

# Investigating the Implementation of the Rules of Islamic Criminal Law in Afghanistan

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## ABSTRACT

The rules of Islamic Criminal Law, as the most obvious and complete ruling rules in Afghanistan, play an important role in ensuring real justice, continuity and order of society.

Since criminal behaviour is a violation of Allah's authority and justice, it requires that it be recognized first, the perpetrators identified, and then the perpetrators be punished. In the rules of Islamic Criminal Law, taking into account the verses of the Quran and the Prophetic tradition, various types of punishments, including monetary penalties, have been considered for all types of crimes. This article examines the rules of Islamic Criminal Law and how it is implemented. In the same way, it is reasonable to punish the offenders and violators of Islamic rules in a society. But the main goal of this article is to apply punishment based on Islamic Criminal Law in Afghanistan to ensure better justice. The findings of the research also show that the rules of Islamic Criminal Law in the country are applied to the perpetrators of various crimes (from hudud, qisas, and dowry to punishment).

To prepare and research this subject, the library research method was used, in the data collection section, the descriptive-analytical research method was used.

**Keywords-** Afghanistan, diyat, hadith, hudud, implementation and qisas.

## I. INTRODUCTION

Undoubtedly, the penal system of each country is different from each other considering the rules and values that govern it. One of the undeniable values of human societies is the holy religion of Islam, whose rulings and rules are detailed in the framework of the Qur'an, Sunnah, consensus and analogy. Afghanistan, as one of the Islamic countries in the world, is committed to implementing the rules of Islamic Criminal Law.

Research on the implementation of the rules of Islamic Criminal Law in Afghanistan is a new and virgin step, whose characteristics and theoretical foundations are rarely seen in the history of this country. For this reason, it is very important to study this issue in order to increase the religious awareness of people, especially the awareness of legal and judicial institutions, to respect the ruling values of the society, especially religion and

justice. This research seeks to solve the problem of whether the rules of Islamic Criminal Law are applied in Afghanistan. In response to this question, it can be added that in terms of substance, the rules of Islamic Criminal Law are based on the Qur'anic verses, Hadith, scholars' views and analogies, and are the same in all Islamic countries, including Afghanistan. But, from a practical point of view, it can appear different considering the prevailing views of different jurists regarding the interpretation and application of the content of Islamic sources. What is common in Afghanistan is the application of the rules of Islamic Criminal Law while following the rules of the Qur'an, the tradition of the authentic theories of Hanafi School.

Despite the fact that the country's legal system has dealt with criminal matters by using and citing the rulings of Quranic verses, prophetic Hadiths and Hanafi School. However, there are few wise people who have

conducted scientific and specialized research on how to implement the rules of Islamic Criminal Law. Because, whenever we look at the background of the subject of research in the country, it can be seen that Sultan Shah Soltani in his book entitled Islamic Penal Law "Criminal Jurisprudence" about the types of Islamic punishment and the scope of its application from the point of view of theory is limited to a general discussion. In the 2016 Penal Code of the country, the implementation of Hudud, retribution and Diyat as Islamic punishment against Islamic crimes was prioritized.

## II. ISLAMIC CRIMINAL LAW

Sometimes people call it penal law or criminal law which is fears a body of regulations that define criminal actions in a society. Therefore, criminal actions may be lawfully punished by state-authorized people. Criminal law is the body of law to which the government and the prosecutors refer when charging and trying a person for criminal conduct. Islamic Criminal Law deals with the different kinds of offenses and punishment among Muslims. It is the handling of security and correctional measures that would be applied to the offenders. The Islamic Penal Code deals with the types of offenses and punishments and the Islamic Criminal Law is not the same in terms of applying in all Muslim countries throughout the world, because there are different interpretations of Sharia and Hudud punishment in different countries. For example, Saudi is very strict in terms of Islamic Criminal Law, but Turkey is a secular country and follow not that much strict as Saudi Arabia (Mathew, 1989, p. 16).

Islamic Criminal Law has had a wonderful influence on the formation of the life and history of many nations throughout the world in particular eastern and Arab countries. Islam is a perfect system of life for everyone with its special rule and regulation. In general, Islamic law (Sharia) is an established of rules of conduct with specific sources of Islamic law which are the Holy Quran, words, and actions of the prophet of Islam named Sunnah, Ijma, Qiyas, Firmans, and Canons. Quran is the holy book which is sent from Allah through Gabriel to Prophet Mohammad (SAW) during 23 years with especial orders in order to be a guider of Muslims (Wasti T. , 2008, p. 19).

