

## Exploring Islamic Injunctions on Remission of Sentences

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**Abstract:** *The most significant and all-encompassing purpose of punishments in Islamic law is to make the offender repent and mend his ways. For this purpose, Islamic law provides various provisions both at the pre-conviction as well as post-conviction stages. With qualitative research methodology and Islamic injunctions, this research aims to examine, at the pre-conviction stage, provisions about repentance and expiation on the part of the offender, suspension of punishment in case of voluntary surrender, probation after repentance and surrender and payment of compensation to the victims of the offence. At the post-arrest and conviction stage, Islamic law provides various relaxations and creates space for repentance and reform, which include obliteration of the punishments of apostasy and blasphemy, considering denial by the accused of the commission of the offence, obliteration of the hudud and qisas punishments, and obliteration of the siyasah punishments.*

**Key Words:** Remission, Punishment, Islamic Injunctions

### Introduction

There is a common misconception about the harshness and rigidity of the Islamic criminal justice system. The present paper attempts to dispel this misconception and for this purpose explores the Injunctions of Islam as laid down in the Holy Qur'an and the *Sunnah* of the Prophet, peace be on him and shows that Islamic law has provided a variety of relaxations and allowances at each and every stage of the dispensation of justice so that the wrongdoers and convicts are given ample opportunity for repentance, reformation, and rehabilitation. This research has been conducted with the help of qualitative and deductive research methodology wherein primary and secondary sources have been consulted. For its operational framework, this paper is broadly divided into two parts: part one explores Islamic Injunctions on repentance and waiver before arrest and conviction, while part two elaborates Islamic Injunctions on post-conviction relaxation and remission in cases of *hudud*, *Qisas*, and *fasad fil ariz*.

### Pre-Arrest and Conviction Repentance and Waiver

Several Qur'anic verses and Prophetic traditions promise a great reward for those who show remorse after committing a sin or crime and then repent. There are also texts which make it obligatory on wrongdoers in certain cases to offer expiation for their wrongs and make compensation to the victims. Moreover, there are texts which demand of the wrongdoers to prove their repentance by doing some good deeds and direct the Muslim community to keep an eye on them. Followings are some of the representative texts:

### Repentance Obliterates Guilt

Several Qur'anic verses and Prophetic traditions elaborate on this fundamental teaching of the divine religion in many different ways:

يَا أَيُّهَا الَّذِينَ آمَنُوا اتُّوبُوا إِلَى اللَّهِ تَوْبَةً نَّصُوحًا عَسَىٰ رَبُّكُمْ أَن يُكَفِّرَ عَنْكُمْ سَيِّئَاتِكُمْ وَيُدْخِلَكُمُ جَنَّاتٍ تَجْرِي مِن تَحْتِهَا الْأَنْهَارُ تَوْبَةً لَّيْسَ مِنَ اللَّهِ بِشَيْءٍ يُسْقَىٰ بِهَا مِنْ أَنْهَارِهِمُ نَبْأُهَا الَّذِينَ آمَنُوا وَهُمْ قُلُوبُهُمْ مُتَّعِينَ بِمَنْ أَعْتَبَهُمُ اللَّهُ الَّذِينَ آمَنُوا مَعَهُ قُلُوبُهُم مَّا يَشَاءُ اللَّهُ لِيُعَذِّبَ الَّذِينَ آمَنُوا وَاللَّهُ الْعَزِيزُ الرَّحِيمُ (سورة التوبة: 8)

*“O ye who believe! Turn unto Allah in sincere repentance! It may be that your Lord will remit from you your evil deeds and bring you into Gardens underneath which rivers flow, on the day when Allah will not*

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*abase the Prophet and those who believe with him. Their light will run before them and on their right hands: they will say: Our Lord! Perfect our light for us, and forgive us! Lo! Thou art Able to do all things” (Quran 66: 8).*

The Prophet, peace be upon him, is reported to have said:

"التَّائِبُ مِنَ الذَّنْبِ كَمَنْ لَا ذَنْبَ لَهُ"

*“The one who repents from a sin is like the one who does not have a sin” (Sunan Ibn Majah, Kitab al-Zuhd, Bab Dhikr al-Tawbah).*

Similarly, the following verses temper the severe punishment of *zina* by an emphasis on repentance, which can be seen in the verses about the punishment of *hirabah* (armed robbery) as well as *sariqah* (theft) (Quran 5:33, 39). There are several Prophetic traditions which imply that enforcement of the *hadd* punishment becomes repentance and expiation for him/her (*Sahih Muslim, Kitab al-Hudud, al-Hudud Kaffarat li-Ahliha*), but then warn of the consequences of delaying repentance till the hour of death:

