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ORIGINAL ARTICLE

Prevention of Hudood (Fixed punishments) on doubt and dispute over what is considered doubt and what is not

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Ahmad Bin Muhammad Husni, Zaini Nasohah, Amir Husin Mohd Nor,Mohd Al-AdibSamuri, Abdul Basir Mohammad, Hayatullah Laluddin: Prevention of Hudood (Fixed punishments) on doubt and dispute over what is considered doubt and what is not

ABSTRACT

Hudood (Fixed punishments) and Qisas (Retribution) offenses are regarded as most dangerous crimes that are prevalent in Islamic Society. The government determines for each crime and the offender the type and amount of punishment. Amongst them there are crimes that do not accept intercession or waiver if there is no doubt or confusion in the case. In spite of that, the Shariah has established rules and regulations that would not allow the implementations of these punishments unless the crime can be proven beyond reasonable doubt and the crime deserves that particular punishment; this is because of the maxim "hudood are to be prevented when there are doubts". The Islamic Jurists are unanimous on the said maxim which has a root from the sayings and actions of the Holy Prophet (saw) and also to that of his companions may Allah be pleased with them. The maxim is also connected to the Islamic Legal Maxims such as "A person is presumed innocent unless proven guilty" and "Certainty cannot disappear because of doubt". The doubt may be related to pillars of the crime or evidence or surrounding circumstances. Thus, based on the saying "hudood are to be prevented when there are doubts", it is for the judge to investigate and verify that the crime deserves the punishment; if it is proven that there is a doubt in the case either from one of its pillars or evidence, then the judge must do all he can to set aside the punishment and to mitigate it 'ta'zir' (Discretionary Penalty).

Key word: prevention, hudood, doubts, dispute, Innocence, guarantee

Introduction

Praise be to Allah and peace and blessings are upon the noblest Prophet and Messenger of Allah, Muhammad and his family and companions.

The subject we are going to discuss which is on the maxim(Prevention of Hudood on doubts and dispute over what is considered doubt and what is not). Before going into this subject, it is important to remind us that Allah (swt) created the universe; He alone knows their affairs better; knows all what surrounds them and He is the wisest ruler. Allah (swt) provided rules and regulations to his creation for all their affairs; impose on them penalties that are set out in His Book on the lips of His Messenger; ordered them to implement those punishments. These penalties are either hudood or ta'zir (discretionary penalty); these penalties were imposed and stressed on their implementation by Allah (swt) because of their importance in the prevention of vices in the society; their role in preservation of mind and human honour; protection of blood; and Protection of property, lineage and honour.

The Scholars said the name 'Hudood' is given because it separates, prevents, covers from committing crime and sin which not only harm the offender but also harm others. Hence, the name 'Hudood' is given because they prevent from embarking on committing a crime and on the other hand it prevents someone from going back to the same crime after being punished. This is part of Allah's (swt) mercy on his slaves in general and to the Islamic nation in particular as He did not leave the decision of what brings stability to the societies at the hands of the creatures. That is why crimes are widespread in the West where crime rates were said to have reached a scary record that threatens the demise of the Western civilization. The warning on the demise of this civilization has begun in all Western states and those that follow them.

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Definition of al-Hadd:

Al-Hadd literally means prevention; it has many meanings which include: imprisonment, separation of two things, appreciation and end. According to Lisan al-Arab for (IbnManzur, 1374, p.140) Al-Had: means separation of two things lest mingle with each other, or lest one transgress over the other. Its plural is hudood. Separation between each two things: an end between them; and ultimate of everything: its limit e.g. boarders of earths and boarders of al-Haram. In a hadith on the characteristics of Al-Qur'an: each character has limit and each end has beginning. It is said what he means is that each limit has end and the end of everything is its limit. The limit of thing from other limits and differentiates it. The limit of everything is its end because it returns it and prevents it from going too far.

And the implementation of al-haddto thief and others is what prevents them from repeating the same crime and stops others from initially committing the crime; and its plural is al-hudud(El-Fairoozabadi.1987. Vol. 3.P 147.)and that is why a gateman is called 'hidadan' because he prevents people from entrance. And penalties are called 'al-hudood' because they prevent the commission of its causes. And the limits of Allah (swt) are the things He prohibited because they are forbidden as evidenced by the saying of Allah (swt) (Those are the limits of Allah and never go close to them) (al-Baqarah, 187). And Allah's limit is also referred to Allah's rulings and a person is not allowed to go beyond them; they are called limits because they prevent a skip to what is behind as evidenced by the saying of Allah (swt) (These are Allah's limits and do not go beyond them) (al-Baqarah, 229).

