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Law and Order

Islam recognizes that morality and ethics are the roots of every decent society. An abundance of social and spiritual traits are found in the fabric of Islam which is geared to provide better living habits. These traits are not enough insurance against misconduct. Shari'ah, the Islamic Law, is a community moral law used to manage a Muslim society and to control the behavior of its members to ensure its safety. Shari'ah is backed by the power of the state that enforces the law by

consequences, penalties or remedies. In modern-day societies, an authorized body such as a legislature or a court creates the law. While this type of legislation is true in Islam, the basic rules of Shari'ah are divine in nature.

As Karen Armstrong stated in her book, *Muhammad A Biography of the Prophet*, "Unlike Christianity, which came to birth under the Roman empire where the social and political order was already established, Jesus and St. Paul had to mainly worry about the spiritual order, Arabia had no political or social order," Muhammad had to build a complete civilized society. Besides establishing the spiritual aspects, he had to erect the social and political aspects as well. Hence, the affairs of the state, the civil, social and political aspects of Muslims' lives are considered as divine as the spiritual aspects. This makes obedience of the rule an act of worship that the individual will be rewarded for.

Penalty

Islam's philosophy with respect to the spread of misconduct is embedded in prevention. Part of the prevention mechanism is a severe penalty. The severity of punishment of a Muslim serves as a giant deterrent to committing a crime. Because of the severity of punishment, the majority of people would not commit the violation or even begin to think of following it through. The likeness of this policy is much like the common practice of law-suits in the United States. Such suits are costing violators millions of dollars in penalties, which have effectively kept many would-be violators honest. An example of this is the multi-billion dollar lawsuit against the tobacco companies: Philip Morris, R.J. Reynolds, Brown and Williamson, Lorillard, the Leggett Group and Brooke Limited. These companies were charged with reckless disregard to misrepresenting information relating to health that cost over 200 billion dollars to one class case, and over 246 billion dollars to 46 states' cases.

Similar to the common expensive lawsuits are the stiffer penalties in traffic laws that are implemented to reduce accidents and death. In the same way, today's courts of law are stiffening the penalties and sentences to limit violations. For example, a traffic citation point in 2003 requires eighteen months to be removed from the driver's record versus six months requirement in the middle of 1980s. Similarly, the level of intoxicant found in drunk-driving citations has risen from 0.12% in the mid-seventies to 0.08% in the 2000's. This restriction has saved thousands upon thousands of lives from death in drunk driving accidents.

Illustrated below is the psychological effect of the severity of punishment on people's behavior. According to Islamic law, the maximum penalty for professional theft is the cutting of hands. It should be understood that this policy does not mean that for every theft there is a hand to be cut. The judge exercises other forms of penalties such as imprisonments or fines. With the mere existence of the hand-cutting rule, theft in Muslim societies has never grown to the level of proficiency and organized crime. The severe effect of hand cutting as a punishment for theft and the shameful impact on it carries has almost completely eliminated this social disease in the Muslim societies. Similarly, the penalty for a murder in Islamic Law is death (Capital Punishment). The wisdom in the severity of the penalty is saving lives. The Qur'an states:

***And there is (a saving of) life for you in al-Qisas, the law of equal penalty (killer to be equally killed);
O you men of understanding, that you may restrain yourselves. Qur'an, 2:180***

The natural human instinct is to avoid and fear death. Setting a legislation that destines one who slays a soul for execution, as a result of his or her actions, is an effective restriction for not committing the crime, therefore saving lives. Thus, in setting this equal punishment many lives are saved and sorrow and sadness for missing loved ones are eliminated.

