

Corporal Punishments in Perspective of Shariah and Law: an Analysis with Special Reference to Objectives of Shariah

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Abstract

Notably, in contemporary times, the subject of Islamic punishments is debated around the Muslim world as Islam is the last divine religion from Allah the almighty which has provided a way out to all the societal evils. The notion of maqāṣid al-Shariah (objectives of law) plays a vital role in protection of religion, life, lineage, property and intellect against all sorts of corruptions. Since a crime against one is considered as against the whole humanity. That is why in Islamic law corporal punishments are imposed against such crimes. Consequently, Islamic punishment(s) may have one or more of the subsequent objectives namely: deterrence (al-zajr), retribution (al-jaza), reformation (al-tahdhib). Thus, this research work is designed to articulate a comprehensive deliberation on corporal punishments in perspective of Shariah law to know why these are categorized in hudood, qisas, and tazir punishments. Additionally, this article will also denote that what are the maqāṣid of Shariah behind each and every punishment. Therefore, an analytical approach with qualitative research methodology is adopted in the present work.

Keywords: *Punishments, Hudood, Qisas, Tazir, Maqāṣid, Objectives of Islamic law, Shariah and*

Law

Introduction:

Generally, punishment is an act of imposing some sort of pain on someone for the wrong he/she has committed against the law. Corporal punishments may include flogging, body dismemberment, rigorous imprisonment and penalties as a punishment. While psychologically the word punishment refers to a certain change that take place after an action has reduces the possibility of wrong in future. The tool of punishment is often used to reduce or eradicate unwanted actions with positive and negative reinforcement is just used to stimulate the conduct.¹ Accordingly, the main difference between the reinforcement and punishment is that the reinforcement increases while punishment decreases the probability of the same again.²

Historically, in some of the pre-modern cultures, for most of the time idea of punishments was based on revenge or retribution. And thus the aggrieved persons were given the authority to take revenge on their own. However, with the passage of time and codification of laws, states took the responsibilities of punishing and of sustaining public tranquility.³

Primarily, all the criminal laws are focused on the punishing of wrongdoer. So for that, resultantly, understanding any criminal system requires perceptive concept of punishments in order to justify any criminal law, it must be capable of reaching its objectives. In general, ideas of punishment in contemporary justice systems are built-on and justified by communal value and advantages. Nevertheless, Islamic laws are

believed that it is totally founded in the holy Quran and the Sunnah of the Prophet Muhammad (peace be upon him).⁴

1. The Concept of Crime between Shariah and Law

Certainly, the idea of crime is debated in both systems i.e. common and Islamic law. Hence, it is prerequisite to understand the basic concept of crime, since where there is no crime there is no punishment. In other words there is no punishment without a crime is committed. For this reason a short description is given for ease of the readers.

Factually, in common law system, Kenny a common law jurist, defines crime in this way as “crimes are wrongs whose sanction is punitive, and is in no way remissible by any private person, but is remissible by the Crown alone, if remissible at all”.⁵ Similarly Osborn maintained that “crime is an act or default which tends to the Prejudice of the community, and forbidden law on pain of punishment inflicted at the suit of the State”.⁶ While John Gillin defines it as “an act that has been shown to be actually harmful to the society or that is believed to be socially harmful by a group of people that has power to enforce its beliefs and that places such as upon the ban of positive penalties”.⁷

While in Islam crimes are considered forbidden actions, for which Allah the almighty has imposed *hudood*, *qisas* or *tazir* punishments as penalties to minimize the occurrence of crimes ratio in any society. In Islamic law anything whose commission or omission is commanded by Allah almighty and one does not follow such command is tantamount to a crime. In Islamic law every crime is punishable but not every punishment is specified.⁸ Regardless of the distinctions, it will be difficult to understand the core concept of crime and punishment both are not studied separately, that is why it needs to be evaluated in parallel fashion.

2. The Subject of Corporal Punishments

Indeed, a corporal punishment, also known as a physical or somatic punishment, is a type of penalty that is designed to cause bodily discomfort to a person. It may include slapping or paddling. It can be imposed on adults, but it can also be inflicted on captives and slaves.⁹ Gershoff defines corporal punishment as bodily chastisement in which use of physical force is employed to exact anguish in order to rectify their behavior.¹⁰ UN committee on the rights contended: “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light”.¹¹ Corporal penalty can be imposed in a number of ways, like the use of whips, vigorous exercise programs, or forcing to endure uncomfortable physical postures.¹²

Since earliest times, different cultures have its own concept of punishments for crimes, such as whippings, brandings, and dismemberments etc. As human principles have risen since the revolution, such sanctions are frequently considered as harsh in modern nations. That is why most nations' legal systems had outlawed corporal punishment by the late twentieth century.¹³

2.1. A Brief History of Corporal Punishments

Historically, the idea of corporal punishment was employed in ancient Greece, as well as in the “laws of Sparta, Troy, and Athens” etc.¹⁴ besides it was also used in Christianity and Judaism churches. Basically the roots of physical punishment are indefinite even though it was also present in primitive cultures. The mere purpose during that era was concentrated on judicial and constructional context.¹⁵ By late 15th century juridical penalties developed into open exhibitions to deter others from committing similar acts.¹⁶ Later on, in early 18th century it was regarded as an ineffective method of tackling bad behaviors. Most of the scholars were of the view that instead of retaliation punishment should be for improvement.¹⁷ As a result of these views, the practice of corporal punishment has decreased. In the early 20th twentieth century, the practice of judicial physical punishment in England decreased, until it was eventually abolished in June 1948. Even though physical punishment has been abolished in most nations but some of Asian and Middle Eastern country still have it.¹⁸