وَالَّذِينَ يَأْتِيهِمَا مَعْتَدٌ فَأَوَدُّهُمَا قَاتَابًا وَأَصْلَحَا فَأَعْرَضُوا عَنْهُمَا إِنَّ اللَّهَ كَانَ تَوَّابًا رَحِيمًا (16) إِنَّمَا التَّوْبَةُ عَلَى اللَّهِ لِلَّذِينَ يَعْمَلُونَ السُّوءَ بِغَیْبِ اللَّيْلِ يُتَوَّعُونَ مِنْ قَرِيبٍ فَأُذِنُوا بِتُوبَةِ اللَّهِ عَلَيْهِمْ وَكَانَ اللَّهُ عَلَيْهِمْ رَحِيمًا (17) وَلَيْسَتِ التَّوْبَةُ لِلَّذِينَ يَعْمَلُونَ السُّوءَ بِغَیْبِ اللَّيْلِ إِذَا حَضَرَ أَحَدُهُمُ الْمَوْتُ قَالَ إِنِّي تُبْتُ الْآنَ وَلَا الَّذِينَ يَمُوتُونَ وَهُمْ كُفَّارًا أُولَئِكَ أَقْتُلْنَا لَهُمْ عَذَابًا أَلِيمًا (سورة النساء، 16-18)

*“And as for the two of you who are guilty thereof, punish them both. And if they repent and improve, then let them be. Lo! Allah is Relenting, Merciful. Forgiveness is only incumbent on Allah toward those who do evil in ignorance (and) then repent quickly to Allah. These are they toward whom Allah relenteth. Allah is ever Knower, Wise. The forgiveness is not for those who do ill-deeds until, when death attendeth upon one of them, he saith: Lo! I repent now, nor yet for those who die while they are disbelievers. For such, we have prepared a painful doom” (Quran 4:16-18).*

There are texts which promise this reward on repentance even after such heinous sins and crimes as associating partners with God (*shirk*), the murder of an innocent person (*qatl*) and fornication (*zina*):

وَالَّذِينَ لَا يَدْعُونَ مَعَ اللَّهِ إِلَهًا آخَرَ وَلَا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَلَا تَزَوَّجُونَ مَنْ يَنْقُلُ ذَلِكَ لِنَفْسِكُمْ أَتَأْتُمُونَا بِذُنُوبِكُمْ وَأَنْتُمْ تَعْلَمُونَ (68) وَإِنَّمَا عَذَابُ الْعَذَابِ لِيَوْمِ الْقِيَامَةِ وَمَنْ يَجْتَلِ فِيهِ مِنْهَا ثَابِتًا وَآمَنَ وَعَمِلَ عَمَلًا صَالِحًا فَأُولَئِكَ يُبَدِّلُ اللَّهُ سَيِّئَاتِهِمْ حَسَنَاتٍ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا (70) وَمَنْ تَابَ وَعَمِلَ صَالِحًا فَإِنَّهُ يَتُوبُ إِلَى اللَّهِ مَتَابًا (سورة الفرقان، 68-71)

*“And those who cry not unto any other god along with Allah, nor take the life which Allah hath forbidden save in (course of) justice, nor commit adultery and whose doeth this shall pay the penalty; The doom will be doubled for him on the Day of Resurrection, and he will abide therein disdained forever; Save him who repenteth and believeth and doeth righteous work; as for such, Allah will change their evil deeds to good deeds. Allah is ever Forgiving, Merciful. And whosoever repenteth and doeth good, he verily repenteth toward Allah with true repentance” (Quran 25: 68-71).*

The Prophet, peace be on him, also advised Muslims that if they committed a sin and Allah mercifully concealed it from people, they should not tell others about their committing that sin:

"من أصاب من هذه القادورات شيئا فليستر بستر الله فإنه من يبيد لنا صفتته نقر عليه كتاب الله"

*“The one who commits any of these abominable acts should shield himself under cover of Allah because if someone brings his bad deed before us, we will enforce the law of Allah on him” ([\[Muwatta’ al-Imam Malik, Kitab al-Hudud, Bab Ma Ja’ fi Man I’tarafa ‘ala Nafsihi bi al-Zina\]](#)).*

Nevertheless, the Companions, God be pleased with them, were so fearful of the punishment hereafter and of accountability before God that they would repeatedly come to confess their guilt before the Prophet, peace is on him so that he cleanses them of their sin by awarding them the worldly punishment.