And the technical definition of al-hadd according to Hanafi School of Law, it is a penalty that is compulsory and it is the right of Allah (swt) (Ibn Najim.1400, p. 189) and discretionary penalties cannot be called al-hadd because they are not estimated; and al-Qisas(retribution) cannot be called al-hadd because even though it can be estimated but it is the right of human beings which is subject to remission and reconciliation. These penalties are called al-hudoodbecause they prevent from falling into such guilt once again. The meaning that they are the rights of Allah (swt) is because they are originally legislated for the protection of honour, lineage, property and mind (Al-Kasani, 1998, p. 200). However, some of these penalties such as the punishments of adultery and intoxication are purely the rights of Allah (swt) i.e. right of the society; while some of the penalties such as penalty for slander carries both rights of Allah and rights of human beings i.e. a combination of private and public rights.

According to majority of the Jurists (IbnRushd. 1989. P. 748.), al-hadd technically means an estimated and legal penalty regardless of whether it is the right of Allah (swt) or right of human being. And according to (IbnQudamah, 1972, 482-672), it is an estimated and legal penalty related to a sin that prevents from falling into its like; of course it is only compulsory on an adult and sane.

Definition of Doubt:

Literally the word shubuha (Doubt) is taken from the word 'shabuha' and its plural is 'shubuhat' like 'garufa' and 'gurufat'. The word 'shubuha' comes with many meanings such as conjecture, doubt and confusion.

Technically, according to four Schools of law and the modern jurists 'it is what looks like regular but it is not (Alkasani, 1998, p. 178). Or 'shubuha is what there is no certainty on whether it is forbidden or permissible'; 'shubuha(doubt) is what there is ignorance on whether it is permissible or forbidden in reality'; 'Presence of reflection of permissibility but the absence of its ruling or its reality'. And according to Muhammad Zuhaily, 'Shubuha is a mysterious thing that accompanies something and it is not easy to distinguish it from others (IbnRushd, 1989, p. 748).

Hudood is of different types: penalty for adultery, slander, theft, robbery, intoxication and others. According to Hanafi School of Law, hudood are five, and they are: penalty for theft, adultery, drinking, intoxication and slander (IbnRushd, 1989, p. 758). And robbery is generally regarded as part of theft. Besides the Hanafi School of law, other schools consider two other penalties as hudood, namely: penalty for qisas (retribution) and apostasy; hence according to them, the total number of hudud are seven considering that al-hadd means any penalty estimated and decreed by Allah (swt) and it is forbidden for anyone to go beyond it; and considering that al-had includes what is the right of Allah and the rights of people including qisas (retribution).

Based on this, we have two terms for hudood:

Firstly, the famous Hanafi School of law (Al-ihsa'i, 1995, p. 369), which says that al-had is restricted to estimated and decreed penalty which is the right of Allah (swt) i.e. for protection of the public, and they are five types which I have mentioned; where penalty of robbery has been merged with that of theft and the penalty of intoxication has been distinguished; grape drink which intoxicates has been distinguished from other intoxicant drinks that are not from grape such as barley, corn, honey and so on.

Secondly, majority view which applies the word al-hadd to each estimated penalty regardless of whether it is decreed for the protection of Allah's right or individuals and they are of seven kinds including qisas(retribution) and apostasy. I will mention these seven types, indicating that al-had crimes are eight and they are: adultery, slander, drinking intoxicants, theft, robbery, rebellion, apostasy and intentional murder that carries qisas (retribution) punishment on all on the grounds that they are estimated and legal rights of Allah (swt). According to IbnJizziy al-Maliki (Al-ihsa'i, 1995, p. 378), crimes that carry a mandatory penalty are thirteen, namely: Murder, injury, adultery, slander, drinking alcohol, rebellion, robbery, apostasy, hypocrisy, Insulting Allah, insulting prophets and angels, magic, abandoning prayer and fasting.