2.1.1. Corporal Punishment in Pre-Islamic Arabs

Before Islam, Arabs were engaged in many iniquitous activities. Such as Female were considered as shame and new born (female) were buried alive. Tribal battles were commonplace. Their lives were characterized by extortion, alcoholic abuse, illegal sexual encounters, and unfairness. Offenders were

subjected to severe and vicious punishments. When the Prophet Muhammad (peace be upon him) was sent he also faced many hurdles in eradicating those evils. Tribal system exists before Islam in Arab society and laws was made up of customs and traditions. “Le vengeance”, “blood money”, and “death punishments” was common but having no limitations or restrictions and were totally up to the aggrieved one.¹⁹ Nevertheless, “ostracism” means social exclusion was also a form of punishment. It was considered as a harsh punishment because such individual lost everything. Offenders were given over to tribes whose members had been, giving them the option of murdering, enslavement, or dismemberment. Torture included thorn-beating, burning, drowning, crucifixion, and under sizzling sun with heavy stones on their chests without drinking water or food. The event when Zu-Nuwas, Yemen's last Himyarite monarch and a Jew by faith, attacked Christian worshippers in *Najran* and burnt them was an example of punishment by burning in pre-Islamic Arabs history.²⁰

3. Categorization of Crime and Punishment in Islamic Law

Definitely, when Islam came to Arabian Peninsula it divided prohibited acts and specified its penalties for them into two categories. These are namely: *hudood* and *tazir* punishments. However, *hudood* and *qisas* are sub-divisions of the first category. Hence, mostly the *Shariah* jurists have separately discussed three types of crimes or punishments i.e. *hudood*, *qisas*, and *tazir* in their classical Islamic law writings.

3.1. *Hudood* Offenses and its Punishments

In Islamic law, the term “*hudood*” is plural of “*hadd*” refers to a penalty prescribed by Allah the almighty in the holy Quran or in Prophetic Sunnah. Such punishment or penalty is said to be “*haqq*” (right) of Allah. All responsibilities and liabilities in Islamic teachings are divided in two as called “*haqq-Allah*” and another is called as “*haqq-Adami*” i.e. right of person/human.²¹ *Hadd* basically is the limit and constraint imposed and fixed by Allah the almighty.²² In this connection *hudood* crimes are violation of “natural law” describe by the Muslim scholars as the breach of *haqq-Allah*. Thus, *hudood* crimes can provoke God almighty’s wrath.²³ In Islamic law these are the crimes for which fixed penalties are set. Muslim scholars deemed it as purely Allah's right, which cannot be postponed or eradicated by injured parties or by anyone else. In this backdrop adultery or fornication, slander, use of alcohol, theft, robbery, apostasy, and high treason are the seven sins/crimes that fall within this category. For conviction due to its sheer gravity of these offences, *Shariah* law has established a high criterion for its proof that should be free from doubts and uncertainties.²⁴ These penalties have some characteristics that distinguish them from others. First: there is no way to enhance or lessen the severity of these penalties. Secondly: no one have the right to dismiss these penalties. But if the harm was solely private, the aggrieved may have the right to forgive the offender. Thirdly: these penalties constitute “right of Allah” which means that the legal right at stake is of a universal character, with the better prosperity of mankind in mind.²⁵ There are basically seven crimes/sins which come under the *hudood* category. These are namely: 1) adultery or fornication (*zina*); 2) false accusation (*qazaf*); 3) theft (*sariqa*); 4) dacoity (*harabah*); 5) drinking wine (*shurb al-khamr*); 6) apostasy (*irtidad*) and 7) high treason (*baghi*).

3.2.1. Fornication (*zina*)

According to Islamic scholars adultery and fornication are basically two different offences having distinct penalties.²⁶ Ethically fornication is the most terrible offense. Actually the offender shows how his dignity has been overcome by his carnality and is incompetent to be part of community. That is why, Islam considers it as an actionable crime, whether or not it is supported by several other crimes. Literally the term fornication refers to an unlawful sexual relationship between two unmarried individuals.²⁷ According to holy Quran punishment for the offense of fornication is of hundred lashes/strips.²⁸ The holy Quran says: وَالزَّانِي فَاجِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلَيْشَهَدَ عَدَايَهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ “The [unmarried] woman or [unmarried] man found guilty of sexual intercourse, lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion of Allah, if you should believe in Allah and the Last Day. And let a group of the believers witness their punishment”.²⁹

On the other hand, if the offender is a slave and found guilty of fornication, the penalty is fifty lashes,³⁰ according to holy Quran: “But once they are الْمُحْصَنَاتِ مِنَ الْعَذَابِ”

sheltered in marriage, if they should commit adultery, then for them is half the punishment for free [unmarried] women”.³¹

Resultantly, we can see the above concept of half punishment is based upon wisdom as compared to free women; a slave woman do not have such secure life and cannot have equal rights, status, position in a society that is why she should have half penalty.³² The offence of fornication must always be proved or confessed. To prove it by evidence, four eyewitnesses are necessary, whereas the confession must be confirmed four times before the judge in different appearances.³³ During the execution of flogging, it must be with smooth stick while the offender is standing and not on one part of body. The striking should not be with full intensity or cruelty.³⁴

3.2.2. Adultery

Adultery is a major sin that allows other sins to flourish. Adultery is not only a humiliating-in itself but it stimulates to encourage exposes the person to so many other sins. It is described as a vile object and a wicked path in the holy Quran, and thus believers are forbidden from approaching it.³⁵ As said in the holy Quran: “And do not approach unlawful sexual intercourse. Indeed, it is *سَبِيلًا مَّوَسَّاءً فَاحِشَةً* , *وَسَاءَ سَبِيلًا* Quran: ever an immorality and is evil as a way”.³⁶

In Islamic law before pronouncing judgment, it must fulfill both conditions of four eye witnesses and the admission with no pressure i.e. compulsion and coercion. Only once it has been reiterated four times in different judicial sittings, the punishment is to be carried out. Secondly, it is the judge’s responsibility to make sure the truth of real insertion of the man’s erectile organ into woman’s genitalia by examining all admissions.³⁷