### The Need of Expiation and Compensation

These texts are, however, qualified by those texts which emphasize that for repentance to be meaningful one has to try to correct the wrong, compensate those whom he wronged, and to follow the right path afterwards. Consider the following verses which, on the one hand, urge in the most powerful words that the wrongdoers to repent and, on the other, warn them of the definite and harshest punishment which will befall them if they do not mend their ways:

قُلْ يَا عِبَادِيَ الَّذِينَ أَسْرَفُوا عَلَىٰ أَنفُسِهِمْ لَا تَقْنَطُوا مِن رَّحْمَةِ اللَّهِ إِنَّ اللَّهَ يَغْفِرُ الذُّنُوبَ جَمِيعًا إِنَّهُ هُوَ الْعَفُوفُ الرَّحِيمُ (53) وَأَيُّوبَ إِذِ ابْتَلَىٰ رَبُّكَ وَأَسْلَمْنَا لَهُ الْوَهْمَ قَبْلَ أَنْ يَأْتِيَنَّكَ الْعَذَابُ ثُمَّ لَا تُنْزِرُونَ (54) وَالرِّبْعِ مَا أَحْسَنَ مَا أَنْزَلَ إِلَيْكُمْ مِّن رَّبِّكُمْ مِّن قَبْلِ أَنْ يَأْتِيَنَّكَ الْعَذَابُ بَغْتَةً وَأَنتُمْ لَا تَشْعُرُونَ (55) أَنْ تَقُولَ نَفْسٌ يَا حَسْرَتَا مَا عَلِمْتُ خَلَقْتُ فِي جَنبِ اللَّهِ وَإِن كُنتَ لَمِنَ السَّاجِدِينَ (56) أَوْ تَقُولَ لَوْ أَنَّ اللَّهَ هَدَانِي لَكُنتُ مِنَ الْمُتَّقِينَ (57) أَوْ تَقُولَ حِينَ تَرَى الْعَذَابَ لَوْ أَنَّ لِي كَرَّةً فَعَتَا كُنتُ مِنَ الْمُحْسِنِينَ (58) قُلْ قَدْ جَاءَكُم آيَاتِي فَكَذَّبْتُمْ بِهَا وَاصْتَكْبَرْتُمْ وَكُنتُم مِّنَ الْكَافِرِينَ (59) وَيَوْمَ الْقِيَامَةِ تَرَى الَّذِينَ كَذَبُوا عَلَى اللَّهِ وُجُوهُهُم مُّسْوَدَّةٌ أَلَيْسَ فِي جَهَنَّمَ مَثْوًى لِّلْمُتَكَبِّرِينَ (60) وَتَجِيَّ اللَّهُ إِلَيْهِ الَّذِينَ اتَّقَوْا إِعْتِقَابًا ظَاهِرًا لِأَنفُسِهِمْ وَالسُّوءِ وَلَا لَهُمْ يَحْزُونُونَ (61) (سورة الزمر. 53-61)

*“Say My slaves who have been prodigal to their own hurt! Despair, not of the mercy of Allah, Who forgiveth all sins. Lo! He is the Forgiving, the Merciful. Turn unto Him repentant, and surrender unto Him, before there come unto you the doom when ye cannot be helped. And follow the better (guidance) of that which is revealed unto you from your Lord, before the doom cometh on you suddenly when ye know not, lest any soul should say Alas, my grief that I was unmindful of Allah, and I was indeed among the scoffers! Or should say: If Allah had but guided me, I should have been among the dutiful! Or should say, when it seeth the doom: Oh, that I had but a second chance that I might be among the righteous! (But now the answer will be): Nay, for My revelations came unto thee, but thou didst deny them and wast scornful and wast among the disbelievers. And on the Day of Resurrection thou (Muhammad) seest those who lied concerning Allah with their faces blackened. Is not the home of the scorners in hell? And Allah delivereth those who ward off (evil) because of their deserts. Evil toucheth them not, nor do they grieve” (Quran 39: 53-61).*

The above verses are an amazing combination of deterrence and mercy, and a powerful message has been given for repentance and reforming one’s behavior and character. From this perspective, the Qur’an and the *Sunnah* ordain expiation (*kaffarah*) for various wrongs, such as unintentional killing (Quran 4:92), injurious assimilation (*zihar*) (Quran 58:3-4), breaking oath (Quran 5:89) and fast [*Sahih al-Bukhari, Kitab al-Sawm*]. Moreover, they prescribed *diyāt* and *arsh* in cases of homicide and hurts. As noted earlier, the jurists hold that expiation is the right of God while *diyāt* and *arsh* are the rights of the individual(s). In other words, true repentance necessitates performing the obligations which one owes to God and His creatures.

