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 arz.

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:

وَأَيُّهَا الَّذِينَ آمَنُوا إِذَا أَخْطَأْتُمْ فَأَنْعَمُ اللَّهُ عَلَيْكُمْ فَأَعْفَاهُمْ أَنْفُكُمْ ثُمَّ لَا تَرْكُوهُمْ أَنْفُكُمْ أَيْمَنُهُمْ (عِلْمُ ابْنِيَّةٍ مَّجَالٍ كَثِيرٍ كَعَدْرُ الْقَرْأَنِينَ الرَّحْمَةُ اللَّهُ أَنفَعَ عِلْمًا مُّنَافِعًا وَلَكُمْ مَّنَافِعًا) (سَرُورُ الْحِكْمَةِ ٨)

“O ye who believe! Turn unto Allah in sincere repentance! It may be that your Lord will remit from 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:

“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 hirabalh (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:

“...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]:

“And those who cry not unto any other god along with Allah, nor take the life which Allah hath forbidden in [course of] justice, nor commit adultery and whoso 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 doth 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:

“...from among the hadiths which are collected from the Prophet, peace be upon him, is that which Allah sent it. He said: '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 l’tara’ ala Nafshi 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 willbefall them if they do not mend their ways:
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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 so that they really meditated their ways:

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 aims 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 aims, 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:

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:

"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 Gisas would come to the Prophet, peace be on him, he would advise the complainant to forgive the wrongdoer [Sunan Abu 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:

"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:

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

"And do not conceal the truth, [the testimony of] right and wrong [from] Allah and your Creator, [O Muslims]." (Sura al-Baqara 2:283)

"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**:

"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 arz** 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 obviate the wrongs committed by him relating to the rights of God [such as the Hudud punishments], but it would not obviate 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:
Injunctions about the Hudud and other texts of the reaches the authorities, which is affirmed by Similarly, the Prophet, peace be on him, declared Qurayshites. Here are some details.

The subsequent part elaborates the Islamic Injunctions on the various aspects of this issue.

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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:

“...and 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:

"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)*

"Those who malign the Messenger of Allah, for them, there is painful punishment" *(Quran 9: 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. 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, the 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, obliterates 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 Haddor 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:

“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 Aslami; 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:

“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-San‘a‘*, 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 ‘Umar b. Wahab reached him and told him that the Prophet, peace be on him, accepted his intercession for him. Safwan could not believe it. ‘Umar 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. ‘Umar 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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