Wisdom behindhudud punishment:

The wisdom of legislating hudud or penalties is to enjoin people and deter them from committing crimes; protect community from corruption; and purification from sins. IbnTaymiyah said: (It is part of Allah's wisdom that He legislated penalties on crimes that occur between people in the soul, body, honour, property, murder, injuries, slander and theft. Allah's rulings are restraining and deterrent to these offenses and were legislated with the fullest attributes that will ensure the restraining and deterrent purposes without exceeding what the offender deserves from the deterrence. Allah has not legislated tongue amputation or murder for lying, castration for adultery or killing for theft but He legislated on them based on His mercy, wisdom, kindness and justice so that greed, injustice and aggression will disappear and everyone will be contented withwhat he has and will not think of dispossessing others from what they have (IbnTaymiyah, 1382, p. 87).

Application of hudood requires four things:
Firstly, faith in Islam as doctrine, law and way of life
Secondly, application of Allah's law in all its provisions be it political, economic or social.
Thirdly, mental cognition and understandingof the benefits of hudood.
Fourthly, concern for the interest of public and given it preference on individual interest.

Death punishment for robbery:

Allah (swt) has imposed death penalty on those who go out against the general system of the state; rebelling by agreeing among themselves on aggression and sin; threateningsecurity; looting and killing bystanders and may even violate honour. They are fighting Allah and His Messenger by fighting against His ruling and fighting Islamic society that Islam came to protect.

The deathpenalty,according to opinion of the majority of scholars, has been imposed on those robbers if they kill (IbnRushd, 1989, 769). IbnQudamah said that the scholars are consensus on this (IbnQudamah, 1972, pp. 541).

Allah (swt) says:

The punishment of those who wage war against Allah and His Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: that is their disgrace in this world, and a heavy punishment is theirs in the Hereafter (Al-Maidah, 33).

As the security; stability; protection of souls, property, honour, during travel and while at home is necessary for the social and peaceful coexistence of communities, nations and all systems, the Shariah came to impose a strict and severe punishment on anyone who threatens the security and stability; goes out against the state; becomes insurgent; terrorizes innocents and passersby; and assaulted them by looting, killing and indecent assault.

Doubtsraised about killing robbers if they kill and it is as follows:

Robbery means going out against the state and rebelling against it, and all systems punishes anyone who goes against them and threatens them with a harsh punishment such as execution, life imprisonment etc. because maintaining law and order is essential to all nations and hence there must be no objection to Islam for imposing death penalty for robbers (Abu Zahra, 2006, p. 173).

We note that the crime of robbery has more damage; more frightening and terrifying; and more corrupt than mere murder and that is why it is considered one of the most heinous and dangerous crimes. Abu Zahra says: (As for those who denounce hanging together with murder out of sympathy for the sinners have to think about victims of this crime from the innocent and they must be sympathetic to those victims instead of the sinners and they must know that protecting sinners encourages commission of sin, and compassion for the innocent will cut the root of the sin and Islam works towards protecting the innocent without paying attention to what befalls the criminal for the eradication of the crime (Abu Zahra, 2006, p. 176).

And the doubt that have been raised about this penalty is that if the criminal repents before sentencing, the penalty would not be carried out; they say it is like ink on paper because any criminal can easily announce his repentance before the state arrests him (Al-Nasrawi, 1988, p. 186).

The answer to this doubt:

We are in the process of killing and they would not be killed unless if they kill; if they kill and they are arrested they must be killed as al-hadd penalty and if they repent before arrest or sentencing, the right of Allah which necessitates killing them fell and will move to qisas (retribution) and it is left on the guardian to avenge the killing or pardon the criminal (Qurtubi, 1967, 6/158). By this the objection will not stand because by consensus, the rights of human beings do not fall by repentance as the right of state for ta'azir (retribution) does not fall (al-Awa, 1983, p. 181).

The primary objective of this punishment is to protect society from the evil of these crimes, their harm and their bad effects; the punishment is not the intended aim. If the criminals realized their mistakes and repent from crimes and declare their repentance or willingly surrender themselves before being arrested by the state, the authority will have no option but to accept their repentance and withdraw its right of punishment with the hope that they (criminals) will go back to normal and clean life in the community.

