

CRIME AND PUNISHMENT IN ISLAM (PART 4 OF 5): RETRIBUTION AND DISCRETIONARY PUNISHMENTS

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Description: A detailed discussion about the regulations Islam has set in regards to dealing with crime in society. Part 4: The second and third types of punishments, retribution and discretionary punishments, the types of crimes for which they have been legislated, as well as the wisdom behind them.

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2. Retribution

This is the second type of punishment in Islamic Law. This is where the perpetrator of the crime is punished with the same injury that he caused to the victim. If the criminal killed the victim, then he is killed. If he cut off or injured a limb of the victim, then his own limb will be cut off or injured if it is possible without killing the criminal. Specialists are used to make this determination.

Important Rules Regarding Retribution

1. Retribution is not lawful except where the killing or injury was done deliberately. There is no retribution for accidentally killing or injuring someone. God says:

“O you who believe, retribution is prescribed for you in the case of murder...” (Quran 2:178)

And He says:

“...There is retribution in wounds...” (Quran 5:45)

2. In the crimes where the criminal directly transgresses against another, Islam has given the wish of the victim or his family an important role in deciding whether or not the punishment should be carried out. Islam permits the victim to pardon the perpetrator, because the punishment in these crimes is considered the right of the victim. Islam even encourages pardon, promising a reward in the hereafter for the one who does. God says:

***“If anyone waives the right to retaliation out of charity, it shall be an expiation for him.”
(Quran 5:45)***

The pardon can either be to the payment of blood money, a fixed, monetary compensation, or can be total, where no worldly compensation is demanded. God says:

“To forgive it is closer to piety...” (Quran 2:237)

3. The punishment must be carried out by the government. The family of the victim cannot carry it out.

The Wisdom behind Retribution:

With regard to Islamic punishments in general, and retribution in specific, we find that they have two complementary characteristics. The first of these is the severity of the punishment. This is in order to discourage the crime and limit its occurrence.

The second characteristic is the difficulty of establishing guilt, reducing the opportunities for carrying out the punishment, and protecting the accused. In this vein, we see the principle that punishments are waived in the presence of doubt, and that the benefit of the doubt is always given to the accused. Some prescribed punishments are even waived on the grounds of repentance, as we can see in the case of highway robbery. This is also seen in the permissibility of pardon in the case of retribution and the fact that pardon is encouraged and preferred.

These two elements complement each other in that crime is effectively discouraged, protecting society, and the rights of the accused are safeguarded by the fact that speculation and accusations cannot be grounds for punishment, and that the accused enjoys the greatest guarantee of justice and being spared the punishment whenever possible. Most people will abstain from committing crime, because of the severity of the punishment, and the punishments for these crimes will rarely be carried out. In this way, the general security of society and the rights of the individual are equally realized.

3. Discretionary Punishments

These are punishments that are not fixed by Islamic Law, for crimes that either infringe on the rights of God or the rights of an individual, but do not have a fixed punishment or a set expiation.

Discretionary punishments are the broadest category of punishments, because the crimes that have fixed punishments are few in number and all other crimes fall under the scope of this last category.

They are the most flexible type of punishment, because they take into consideration the needs of society and changing social conditions. Consequently, they are flexible enough to realize the maximum general benefit to society, effectively reform the criminal, and reduce the harm that he causes.

Islamic Law has defined different types of discretionary punishments starting from exhortations and reprimands to flogging, to fines, and to imprisonment. These discretionary measures are left to the decision of the legal authorities within the general framework of Islamic Law and the universal purposes of Islam that balance between the right of society to be protected from crime and the right of the individual to have his freedoms protected.

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