### Obligations of the Muslim Community

The following verses add another dimension to the concept of repentance as these verses not only emphasize the need of correcting a wrong, but also envisage a system of surveillance and supervision for the wrongdoers to see if they really mended their ways:

وَاعْتَرَفُوا بِذُنُوبِهِمْ خَلَطُوا عَمَلًا صَالِحًا وَآخَرَ سَيِّئًا عَسَى اللَّهُ أَن يَتُوبَ عَلَيْهِمْ إِنَّ اللَّهَ عَلِيمٌ رَّحِيمٌ (102) خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا وَصَلِّ عَلَيْهِمْ إِنَّ صَلَاتَكَ سَكَنٌ لَهُمْ وَاللَّهُ سَمِيعٌ عَلِيمٌ (103) أَلَمْ تَعْلَمُوا أَنَّ اللَّهَ هُوَ يَقْبَلُ التَّوْبَةَ عَنْ عِبَادِهِ وَيَأْخُذُ الصَّدَقَاتِ وَأَنَّ اللَّهَ هُوَ التَّوَّابُ الرَّحِيمُ (104) وَكُلِّ اعْمَلُوا أَقْسَبَسِ اللَّهُ عَمَلَكُمْ وَتَمْسُرُوا لَهُمْ التَّوَابُونَ وَسَيُرَدُّونَ إِلَىٰ عَالِمِ الْغَيْبِ وَاللَّهُ هَادِي ذَوِي الْأَلْبَابِ (سورة التوبة. 105-102)

*“And (there are) others who have acknowledged their faults. They mixed a righteous action with another that was bad. It may be that Allah will relent toward them. Lo! Allah is Relenting, Merciful. Take alms of their wealth, wherewith thou mayst purify them and mayst make them grow, and pray for them. Lo! The prayer is an assuagement for them. Allah is Nearer, Knower. Know they not that Allah is He Who accepteth repentance from His bondmen and taketh the alms, and that Allah is He Who is the Relenting, the Merciful. And say (unto them): Act! Allah will behold your actions, and (so will) His messenger and the believers, and ye will be brought back to the Knower of the invisible and the visible, and He will tell you what ye used to do” (Quran 9: 105-102).*

It is also worth noting here that individual Muslims were encouraged to forgive and pardon their brethren if they committed a wrong against them, particularly when they showed remorse and regret. Thus, when Abu Bakr (God be pleased with him) intended not to give charity to those who committed *qazf* against ‘A’ishah (God be pleased with her), the following verses were revealed:

وَلَا يَأْتَلِ أُولُو الْقُرْبَىٰ مِنكُمْ وَالسَّعَةِ أَنْ يُؤْتُوا أُولِي الْقُرْبَىٰ وَالْمَسْكِينِ وَالْمُهَاجِرِينَ فِي سَبِيلِ اللَّهِ وَلْيَعْفُوا وَلْيَصْفَحُوا أَلَا تُحِبُّونَ أَنْ يَغْفِرَ اللَّهُ لَكُمْ وَاللَّهُ عَلِيمٌ رَّحِيمٌ (22) (سورة النور. 22)

*“And let not those who possess dignity and ease among you swear not to give to the near of kin and to the needy, and to fugitives for the cause of Allah. Let them forgive and show indulgence. Yearn ye not that Allah may forgive you? Allah is Forgiving, Merciful” (Quran 24: 22).*

Despite the fact that in various verses, Muslims were allowed to give equal punishment to the wrongdoers, but simultaneously they were encouraged to forgive them:

وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا نَمَنَ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ إِنَّهُ لَا يُحِبُّ الظَّالِمِينَ (سورة الشورى، 40)

*"The guerdon of an ill deed is an ill the like thereof. But whosoever pardoneth and amendeth, his wage is the affair of Allah. Lo! He loveth not wrongdoers" (Quran 42: 40).*

The Companions report that whenever a case of Qisas would come to the Prophet, peace be on him, he would advise the complainant to forgive the wrongdoer [[Sunan Abi Dawud, Kitab al-Diyat, Bab al-Imam Ya'muru bi al- 'Afw fi al-Dam](#)]. Moreover, they were also recommended to cover the sins of their brethren:

"من ستر مسلماً ستره الله يوم القيامة"

*"The one who covers the sin of a Muslim will be covered by Allah on the Day of Judgment" (Sahih al-Bukhari, Kitab al-Mazalim wa 'l-Ghasab, Bab La Yazlimu al-Muslimu al-Muslima).*

*Parallel to this, there is the duty to bear testimony of truth on each and every step of life even if that is against one's own interests:*

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا أَمْنًا بِمَا بِالْقِسْطِ شَهِدْنَا لَكُمْ عَلَى أَنْفُسِكُمْ أُولُو الْأَرْحَامِ وَالْأَقْرَبِينَ إِنْ يَكُنْ عَيْنًا أَوْ قَدِيرًا فَانْهَئْهُ أُولَىٰ بِهِمَا فَلَا تَتَّبِعُوا الْهَوَىٰ أَنْ تَعْدُوا وَإِنْ تَكُونُوا فِي أَرْحَامِكُمْ أُولَىٰ لَكُمْ فَاتَّقُوا اللَّهَ إِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا (سورة النساء، 135)

*"O ye who believe! Be ye staunch in justice, witnesses for Allah, even though it be against yourselves or (your) parents or (your) kindred, whether (the case be of) a rich man or a poor man, for Allah is nearer unto both (than ye are). So, follow not passion lest ye lapse (from the truth) and if ye lapse or fall away, then lo! Allah is ever Informed of what ye do" (Quran 4: 135).*

Concealing of the testimony of truth is one of the major sins:

وَلَا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ آثِمٌ قَلْبُهُ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ (سورة البقرة، 283)

*"Hide not testimony. He who hideth it, verily his heart is sinful. Allah is Aware of what ye do" (Quran 2: 283).*

The jurists, after considering these and other texts of the Qur'an, the Sunnah, and the general principles of Islamic law, concluded that Muslims should generally come forward to give testimony in courts, but in case of the Hadd of Zina, it is preferred for them not to come for testimony so as to cover the sins of others (Al-Kasani, 2003).