It is important to explain that the Quran directly provides orders for certain punishments such as murder and bodily injury (Qisas), theft, fornication, robbery, and defamation (Hudud). Quran also orders for the prevention of drinking alcohol. Though, details of these offenses and punishment for other capital offenses such as adultery and drinking alcohol are provided by the prophet of Islam (Hadith) as a second primary source. Islamic Criminal Law falls within the realm of public law. Therefore, the application of criminal law is inevitably bound to raise issues of both national and international concern (Lippman, 1988, p. 34).

This is mainly because Muslim countries that apply the law have either plural legal systems due to the legacy of colonial rule like some African countries or are modern states like Turkey amongst the comity of nations with international obligations, or both like Malaysia or none of them like Pakistan. Furthermore, there are hardly any such countries that do not have a Muslim population. Applying Islamic Criminal Law is not easy for Muslim countries, they would not only face conflict with national constitutions but with international human rights instruments as well. Fascinatingly, applying Muslim countries are bound by these instruments. Therefore, changing of religion issue which the universal declaration of human rights (UDHR) and the international covenant on civil and political rights (ICCPR) clearly sanction. While practical problems in the application of the law may not be difficult to handle if there is will for example Brunei. The inconsistency with national constitutions and international human rights instruments hurdle seems difficult if not impossible to cross. So Islamic Criminal Law has been established by the Sharia in order to maintain order and security in society, and Islamic Sharia has established strict rules for criminals. Accordingly; the implementation of Islamic laws is beneficial for the people and the society because it eliminates and reduces crimes. In addition, the implementation of Islamic laws provides security for the lives, property, and honour of the people in society (Mathew, 1989, p. 13).

### 2.1 Types of Islamic Criminal Law

Islamic Criminal Law is generally split into four sections and we shall discuss them below.

**1. Hudud:** crimes In the Islamic justice system, crimes against Allah are referred to as hudud. Hudud offenses are transgressions of "natural law" as defined by the Islamic State's culture. As violations of Allah's rights, Hudud's sins would elicit divine wrath. Declaring war on an Islamic state is equivalent to declaring war on Allah and his messenger. "The only reward to those who wage war against Allah and his prophet and seek injustice in the world would be to be executed or crucified, or to have their hands and feet on opposite sides cut off, or to be expelled out of the land," says the Holy Quran (Sultani, 2019, p. 31).

Rebellion against a constituted government, such as a political official or an economic order, is called "crime on earth" and is punishable by death. The accused party can be killed by police or military operation, or by a court of competent jurisdiction's sentencing. In the Islamic justice code, rejecting Islam is a capital offense that carries the death penalty. It may be attributed to a Muslim who doubts the presence of Heaven, angels, or any of Islam's prophets, or who refuses any aspect of the Quran. Apostasy is the term for rejecting Islam. "The blood of a Muslim cannot be lawfully spilled except in one of three (cases): the married person who commits adultery; a life for a life; and one who forsakes his faith (of Islam) and abandons the community," Prophet

Muhammad is quoted as saying in one of the Hadith (Okon, 2014, p. 22).

Three days of grace are offered to the accused apostate to return to Islam. Islamic scholars will instruct him on the gravity of the crime he has committed against his own soul, family, and culture. The accused person will be set free if he wishes to re-join the Islamic community. The execution of the apostate is a major relief for humanity as a whole, as it removes everyone from the malice and abuse that denial and blasphemy can carry. When it comes to sentencing the perpetrator, Islam does not include the offender's family. Because of the seriousness of the penalty for apostasy, Abdul-Rahman al-Sheha has warned people not to convert to Islam by trickery or deception: "Every prospective convert must take time to read, learn, analyse, and discuss all facets of Islam as a way of life prior to entering it and committing its rules and regulations." Such a harsh sentence would have little effect. There are six types of punishment in Islam like: Fornication, Adultery, Drinking of Alcohol (Shurb al -Khamr), Qadhf, Theft, Hirābah, Apostasy (ridda, Irtidad) (Sultani, 2019, p. 14).

**2. Qisas:** it is a Hebrew word that means "retaliation," and refers to the biblical concept of "an eye for an eye." (Zaydan, *The Qisas and Diat Rulings in Islamic Sharia*, 2021, p. 21).