- Thus, the penalty for robbery is well established under the Shariah regardless of whether we know its wisdom or we do not know. Allah (swt) says: (The punishment of those who wage war against Allah and His Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: that is their disgrace in this world, and a heavy punishment is theirs in the Hereafter; Except for those who repent before they fall into your power: in that case, know that Allah is Oft-forgiving, Most Merciful.) (Al-Maidah, 33-34).
- Secure and stable life cannot be achieved except in a society that enjoys security, consequently anyone who threatens the security of society and undermines its stability must face a strict punishment.
- These robbers themselves are criminals; they have used weapons which show that they are cruel who lack mercy in their hearts and hence based on justice and fairness of Shariahthey must be punished with deterrent and harsh punishment as a result of their action in order to be an example to others who are like them.
- The nature of this crime differs from other crimes because it exceeds normal considerations from which crime is committed; crime of theft is subtle and the Shariah provides punishment of amputation to it, however, the crime of robbery is being conducted under threat by using weapon and that is why it increased threat to the security and stability of the society, so it is appropriate to thicken its punishment based on the type of the crime.

Penalty of Adultery:

Islam imposes death sentence by stoning on married man or woman. The prophet (saw) says: (the blood of a Muslim who bears witness that there is no god worthy of worship except Allah and that I am the Messenger of Allah cannot be shed except in three cases: soul for soul, adulterer and who has forsaken his religion and go out of the people (Al-Bukhari, 1979, 8/37). The prophet (saw) has stoned *Ma'iz* and *Ghamidiyyah*to death (Sahih Muslim, 3/1322). Adultery has been forbidden and the punishment has been imposed on adulterer for obvious reasons which are as follows:

- Humiliation and shame and it is not pleasing to everyone for his family and his relatives. It causes destruction of the family structure and provokes hatred.
- It affects the Islamic virtue and morality in society.
- It causes loss of innocent souls because an illegitimate child is lost in the community as he has no father to bring him up and be sympathetic with him and the society will not accept him.
- It may lead to relating a person to someone who is not his father and take the rights of others from inheritance and this is injustice and corruption.

Doubtsraised about stoning

- It is inherently cruel and brutal.

Stoning is a waste and contempt to humanity; if murder was inevitable let it be by other rapid means besides stoning (al-Awa, 1983, 186)

Response regarding the doubts

- As for doubt on cruelty

The Shariah imposed severe punishment on the adulterer after giving all excuses and grounds of prevention from adultery. Imam Ibn al-Qayyim says: The married man or woman (is aware of the means of chastity from adultery but ignores and prefers to commit adultery (IbnQayyimal-Jauziyyah, 1973, 2/126).

Prof. Abdul QadirAwda says: (The chastity blocks the door to the crime because the Shariah did not provide any way for him or her to the crime after chastity. The Shariah did not make marriage eternally so that one of the couples will fall into sin if what is between them spoiled… It opened the doors of halal (permissible) for the married and closed the doors of haram (forbidden) for him or her and thus it was just and hence, it is just and fair. The reasons for the crime in terms of mind and nature have been terminated as such there shall not be any reason for mitigation and inflicting harsh punishment is fair enough because that shall be the penalty of those who defied reform (Awda, 1959, 2/383-384).

Dr. Abdul AzimSharafuddin says: (the married person who gets the opportunity to satisfy his or her sexual desire in a permissible way and in spite of that violated the sanctity of honour and made permissible to himself or herself that what Allah has forbidden, such person is corrupt in society and the society should get rid of him or her for the protection of the public and honour) (Sharafuddin, 1986, p. 91).

The Shariah has is strict in the means of proving adultery which it has not done with other crimes as the penalty for adultery is the harshest penalty and the hardest is in the form of stoning the married man or woman. Thus, it is required that witnesses must have seen the commission of the sin fully and clearly and came to testify in one sitting and described the crime fully and accurately. If one of these conditions is missing, the crime will not stand and the witnesses would be penalized for slander.

These are additional conditions in testifying in adultery case which are not required in other crimes and this is because of the cruelty and severity of the punishment in the crime even though the nature of the crime is normally committed secretly.