When a Sentence is Executed

The maximum sentence for any violation of the law is not applied in every case. In the robbery and theft cases, for example, the maximum penalty of hand-cutting applies after the consideration of many factors such as track record and whether the theft was made for profit. In some cases, such as stealing food because of severe hunger prevent death, there may not be a penalty. An actual example that took place during the Rule of Caliph Umar can be helpful to illustrate this fact. A master brought a servant to Caliph Umar to cut his hand for stealing. Umar asked the defend-

he stole from his master's property. When the servant did not deny the accusation, Umar asked him why he did it. The servant explained that he did it because his family had nothing to eat. Upon this, the plaintiff concurred that the defendant's claim was true. Further questioning of the plaintiff led Umar to determine that the plaintiff was at fault for not providing his servant enough food, labor, and shelter. Then Umar ordered the plaintiff to adequately provide his servant's needs and the case against the servant turned out to be a case against his master. This example asserts that Shari'ah is a community law based on fairness and justice.

Alternatives to a Capital Punishment

The penalty for murder is death. However, depending on the circumstances, the Islamic judicial system permits settlements and forgiveness. Thus, there is a substitute for the capital punishment in the Islamic Law. Allah makes it more rewarding to the slain family to forgive than to execute the sentence of death on the murderer.

*O ye who have believed, prescribed for you is legal retribution for those murdered, the free for the free, the slave for the slave, and the female for the female (no one other than the killer should be executed).
But if the brother of the slain makes any remission, then grant any reasonable demand and compensate him with handsome gratitude. This is a concession and a mercy from your Lord.*
Qur'an, 2:178

Thus, the family of the victim has the right to demand punishment or to ask for monetary compensation. The third alternative the Islamic Law provides is pardon. The Holy Qur'an states that it is preferable for people to forgive.

But if you pardon and overlook and forgive, indeed, Allah is Forgiving and Merciful. Qur'an, 64:14

In regard to forgiveness, Dr. Ingrid Mattson of Hartford Seminary states,

“Because forgiveness itself is an act that frees the people who have been harmed from the sense of anger and the sense of victimization, it empowers them to have some control of the situation by giving that act of forgiveness.”

Flexibility and Ambiguity

Relaxing or stiffening a penalty for a particular violation is an integral part of Islamic Law. The penalty in Islamic Law is dependent on the nature of the crime. Factors such as severity of damage, the background of the violator, his or her intent, and repetition of the crime, play a major role in determining the extent of the penalty. Furthermore, the Prophet said:

Avoid (the maximum) penalty (hudud) on the account of ambiguity (shubuhat). -
Al-Termizi and Al-Bahaqi

Since punishment is mainly used as a deterrent and if the intent of the law in a particular case is fulfilled, the judge then has the discretion to apply a lower sentence and avoid the maximum penalty. Similarly, the judge may increase the penalty for a particular case if found necessary. The judicial Islamic record is full of cases illustrating how the Islamic law served justice. An interesting case of the Prophet himself shows the ultra sensitivity of Islam towards justice.

A Jewish person by the name of Zayd ibn al-Luthah approached Prophet Muhammad, grabbing him by the clothes on his chest and saying: “You, the family of Abu Talib are *mutla*, delinquent, in making payments.” Umar ibn al Khattab standing by pulled out his sword and said: “O Prophet of Allah, order me to cut this man's head.” The Prophet replied: “No, Umar do not cut his head. Instead, you should counsel him to be polite when he asks for his rights and ask me to give him his money in due time.”

According to the Prophet, the money he borrowed from Zayd ibn al-Luthah was the following week. Nevertheless, the Prophet ordered Umar to give Zayd 8 dinars he had owed him and an extra 8 dinars on top of it. When Umar objected a

Prophet why the extra 8 dinars?" The Prophet replied: "This was a reward for him because you scared him with your threat." Zayd ibn al-Luthah then said: "O Prophet of God, our Scripture told us that one of the signs of the Expected Prophet is that he will be with ample patience, I was only examining your patience and I believe you are the Prophet of God." See *al-Wafaa be Ahwal al Mustapha* by al Jawzi.

It is only people of passion and deep love for others that can take the kind of high ground that Prophet Muhammad did in this case.

