt of ownership. If so, it does not need to steal from eyes of People, so the base of theft is not fulfilled, which is taking as a way of concealment, and secretly.

3. The stolen thing should be in safe guarded house. It was narrated on the authority of the Prophet - may the peace and blessings of God be upon him - that he said: " لا قطع في ثمر معلق، ولا في حريسة جبل

There is no cutting of hanging fruit, nor of the stalk of a mountain.

And it was narrated from him - peace and blessings be upon him - that he said:

لا قطع في ثمر، ولا كثر حتى يؤويه الجرين، فإذا آواه الجرين ففيه القطع³⁰

"There is no cutting in the fruit, nor much until it is stored by the owner in safe place, then it is cut." So it is known from the hadith that the element of theft (take from safe house) is necessary to fulfill the requirements of cutting. Because it is obligatory to cut hand for securing the money for the sake of its owners, in order to prevent the desire of thieves from taking away people's money.

And a human wants to take what has honor in their hearts, and what is not secured does not usually have value in the hearts, so human does not tend to it, so there is no need to maintain it by cutting, and thus it was not cut off from what is below the (Nsiab) quorum for Zakah.

4. the stolen thing should reach the specific amount of Zalah. But there was a difference of opinion regarding its amount. Hanafic Scholars said: It is estimated at ten dirhams, so there is no cut-off in less than ten dirhams. The Jusits establish this opinion by Sunnah:

In a narration on the authority of Amr bin Shuaib, on the authority of his father, on the authority of his grandfather, he said: The Messenger of God said:

لا قطع فيما دون عشرة دراهم³¹

“There is no cut-off for anything less than ten dirhams.”

And on the authority of Ibn Masoud on the authority of the Prophet - may God’s prayers and peace be upon him - that he said:

لا تقطع اليد إلا في دينار، أو في عشرة دراهم³²

“The hand is not cut off except for a dinar, or for ten dirhams.” And the Hanfi Jurist Muhammad mentioned that Umar ordered to cut off the hand of a thief of cloth which value amounted to ten dirhams, then Othman passed by him and said: This is only worth eight dirham.

The ten darahim in classic Fiqh and its contemporary amount:

The final conclusion from the opinions of the jurists is that the weight of the dirham is 2.97 grams of silver.

This is the opinion of Sheikh Muhammad Ibn Uthman nd Dr. Yusuf Al-Qaradawi.

It was approved by the Kuwaiti Jurisprudence Encyclopedia³³

3. The conditions for the owner:

The Owner must have a valid ownership, which is the custody of the possession, or the custody of trust, such as the borrower.

4. The conditions of the place of theft:

The place of theft should be in the jurisdiction of Muslim Country,. Because there is no control of the imam on the other counties.

5. The hadd Punishment of highway robbery:

Cutting off a hand and foot is obligatory in this crime. God Almighty said: “The punishment for those who fight God and His Messenger, and strive to spread corruption on earth, is that they be killed, or crucified, or have their hands and feet cut off on opposite sides, or be banished from the land. That is to disgrace them in this life; and in the Hereafter they will have a terrible punishment”³⁴.

Road robbery Basic element:

It is to go out on passers-by to take money or items in such a way that the passersby refrains from passing, and the road is blocked, whether the robbery is by a group, or by one person after he has the power to blocking road, and whether the robbery is with a weapon or other stick, stone and wood etc. Because the interruption of the road occurs with all of this, whether it is by directing everyone, or by causing some to help or take³⁵.

Conditions for highway robbery Hadd:

The conditions for highway robbery Hadd in the Zahir al riwayat (Basic classic book of Hanafi School of thoughts) are three³⁶:

- I. That the robber be from a people who have strength and power to block the road and robbery
- II. That he should not be in city, nor between villages, nor between two cities,

III. That there should be a big distance between them and controlled City.

Types of road robbery:

There are four types of robbery³⁷:

The robbery either is by taking the money or item only, or it is by killing only, nothing else, or it is both, or it is by intimidation without taking or killing. Whoever takes the money and is not killed, his hand and foot on opposite sides will be cut off.

Ruling on road robbery:

If a group of powerful people, or one person able to block road, goes out and intends to robbery in the road, then they were caught before taking money and killing a person, the imam will imprison them until they apologize.

If they take the money of a Muslim or a non-Muslim, and if the robbery money is divided among their group, then each of them gets ten dirhams or more, or whatever its value is, the imam will cut off their hands and their feet from opposite sides.

If they kill and do not take money, the Imam will kill them in Hadd punishment.³⁸ Al-Kasani said: Whoever kills and does not take the money is killed, and whoever takes the money and is killed, Abu Hanifa said: The Imam has the option, if the imam (Judge) has choice to cut off his hand and foot, then kill him or execute him, and if he wishes, he does not cut him off, and kill him or execute him.

The basis for it is the saying of the God Almighty: "{The punishment for those who war against God and His Messenger and strive upon earth to cause corruption is only that they be killed or excruciated or that their hands and feet be cut off from opposite sides or that they be exiled from the country}"³⁹.