And we observe this hardness and accuracy required before establishing the crime of adultery in the case of Ma'iz when he confessed to have committed adultery. After confessing for the first time, the prophet (saw) returned he and he then confessed for the second time and the Prophet (saw) returned him again and ignored him until he confessed four times and the Prophet (saw) said to him: are you insane? He said no. The Prophet asked him: are you married? He said yes. And the Prophet (saw) said to him: May be you only kissed? He said no. And the prophet (saw) said: have you committed the adultery? And he said yes. And the Prophet (saw) asked him again: do you know what adultery is? He said yes; I committed it (adultery) through illegal means what other man commits with his lawful wife and I want you to clean me. Then the Prophet ordered for his stoning (Bukhari, 1979, 8/22-24).

We can see how the Prophet (saw) ensured the commission of the crime and observed accuracy in that He did not content with only one confession but only after four confessions and after asking and ensuring the occurrence of the crime and responsibilities of the adulterer.

Thus, we know that Islamic law tried to narrow the scope of this severe punishment and throughout the history the crime of adultery has not been established through testimony even once.

Therefore, we can say: The stoning is implemented only to those who want it to be implemented on them; this is because substantiating the crime of adultery through witnesses is almost impossible, if not impossible at all; and the crime can only be substantiated through confession which is left to the adulterer himself/herself; if he/she wants to confess and clean himself/herself, he/she may do so, which is better for him/her and we cannot prevent him/her from anything he/she wants, but if he/she wanted to conceal the crime and repent that is what the Prophet (saw) guided and called for.

The Shariah then confronted the severity of punishment with rigid means of proving the crime (Bahnasi, 1412, p. 93).

If the difficult means of proving the crime were able to be established, then truly the adulterer deserves this fair punishment.

Prof. FikriAkkaz says: (The Shariah has opened for married man or woman all the doors of permissible things on its broadest term; closed the door of the forbidden things; cut all the causes of crime and thus it became fair to punish the married man or woman with punishment of eradication, especially if we look at the difficult means of proving this crime in particular; the man who commits this crime and continues until four just witnesses see him in this ugly situation must have lost all his humanity and becomes worse than sordid animals; leaving him/her is a corruption to the society. To get rid of him/her and others like him/her will make this moral and hideous crime disappear in the community; hence, his/her reward was fair for the sake of public interest) (Akkaz, 1988, 80).The Shariah has narrowed the scope of the penalty through another door which is "prevention of hudood when there is shubuha (doubt), where it ordered that the benefit of doubt should be given to the accused person.

- ❖ As for the doubt against stoning as a means of killing

(1) The death penalty does not aim at only taking out soul but before that it aimed at restraining and deterrence to desert this reprehensible crime, and killing in this nature will act as a lesson for those who intend to commit such crime (The impact of hudood application in society, p. 170).

(2) Married man/woman who has no any excuses and justifications as mentioned above when he/she satisfied his/her desire through haram (forbidden) way and zest with all his body, was punished with death by stoning to spread the pain and agony to all his body before death and this objective cannot be achieved through other rapid means such as killing by sword, electrocution and so on.

(3) The way of implementing the penalty of stoning includes benefit and compassion for the offender, as it allows the defendant an opportunity to escape from the punishment by withdrawing the confessionor withdrawal of testimony by the witnesses when viewing the severity of the situation i.e. the punishment and all these may not be available if the death sentence is by sword.

As stated in the story of *Ma'iz*he escaped during the stoning when the punishment started but the stoners followed him and when that was mentioned to the Prophet (saw) He said: (You should have left him to repent so that Allah (swt) will accept his repentance) (Abu Dawood, 1990, 4/576).

Some claimed that stoning adulterer is an extreme cruelty and an assault on personal freedom of the people and also using stoning as a means of killing is brutality that does not fit the twentieth century.