### Surrender and Compensation

If a person, after committing a crime, willfully surrenders before the authorities, he deserves leniency. This has particularly been mentioned in the verses about the *Hadd* of *Hirabah*:

"إِنَّمَا جَزَاءُ الَّذِينَ يُجَارُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ جُلُوبِ أَوْ يُنْفَذُوا مِنْ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ إِنَّ الَّذِينَ تَابُوا مِنْ قَبْلِ أَنْ تَقْبَلَهُمْ فَاتَّعَلَفُوا أَنَّهُمْ قَاتِلُوا اللَّهَ عَدُوًّا كَرِيمًا" (سورة المائدة، 33-34)

*"The only reward of those who make war upon Allah and His messenger and strive after corruption in the land will be that they will be killed or crucified or have their hands and feet on alternate sides cut off, or will be expelled out of the land. Such will be their degradation in the world, and in the Hereafter, theirs will be an awful doom; Save those who repent before ye overpower them. For now, that Allah is Forgiving, Merciful" (Quran 5: 33-34).*

These verses are very pertinent for the case at bar because the crime of *Hirabah* is one of the prime examples of *Fasad fil arza* as the Qur'an explicitly mentions it here. Muslim jurists have analyzed in detail the effect of "repentance before arrest" on various obligations and have generally agreed that this repentance would obliterate the wrongs committed by him relating to the rights of God (such as the *Hudud* punishments), but it would not obliterate the violations of the rights of individuals (such as damage to life and property). All school of thoughts have a general consensus to it (Al-Razi, 1981; Al-Jassas, 1992; Ibn Qudamah, 1997; Al-Qurtubi, 2006). *Imam Kasani*, a famous Hanafi jurist, explains in the following words the line of argument which Muslim jurists have generally adopted in this regard:

This means that they abandoned their act as they regretted it and resolved not to repeat it in future. Hence, this blessed verse implies that when the highwayman repents before he is captured; the *Hadd* punishment is obliterated for him. If he snatched property from someone and did not commit other crimes, his repentance means that he returns it to the owner and resolves not to repeat the same in future. This repentance primarily obliterates the *Hadd* of amputation (of hand and foot). It also obliterates death punishment by way of *Hadd*, if he snatched property and committed murder so that the government will not have the right to execute him. However, he will refer his matter to the heirs of the victim who may opt for *Qisas*. If he neither snatches property nor kills anyone, his repentance means remorse on what he has done and resolution not to repeat it in future. He will do this by willfully and voluntarily surrendering to the authority and expressing his repentance before it. Repentance will obliterate the punishment of imprisonment as well because the purpose of imprisonment was to make him repent, and this purpose has already been achieved (Kasani, 9:372-73). *The last sentence is particularly important for issues in the case at bar as it shows the purpose of punishment for the heinous crimes of Hirabah and Fasad fil arz.*

The Qur'an also mentions repentance in the context of the Hadd punishment of theft, but the wording is a bit different here:

وَالسَّارِقِ وَالسَّارِقَةِ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا تَكَالُفِ مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ (38) فَمَنْ تَابَ مِنْ بَعْدِ ظُلْمِهِ وَأَصْلَحَ فَإِنَّ اللَّهَ يَتُوبُ عَلَيْهِ إِنَّ اللَّهَ عَفُوفٌ رَحِيمٌ (سورة المائدة: 38-39)

*“As for the thief, both male and female, cut off their hands. It is the reward of their own deeds, an exemplary punishment from Allah. Allah is Mighty, Wise. But whoso repenteth after his wrongdoing and amendeth, lo! Allah will relent toward him. Lo! Allah is Forgiving, Merciful” (Quran 5: 38-39).*

Imam Jassas explains that repentance mentioned in the verses about Hirabah is at the pre-arrest stage which is why it obliterates the Hadd punishment, while the verses about theft only talk about God's mercy for those who repent without mentioning that it would obliterate the Hadd punishment. For Jassas, it implies that repentance in these latter verses is in the post-arrest stage (Jassas, 4:60). It may be recalled that many jurists hold that when the Hadd punishment is enforced on the convict, it becomes expiation for him. He further points out that if the thief returns the property to the owner before he is arrested, the Hadd of theft is not enforced on him, which is affirmed by Al-Kasani and other jurists (Bada'i'al-Sana'i, 9:373).