The Arabic term of *zina* is used for both adultery and fornication; however the mere distinction is of its punishment.³⁸ The punishment for adultery is also like given for fornication of hundred lashes mentioned in the holy Quran and also of stoning to death which is also known as “*rajm*”. Traditional scholars’ of Islamic law elaborated the notion of “*ihsan*” when it came to married adulterers and adulteresses. Only in *Shafi* School where a non-believer *dhimmi* can also be a *muhsan*; a *muhsan* is a free adult believer having valid intercourse in wedlock.³⁹ According to *Imam Abu hanifa* and *Imam Abu Yousaf* to give punishment of stoning to death the adulterer is have to sound knowledge, major, Muslim, free and having a lawful marriage with free adult Muslim women.⁴⁰ For that purpose the most cited *hadith* of our holy Prophet Muhammad (peace be upon him) is to be mentioned: Once a nomad came to the Prophet of Islam and said: “O Messenger of Allah, I implore you by Allah to pass judgment on me in accordance with Allah’s book... My son worked as a laborer for this man and then he fornicated with his wife. I was told that my son deserved to be stoned to death, so I ransomed him for one hundred sheep and a female slave. I then asked the people of knowledge and they informed me that my son deserved one hundred lashes and banishment for one year and that the woman deserved to be stoned to death”. Then holy Prophet responded: “As for the female slave and the sheep, they must be returned to you. Your son deserves one hundred lashes and banishment for a year. Go Unais to this man’s wife and if she confesses, stone her to death.” Thus she admitted and then Prophet given his judgment about her to be stoned”.⁴¹ Again, as like fornication adultery should be established by four eye witnesses and secondly it can also proved by confession.⁴² While executing the punishment of stoning to death (*rajm*) it should be done in desolate place and carried out initially by eyewitnesses then by judge and lastly by public.⁴³

3.2.3. False Accusation (*Qazaf*)

The word “*qazaf*” generally means an accusation. Legally by *qazaf* we mean to impose the charge of having *zina* on married person whether man or women and the one who is imposing such accusation is known as *qazif*. On the other hand the accused of is known as *maqzuf* or *maqzufa*.⁴⁴ The holy Quran make a clear statement to safeguard the honor and dignity of a person i.e. in case of female it is stated: *وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجِدُوهُمْ تَمْنِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ* , “And those who accuse chaste women and then do not produce four witnesses - lash them with eighty lashes and do not accept from them testimony ever after. And those are the defiantly disobedient”.⁴⁵

Resultantly, the holy Quran stated that the offense of dacoity or robbery is punishable with four kinds of punishments which is beheading, crucifixion, chopping hands and legs from the opposite sides and the last one is to banish the criminal from his home land.

According to many *fiqh* literature; during dacoity if the killing of someone happened, thus in such case the offender shall be executed plus crucified. But, if the murder happens only then he shall be beheaded. However, if during the offense no murder occurs then only his hands shall be cutoff and foot from the opposite side. Whereas, if he comes with the intention of committing dacoity and murder but could not succeed, then it is optional punishment as *tazir* shall be given by the judge.⁶⁰ The punishment of banishment in literal sense means to exile someone as mentioned in the verses holy Quran is optional in nature which means it is up to the judge or court's prerogative to give the punishment as deem fit. Certainly, if the offender is from the Muslim majority state then the punishment of banishment is not be implemented.⁶¹ *Hidaya*, a prominent *hanafi fiqh* manual, maintained if before that offense happens while someone puts the offender under threat of murder then he (the offender) shall be imprisoned by the judge. Secondly, if he commits dacoity but no murder happens then his right hand and left foot should be chopped off. Thirdly, during that offense if murder happens he shall be executed. And lastly, during the offense if both dacoity and murder happens then it will be judge's discretion to cut the hand first or directly executed him.⁶²

3.2.6. Drinking Wine (*Shurb al-Khamr*)

In Arabs before to the arrival of Islam drinking wine was common thing among them. People were so used to it and it was impossible for them to think about quitting this evil practice. Drinking wine led to a wide range of wicked activities and bred animosity amongst them. Since wine was so important to them that is why *Shariah* initially does not completely forbid the consumption of alcohol/wine at once, but rather the banning process of alcohol was implemented gradually, giving people sufficient time to remove the well-entrenched impact it had on people's brains.⁶³

Drinking wine is prohibited in Islam and defined as *khamr*. The word "*khamara*" literally means "it veiled or covered or concealed" and a wine is called *khamr* because it covers the understandings and conceals the ethical susceptibilities.⁶⁴ Wine the *khamr*, which simply means all things causes intoxication and is prohibited in holy Quran in the following verse: *يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ ۖ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنَافِعُ لِلنَّاسِ ۚ وَإِثْمُهُمَا أَكْبَرُ مِّن نَّفْعِهِمَا*, "they ask you about wine and gambling. Say, "In them is great sin and [yet, some] benefit for people. *تَفْعِيلُهُمَا*, "they ask you about wine and gambling. Say, "In them is great sin and [yet, some] benefit for people. *بُيُوتِهِمُ* But their sin is greater than their benefit".⁶⁵ Similarly, the holy Quran says: *وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ ۗ تَلْحِقُونَ*, "O you who have believed, indeed, intoxicants, gambling, *تَلْحِقُونَ* [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful".⁶⁶

Looking towards the *hadith* literature the Prophet Muhammad (peace be upon him) termed consumption of wine is *umm-al-khaba'ith* (the mother of all vices) as it can pave a way to other crimes. In another *hadith* of Ibn Umar cited the Prophet of Islam aid: "every single intoxicant is *khamr* (wine) and every intoxicant is forbidden". While, Hazrat Jabir (R.A) narrated that the Prophet (peace be upon him) said: "if a large amount of anything causes intoxication, a small amount of it is prohibited".⁶⁷

From the above *ahadith* we may conclude that drinking wine is a major sin and therefore prohibited in Islam. However, the penalty was provided for it very later by the Prophet of Islam. Thus, the Prophetic penalty came down to us as applying forty lashes to the alcohol drinker.⁶⁸ This has been interpreted by some followers as eighty lashes; as the second Caliph, 'Umar bin al-Khattab (R.A) has been reported to have applied eighty lashes. The *Hanafi* school of thought holds that having a drink is punishable by eighty whips. The *Maliki* and *Hanbali* schools of thought have the same viewpoint. While *Hanbali* viewpoint, as well as the *Shafi*, *Zahiri*, and *Zaydi* schools, holds that the punishment is only forty whips.⁶⁹