We respond to this doubt by saying:

- Penalty for adultery is a fixed rule in Islam and is not permissible to anyone to deny it whether we know its wisdom or not. Allah (swt) says: (The woman and the man guilty of adultery or fornication,- flog each of them with a hundred stripes: Let not compassion move you in their case, in a matter prescribed by Allah, if ye believe in Allah and the Last Day: and let a party of the Believers witness their punishment (An-Nur, 2).
- Allah (swt) has forbidden adultery and thickens its sentence because of its harmful effects on the individual and society.
- Although, the Shariah provides a harsh penalty for adultery but it provides precautions and conditions that will narrow the implementation of the punishment. The Shariah has provided only two means of proving the crime: firstly, their clear, free and irreversible confession. Secondly, the testimony of four witnesses that they view the commission of the adultery explicitly (penetration) and viewed at the same time. This number of witnesses is difficult to get unless they the offenders commit the crime in public, and that is why proven adultery in this way is less throughout history.
- The Shariah then distinguishes between the married and unmarried with regard to the punishment and made the punishment of unmarried hundred lashes and banishment for one year and the punishment for married stoning till death and the difference between the two is clear for the wise.
- As for the punishment of stoning to death its aim is not mere killing, but the purpose is restraining and deterrence for committing such heinous crime for himself/herself and his/her society. Moreover, there is a lesson for who have the intention of committing the same crime and that is why Allah (swt) ordered the attendance of a party of believers during the implementation of the punishment. Allah (swt) says: (and let a party of the Believers witness their punishment).
- Furthermore, Islam requires the death penalty on adulterer only after blocking roads and means leading to the adultery, including prohibition on looking at a woman and to be alone with her in seclusion and other factors leading to exciting instincts and inflame passions; and work on the treatment to that by encouraging early marriage and facilitating its affairs to ensure the satisfaction of the instincts in a proper way.

Death Penalty for Apostasy:

The Holy Qur'an condemned an apostate by describing that he will stay in the Hell fire forever. Allah (swt) says: { And if any of you Turn back from their faith and die in unbelief, their works will bear no fruit in this life and in the Hereafter; they will be companions of the Fire and will abide therein.} (Al-Baqarah, 217).

Because of the horrific and severity of apostasy on the progress of the true religion (Islam), a severe penalty which is murder has been imposed for it. Anyone who entered into Islam with his free consent having understood its real meaning and then turned on his heel and went back by becoming an apostate must be punished with death by consensus of the Muslim Scholars (Mabsoot, 10/98). The basis of this is the saying of the Holy Prophet (saw): {the blood of a Muslim who bears witness that there is no god worthy of worship except Allah and that I am the Messenger of Allah cannot be shed except in three cases: soul for soul, adulterer and who has forsaken his religion and go out of the people} (Al-Bukhari, 1979, 6/149).

The wisdom behind this penalty is that religion is the basis of the Muslim community and the Islamic system; and Islam can be protected through this penalty as there might be a hypocritical group that may enter into the religion with the aim of going out of it in order to destruct and abuse Islam and also to threaten its movement and spread after knowing the religion (Bahnasi, 1412, 98). Allah (swt) said in the Holy Qur'an regarding this group that trade with the religion: {a section of the People of the Book say: "Believe in the morning what is revealed to the believers, but reject it at the end of the day; perchance they may (themselves) Turnback ;}

This is because a true Muslim who converts to Islam based on knowledge and conviction and faith deeply entered into his heart rarely goes out of it; and if he turns back he is out of the truth and logic and denies the evidence, proof and the correct nature. Anyone who reaches this degree of decadence deserves to be punished with death because his life has no benefit and purpose (Sabiq, 1986, 2/457).

Shaykl al-Islam IbnTaymiah said: (The apostate … is disbelief after belief, and a special type of infidelity and if he is not killed … then anyone who enters the religion may turn back, hence, killing him is a prevention to religious people and the religion because that prevents shortages and prevent them from going out of the religion unlike the one who did not originally enter it (IbnTaymiyyah, 1382, 20/102).

The doubts raised are:

1- Harsh punishment greater than the crime.

2- It means compulsion in religion and the Holy Qur'an says: (There is no compulsion in religion). This is contrary to freedom of religion.

3- It will make a lot of people to take hypocrisy as a way to avoid the death penalty and this may lead to widespread of hypocrisy which is more damaging and detrimental than clear disbelief.

1- The answer to the doubt of cruelty:

Islam in its punishment for an apostate is logical and compatible with other systems because apostasy means going against the Islamic system which implements hudud and considers Islam as its basis and constitution, and all states work towards protecting their systems and the basis of their constitutions with strongest types of penalties (Abd al-Aal, 1989, 371).

