

The second lecture

The second section: classifications of crimes

Crimes in Islamic jurisprudence are numerous and differ depending on the basis on which they are divided. Several types of crimes come to the surface in this field, but the division that is considered the basis for studying the Islamic criminal system remains the one that is based on the distinction between hudud crimes, retaliation crimes, blood money crimes, and discretionary crimes. This division corresponds to a similar division of punishments, which include hudud punishments, retaliation, blood money, and discretionary punishment. We detail each section of these crimes below.

The first requirement: border crimes

Understanding this type of crime requires clarifying its concept to remove any ambiguity or ambiguity, in preparation for clarifying the various provisions to which this type of crime is subject.

Section One: Definition of border crimes and their types

The officer considers a crime as hudud crimes is the type of punishment prescribed for it and the fact that it is described as hudud, as the latter branches between what is the pure right of God Almighty and what is right of God and the slave, as will be explained successively:

First/ Definition of border crimes: Hudud crimes are defined as: "crimes punishable by hadd punishment", and the limits of God are: "his mahrams and father-in-law that a slave may not break upon", and the limit is defined as: "a punishment estimated by a fixed legal text related to the signing of the right of God Almighty, for its connection with the interest of the Islamic community and achieving the public benefit of his servants".

In such crimes, which are estimated at a fixed legal limit, there is no room for the judge to exercise his discretionary power, which is lacking in confronting them, whether by mitigation, aggravation, replacement or suspension of execution, as such powers and others are withdrawn from the judge if it comes to hudud crimes, and

the guardian lacks the authority to pardon the hadd punishment in whole or in part, before or after the verdict.

Hudood crimes are not subject to ijtiḥād, as they are mentioned exclusively in the Qur'an or Sunnah, namely: adultery, slander, drinking alcohol, theft, moharebeh, apostasy and prostitution.

Hudud crimes are supported in the Holy Qur'an and the hadiths of the Prophet as follows:

- **The punishment for adultery:** His support is stated in the Almighty's saying: "The adulteress and the adulterer, so flog each of them a hundred lashes, and do not take them with compassion in the religion of God if you believe in God and the Last Day, and let a group of believers witness their torment."

The Prophet (peace and blessings of Allaah be upon him) also said: "The blood of a Muslim man is not permissible except for one of three things: adultery after horse, kufr after faith, and killing a soul without a soul."

- **The limit of theft:** It is supported by the Almighty's saying: "And the thief and the thief, cut off their hands as a reward for what they have earned as a reward from God."

- **Limit of slander:** The support of the Almighty saying: "And those who throw fortifications and then do not bring four martyrs, so flog them with eighty lashes, and do not accept them as a testimony at all, and those are the immoral."

- **The limit of the prostitute:** the support of the Almighty: "And the two sects of believers fought and reconciled between them, if one of them attacked the other, they fought the one who wants to come to the command of God, and if it fulfilled, then reconciled between them with justice and settled that God loves the just."

- **The limit of harabah:** supported by the saying of the Almighty who said: "But the reward for those who fight against God and His Messenger and seek corruption on earth to be killed, crucified, or have their hands and feet cut off from a dispute or exiled from the earth, because they have shame in this world and have great torment in the hereafter, except for those who repented before you could do it, know that God is forgiving and merciful."

- **The limit of apostasy:** It is supported by the words of the Messenger of Allah (peace and blessings of Allaah be upon him): "Whoever changes his religion, kill him" and his also saying: "The blood of a Muslim man is not permissible except in

one of three ways: the adulterer's garment, the soul with the soul, and the one who abandons the congregation."

• **The limit for drinking alcohol:** its sanad is mentioned in the words of the Messenger of Allah (peace and blessings of Allaah be upon him) in a drinker who brought him: "Hit him", and his saying: "Whoever drinks wine, flog him, then if he drinks, flog him, then if he drinks, flog him, then if he drinks the fourth, kill him."

Second: Types of borders: The limits differ among themselves in terms of the extent of their connection with the right of God Almighty. Some of them are a pure right for Him, and some are a right for Him and a right for the servant as well, as will be explained in turn:

- **Borders, which are the pure right of God Almighty:** The connection of borders with the right of God Almighty does not mean that they determine the interest or self-right of the rich and benign, but it means that it is related to the interest of society, which is the sum of the provisions that he decides for the public benefit of his servants and the Islamic community as a whole.

Considering these limits as a pure right of God Almighty means that the side of the slave, even if the victim is not considered in determining the limit, as the aim of these limits is to determine the pure interest of society, where the slave is neglected in demanding the limit, unlike the limits, which are the right of God and the right of the slave.

The crime of adultery is an attack on the Islamic family, which is the nucleus of Islamic society, and the resulting assault on the purity and mixing of lineages, and then the corruption of society, which has the right to have all its children with legitimate lineage, so it is led towards vice and corruption, whose effects are dire for the future of society as a whole, which violates the purposes of Sharia, which came to preserve virtue, maintain morals and urge The best of them, and the establishment of a good Islamic family and the strength of all that marriage, has confirmed these meanings of the Messenger of God peace be upon him in saying: "Fear God in women, they are your helpers, you have replaced their chicken with the word of God", the Messenger of God peace be upon him described marriage as "the word of God" If adultery is an attack on the word of God, it is necessarily an attack on the pure right of God Almighty.