3.2.7. Apostasy (*Irtidad*)

The word apostasy in *Shariah* law and in Arabic is termed as "*riddah*" or "*irtidad*", which comes from the verbal root "*radd*" means "to withdraw, resign, recede from, or drop back from". In the perspective of *Shariah* law, it simply means the repudiation of Islam by somebody who is professing Islamic religion and

the one who does that is called as “*murtad*”.⁷⁰ The revelation of *hudood* offences also encompasses apostasy (*riddah*). Allah the almighty have ordained this for other sociopolitical objectives though this may seem to be a religious offence.⁷¹ In other words we can say that in Islamic law *irtidad* means the denial of Islam by the person after acceptance of Islam.⁷² The term *murtad* is used in both of the holy Quran and Prophetic Sunnah. As stated in holy Quran: *وَمَنْ يَرْتَدِدْ مِنْكُمْ عَنْ دِينِهِ فَيَمُتْ وَهُوَ كَافِرٌ فَأُولَئِكَ حَبِطَتْ أَعْمَالُهُمْ فِي الدُّنْيَا وَالْآخِرَةِ وَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ* , “and whoever of you reverts from his religion [to disbelief] and dies while he is a disbeliever - for those, their deeds have become worthless in this world and the Hereafter, and those are the companions of the Fire, they will abide therein eternally”.⁷³ Similarly, the punishment of *murtad* is given in the holy Quran and Sunnah of holy Prophet Muhammad (peace be upon him) and also upheld by the “*khulafa-e-rashidoon*” (rightly guided Caliphs) after the demise of our holy Prophet of Islam which recommends the capital punishment for that offence of *irtidad*.⁷⁴ In holy Quran Allah the almighty says: *وَعَهْدِهِمْ وَطَعْنُوا فِي دِينِكُمْ فَقَاتِلُوا أُنْمَةَ الْكُفْرِ إِنَّهُمْ لَا أَيْمَانَ لَهُمْ لَعَلَّهُمْ يَنْتَهُونَ* , “And if they break their oaths after their treaty and defame your religion, then fight the leaders of disbelief, for indeed, there are no oaths [sacred] to them; [fight them that] they might cease”.⁷⁵

Assertively, the *hanafi* jurists believe that the penalty for apostasy applies only to males. As per them, women can only be imprisoned till they retract, since the holy Prophet Muhammad (peace be upon him) forbade the execution of a disbelieving woman, while who are against the view says that it is for women in war.⁷⁶ While the majority of jurists believe that if a person is guilty of apostasy, he or she should be imprisoned for a month and encouraged to repent. In apostasy, the individual may reconcile at any moment and if he or she regret, then he or she will be freed and the accusation will be withdrawn. But if he or she does not change his or her mind within 30 days, the death penalty will be imposed and such apostasy should be confirmed by that person before judge or by two competent witnesses.⁷⁷ A *murtad* should be killed by sword because it is narrated by ‘Ikrama (R.A) that apostates were brought before Hazrat Ali (R.A) then he burnt them alive later on when it was heard by Hazrat Abbas (R.A) he said to him that Prophet Muhammad (peace be upon him) said: “punish not with Allah’s punishment” i.e. fire but when someone changes his religion kill them with sword.⁷⁸

4. *Qisas* Offenses and its Punishments

The word *qisas* is actually synonymous with “*musawah*”, which means to make one thing equivalent to other. In this case it means to make the penalty equivalent or proportionate to the offence. The origin of word *qisas* is “*qassa*”, means that “he trailed after the track or footprints” or “he attempted to trace him”.⁷⁹ These are offences that are punished by vengeance or ransom money (*diyah*), both of which are specified in the holy Quran. Only the offended party has the right to pardon, decrease the penalty, or compound the offence against the accused person; the appropriate government does not have the ability to amend or adjust these sanctions. Intentional murder, man slaughter, causing death by error or accident, deliberately inflicting simple or severe damage, and causing harm (simple or serious) by mistake or accident are all examples of *qisas* crimes. In his book on Islamic criminal law, *fiqh al-jinayi*, Abdul Qadir ‘Awda says: “if there is no other factual evidence to consider, the statement of at least two credible eyewitnesses is necessary to achieve a conviction”.⁸⁰ In other words we can say that the culprit of an offense is penalized with almost the same harm which the offender inflicted on the wronged party. If the offender assassinates the person, he is also assassinated. If he amputates or injures any limb of the sufferer, he will amputate if it is feasible to do so other than murdering the offender. This conclusion is made with the help of experts.⁸¹ As Islam gives a huge importance to human life as it is stated in holy Quran and Sunnah of the holy Prophet (peace be upon him). *مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا* In the holy Quran Allah the almighty says: , “whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely. And whoever saves one - it is as if he had saved mankind entirely”.⁸² In another place *وَالَّذِينَ لَا يَدْعُونَ مَعَ اللَّهِ إِلَهًا آخَرَ وَلَا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَلَا يَزْنُونَ وَمَنْ يَفْعَلْ ذَلِكَ يَلْقَ أَثَامًا* He says: , “and those who do not invoke with Allah another deity or kill the soul which Allah has forbidden [to be killed], except by right, and do not commit unlawful sexual intercourse. And whoever should do that will meet a penalty.”⁸³ ‘Abdullah bin Mas‘ud (R.A) reported from Allah’s Messenger (peace be upon him) said: “the first

thing that will be decided among the people on the day of judgment will pertain to bloodshed". From the above verse and *hadith* we came to know the serious among the crime is the bloodshed of men without justification.⁸⁴ If we look at the holy Quran and sayings of our holy Prophet (peace be upon him) it is clear that Islamic law gives very much importance to human life that is why Islam takes cognizance of the following offences and makes it punishable with *qisas*. Basically in *Shariah* law there are five offenses which are punishable with *qisas*. These will be discussed in the following manner.

