

The third lecture

Section Three: Proving border crimes

Hudud crimes are crimes of restricted evidence that may not be proven except by evidence specified in Sharia and not others, and therefore must be submitted to the judge certain evidence that does not accept everything that comes out of it, and this is unlike the crimes of ta'zir, which may be proven by all means without exception, as it is subject to the principle of personal conviction of the judge.

In application of the foregoing, hudud crimes are established exclusively by the following means:

- **Proof of adultery:** The prescribed punishment for adultery is not imposed unless it is proven by the methods specified in Sharia, namely the testimony of four witnesses or the confession.

- **Testimony:** If the adultery is witnessed by fewer than four witnesses, the crime is not proven or established against the person accused of committing it, and as a result, the latter is not subject to the punishment of adultery, but the witnesses are considered to have committed the crime of slander, which is throwing adultery, and accordingly the punishment of slander is imposed on them.

And find this means in the proof of its legitimate support in the saying of the Almighty: "And those who throw fortifications and then did not bring four martyrs Vjldhm eighty lashes and do not accept them testimony never and those are the immoral", and the saying of the Almighty "and those who come obscene of your wives martyred them four of you", and the saying of the Almighty saying: "If they did not bring him four martyrs, if they did not bring martyrs, those with God are liars", as you find its support in the saying of the Prophet peace be upon him on the issue of "I see if I found a man with my wife who I gave him time to bring four martyrs," and he replied, "Yes."

- **Confession:** Adultery is proven in addition to the testimony of the four witnesses by the confession of the adulterer, that is, by his confession of committing the act carried out by the crime in an explicit confession that denies ignorance, ambiguity, doubt or suspicion, and the issue of the number of times the confession, which is evidence of proof in adultery, has raised a jurisprudential dispute divided jurists into two groups:

- ✓ **The first team:** represented by the Hanafis and Hanbalis, where they require the repetition of the confession four times, with a review of the offender after each confession, where he remains insistent on it every time, and their evidence in this is the case of Ma'az bin Malik, who confessed to the Messenger of Allah, may God bless him and grant him peace, of committing adultery, so the Messenger of Allah, peace and blessings be upon him, turned away from him until he repeated his confession four times, and then asked him: When he said: "No", he was sentenced to the limit, as they base their argument on the need to repeat the confession four times by analogy with the testimony, because the confession is a type of testimony, it is the testimony of a person against himself, and therefore the rule of requiring multiple witnesses must be applied to him.

- ✓ **The second team:** It is represented by the Shafi'is and the Malikis, where they are satisfied with acknowledging once without the need to repeat it any more, and they also see that the measurement of the acknowledgment on the testimony is not established, because of the different nature of each of them, and the evidence for this is that in the field of financial transactions, multiple witnesses are required, so that they are two men or a man and two women, however, multiple acknowledgments are not required, and they also justify that the judgment of the Messenger of God, may God bless him and grant him peace, with the limit in the case of Ma'az bin Malik after repeating his approval Four times was not to ask for the number in itself, but because of the fact that the peace and blessings of God be upon him in the facts of that case must be achieved, and he also ruled on other similar occasions based on the sufficiency of acknowledging once, and therefore repetition in their view is not a condition but it is desirable.

• **Proof of drinking alcohol:** Drinking alcohol is proven by Sharia by the confession of the drinker or the testimony of two witnesses, and unlike these two means, the crime against the drinker does not exist at all.

If the testimony of witnesses does not raise any problems, the same dispute that arose above about the need to repeat the confession or not in the crime of adultery has erupted itself so that the confession is valid as a means of proving the crime of drinking alcohol, and in that the jurists were divided into two opinions:

- ✓ **The first opinion:** Abu Yusuf and a group of Hanbalis said that it is necessary to repeat the confession twice by the amount of the testimony, and their argument in this is that the limits in which the truth of God Almighty must insist on saying.
- ✓ **The second opinion:** said by Imam Abu Hanifa and Muhammad, to the effect that repetition is not required, and their argument in that is that repetition was decided to prove adultery contrary to measurement, and what was contrary to measurement is not measured against it, and the reason for considering it has been stated contrary to measurement that the acknowledgment is to tell a person about his act, and as long as this news was issued by those who are eligible to be charged free without doubt or suspicion, it is not imagined that it is subject to repetition because it is a breaker by itself without the need to repeat it.

• **Proof of defamation:** defamation is legally proven by acknowledgment after the lawsuit or the testimony of two witnesses, and it is not required to repeat the acknowledgment by consensus of jurists, but in the testimony of witnesses, the victim is not counted among the witnesses because he has an interest in proving slander.

The jurists also raised the issue of proving the limit of the oath or not, and this happens when the plaintiff directs the accused to swear an oath that he did not commit the crime and renounced the alliance, so is such a denial as an acknowledgment of the crime and then the limit is established on it?

The answer to these forms varies according to the crime under prosecution if it is theft or slander as follows:

• **Repudiation of the oath in theft:** Repudiation of the oath in theft is not considered as an acknowledgment of its commission that entails the imposition of the hadd punishment on the accused of committing it, and this rule finds its support in the fact that the right of God Almighty prevails in theft, and then the slave loses all control or entered into litigation after its establishment.

Imam Abu Hanifa justified this rule by saying that repudiation of the oath is not permissible except in the field of financial transactions only because the repudiation of the oath is giving, giving and donating, which is not permissible except in the

field of financial transactions without the limits in which there is no place for such an oath, so the repudiation of the oath is valid to prove the ownership of the money to the plaintiff, and it entails obliging the accused of theft to return the money or guarantee its value.

Also, the repudiation of the oath, although it includes an acknowledgment, as some believe, but it has a suspicion as silence, and the rule is not to attribute to the silent saying on the one hand, and it is an acknowledgment in which there is suspicion that cannot be relied upon as evidence because the borders are shielded by suspicions on the other hand.

And the right is a suspicion that drops the limit but does not fall