The Almighty also described those who commit the crime of hiraba as "those who fight against God and His Messenger and seek corruption on earth," and this means

that this crime is a war for God and His Messenger, it is an attack on the pure right of God Almighty, as it is a pursuit of corruption on earth, it is an attack on the entire Islamic community in its security, stability and the establishment of its security and order, and every attack on the right of society is an attack on the right of God Almighty, as previously explained, where the public interest is the right of God, as it is associated with the existence of and nothing.

- **The limits in which the right of God Almighty and the right of the slave meet:** It is related to the limits of theft and slander.

The right of God Almighty to the extent of theft appears in the fact that the latter is an attack on the right of society to protect the right of property from attack as a sacred right based on preserving the ownership of funds for their owners and their right to protect and preserve them, which results in the rejection of images of assault on funds in illegal ways and obtaining them by assault and usurpation, and in return encourage halal gain, giving, work, taking reasons and entrepreneurship, and then the prosperity and development of society and the recovery of economic activity, which is beneficial to Society and the state as a whole.

The right of the slave appears in the limit of theft as an assault on private money owned by a particular person, and then the latter was the subject of consideration and interest in determining the provisions to which it is subject, and in this the jurists said: "The right of the slave is fixed in theft in the beginning, although the right of God Almighty is fixed alone in the end", and the result of this is that the right of the slave stops at the claim or claim without exceeding it, until the judiciary is authorized to investigate and verify the case, if the victim claims Therefore, the restriction was removed from the judiciary to prove the act and all the powers and powers of the victim to control or direct the litigation fell in return after that, so that the right of God Almighty becomes clear and pure, as the establishment of the limit becomes pure to God Almighty, does not entitle the slave to descend from it or drop it, the right of the slave stops at the limit of the claim only, and this right has been recognized to him within the limits of this area without exceeding it.

The right of the slave to the limit of slander appears in the fact that the victim who was slandered by the offender for adultery is the one who claims it and demands as a result of this claim the imposition of the hadd punishment, if he claims, the guardian has the right to initiate the litigation, proceed with it, proceed with it, and

initiate procedures and means of proving it, after which the victim's right to pardon the offender and drop the hadd punishment or stop its execution, all these powers are not enjoyed by the victim in the face of the offender in such a case, in application of the words of the Messenger of Allah (peace and blessings of Allaah be upon him). Upon him and upon him: "If the borders reach the authority, then Allah will curse the intercessor and the intercessor."

Section Two: Claims of punishment

The division of the limits into those that are the pure right of God Almighty and those that combine the right of God and the right of the slave entails provisions related to the claim of the limit according to its type, if the latter has a pure right to God Almighty, it is not required to claim it to sign the limit, because there is no victim victim to make the claim, and accordingly the witness is considered a plaintiff in such a case, and his claim is called "Hisba lawsuit" and it is an exception to the general rules and lawsuit procedures that require the prosecution before Hearing the testimony, as in such a case, the testimony of the crime is heard, although it was not preceded by a lawsuit, as the hisba certificate in itself is a lawsuit and not one of the lawsuit procedures.

Accordingly, if four witnesses witness adultery, they go directly to the judge and testify before him about the incident as they witnessed and attended it, if the judge verifies the availability of the elements of the crime in full and that the perpetrator is qualified for assignment, he pronounces the hadd punishment, and their testimony is considered to be the case itself and not one of its procedures, which is the same provision prescribed for the crime of drinking alcohol, in which the truth of God Almighty is determined exclusively.

But if the limit is a right of God and the slave, the claim and claim are required at the beginning, as it is required that the victim apply and file the lawsuit first, demanding the imposition of the hadd on the offender who committed the crime, and in such a case a return to the application of the general rules that require the precedence of the prosecution to file a lawsuit, the claim is a condition of the lawsuit, and there is no lawsuit without a claim carried out by the litigation and proceeds accordingly its procedures, and in application of that, the theft limit is not signed unless the victim, the owner of the stolen money, submits his claim against the offender, and he does not sign The limit of defamation unless the victim claims the

projectile against him before the judiciary, after which the way is opened to prove the crime by various means of proof such as confession and witness testimony.

If the prosecution is a condition for filing a lawsuit in the crimes of theft and slander respectively, considering the right of God Almighty shared by the right of the slave in both, but the continuation of the prosecution in theft is not necessary, if the prosecution is issued and the litigation arises and the victim declares his desire, consent and consent to follow up the offender and impose the limit on him, he loses his control over the lawsuit and the litigation that remains continuous until the judge decides on it conviction or acquittal, the victim does not have pardon the thief offender, which is an application of the principle " If the border reaches the sultan, God will curse the intercessor and the intercessor."

As for slander, it is contrary to the above, where Imam Shafi'i and Ahmad went that the continuation of litigation is a condition for the trial of the ejector and the establishment of the limit on it, which is the opinion that prevails over the right of the slave, but Imam Abu Hanifa and his companions go to the fact that the continuation of litigation is not a condition in the limit of slander, and then the pardon does not fall the limit, and the support of this opinion is the predominance of the right of God and the work of the principle of "the inadmissibility of intercession in the limit if the Sultan reached."