4.1. Qatl-e-'Amd

"*Qatl-e-'amd*" or intentional homicide is defined as the criminal knowingly murders a victim with a gun or something that is used to kill, such as a hammer, a shrill rock, or by flame.⁸⁵ In other words it is defined as someone who with the aim of inflicting death or physical harm to another person, results in the death of that individual by performing an act that is likely to be fatal in itself.⁸⁶ The holy Quran gives two verdicts about the murderer one of hell fire on the Day of Judgment and second of the retaliation which is *qisas*.⁸⁷ Allah the Exalted says in the holy Quran: لَهُ عَذَابًا عَظِيمًا "but whoever kills a believer intentionally - his recompense is Hell, wherein he will abide eternally, and Allah has become angry with him and has cursed him and has prepared for him a great punishment".⁸⁸ While for *qisas* it says: يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَىٰ بِالْأُنثَىٰ "O you who have believed, prescribed for you is legal retribution for those murdered - the free for the free, the slave for the slave, and the female for the female".⁸⁹

As we know *qisas* is retribution and the penalty for willful homicide is death. If the victim's legal heirs forgive the offender on the demand of *diyah*, or if the offender died just before penalty is carried out, *diyah* will become mandatory as long as the forgiving is not unconditional.⁹⁰ As the holy Quran says: لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبَاعُ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ فَمَنِ اعْتَدَىٰ بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ وَلَكُمْ فِي الْقِصَاصِ حَيَوةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ "but whoever overlooks from his brother anything, then there should be a suitable follow-up and payment to him with good conduct. This is alleviation from your Lord and a mercy. But whoever transgresses after that will have a painful punishment. And there is for you in legal retribution [saving of] life, O you [people] of understanding, that you may become righteous".⁹¹ From the cited verses of the holy Quran we came to know that in *Shariah* law pardoning is the right of victim's heirs, and thus a judge cannot insist on *qisas*, but he will give blood money.⁹²

4.2. Qatl-e-Shibhi-'Amd

"*Qatl-e-shibhi-'amd*" is the act of killing a person without intending to do so but with the motive of inflicting injury upon that person, which culminated in their murder.⁹³ So it is a form of purposeful homicide in which the culprit strikes a man with something that is not usually used to kill someone.⁹⁴ The punishment for *qatl-e-shibhi-'amd* is full *diyah*, however Imam Abu Hanifa's reasoning is based on a statement of the holy Prophet (peace be upon him) that murdering with a rod or a stick is not murder but merely manslaughter, with a punishment of hundred camels payable within three years.⁹⁵

4.3. Qatl-e-Khata

"*Qatl-e-khata*" is a crime which is considered to have been committed by someone who, without intending to do so, causes the murder of another individual, either by error of conduct or by error of fact.⁹⁶ Murder by accident or error (*qatl-e-khata*) is a fatal deed that occurs accidentally or by misunderstanding. There might be a mistake in the deed or in the purpose. Mistake in action where a person fires at a target and mistakenly kills a bystander, while mistake in purpose is a person fires at what he believes is a creature but comes out to be a person. Here *qatl-e-khata* also includes homicides that occur as a result of unconscious conduct, such as when a person turns over in his sleep and smothers his wife.⁹⁷ According to many Islamic scholars if it is done by mistake then he will pay an amount as "*kafarah*" or expiation as charity, but if he is not able to do so then he will keep-fast for two months.⁹⁸ Here in this case the person who causes such death by *khata* (mistake) is obliged to release Muslim captive or keep-fasting for two consecutive months and pay fine within three months.⁹⁹ As the holy Quran says: مُؤْمِنَةٍ وَدِيَةٌ مُّسَلَّمَةٌ إِلَىٰ أَهْلِهَا إِلَّا أَنْ يَصَدَّقُوا فَإِنْ كَانَ مِنْ قَوْمٍ عَدُوٍّ لَّكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُّؤْمِنَةٍ وَإِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِّيثَاقٌ فَدِيَةٌ

، “and never is it for a *مُسْلِمَةً إِلَىٰ أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ* ^{١٠٠} *فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ تَوْبَةً مِّنَ اللَّهِ* وَكَانَ اللَّهُ عَلِيمًا حَكِيمًا” , believer to kill a believer except by mistake. And whoever kills a believer by mistake - then the freeing of a believing slave and a compensation payment presented to the deceased's family [is required] unless they give [up their right as] charity. But if the deceased was from a people at war with you and he was a believer - then [only] the freeing of a believing slave; and if he was from a people with whom you have a treaty - then a compensation payment presented to his family and the freeing of a believing slave. And whoever does not find [one or cannot afford to buy one] - then [instead], a fast for two months consecutively, [seeking] acceptance of repentance from Allah. And Allah is ever knowing and Wise”.¹⁰⁰

4.4. Qatl-e-Bisabab

“*Qatl-e-bisabab*” (murder by an indirect cause) refers to death caused by unrelated causes such as through wall collapse or where a person falls into an uncovered hole. Thus, in such circumstances, the landowner or contractor is held solely responsible and must pay a fine. However, in such cases no exclusion from inheritance in property or expiation is required.¹⁰¹ Resultantly, from the stated discussion we came to know that in case of murder *Shariah* law gives three rights to the heirs of the victim namely: 1) right of *qisas*; 2) right to accept blood money; and 3) right to pardon freely. While, in view of some jurist i.e. from four *Sunni* school of thought says that, execution of *qisas* is the right of victim’s heirs to execute it if they able to do it in proper way.¹⁰²

4.5. Hurt

In case of hurt if anyone willfully inflict physical discomfort, whips, hurts, or inflicts injury or damage to another person is punishable with *qisas*. However, where a same injury if inflicted without fairness and not possible then *diyah* or *arsh*, as to the nature of hurt, will be payable.¹⁰³ For the *qisas* of hurts and injuries the holy Quran says: *وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصًا فَمَن تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ* . وَمَنْ لَمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ” , “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 wrongdoers”.¹⁰⁴