The next segment of the research is about post-arrest stage, which examines whether or not the culprit or convict deserves any relaxation if he shows remorse and regrets after his arrest or conviction? The subsequent part elaborates the Islamic Injunctions on the various aspects of this issue.

## Post-Arrest and Conviction Relaxation

The Injunctions of Islam as laid down in the Holy Qur'an and the *Sunnah* further give space for reformation and rehabilitation by allowing relaxation and remission even after arrest and conviction. Here are some details.

### The Hudud Offences

The *Qur'an* and the *Sunnah* strongly emphasized the enforcement of the *Hudud*. Thus, the Qur'an while prescribing the *Hadd* of *Zina* stressed that this should be executed publicly and that no one should feel pity on the convicts:

الرَّاٰبِئِيَّةُ الرَّاٰبِي نَا جَلِدُوهُمَا مِائَةً جَلْدًا وَلَا تَأْخُذْ كُمْ بِهِمَا اُفْعٰبِي يَوْمِ الْقِيَامِ اِنْ كُنْتُمْ تُؤْمِنُوْنَ بِاللّٰهِ وَالْيَوْمِ الْاٰخِرِ وَلَيْشَهَدَ عَلٰى اَبْنَيْهَا طَائِفَةٌ مِّنَ الْمُؤْمِنِيْنَ (سورة النور: 2)

*“The adulterer and the adulteress, scourge ye each one of them (with) a hundred stripes. And let not pity for the twain withhold you from obedience to Allah, if ye believe in Allah and the Last Day. And let a party of believers witness their punishment” (Quran 24: 2).*

The Prophet, peace be on him, expressed his displeasure in the strongest words when some of the *Qurayshites* brought *Usamah b. Zayd* to intercede for a female convict of theft [*Sahih Al-Bukhari*]. Similarly, the Prophet, peace be on him, declared that there would be no pardon after the *Hadd* case reaches the authorities, which is affirmed by *Al-Kasani* and other jurists (*Bada'i'al-Sana'i*, 9:373). These and other texts of the *Qur'an* and the *Sunnah* have been misconstrued by some people to imply that the *Hudud* law is too rigid and that there is no room for any relaxation in this sphere of Islamic law. This is, however, a misconception based on a superficial reading of the law. An in-depth analysis of the Islamic Injunctions about the *Hudud* reveals many different kinds of relaxation and allowance in this area. It is

true that the *hudud* punishments are mandatory in nature and that no human authority can suspend or change them, but the very stringent conditions for proving the *Hudud* offences and the extraordinary allowances given to the accused (even the convict) in the *Hudud* cases balance this apparent rigidity. Some details are given here.

### Apostasy and Blasphemy

From the perspective of the Islamic Injunctions, disbelief is the most serious of all sins because it causes eternal punishment for the disbeliever. When a person becomes a disbeliever after denouncing faith, it becomes a more serious form of disbelief, and when denunciation of faith takes the form of blasphemy, it becomes the most abominable form of disbelief. Hence, apostasy and disbelief are deemed the most serious offences in Islamic law. Consider, for instance, the following verses:

إِنَّ الَّذِينَ يُؤْذُونَ اللَّهَ وَرَسُولَهُ لَعَنَهُمُ اللَّهُ فِي الدُّنْيَا وَالْآخِرَةِ وَأَعَدَّ لَهُمْ عَذَابًا مُهِينًا (الأحزاب: 57)

“Surely, those who malign Allah and His Messenger, Allah has cursed them in this world and in the hereafter and has prepared for them a humiliating punishment” (Quran 33: 57)

وَالَّذِينَ يُؤْذُونَ رَسُولَ اللَّهِ لَهُمْ عَذَابٌ أَلِيمٌ (التوبة: 61)

“Those who malign the Messenger of Allah, for them, there is painful punishment” (Quran 9: 61).

مَلْعُونِينَ أَيْنَمَا تَجِدُوهُمْ تُقْتُلُوهُمْ أَوْ تُسَبِّحُوهُمُ (الأحزاب: 61)

“Accursed; wherever they are found, they will be seized and slain fiercely” (Quran 33: 61).

Even in cases of these most serious offences, repentance of the convict obliterates his punishment. Muslim jurists have a consensus on this rule as far as apostasy *per se* is concerned. *Ibn ‘Abidin* explains the basis for this consensus in the following words:

The ratio of death punishment for apostate is not apostasy *per se* rather it is accompanied by the intent to continue with disbelief and the *ratio* comprising two elements does not exist when any of the two elements is missing. Hence, apostasy alone does not necessitate death punishment after the apostate returns to Islam because death punishment was awarded on the two acts jointly. That is the reason why Islam is offered to him first. If he does not embrace Islam, the punishment is called *fadd* till the culprit continues with apostasy because this is the punishment of his disbelief and the major purpose behind this punishment is to compel him to revert to Islam. Hence, when he reverts, the purpose is achieved (Ahmad, 2020). The *Hanafi* jurists hold the same position in case of blasphemy because in their opinion blasphemy is a form of apostasy.

