

The fourteenth lecture

The second topic: Sections of punishment in Islamic legislation

The penalties are divided according to the crimes imposed on them as follows:

The first requirement: hudud penalties

These penalties are prescribed for hudud crimes, which, as previously explained when dealing with seven crimes, are, respectively: adultery, slander, drinking alcohol, theft, moharebeh, apostasy and prostitution.

- ✓ It was initiated for the purpose of special deterrence of the offender by disciplining him, and general deterrence by stopping other members of the group from the crime, as there is no way to take into account the personality of the offender, which is not considered when imposing punishment on him.
- ✓ Penalties with a single limit in which there is no discretion of the judge, who does not have the power to reduce or increase them, nor may he replace them with others, as they are estimated and necessary penalties.
- ✓ It proceeded to fight the causes and motives behind the commission of the crime, as it was developed on solid psychological foundations.

Section One: Punishment for adultery

According to the provisions of Islamic law, the adulterer is punished by three penalties: flogging, alienation and stoning, where the unprotected adulterer is punished by flogging and alienation together, while the immunized adulterer is punished by stoning.

- ✓ **Flogging:** It is the punishment of the adulterer who is not immune, and its amount is one hundred floggings based on what was mentioned by God Almighty in Surat Al-Nur, and this punishment was decided because of the pain it contains that pushes the person not to do it.
- ✓ **Westernization:** The punishment of Westernization is added to the punishment of flogging prescribed in the face of the adulterer who is not immune, and its duration is Westernization for a year after flogging, and the legislative source of this punishment is the hadith of the Messenger of God, may God bless him and grant him peace: "The firstborn with the firstborn is flogged a hundred and a year of Westernization", and

jurists have differed about this punishment between those who consider it a limit, and those who see it as a ta'zir, and those who see it as a complementary punishment to the punishment of flogging

- ✓ **Stoning:** The meaning of stoning is killing by throwing stones, which is the punishment of the fortified adulterer, whether a man or a woman, and it is a saying Sunnah of the hadith of the Messenger of Allah, may God bless him and grant him peace: "The blood of a Muslim man is not permissible except by one of the three: disbelief after faith, weight after horse, and killing a soul without a soul", as it is an actual year for what was reported from the Messenger of God, may God bless him and grant him peace, of his order to stone a goat, Al-Ghamidiyyah and the owner of Al-Asif.

Section Two: Punishment for slander

Islamic law has established two penalties against slander: one is original, flogging, and the second is ancillary, which is incapacity to testify.

- **Flogging:** The amount of eighty lashes is credible to what was mentioned from God Almighty in Surat Al-Nur, which is a one-limit punishment, the number of lashes is specific and the judge cannot decrease or exceed them, nor can he replace them with another penalty.
- **Ineligibility for testimony:** It is an ancillary penalty that attaches to the original penalty of not accepting the testimony of the thrower, and its support is contained in the fourth verse of Surat Al-Nur.

Section Three: Punishment for drinking alcohol

Sharia law punishes drinking alcohol with flogging.

- ✓ **Flogging:** Islamic law punishes drinking alcohol with eighty lashes, which is a single punishment against which there is no discretionary authority of the judge, as is the case with the punishments for the punishments mentioned above. The Shafi'is, unlike the rest of the imams, believe that the punishment for drinking alcohol is only forty lashes, and their evidence for that is It has not been proven from the Messenger of God, may God bless him and grant him peace, that he multiplied more than forty for wine. As for the other forty, according to the Shafi'is, it is a ta'zir and not a punishment.

Section Four: Punishment for theft

Islamic law punishes theft by cutting off the hand.

- ✓ **Amputation:** The basis for this punishment is verse 38 of Surat Al-Ma'idah, where the jurists agreed that the word "their hands" includes the hand and the foot, as the thief's right hand is cut off from the palm joint when he steals for the first time, and his left leg is cut off from the heel joint if he steals again. Again, it has been proven on the authority of Ali, may God be pleased with him, that he used to cut it off by half a foot from the knot of the trap, in order to give the thief a heel to walk on.

Section Five: Punishment for banditry

Islamic law imposed four punishments for hiraba respectively: murder, murder with crucifixion, cutting, and exile, supported by verse 33 of Surat Al-Ma'idah.

- ✓ **Murder:** The penalty of murder must be imposed on the bandit if his crime results in murder, as it takes in this place the rule of hadd not retribution, and therefore does not fall with the pardon of the victim's guardian.
- **Murder with crucifixion:** This punishment must be imposed on the bandit if he kills and takes money, so it is a punishment for two crimes, murder and theft together, where one of them was associated with the other or committed one of them, which is murder to facilitate the other, which is the theft of money, and it also takes the rule of hadd not retribution, so it does not fall with the pardon of the victim's guardian.

The jurists differed in the issue of submitting crucifixion to murder or vice versa, where the team believes that the offender is crucified alive and then killed while crucified, and the argument of this team that crucifixion is a punishment and therefore must respond to the living not dead, while the second team is likely to provide murder on crucifixion and kill first and then crucified, and their argument in that that the verse that decided this punishment has provided murder on crucifixion in the word, so it must be advanced in the act, as the crucifixion before Murder is torture for the perpetrator and Sharia forbids torture.

The jurists have set the duration of the crucifixion at three days, while some of them specified the start of rotting of the corpse where the corpse descends with the beginning of rotting, while some see just sufficiency with crucifixion as much as the name of the crucifixion falls on it, and some believe that crucifixion as much as it is defamed to descend the corpse before the start of rotting.

- ✓ **Cutting:** by cutting off the hand and leg of a dispute, where the criminal's right hand and left leg are cut off at once, and this punishment must be imposed on the bandit if he takes the money and is not killed.

- ✓ **Exile:** This punishment was decided in the face of the bandit who scares people without killing them or taking money from them, where the exile is in most of the opinion from country to country within the borders of Dar al-Islam, provided that the distance between the two countries is not less than the distance of the palace.

Section Six: Punishment for apostasy

Apostasy means leaving the Islamic religion and breaking with it after embracing it, so apostasy in this sense is only from a Muslim, and accordingly, Islamic law has decided in the face of apostasy two penalties: an original penalty, which is murder, and a consequential penalty, which is confiscation.

- ✓ **Murder:** Islamic law punishes the apostate with murder, and the basis of that legitimacy verse 217 of Surat Al-Baqarah, and the saying of the Messenger of God, peace and blessings be upon him: "Whoever changes his religion, kill him", because apostasy falls against the Islamic religion and accordingly the social system of the group is based.
- ✓ **Confiscation:** It is a consequential penalty for the original penalty of murder, under which the apostate money is confiscated, as the jurists differed in the extent of confiscation between those who went to include all the money of the apostate, and those who limit it to what the apostate gained from the money after apostasy only, but what he gained before apostasy is the right of his Muslim heirs.

Section Seven: Punishment of transgression

Islamic law punishes a prostitute with murder.

- ✓ **Murder:** Islamic law decided in the face of the prostitute the penalty of murder, and the basis of what was stated in the ninth verse of Surat Al-Hujurat, has tightened Sharia glue in the punishment of this crime because it is directed to the system of government and those in charge of it, so that leniency leads to strife, unrest and instability, which in turn leads to the delay of the group and its dissolution, which makes the punishment of murder the most capable punishment to distract people from this serious crime.