From the above statement it is clear that Islam also declared the punishment of *qisas* in cases of hurts and injuries. In this case, the statement “eye for an eye and tooth for tooth” is just metaphorical, but the culprit will be punished by the judge in line with the offence. Besides, if hurt or injury is of such nature that it cannot be inflicted in the same manner or the bones are fractured which cannot be observe properly by naked eye, or if the offender is imperfect and unsound or is lost before execution then there will be no *qisas*. Similarly, for tongue or virile member but the compensation will be necessary. Correspondingly, whomever waives he will receive expiation as said in the verse of the holy Quran.¹⁰⁵

5. Other Offenses and *Tazir* Punishments

The Arabic term “*tazir*” comes from the word “*azar*”, which means to avoid, revere, and correct.¹⁰⁶ Basically these penalties are not fixed for offences that either infringe *huqooq-ul-Allah* (Allah’s rights) or *huqooq-ul-‘ebaad* (person’s rights), and do not have a defined penalty or a predetermined atonement. As the offences that have predetermined penalties are small in number, however discretionary penalties are the largest classification of the subject penalties. Thus, all other, except those are determined, offenses fall under this category.¹⁰⁷ Similarly, these are offenses in which the state enacts forbidden actions in the form of laws, acts, or rules. Since, these kinds of offences are not defined through divinely decreed laws and thus their penalties aren’t either as these are leftover for the judge or court or ruler’s discretion. Breach of trust, corruption, and interest are only a few of them that have been given as instances. The authority to legislate in this area is completely in the hands of the authorities, provided that enactment is consistent with the needs of community and its normal functioning, and that it protects current societal objectives, sustains public stability, and safeguards other collective objectives of society within the confines of *Shariah* principles. So in these cases court/judge has the authority to impose the penalty that best suits the offence and its situation, as well as the criminal and his or her condition. In such cases state or judge can issue orders under the

stipulation that amnesty issued does not at all jeopardize or interfere with the injured side's rights. Similarly, on the other hand, the aggrieved might offer forgiveness if it is not injurious to current societal objectives.¹⁰⁸ Ibn Farhun, a well-known Muslim jurist, tries to define the purpose of *tazir* in simple words; he says it is a "disciplinary, reformatory, and preventive punishment".¹⁰⁹ The concept of *tazir* punishments is present both in the holy Quran and Sunnah of holy Prophet Muhammad (peace be upon him). The holy Quran says: "and the two who commit it among you, فَأَصْلَحَا فَأَعْرَضُوا عَنْهُمَا إِنَّ اللَّهَ كَانَ تَوَّابًا رَحِيمًا", "but if they repent and correct themselves, leave them alone, indeed, Allah is ever accepting of repentance and merciful".¹¹⁰ In other place the holy Quran says: "but those [wives] from whom you fear arrogance - [first] advise them; [then] اضْرِبُوهُنَّ وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاصْرَبُوهُنَّ", "if they persist], forsake them in bed; and [finally], strike them".¹¹¹

Resultantly, the holy Quran in the above verses give us a broad principle of imposing *tazir* punishment on the offenders. Nevertheless, one cannot say that the holy Quran does not know about such offenses, but rather it gives us the ruling of *tazir* impliedly.¹¹² On the other hand, if we look into the Prophetic traditions (*ahadīth*); the concept of *tazir* punishments can be found for example "once a companion of the holy Prophet (peace be upon him) injured his slave as a punishment for his having a sexual relationship with a female slave, so when the holy Prophet (peace be upon him) saw the injured slave, he freed him. This was, indeed, a punishment for the companion's misconduct" which testify the concept of *tazir* punishments in Islamic injunctions.¹¹³ A *hadīth* in "Abu Muslim and Abu Dawood" clearly states in which the "holy Prophet (peace be upon him) deprived a man of his share of the spoils of war because of misdeeds committed against the commander of the army".¹¹⁴ So, from the cited *Quranic* verses and *ahadīth* it is very much clear that the concept of *tazir* punishment having strong bases in Islamic law injunctions.

6. Major *Tazir* offenses in Perspective of *Shariah* and Law

Indeed, we can find some of the important *tazir* offences both in the holy Quran and Sunnah of the holy Prophet Muhammad (peace be upon him). Thus, in following section we will discuss some of the imperative *tazir* offenses in perspective of *Shariah* and law for ease of the readers.

6.1. Usury (*Riba*)

Categorically, *surah al-baqarah* and *al-imran* of the holy Quran strictly made all the dealings of *riba* or those based on interest as "*haram*" (forbidden) for the believers (Muslims). One of these verses says; "but Allah has permitted trade and has forbidden interest".¹¹⁵ At another place the holy Quran says: "يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِن كُنْتُمْ مُؤْمِنِينَ فَإِن لَّمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِّنَ اللَّهِ وَرَسُولِهِ وَإِن تُبْتِغُوا فَلَئِمَّ رُءُوسُ أَمْوَالِكُمْ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ [due to you] وَلَا تَظْلِمُونَ وَلَا تُظْلَمُونَ".¹¹⁶ Again the holy Quran say: "O you who have believed, do not consume usury, doubled and multiplied, but fear Allah that you may be successful".¹¹⁷

Hence, from the above verses it is clear that dealing in interest or *riba* is prohibited in Islam, however the holy Quran and Sunnah does not fix a punishment for *riba*. Thus, in the cases of *riba* judge has to determine what *riba* is and whether the offense comes under the definition of *riba*? Similarly, the judge has the discretion to impose effective punishment on the offender.¹¹⁸

