

CONCEPT OF CRIME AND PUNISHMENT
UNDER ISLAMIC LAW

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CHAPTER 1

INTRODUCTION

Law in every society aims at the maintenance of social control. It is a system which is primarily established to protect the rights of individuals as well as of society. The legal system in every society has its own nature, character and scope. Similarly, Islam has its own legal system known as Fiqh. Islamic law is not purely legal, in the strict sense of the term; rather it embraces all the spheres of life i.e., ethics, religion, political and economic. It has its origin in the Divine Revelation that is, the Quran. The Revelation determined the norms and basic concepts of Islamic Law.

It should be noted that there are certain basic differences between the purpose and scope of law in Islam and in the other legal systems. The scope of Quranic laws comprise rules of human conduct in all spheres of life, ensuring man's well-being in his ordinary life as well as in the Hereafter. The enforcement of Islamic laws as contained in the Quran is the duty of an Islamic State. The application of the individual's rules of moral conduct is governed by two important factors, namely the Muslim society's collective responsibility to observe Islamic teachings, and the individual's relationship with his Creator; Allah as well as with society. Muslim society is obliged according to the Quran, to enforce the application of rules of moral behaviour as divine commandments. The Quran repeatedly appeals to human conscience to follow the teachings of the Revelation for its own welfare as well as for the well-being of fellow human beings.

Thus, the Quran, by making the observance of the rules of the Syariah a matter of human conscience, has dignified the concept of law and the ethical values of its teachings, which constitute the noblest and most perfect basis of universal laws.

CHAPTER 2

HISTORICAL DEVELOPEMENT AND SOURCES OF ISLAMIC LAW

THE PRE-ISLAMIC CONDITIONS:

Before the advent of Islam, Arabia was divided into independant tribes.

In cases of disputes between members of different tribes, they often seek a priest or a seer ¹ to settle the disputes. Compliance with their decision, however, depends on the goodwill of the disputants. Since the leaders of the tribes themselves possess no executive power either, there is no criminal law, and each individual must have recourse to private justise against a thief or a murderer of a kinsman. If someone is murdered by an unknown person is found in a clan's territory and if suspicion falls on one of its members, then the clan takes the oath of participation on his behalf, but the effect of this oath may be neutralised by the victim's clan by means of a new oath. The duty of avenging the murder falls on the victim's next of kin. But since the culprit's clan generally takes his side, the blood vengeance gives rise to blood feuds which often drag for generations in renewed assassinations. It is true that blood guilt can be atoned for by payment in camels and it is up to the leaders within the tribe to see to it that a compromise is reached. But for the most part, the clans come to this decision only after having a long period of quarrels, disputes, and arguments. The blood feud is avoided whenever the murderer is voluntarily delivered up to the injured parties to be executed for revenge. This is considered as something so dishonourable to the clan that the murderer is more likely to decide to kill himself first.

Sir Abdur Rahim says; " The principle of punishment for all crimes against the person was retaliation commuted to a payment of blood money or compensation for the injury. If the injuries resulted in death, the loss caused was regarded as a loss to the tribe or family of the deceased and