The Spread of Vice

Islam sets vigorous controls to minimize the publicity of vice in a community. Publicity of vice leads to its acceptance and acceptance of vice leads to the degeneration of the entire society. The Qur'an clearly teaches:

And do not approach (avoid all situations that might possibly lead to unlawful sexual intercourses. Indeed, it is ever an immorality and is evil as a way. Qur'an, 17:32

O you who have believed, indeed, intoxicants, gambling, (sacrificing on) stones alters (to other than Allah) and divining arrows are but defilement from the work of Satan, so avoid (distance yourself from anything remotely related to) it that you may be successful. Qur'an, 5:90

Say: My Lord has only forbidden immoralities, what is apparent of them and what is concealed and sin and oppression without right... Qur'an, 7:33

Indeed, those who like that immorality be spread (or publicized) among those who have believed will have a painful punishment in this world and the Hereafter. Qur'an, 24:19

For this reason of limiting the news of vice and corruption, Islam made it particularly difficult to prove fornication or adultery cases. Below read what Allah said in this regard:

The woman and man found guilty of sexual intercourse, lash each one of them with a hundred lashes and do not be taken by pity for them in the religion (i.e. Law) of Allah and those who launch a charge against chaste women and produced not four witnesses (to support their allegation), flog them with eighty stripes and reject their evidence... Qur'an, 24:2-4

The penalty for adultery (made for mischief in the land) is death and for fornication is 100 lashes. The penalty purifies the person from the sin in this world and saves him or her from the punishment in the Hereafter. One can imagine the lesson a particular Muslim society learns from the execution of a case of adultery to one of its members. This lesson is certain to make each member stay as far away as possible from even thinking of committing such a grave sin.

To prove fornication or adultery cases, it is required that the accuser produce four witnesses. Each witness must testify that he or she saw the penis in the vagina. If one was not sure of this act, then all four witnesses must be lashed eighty times for false accusation and for the spread of gossip.

The possible penalty for conveying fornication gossip and the condition of four witnesses severely restricts the legal cases in the court of law. These restrictions in turn help contain the sexual gossip from becoming a common occurrence which may ease its acceptance into the community. While Islam made these severe restrictions for fornication cases to reach the legal system, it has left the door wide open for sinners of such crime to repent and change their sinful habits privately.

Justice and Guarding Safety not Penalty

The intent of Islamic law is to prevent crime and establish justice, as well as ^{fair} not simply to impose harshness and rigidity. Avoiding execution of penalty

recommended even when an actual sin is committed. To substantiate our claim, let us look closely at an example taken from the days of the Prophet. A lady by the name of al Ghamediyah came to Prophet Muhammad and said: "O Prophet of Allah *tah-Herni*, purify me from my sin, I have committed adultery." He said: "Maybe you kissed." She said: "No, O Prophet, I committed adultery." He said: "Maybe you touched." She said: "No, O Prophet I committed fornication." At this point, the prophet told her to come back after three months. Three months later, al Ghamediyah came back. He asked her if she was carrying a baby in her womb. Her answer was positive. He then sent her away telling her to come back after she bears the child. When she had the child, she came back to the Prophet asking him to execute the penalty. Again, Prophet Muhammad sent her away saying: "Go breastfeed the child for two years." When the two years were over, al Ghamediyah was at the doorstep of the Prophet again, asking him to apply the rule to her. At this point, the Prophet ordered that she be punished.

Several of the Modern day scholars, such as [Dr. Adnan Ibrahim](#), maintain that the Qur'anic penalty for adultery is lacking, not stoning as other earlier scholars believed.

From this example, it is obvious for many reasons why the Prophet allowed this lady to go away and seek repentance on her own and avoid the penalty. One can also see that he was not eager to execute her sentence, especially when she had a fetus in her womb. Preserving souls, after all, is a sacred rule in Islam. Furthermore, he did not order her into prison or issue a warrant to capture her partner-in-crime to execute the penalty on him since he had committed the sin as well.

The spirit and essence of Islamic Law in its severe penalty is to save lives, stop corruption, disallow mischief, serve justice, build a safer society and apply little or no penalty.