6.2. False Testimony (*Shahadat al-Zur*)

False testimony was prohibited in the holy Quran, and Muslims were advised to speak the truth and reality when questioned. The holy Quran says: "o you, who have believed, be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves or parents and relatives".¹¹⁹ Similarly, it says: "and avoid false الزُّورِ قَوْلِ الزُّورِ against yourselves or parents and relatives".¹²⁰ Remarkably, in case of false testimony the prime responsibility of "*qazi*" or judge to decide on effective penalty for the offense but not of its determination, because it is clearly defined by the holy Quran that true believer should avoid false statement and testimony. Thus, the case of libel and slander should be placed before the judge on the bases of a

tazir punishment or pass any other decree for remedy as they deem fit and just.¹²¹

6.3. Breach of Trust (*Khiyanat al-Amanah*)

Clearly, in the holy Quran there are many verses related to the breach of trusts, although two of them are sufficient which clearly demonstrates that these offences are formulated in the book of Allah. The holy Quran says: “indeed, Allah commands you to render trusts to whom they are *أَهْلُهَا* إِلَىٰ أَهْلِهَا إِنَّ اللَّهَ يُأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا إِنَّ اللَّهَ يُحِبُّ الْمُؤَدِّينَ”¹²² In another verse it says: “o you, who have believed, do not betray Allah and the Messenger or betray your trusts while you know [the consequence]”¹²³ Therefore, Islamic scholars based treatment of the above offence on the given two verses of the holy Quran. In *Sahih al-Muslim* a notable point is given in which the holy Prophet (peace be upon him) consider both “*khiyanat al-amanah*” and theft as of a same nature.¹²⁴

6.4. Insult (*Al-Sabb*)

The holy Quran forbids insulting a human being if the person being insulted is an unbeliever.¹²⁵ The holy Quran says: “and do not insult those they invoke other than Allah, lest they insult Allah in enmity without knowledge”¹²⁶ In the matters between the Muslims the holy Quran states: “o you, who have believed, let not a people ridicule [another] people; perhaps they may be better than them; nor let women ridicule [other] women; perhaps they may be better than them, And do not insult one another and do not call each other by [offensive] nicknames, Wretched is the name of disobedience after [one's] faith. And whoever does not repent - then it is those who are the wrong-doers”.¹²⁷ So, from these verses many Muslim scholars categorized insults as one of the “*tazir*” offences.¹²⁸ It is court’s or judge prerogative to order for the just punishment keeping in view the nature of offence and condition of the offender.

6.5. Bribery (*Al-Rishwa*)

Definitely, the holy Quran condemned bribery and regarded it as illegal manner of getting income and any other techniques of making money via deception are prohibited.¹²⁹ The holy Quran says: “and do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful]”.¹³⁰

Resultantly, as there is no fixed punishment for bribery in the holy Quran and Prophetic Sunnah, thus it is also considered *tazir* offense, and by that the judge or court has been given discretion of imposing a just punishment.¹³¹ Moreover, from the stated discussion we came to know that there are certain crimes or offenses that can be dealt with *tazir* punishments. Although, penalties vary according to the gravity of the offence and may include incarceration, whipping, a fine, exile, and property confiscation. In view of Ibn Nujaym “*tazir* might include flogging, slapping, scratching of ears, a sharp telling-off, denunciation short of slander, or an angry gaze of the court”.¹³² Besides, all the four *fqih* schools of thought i.e. “*Hanafi, Maliki, Shafi, and Hanbali*”, allowed capital punishment at the disposal of the government or *qazi* or court for specific *tazir* offences. The same may likely be done by harsh conduct, propagating heretical doctrines or where the offender is habitual and there is no other way of stopping him from doing again and again, if it is confirmed by at least two witnesses or a personal confession.¹³³ Then, the court or judge or the authorities may order for harsh and severe punishment not exceeding the limit of *hadd* (described/determined) penalties.

7. Purpose and Objectives of Punishments in Islamic Law

Factually, punishments in Islamic law are intended to deter future offences by both the criminals and other individuals. In this backdrop, punishment is also designed to correct and rehabilitate the offender.¹³⁴ Therefore, in the following section we will discuss purpose and objectives of punishments in perspective of Islamic law.

7.1. Prevention of Crime (*Al-Zajr*)

Certainly, the term *zajr* refers to preventing the criminal from committing more crimes and discouraging the people of community from committing those crimes, with understanding that the penalty imposed to the criminal is not limited to his/her crime but can be enforced to another criminal.¹³⁵ In *fath al-qadir* on the case of *zajr*, Ibn al-humam writes: “punishment can serve as a preventive measure (*mawani*) before the occurrence of a crime, and serve as a deterrent (*zawajir*) after the occurrence of a crime. It means that the knowledge of the enforcement of the punishment could prevent any other potential criminal from carrying out his/her intention, or whenever a criminal is punished, it deters him/her from the re-commission of further offence”.¹³⁶ That is why Allah the almighty says in the holy Quran; “And there is for you in legal retribution [saving of] life, O you [people] of understanding, that you may become righteous”.¹³⁷ As we know that chargeable sacred breach “*ma’asi*” could sometime be by the conduct of forbidden actions or the neglect of required activities, the aim of *zajr* is basically to restrain a person from performing prohibited acts or neglecting compulsory acts. Thus, in such case, the culprit will face punishment until he fulfils his/her religious duty. It is worth noting that penalty in the latter situation should be harsher and more severe, as here the goal of penalty is to encourage the criminal to perform required and legal/lawful activities. As a result, the penalty might be repeated as long as he/she does not perform the required actions.¹³⁸ In reality, the acknowledgement of the deterrence factor is deeper and greater in the Islamic penal/criminal system than in other legal systems. Deterrence is acknowledged as the primary reason for the sanctions in this context. According to various scholars, preventive punishments improve society's protection as well as everyone's dignity and benefits. Deterrence in this regard is not achieved merely by announcing the crime and its consequences, but rather the efficiency with which the guilty is prosecuted and punished is ultimately required, as well as the blatant way in which the penalty is inflicted.¹³⁹ Hence, for the purpose of deterrence, the Holy Quran says: “and let a group of the believers witness their punishment”.¹⁴⁰