In addition to that, laws and regulations do not accept excuses in cases of treason and give no chance to the accused to clear up but Islam gives the apostate chance for conversation to clear his doubts and chance to repent (Bahnasi, 1412, 99). Sheikh SayyidSabiq says: (Getting out of Islam and becoming an apostate is a revolution against it (Islam) which has no any other penalty besides the one agreed upon by ordinances on someone who goes against the state and its system. Anyone who goes against the state and its system whether in a communist or capitalist country will be charged with treason to his country and it carries a death penalty and Islam by imposing death penalty on apostate is logical and compatible with other systems (Sabiq, 1986, 2/460).

It's not harsh; it is fair to the one who entered Islam knowing the truth and knowing its authenticity then he recoils on his heels and returns to falsehood. Sheikh SayyidSabiq says: (Anyone who enters it (Islam), known its truth and tasted its sweetness; if he gets out of it after entering and realizing it, he was actually out of the right logic and denying the evidence and proof; abandoned the truth and proper instinct. When a person reaches to this level, he must have rebounded to the utmost decadence and such person does not suppose to live and there should be no concern for his survival, because his life has no purpose (Sabiq, 1986, 2/461-465).

Ahmed Bahnasi says: (the crime of apostasy in Islamic jurisprudence is somehow similar to the crime of change of the social system in the western jurisprudence such as anarchism and other subversive doctrines) (Bahnasi, 1412, p 108).

As such apostasy from Islam is going against the system and rebellion and manipulation and spoiling of the religion and weakening Muslims and increasing the number of the infidels and these considerations necessitate killing the apostate.

- The Shariah has givenan opportunity for repentance before implementing the punishment on the apostate to review his stand and to discuss the doubt with the scholars so that he may get healed by their responses; with that the apostate will have no excuse, thus there should be no objection for the Shariah for this punishment.

2- Answer to the doubt that apostasy means compulsion on religion

The punishment for apostasy does not mean compulsion in religion and taking away free will and belief; Islam gives the freedom of belief and means to protect it as no compulsion on people to embrace Islam. Allah (swt) says: (Let there be no compulsion in religion: Truth stands out clear from Error). IbnKathir says in the interpretation of this verse: (i.e. do not compel anyone to embrace Islam because its evidence and proof are very manifest and hence there is no need to compel anyone to embrace it; but he who Allah guides to and open his heart will embrace Islam, but he who is blind in seeing the truth will get no any benefit in embracing Islam with compulsion) (IbnKathir, 1977. 1/459). And almighty Allah says: (wilt thou then compel mankind, against their will, to believe!) (Yunus, 99).

The Shariah ensures the protection of freedom of non-Muslims that are living in a Muslim country; they have the right to live and practice their religious rituals. Punishment for apostasy does not mean robbing them of this freedom, but if someone embraces Islam with his free will and believes in its provisions and principles

including the penalty for apostasy then he cannot get out of it and if he doeshe ought to be punished with the penalty for apostasy which is part of what he embraced with his free consent.

We can say that (Killing an apostate is not as a result of his idea or apostasy and if that is the case then dhimmi and al-muahid should also be killed, but the aim of fighting apostasy is that it threatens the society and creates intellectual and moral chaos; and the society is more important than personal freedom in all the laws in the world (Awda, 1959. 2/384-391).

- Islam does not compel anyone to embrace it and there is no contradiction between this and the penalty for the apostasy. Based on this (when someone converts to Islam with his free will and consent, it is not then for him to turn back and take the religion for play and mockery and if that appears from him, it is a clear manifestation that he has bad intention and wants to destabilize the faith of the Muslims' and this action cannot be tolerated or taken very lightly because it leads to destabilization of the strongest pillars of the Muslim community which is religion, and that is why the killing of an apostate has been authorized to protect this religion and nothing in this undermines the Shariah or tarnishes its reputation because many of the contemporary and civilized states consider going against the state and its constitution and social and political system as worthy of the most severest punishment such as exile, imprisonment or execution and consider the offender as traitor to his country and his principles) (Abdel Aal, 1989, p. 371).