The Islamic word Qisas (Arabic) means retribution, which is analogous to the biblical concept of an eye for an eye. In the case of homicide, it refers to the right of a murder victim's heirs to claim the murderer's execution. Qisas is a Shari'ah-mandated penalty that refers to someone who deliberately kills or injures a Muslim, according to Islamic law. This is established by the following verses of the Qur'an: O you who believe, equivalence is the law decreed for you when dealing with murder - the free for the free, the slave for the slave, and the female for the female. If one is pardoned by the victim's kin, an appreciative response is in order, and an equitable compensation shall be paid. This is an alleviation from your Lord and mercy. Anyone who transgresses beyond this incurs a painful retribution. [1][2] Sura 2, (Al-Baqarah) 178. (Quran-e-Karim).

The Quran, on the other hand, states that one should get restitution (Diyya) rather than retaliation. Since the state could only carry out a murderer's execution with the consent of the victim's heirs, the state could only do it with their approval, and they were entitled to pardon the murderer as an act of kindness or in exchange for reimbursement (Mohammad, 1998, p. 18).

**3. Diyat:** For victims of murder and torture who have been apologized to by the perpetrator or their families, Islamic Criminal Law accepts a type of penalty known as diyat (compensation). The sum of money or goods that the defendant should pay as a result of the victim's death or bodily harm is known as diyat. The Koran, chapter Al-Baqarah, verse 178, provides the moral

framework for determining diyat. Aside from that, Abu Dawud (peace be upon him) wrote Hades of Muhammad Prophet, which explains the sum of diyat depending on the crime type, such as murder or torture (Quran-e-Karim).

In another sense, Diyat is a substitute for the victim's soul or corpse, which is provided as a kind of restitution by a murderer to the victim or his heirs in the case of murder or a criminal offense involving members of one's body. For offenses such as murder and malicious persecution, as well as murder and persecution that happened due to a mistake, according to Islamic law, diyat is the primary penalty. The base penalty diyat is al-Quran and Sunnah Rasulullah SAW contained in the letter an-Nisa 'verse 92 which means, "... and whosoever kills a believer because of the mark! (Let) it free a believing slave, and pay diyat submitted to his family (the slain), unless they (the family was killed) charity..." Based on, Rasulullah SAW Hadith narrated by Abdullah bin Amr means, "... remember that diyat against murder and murder mark! Similar deliberately using whips and sticks are 100 camels made up of 40 head pregnant". (HR. Abu Daud). Diyat is usually divided into two types: hard diyat and light diyat. Levels of the high Diya Diya to be charged by those who commit deliberate murder of 100 camels with Camel 30 camels in the 4-year-old category, 30 camels in the 5-year-old category, and 40 camels in the champion category. Meanwhile, lightly diyat is diyat to be charged by the perpetrator who knowingly murders more than 100 camels in the form of 20 female camels aged 3 years, 20 female camels aged 4 years, 20 female camels aged 2 years, 20 male camels aged 2 years, and 20 female camels aged 1 year. In other terms, it is known from the above that diyat weight is paid only for deliberate killing. Although mild Diyat has been charged with criminal murder for related mistakes and intentional killings, persecutions, and limb. (Zaydan, *The Qisas and Diat Rulings in Islamic Sharia*, 2021, p. 25).

**4. Ta'zir crime:** In principle, the Sharia punishes all forbidden or sinful acts, even if they do not constitute hudud offenses, homicide, or bodily harm. Executive officials and magistrates (and their masters in regard to slaves) may, at their discretion, punish those who have committed those acts in a corrective manner. That's what Ta'zir is called. It is discussed as a residual category of sanctions in the legal handbooks (Jafari Langrodi, 1992, p. 45).

An important function of Ta'zir is to provide grounds for the punishment of those who have committed Hudud crimes or crimes against persons but cannot be sentenced to the appropriate punishment due to procedural reasons (e.g., uncertainty (shubha), pardon by the victim's next of kin, or lack of legally required evidence), as well as for the punishment of those who have committed acts that resemble Hudud crimes or crimes against persons but cannot be sentenced to the appropriate punishment due to procedural reasons (e.g.

Illegal sexual acts that do not amount to intercourse; misappropriation that does not amount to theft, such as embezzlement; and defamation based on grounds other than forbidden sexual intercourse are examples of such acts. Furthermore, those who refuse to perform religious duties such as ritual prayer or fasting may face discretionary punishment. Procedural restraints had little impact on the authorities who imposed such punishments. They had a lot of leeway when it came to accepting evidence in particular (Penal Code Explanation, 2019, p. 17).