Status of Huddud:

There is no disagreement regarding the punishment for adultery, drinking, and theft, that it is not possible for pardon, reconciliation, or absolution after what has been proven by evidence. Because it is the pure right of God Almighty, the human has no right to it, so he does not have the right to cancel it.

Conclusion:

1. There are five types of fixed and mandatory penalties in Islam.
2. These five penalties are called Hodood
3. Punishment of Puberty is flogging for unmarried and stoning to death for married after the fulfillment of requirements
4. Punishment of wine drinking is flogging 80 lashes.
5. Penalty of defamation is also flogging 80 lashes.
6. Penalty of theft is cutting one hand
7. Punishment for Rubbery in Road is cutting one hand and one foot from the opposite sides or killing or hanging or exiling
8. Theses all Hudood will be implemented in the jurisdiction of a Muslim ruler after the testimony of specific witnesses.

References

- ¹ . *Al qalam*: 35-56
- ² . Abdul Qadir aodah, *altashri aljinayi alislami muqarinan bil aqnoon al wazi, dar al kitab alrabi, beruit*, vol:1, P:634
- ³ . Hasan Ali Shazili, *Alijinayah fi al Fiqh al islami Dirasah Maqaranah bain al Fiqh al islami wal qanon, Dar al kitab aljamei, 2nd edition, P:29*
- ⁴ . Muhammad bin Ibrahim, *mausuah al fiqh al Islami, Bait al afkar al dowaliah*, 2009, Vo:5, P:7
- ⁵ . Dr wahba al Zuheli, *al Fiqh al islami wa adillathu, dar al Fikr, Damascus*, 7/5297
- ⁶ Al Kasani, *abu bkr bin masud, Badaei as sanaei, dar al kutub alilmiah, 2nd editition, 1986:7/33*
- ⁷ . *Ibid*
- ⁸ . Abn Majah Mhuhammad ibn Yazid, *dar al risalah al alamiah, 2009:3/579*
- ⁹ . *Al-Nisa: 15*
- ¹⁰ . *Al-Nisa: 16*
- ¹¹ . Muslim ibn Hajjaj, *Sahih e Muslim, Dar Ihya e Turath al rabi, beirut:3/1316 Hadith no:1690*
- ¹² . *Al-Nur: 2*
- ¹³ *Al sarakhsi Muhammad bin Ahmad, Almabsoot, Dar al Marifah, Beirut, 1993:9/36*
- ¹⁴ . Abu dawood Sulaiman bib Asath, *Suan e abu dawud, almaktabah alasriah, Beirut, Vol:4, P:170, Hadith No: 4502*
- ¹⁵ . *Al Ahzab:30*
- ¹⁶ *AL Nur: 2*
- ¹⁷ . *An-Nur: 2*
- ¹⁸ Abdullah bin Mhamood al mosli, *alIkhtiyar Italil Al mukhtar, Matbah al Halbi,cairo,1937,:4/87*
- ¹⁹ . *Badai al sanai:7/39*
- ²⁰ . *Al Nur:23*
- ²¹ . Al nasyayi, Ahmad ibn Shoaib, *Sunan al nasayi, maktab al maboait al islamiah, Halab,1986, Vol:6, P:257, Hadtih no:3671*
- ²² . [*Al-Nour 4*].
- ²³ . [*An-Nour 4*].
- ²⁴ . *An-Nour: 23/24*
- ²⁵ . [*An-Nour 4*].
- ²⁶ . Abn Abidin Muhammad amin bin Umar, *Al-Durr al-Mukhtar and Hashiyat Ibn Abidin (Rad al-Muhtar), Dar al Fikh, Beirut, 1992: 4/85*
- ²⁷ . *Badaye al Sanaye:7/65*
- ²⁸ . " [*Al-Ma'idah: 38*].
- ²⁹ . Abn rahiwyah Ishaq bin Ibrahim, *Musnad e ishaq bin Rahwiyah, Maktabah al iman, Madina, 1991: 2/231*
- ³⁰ . Al shafi Muhamamd ibn Idrees, *Dharas company, Kuwait, 2004:3/283 hadith no:1595*
- ³¹ AL dar al qutni Ali ibn Umar, *Sunan al dar al qutni, Musasah al risalah, Beirut, 2004:4/260*
- ³² Al tirmidhi mUhammad bin esa, *dar al ghrab alislami, Beirut, 1998:3/103*
- ³³ Ministry of awqaf and Islamic affirs Kuwait, *Mawsuah al fiqhiyah al kuwayitiah, Dar salisil Kuwait,140401427,Vol:21, P:235*
- ³⁴ . *Almaida: 33*
- ³⁵ . *Bada'i' al-Sana'i' fi Artan al-Shara'i' (7/90)*
- ³⁶ . Uthman bi Ali, *Tabuin Alhaqayiq Shrah kanz al daqayiq,Al matbah al kubra al amiriah, Cairo:3/235*
- ³⁷ . *Bada'i' al-Sana'i' fi Artan al-Shara'i' (7/93)*
- ³⁸ . Ali bi Abu bkr, *al urghinani, Al hidayah. Dar aihya al Turath al arabi, Beirut:2/375*
- ³⁹ . [*Al-Maeda: 33*]