

CRIME AND PUNISHMENT IN ISLAM (PART 2 OF 5): FORMS OF PUNISHMENT IN ISLAM

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Description: A detailed discussion about the regulations Islam has set in regards to dealing with crime in society. Part 2: Distinguishing features of the Islamic penal system, and an introduction to the three forms of punishment which Islam has legislated for certain crimes.

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Distinguishing Features of the Islamic Penal System

In the aforementioned principles, Islamic Law and contemporary law coincide, though Islamic Law has the distinction of being first. However, the Islamic penal system also has unique virtues and distinguishing features, among the most important of which are the following:

1. The inner deterrent of man's moral conscience is fully integrated with external supervision. This is due to the fact that Islamic Law, when dealing with social problems such as crime, does not rely merely on legislation and external deterrents. It focuses more on the internal deterrent, placing the greatest emphasis on man's moral conscience. It endeavors to develop this conscience within a person from childhood so that he can be brought up with the noblest moral character.

It promises success and salvation for those who work righteousness and warns wrongdoers of an evil fate. In this way, it stirs up emotions, making a criminal renounce his ways by inspiring him with faith in God, hope for divine mercy, fear of divine punishment, adherence to moral virtues, love for others, and a desire to do good to others and refrain from causing injury and harm.

2. It has a balanced outlook with respect to the relationship between the individual and society. This becomes clear from the fact that while the Divine Law protects society by legislating punishments and preventative measures against crimes, it does not marginalize the individual for the sake of society. On the contrary, its priority is the protection of the individual, his freedom, and his rights. It provides every safeguard to leave no excuse for a person to have to resort to crime. It does not set out to punish without first preparing for the individual a situation conducive to a virtuous and happy life.

Forms of Punishment in Islam

Islamic Law, in confronting the problems of life and setting down solutions for them, is established on two complimentary principles. These are: the stability and permanence of its basic tenets on the one hand and the dynamism of its subsidiary injunctions on the other.

For the unchanging aspects of life, Islamic Law brings fixed statutes. For the dynamic aspects of life that are affected by social development, broadening horizons, and advances in knowledge, Islamic Law comes with general principles and universal rules capable of being applied in a number of different ways and in a variety of circumstances.

When we apply these principles to the penal system, we find that Islamic Law has come with clear texts prescribing fixed punishments for those crimes that no society is free of, crimes that do not vary in their forms because they are connected with the constant and unchanging factors of human nature.

Islamic Law confronts other crimes by stating the general principle that decisively indicates their prohibition, leaving the punishment to be decided by the proper political authority in society. The political authority can then take the particular circumstances of the criminal into consideration and determine the most effective way to protect society from harm. In accordance with this principle, punishments in Islamic Law are of three types:

1. Prescribed punishments
2. Retribution
3. Discretionary punishments

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