The main goal of discretionary punishment is to keep the perpetrator from repeating the offense, and it may have two forms: it can be a punishment for past behaviour with the goal of reforming the perpetrator and preventing him from repeating the offense; or it can be a coercive measure to force a person to perform his duties, such as ritual prayer or fasting. The selection of the necessary penalty is influenced by retribution and deterrent. If the accused is a serial offender or if the crime is commonplace and a precedent has to be set, the punishment would be more serious. Furthermore, the offender's psychological condition plays a crucial role in determining the sentence. The most important consideration in deciding the form and nature of the sentence is a rational one: can the preferred sanction preclude this particular offender from committing his wrongdoing? As a result, punishment is individualized, and individuals have not punished equally: the prestige is significant since it is believed that the average people need more extreme punishments to be corrected than the wealthy, for which a frown, a physical reprimand, or stern words often serve (Ghassemmi, 2009, p. 56).

### **2.2 The Purpose of Punishment in Islamic Criminal Law**

Considering the general lines of the teachings and teachings of the religion of Islam and the characteristics of the Islamic penal system, it seems that the Islamic view on the justification of Islamic punishments is a dual and combined view. This view governs the Islamic penal system as a whole; therefore, all punishments, including hudud, Qisas, and Ta'zir, can be justified based on this theory. Of course, it may not be possible to recognize and prove this theory in the same way about all punishments; but as proof, all punishments seem to have been legislated according to this theory. This view is different from all the theories and theories that have been studied so far, and its features cannot be found in any other theory (Zaydan, Summary of Rules Jurisprudence, 2020, p. 32).

This theory, in line with the type of attitude towards the universe and human beings and the specific definition of individual and social happiness, can address a wide range of issues such as attention to justice and merit on the one hand and achieving desirable individual and social effects and results on the other. And it has received realistic attention. The issue of attention to justice, along with attention to individual and social

well-being, are two inseparable and interconnected things. As a result, it seems that the goals of punishment can be divided into two general categories from the Islamic point of view; the first class, the goals of society, and the second class, the goals of the perpetrator and victim of crime (Sultani, 2019, p. 18).

Generally, we can say that the purpose of punishment in Islam is not to torture the offender; rather, it is the preservation of religion, soul, generation, intellect, and property that is called the necessity of khums (Paywandi, 2014, p. 36).

### **2.3 The Sources of Islamic Criminal Law**

The Qur'an and the Sunnah are the two main and passed-down origins of Islamic law (Hadith and practices). This synthesis of the two most important origins of Islamic law is regarded as a connection between justification and revelation. Islamic Law has emerged as a consequence of the union of these two sources.

The Qur'an is the holiest and significant source of Islamic law, and it includes verses about Allah, human values, and how a believer can live in this world. Islamic Law encompasses the human actions that should rule the lives of believers, as mentioned explicitly in the Qur'an. The Qur'an contains approximately 500 legal verses that expressly state legal rules that must be followed by all believers. Professor Almatroudi would argue that even non-judicial verses in the Qur'an affirm the creation of Islam's legal framework (Alwazna, 2016, p. 33).

The Sunna, which represents the Prophet Mohammad's (peace be upon him) acts and sayings, which were developed in the form of narratives and were known as Prophetic Hadith, is the second primary and transmitted source of Islamic Law. The Sunna also contains a set of moral rules that must be followed by all Muslims. Certain legal decisions in these Islamic sources that have been transmitted are conclusive. In other words, since they are simple and authoritative, the lawgiver (Allah) has constructed them in such a manner that they do not require personal legal reasoning and are not subject to varying interpretations.

On the other hand, both the Qur'an and the Sunna contain a corpus of legal contents, the application of which necessitates logic. The same law-giver who formulated those legal decisions in the Qur'an and Sunna in such a way that two separate interpretations are never accepted may have done the same for the majority of the legal contents laid down in the aforementioned Islamic texts.

There is nevertheless a key explanation why a tremendous amount of legal material is subject to legal reasoning listed in the Qur'an and the Sunnah. This versatility in the law allows it to be constitutionally applicable on any court situation, irrespective of time and location, as this is a matter to be addressed further in Sect. In addition, the disparity in interpreting a certain legal question is considered a kind of compassion among



lawyers. The de facto corpus of legal contents in the Qur'an and the Sunnah, which require separate legal rationale, brings us to another source of Islamic law called legal rationale (Alwazna, 2016, p. 34).

As a result, we can say that the following sources constitute the sources of Islamic Criminal Law:

Qur'an is the most important source of Islamic Criminal Law  $\cap$  Sunnah, which means the speech and behavior of the Prophet Muhammad. Ejmaa means the consensus of all Muslim mujtahids on a religious ruling. Qiyas means inferring the verdict of a subject from a subject with a valid text because of the similarity between them.

