

## **The thirteenth lecture**

### **The second axis: Punishment/its definition and sections in Islamic legislation**

The Sharia philosophy of punishment is based on making every punishment appropriate to deter the offender and prevent him from committing the crime again, thereby serving as an example to other members of his society. This applies to crimes that affect the entity of society and the group, where the latter enjoys the protection of Sharia at the expense of the offender, who is negligent because the nature of this type of crime imposes this, and their number is small and limited. As for other crimes, Sharia requires that the offender's personality, circumstances, morals, and conduct be taken into consideration when estimating the punishment, and these are the most common crimes, as will be explained later.

#### **The first topic: the concept of punishment**

We first address the definition of punishment to determine its essence and content before explaining the controls on which it is based, ending with a statement of its conditions.

#### **Section One: Definition of punishment**

Punishment is defined as the punishment determined for the benefit of the group as a result of disobeying the commands and prohibitions of Sharia law, for the purpose of protecting people's condition, reforming them, maintaining their integrity, protecting them from corruption and falling into sins forbidden by Sharia law, and urging them in return to be obedient, upright, and obedient to God Almighty. God Almighty imposed the punishment after He revealed His law to all people and stated His prohibitions and prohibitions in order to make people disapprove of what displeases God Almighty and then stay away from it and avoid falling into it. Otherwise, this will be met with the imposition of the punishment prescribed by the Sharia as a reward for his boldness in transgressing the limits of God, so that he is considered to be the one. It serves as an example to others, and thus deterrence, both general and specific, is achieved. Accordingly, punishment was decided for the purpose of reforming individuals, protecting the group, and preserving its system, and there is no need for God Almighty to decide such rulings, for He is the Rich, the Praiseworthy, the Majestic, the One who is not harmed by the disobedience of a disobedient person, even if all the people of the earth disobey him, and the obedience of an obedient person does not benefit him, even if all the people of the earth obey him.

#### **Section Two: Punishment controls**

In order for the punishment to achieve the purposes and objectives for which it was decided and to perform its function to the fullest, the latter must be based on a set of controls and principles that make it achieve this purpose, which are summarized as follows:

- The punishment should be a deterrent to the same person from returning to the crime again and to others from committing such a crime, so it disciplines the offender for his felony and discourages others from undertaking it and following the path of the offender, as knowledge of the punishment in advance prevents it from being undertaken.
- The limit of punishment is related to tightening and mitigating the group's need and interest, if it is in the interest of the group to aggravate, the penalty is increased, and if its interest requires mitigation, the penalty is reduced, its limits are related to the group's need, which means that the punishment is realistic and reflects the conditions and needs of the society in which it is applied.
- Acknowledging the former officer indicates that the punishment limit may reach the maximum degrees without anything to prevent it, which means that the punishment in Islamic law may reach the extent of killing the offender or imprisoning him from the group to avoid his evil until he dies, if the interest of the group so requires, unless he repents or corrects his condition.
- Sharia penalties are not limited to a specific list alone, but are related to their purpose and the goal they pursue, regardless of their content and nature, as they should not be limited to specific and specific penalties, but each punishment that achieves its intended purpose by reforming individuals and protecting the group is a legitimate punishment.
- The goal of punishment is not to take revenge on the criminal, but rather aims primarily to reform, discipline and discipline him, because discipline varies according to different people, some of them are disciplined with advice, some of them need to be slapped and beaten, and some of them need imprisonment, where the appropriate punishment is chosen for each criminal according to the considerations and circumstances surrounding the crime committed, and according to the personal and psychological aspect that Islamic law has not neglected in its estimation of appropriate penalties.

### **Section Three: Conditions of punishment**

In order for the punishment to be legitimate, it must meet the following conditions:

- To be legitimate: that is, its source is the Qur'an, Sunnah or ijtiḥād, in order to be identical with the texts of Sharia, otherwise it is considered invalid, and therefore the judge is prohibited from pronouncing other than the penalties stipulated by Sharia or

that are based on a legitimate source, and it is also required that the penalties decided by the guardian within the framework of ta'zir not be incompatible or contrary to the texts of legitimacy or the spirit and principles of Sharia, as they are considered in such cases invalid, and thus lose their legitimacy that derives in The origin is one of the legitimate sources on which it is based.

- The punishment should be personal: It is one of the most important principles on which Islamic law is based, the punishment must affect the person of the offender and not exceed him to others, the perpetrator of the crime is the one who deserves the punishment that is carried out on him personally after verifying the commission of the act on his part, and no person, whatever his relationship with the offender, can bear the burden of punishment for him, he is solely responsible for the results of his actions, based on the Almighty's saying: "And do not visit another button", and also saying Almighty who said: "And that a person has nothing but what he sought", once the act is committed, the perpetrator deserves punishment as long as he is eligible for assignment.
- The punishment should be general: the punishment does not differentiate between those addressed by it, everyone is concerned with the application of the prescribed penalties if they commit the corresponding crimes, without any regard to the circumstances of the offender or the victim, their status, their social, financial or other status, everyone is equal before it a ruler or convict, ignorant or educated, rich or poor

The punishment concerned with full equality is the limit and retribution, which is not disputed and there is no room for the judge to exercise his discretionary authority over them, while punitive penalties do not achieve full equality, otherwise they are a limit, because the area of discretionary power is applicable at the level of this type of penalties, and equality is achieved in this type of punishment based on the impact it inflicts on the offender, even if it varied, multiplied and differed, some people are deterred by reprimand, and others are only deterred by beating or imprisonment, even if they are all involved. In one crime, which is known in man-made laws as the principle of punitive individualization, the diversity and difference of penalties does not cancel their equality as long as the same impact is achieved on all offenders, which is restraining and discipline, even if they differ in type and amount from one offender to another, where each of them is sentenced to the penalty that suits him personally and is appropriate for him in the field of deterrence and reprisal.