This pertained to confession and insistence on the part of the apostate (or blasphemer). If he repents from or retracts from his confession of, apostasy (or blasphemy), his punishment dissolves there and then. Another exposition regarding blasphemer is when his guilt is proved through testimony of witnesses. The jurists hold that if the accused denies his having committed apostasy, his mere denial entitles him to be acquitted not because it proves the witnesses untrustworthy but because it is deemed repentance which obliterates the punishment of apostasy (Al-Iskandari, 2003). This is a very significant rule because it further substantiates the contention of *Ibn ‘Abidin* that the purpose of this punishment is to make him repent and revert and that there is no need to enforce the punishment if that purpose has been achieved.

### The Effects of *Shubhah*

The concept of *Shubhah* is a significant feature of Islamic criminal law is. Generally, courts correspond *Shubhah* equivalent to the notion of “benefit of the doubt”, which is given to the accused (Federation of Pakistan v Hazoor Bakhsh, 1983). Nevertheless, the superficial examination of the jurists’ manuals elucidates that this is incorrect. While giving the ‘benefit of the doubt’ to the accused, the judge is not certain about the guilt of the accused that whether or not the accused has committed the act. It may also be construed that the judge is not sure whether or not the conditions for ensuring one’s guilt have been fulfilled. Therefore, the benefit of the doubt is given to the accused in the form of acquittal since the prosecution has to prove the guilt of the accused ‘beyond a reasonable doubt.’ Conversely, in cases of *Shubhah*, which is discussed by the jurists, punishment is suspended due to the existence of doubt in the mind of the accused regarding the legality of the act. The doubt may actually (*Haqiqatan*), exist or its existence may be presumed through the law (*Hukman*) (al-Sarakhsi, 1997).

The same could be elaborated with the help of the following example: in a contract of marriage, the presence of two witnesses is essential for a valid marriage. In the absence of witnesses, marriage is defected, which is irreparable in nature and turned the contract of marriage void (*batil*) or non-existent (*Al-Mabsut*, 5:29-30). Nonetheless, parties to the contract of marriage cannot be awarded the punishment of *Zina* if the marriage is consummated reason being 'form of contract' (*shubhat al-'aqd*) suspends the *hadd* punishment. Therefore, *shubhah* is more familiar with the *mistake of law or fact* than the 'benefit of the doubt' [Nyazee, 2010]. Some of these mistakes, whether of law or fact, which involve the right of God, obliterate both *Hudud* and *Qisas* punishments. Some forms of *shubhah* have also been recognized by the Pakistani law in cases where it declares that an offence is "not liable to *Hadd*" or "not liable to *Qisas*" or where it says that the *Hadd* or *Qisas* punishment shall not be imposed (Sections 9 and 10 of the Offences against Property (Enforcement of Hudood) Ordinance (VI of 1979); Section 306 and 307, PPC).

The Prophet, peace be on him, is reported to have said:

"اذرءوا المذود عن المسلمين ما استطعتم. فإن كان له مخرج فخلو سبيله. فإن الإمام أن يخطئ في العفو خير من أن يخطئ في العقوبة"

*"Do away with the hudud from Muslims as far as you can; so, if you have a way out for him (accused), leave his way free; for if the ruler commits a mistake in pardoning, it is better than his committing a mistake in punishing"* [Sunan al-Tirmidhi, Kitab al-Hudud, Bab Ma Ja' fi Dar' al-Hudud].

It is worth noting here that no such mistake obliterates *Ta'zir* or *Siyasah* punishment (Al-Misri, 1999).

### Retraction from Confession or Testimony

Another important relaxation for the accused/convict in *Hudud* cases is that he/she can retract from his/her confession at any time and if the offence was proved only through such confession, the punishment is obliterated by such retraction, and no retrial shall take place afterwards. This is one of the necessary corollaries of the operation of *Shubhah* in *Hudud* cases. A very famous example in this regard is that of *Ma'iz Aslam*; God be pleased with him, who came to the Prophet, peace be on him, to make a confession of his committing the heinous crime of *Zina* and the Prophet, peace be on him, would return him. Finally, he was awarded the punishment of *Rajm* on the basis of his confession and later it was reported to the Prophet, peace be on him, that he tried to go away, he said:

"هَلَّا كَرَّ كُفُؤُهُ. لَعَلَّهُ يُثْرَبُ فَيُؤْتَبَ اللَّهُ عَلَيْهِ"

*"Why you did not let him go?! He may have repented, and Allah may have accepted his repentance"* [Musannaf Ibn Abi Shaybah, 5:538].