3- Answer to the doubt that penalty for apostasy leads people to Hypocrisy

- It does not lead to the spread of hypocrisy and keeps people in Islam on the fear of execution if they change religion because as we mentioned before, a true Muslim who tasted the sweetness of faith and knew the reality of religion rarely turns on his heels and leaves the religion and if he leaves Islam we know that he did not originally convert on conviction. Thus, the penalty cannot by any means be a reason for the spread of hypocrisy.
- The opportunity of repentance given to the apostate before implementing the penalty will give the apostate a chance to return to the truth after discussion and persuasion with clear proofs and evidences (Awda, 1959. 2/380).
- The purpose of this punishment is not for a true Muslim but for those hypocrites who trade with the religion; those who converts to it with the intention of leaving it in order to tarnish its image, and stop its well-being and spread. This punishment acts as a weapon to stop this hypocrisy, contrary to what those who raised this doubt claim (Awda, 1959, 384).

Also this penalty will prevent embracing Islam for experiment on its validity –even if he is honest- we shall know that he did not originally believe in the religion, so we cannot give him this opportunity; and if this opportunity (embracing Islam for experiment) is given, then there would be many entrants for experiment and they will definitely go out of it because originally they did not believe in it; this will make the infidels to claim that Islam is not valid because many have tried and did not fit them and thus Islam will become subject to manipulation and cynicism.

Some claimed that the implementation of the penalty is interference in the intellectual freedom of people, and a flagrant violation of the human right for religion.

We answer to this doubt as follows:

1- Penalty for apostasy is a fixed rule under Islamic law and it is not permissible for anyone to abolish it whether we know its wisdom or not. AbdullahiibnMas'ood reported that the Messenger of Allah (saw) says: ((the blood of a Muslim who bears witness that there is no god worthy of worship except Allah and that I am the Messenger of Allah cannot be shed except in three cases: soul for soul, adulterer and who has forsaken his religion and go out of the people). And AbdullahiIbn Abbas said: The Messenger of Allah (saw) says: (Whoever changes his religion, kill him).

2- Here we have to be alert to two issues that the Shariah takes into consideration before implementing the penalty for apostasy:

Firstly: Islam judges by the manifest and what is hidden it is for Allah (swt) to judge. Thus, we can only implement the penalty for apostasy to someone who announces and makes it public and it was witnessed against him, but who conceals it in his mind only Allah (swt) can judge him.

Secondly: Before the implementation, he has to be given three days to repent, and if he refused, the punishment would be carried out.

3- In Islam, the creed is the basis of religion and the rest of the rules and regulations are built on it; thus the protection of the creed is the first and compulsory duty on the state.

4- Apostasy manipulates religion and its teachings and the Shariah is not pleased with this and considers it more severe than disbelief.

5- In apostasy, there is a strong propaganda against Islam and abuse to the Muslims which may stop others from embracing Islam; this is because as if the apostate is saying I have tried Islam and did not find it suitable. And this is a chance for the enemies of Islam to use to demolish it.

6- Islam wants people to convert with free and complete will and consent and if this is not available, then Islam closed the door in the face of manipulators.

7- Apostasy is not a personal matter even if it appears to be like that, because the apostate by leaving the religion has rebelled against the system and this would be a reason for confusion; thus, the damage is not limited to the apostate himself, but will spread in the community. Apostasy in Islam is tantamount to internal revolution in the Muslim community.

Conclusion:

Thanks be to Allah with whose Grace the righteous is accomplished and a permanent peace be upon the Prophet (saw). Below are the findings of this research:

- Robbery means going against the state and all systems provide death or life imprisonment for this crime.
- Amnesty given robbers before arresting them does not diminish the value of the penalty, because if they are killed that will not take way the rights of human beings from them.
- Stoning has been imposed for many wisdoms, of the most important is that adultery brings demolition and destruction to nations.
- Stoning of adulterer is not considered harsh looking at the severity of the crime, but it is fair and appropriate, additionally, the Shariah imposed a strict way of proving adultery that was not done with other crimes.
- Stoning is purposely imposed as for example it cannot be substituted with killing by sword.
- The wisdom behind the killing of an apostate is the protection of the religion which is the basis of Muslim's life.
- Penalty for apostasy is not harsh, but it is logical and fair because apostasy means going against the state and this is punished with the severest types of punishment by all the states.
- Penalty for apostasy does not mean compulsion for religion, but if someone converts to Islam with his free will and consent, he cannot then goes out of it, and if he does that, he would be punished with penalty for apostasy which is part of what he believes in.

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