### **III. THE APPLICATION OF ISLAMIC CRIMINAL LAW IN AFGHANISTAN**

Afghanistan, having 99 percent of Muslim people, has had various penal rules from the past until today, which has always been the attention of the government to punish the perpetrators of crimes (Mujtaba, 2013, p. 20).

If you have a cursory study in the history of the country's criminal law, from 1301 to 1400, penal laws have been established and implemented to punish people who violate the law and the prevailing values in the society. In particular, the Penal Code of 2016, as the most comprehensive law in terms of giving credit to crimes and penal punishment, in Article (1) has left the claims of limits, retribution and death to Hanafi School for resolution. Of course, the main question is that within the time frame when the codified criminal laws were in force in Afghanistan, Article (1) of the Penal Code was applicable to what extent? To answer this question, it can be said that although the laws of Afghanistan, especially the Penal Code, have referred to the Hanafi School regarding the application of Hudud and Qisas, and in the same way, the judge has been obliged to first decide the cases of Hudud and Qisas. If the judge is not able to punish the perpetrator in case of the existence of abortion cases or the existence of suspicion, he must deal with the matter according to Hanafi School, which unfortunately does not appear to be such cases in practice in Afghan courts, and the rulings of limits and retribution are merely rulings of role. Hadud, remained in the legal documents and could not be implemented. (Penal Code Explanation, 2019, p. 23)

But today, with the rule of the Islamic Emirate in the country, all the laws written since 2021 have lost their executive and comparative power, and Islamic laws have been recognized as applicable for punishing the perpetrators of crimes. Of course, the application of Shariah punishments against crimes is communicated to the relevant departments through the decrees issued by Amirul Munin. If, in the effect of the Supreme Court of the Islamic Emirate of Afghanistan No. 10 dated 8/13/1443, which was issued by Mufti Abdul Rashid

Saeed, the head of the Supreme Court Office, under the title of the decree of Amirul Momineen Sheikh Sahib Hefza Allah regarding the implementation of limits, retribution and execution.

Example: Radio Azadi's newsletter dated 9th of Jadi 1401 states: According to the announcements of the Supreme Court of the Taliban government, more than 260 people including 50 women from 19 provinces of the country, after the decision of the primary court of the Islamic Emirate in public in Their respective provinces were flogged 39-19 depending on the crime committed, which included running away from home, administrative corruption, drug trafficking, etc. Also, in the news published by the Voice of America dated 14th of Thor 2023, Abdul Malik Haqqani, the administrative deputy of the Supreme Court of the Islamic Emirate, announced the issuance of nearly 300 retributions, dowry, stoning and stoning orders. There are also the most recent examples of applying Sharia rules in the country in 2024; so that the Supreme Court of the country (Penal Code Explanation, 2019) (Justice, 2017) has announced the expiration of Sharia limits for nearly 40 people in the country. Officials have said in the Supreme Court that Sharia sanctions have been imposed on these people for the crime of illicit relations, running away from home and theft in various provinces. At the same time, some religious scholars considered the passing of the Sharia ruling on the members of the society as important to free the society from vices.

In this regard, Hasibullah Hanafi, a religious scholar, added: "Implementation of limits and retribution according to the laws of Islamic Sharia is necessary for the Islamic system, and this is Allah's command."

Ahmadullah, another religious scholar, has this view: "The society becomes a healthy society, and the future of such a society is better because an Islamic life and a life equal to Allah's decree will take place, and this is the salvation of all humanity."

After the re-establishment of the Islamic Emirate in Afghanistan, the Supreme Court punished five people for the crime of murder in the provinces of Farah, Laghman, Ghazni and Jawzjan.

So, it can be seen that the current system of the country works as a successful system in implementing the rules of Islamic Criminal Law.

### **IV. CONCLUSION**

As the basis of moral philosophy, Islam includes order and law in addition to commands and prohibitions. Islam has proposed a world based on peace and justice. In any society, it is not acceptable to commit a criminal act that disrupts the basic rights and freedoms of individuals, including society. Therefore, the principle of punishing the perpetrators of criminal acts requires that there be comprehensive and complete rules based on which justice is provided.

Crimes are usually dealt with by government institutions in the form of judicial power. Thus, in order to ensure justice in the society, Afghanistan's judicial system deals with cases of limitation, retribution, death and ta'zir based on the rules of Islamic Criminal Law, especially Hanafi School.

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