7.2. Reformation of Criminal (*Al-Islah wa Al-Tahdhib*)

Indeed, in Islamic law another purpose of retribution is to transform and rehabilitate the criminal so that he/she will not perpetrate the offense or mistaken again. It implies that disciplinary and reformative punishment can cause a perpetrator to prevent committing a crime. Because, of the knowledge and realization which stems after his/her repugnance from the wrongdoing rather than threat of punishment. Additionally, encourage him/her to obtain Allah's pleasure, as the crime is deemed a *ma'siyah* in Islamic law. Thus, when an individual realizes that all of his/her deeds is documented by Allah the almighty and cannot go unanswered in afterlife, he/she has the best chance of confronting the crime at its base.¹⁴¹ That is why for the repentance the holy Quran says: “but whoever repents after his wrongdoing and reforms, indeed, Allah will turn to him in forgiveness. Indeed, Allah is Forgiving and Merciful”.¹⁴² This doctrine of regret “*tawbah*” or philosophy of offender rehabilitation is derived and acknowledged by the holy Quran. Best visible manifestation of this goal may be seen in the penalty of endless incarceration with no time limit on the duration of the sentence. It will endure until the offender repents or, in the case of a dangerous criminal, until his/her death. From the beginning, there has been recourse to jail. During the era of Caliph “Umar bin al-Khattab” where a house in Medina was acquired to lodge convicts. Governors later adopted this approach.¹⁴³ Incarceration can be employed primarily for educating and rectification, either of them can suppose to be accomplished via self-replication.¹⁴⁴

7.3. Recompense for Crime (*Al-Jaza*)

Factually, crime is a despised activity that arouses societal fury against the criminal and as well as pity for the victims. Thus, in this regard punishment is ultimately society's response to the criminal's behavior. As a result, the concept of punishment is society's general reaction in order to sustain tranquility and social order. Similarly, in the instance of a crime that violates an individual's right, the penalty offers satisfaction for the injured persons removing whatever bad sentiments they may have towards the perpetrators. Therefore, punishment shields criminals from the effects of the fury that crime instills in the society, allowing rehabilitation to take place.¹⁴⁵ For the reason most of the time whenever crime is mentioned in the holy Quran, punishment comes along with its purposes. The holy Quran says: “[As for] the thief, the male and the female, amputate their hands in recompense for what they committed as a deterrent [punishment] from Allah, and Allah is Exalted in Might and Wise”.¹⁴⁶

Conclusion:

Consequently, *Shariah* law is having its own concept of punishments that concerns less about the offender and his/her rehabilitation, and instead focuses on preventing the occurrence of crimes. That is why, in Islamic law, offenses and its penalties are classified into *hudood*, *qisas* and *tazir* punishments. Basically, in case of *hudood* the lawmakers are left with no option as these are divine parameters. Thus, they cannot include, exclude or change these laws pertaining to these penalties outlined in the holy Quran and Sunnah of the holy Prophet. While in *qisas* the offender is reattributed with the same offense or injury in case of hurt. On the other hand, the concept of “*tazir*” is wide-open for the lawmakers who may make certain acts as crimes and hence may establish its penalties for the purpose of an immediate consideration to social decency and provides an enduring foundation through which Islamic society's expectations and demands can really be fulfilled. Therefore, the present study recommends the lawmakers, while making criminal laws, to take into considers the broad spectrum of punishments in Islamic law in order to safeguards people from crimes and criminal acts. The factual application of corporal punishments as enshrined in *Shariah* law along with the notion of *tazir* offences is vital role to play while countering the law and order situation anywhere and everywhere in the country.



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- ² See, (op. cite. no 1)
- ³ “Augustyn, Adam, Adam Zeidan, Alicja Zelazko, Grace Young, and Gloria Lotha”, 2014, “*Encyclopedia Britannica*”, November 09, available at: https://en.wikipedia.org/wiki/Corporal_punishment#cite_note-BritannicaCP-1
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- ⁵ “The Lawyers and Jurists”, 2017, “*Definition of Crime*”, published: 2017, available at: <https://www.lawyersjurists.com/article/definition-crime/>
- ⁶ See, (op. cite. no 5)
- ⁷ See, (op. cite. no 5)
- ⁸ RABI’U, Sulaiman Olayiwola, 2016, “*The Philosophy Of Punishment As Attainable Under English and Islamic Laws*”, in “*International Journal of Business & Law Research*”, 2016, 4(4):67-75, available at: <https://seahipaj.org/journals-ci/dec-2016/IJBLR/full/IJBLR-D-6-2016.pdf>
- ⁹ See, (op. cite. no 3)
- ¹⁰ “O’Connor, Ann, and Recee L. Peterson”, 2014, “*Corporal Punishments: A Traditional Discipline Consequence*”, Research Gate-1, 2014, 1-7, available at: <file:///C:/Users/Dayan/Downloads/CorporalPunishment3-8-2014.pdf>
- ¹¹ See, (op. cite. no 10)
- ¹² See, (op. cite. no 10)
- ¹³ See, (op. cite. no 3)
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- ⁴⁰ See, (op. cite. no 22 & 38)
- ⁴¹ Al-Bukhari, book no. 95, chapter no. 1, hadith no. 14; Al-Nasai, book no. 49, chapter no. 22, hadith no. 32 & 33
- ⁴² See, Siddiqi (op. cite. no 22), at, p. 69; Notably, some people and modern-day scholars have mixed the concept of *zina* with rape due to misconception as deeming both have the same nomenclature. Nevertheless, that was not the case in reality, because adultery/fornication is the outcome of censures which should be established on the basis of four eye witnesses; however, rape is otherwise since it is the outcome of coercion or compulsion. Thus, four eye witnesses are not required in rape cases. For details discussion see, Fazli Dayan, (Ph. D Thesis), *The Application of Doctrine of Necessity in Shariah and Contemporary Medical Issues with Special Reference to Family Matters and Pakistani Law*, IIU, Islamabad, 2018, pp. 45-46, 393, 400-405
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- ⁵⁶ See, (op. cite. no 26), at, p. 163
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