Similarly, if the offence was proved through the testimony of witnesses and any of them retracts from his testimony even at the time of the execution, the remaining punishment is obliterated, and no retrial will take place (Sarakhsi, al-Mabsut, 9:54). Importantly, witnesses are not only required to be presented at the time of the execution of the *Hadd* punishment, but they are also supposed, to begin with stoning the convict (Kasani, Bada'i'al-Sana'i, 9:254). This was decided by the Caliph 'Ali', God be pleased with him [Sunan al-Bayhaqi]. Refusal on the part of the witnesses to start stoning is also deemed *Shubhah*, which obliterates the *Hadd* punishment (Kasani, Bada'i'al-Sana'i, 9:254).

### The Qisas Offences

Whatever has been mentioned above regarding the effects of *Shubhah* and retraction from confession or testimony on the enforcement of the *Hudud* punishments is equally applicable on the *Qisas* punishment because, as noted earlier, *Qisas* also involves the right of God and as such it is also obliterated by *Shubhah*. Moreover, it is well-known that the *Qisas* punishment can be waived or compounded by the victim or his/her heirs any time before its execution.

### The Siyasah Offences

As noted earlier, *Siyasah* jurisdiction of the government pertains to curbing *Fasad fil arz* within the constraints of the *Shari'ah*. Using this authority, the Prophet, peace be on him, and rightly-guided Caliphs, God be pleased with them, prescribed various kinds of punishments for various violations and wrongs. The stringent conditions of *Hudud* and *Qisas* were not applied on *Siyasah* offences. Moreover, the accused in the *Siyasah* offences did not have some of the special allowances which were available to the

accused/convict in the *Hudud* or *Qisas* cases. Still, there are many instances where the punishments of these offenders were later remitted or altogether abolished by the government when the convict would express remorse on his wrongs and would show improvement in his character. Some examples are given here to substantiate this contention.

When Makkah was conquered, the Prophet, peace be on him, declared a general amnesty for the inhabitants of Makkah, but a few persons were specifically named who were not to be spared even if they were to take refuge in the Holy Mosque (Kasani, *Bada'i'al-Sana'i'*, 9:254). One of them was 'Abdullah b. Abi Sarh who had committed several heinous crimes. He denounced faith and became apostate, looted the *Zakat* property that he collected from some tribes, killed other Muslims who were assisting him in collecting *Zakat*, fled to *Makkah* and issued blasphemous statements against the Prophet, peace be on him. He was brought by 'Uthman, God be pleased with him, who interceded for him.

Another pertinent example is that of *Safwan b. Umayyah* who fled *Makkah* and intended to migrate to *Abyssinia* when 'Umayr b. *Wahab* reached him and told him that the Prophet, peace be on him, accepted his intercession for him. *Safwan* could not believe it. 'Umayr told him about the qualities of the Prophet, peace be on him: "The best of the people; the best of those who keep their word; the most forbearing of them; the most virtuous of them." *Safwan* still had concerns. 'Umayr told him: "He is more tender-hearted and more generous than you can imagine" (Al-Suhayli, 4:180). Finally, *Safwan* came to the Prophet, peace be on him, and demanded of him two months for reconsideration. The Prophet, peace be on him, gave him four months. It was in that period that Muslims had to fight the people of *Hawazin*, and they needed weapons, some of which were provided by *Safwan* (though he did not yet embrace Islam). Afterwards, the Prophet, peace be on him, gave *Safwan* a large chunk of the booty and finally he embraced Islam and abandoned disobedience and disbelief.

Lastly, another example is of two persons from the Tribe of *Makhzum* who were supposed to be killed and 'Ali, God be pleased with him, came after them, but his sister 'Umm Hani', God be pleased with her, told him that she had already given them a quarter. *Ali* told her that he was ordered to kill them. She brought the issue before the Prophet, peace be on him, who said: "We gave quarter to those whom you have given quarter, he shall not kill them."

## Conclusion

The *Qur'an* and the *Sunnah* prescribe specific worldly punishments for various offences. Some of these punishments are very harsh, which *prima facie* gives the impression of rigidity about Islamic law. However, there are several other injunctions which balance this harshness in different ways. Some of these injunctions relate to the pre-arrest and conviction stage, while others relate to the post-arrest and conviction stage. This has led the Muslim jurists to expound various theories about punishments in Islamic law. These theories are closely linked with the general principles and higher objectives of Islamic law (*Qawa'id wa Maqasid al-Shari'ah*). It is these general principles and higher objectives which define the limits of the *Siyasah* (jurisdiction of the government), which help the courts in determining if a particular law or policy constitutes *Siyasah Shar'iyyah* or *Siyasah Zalimah*.



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