

# SHARIAH: THE WAY OF JUSTICE

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## INTRODUCTION

Adroitly manipulated exposure to the imagery of a whip cracking on a naked back and a veil enshrouding a woman's face has led many to believe that the *Shari'ah*, the divine code of Muslim conduct, is in reality no more than a collection of values and practices that are primitive, uncivilized and barbaric. What to a Muslim is the object of his longing and endeavor has been very subtly projected as a relic from the dark ages which enslaves the woman and inflicts punishments on the criminal which are cruel, inhuman and degrading.

The Qur'an most certainly does prescribe corporal punishment for certain serious social crimes and it does lay down the principle of retribution, or *qisas*; it is very emphatic, too, about the crucial role of the family in human society and therefore insists on assigning different well-defined roles to men and women; and it does lay down many other regulations and laws and expects Muslims to obey the eternally valid injunctions of God and His Prophet.

But will these and similar provisions of the Shari'ah really plunge society back into darkness? Are they inhuman and barbaric? Are they an indicator of Islam's inability to keep pace with the demands of human progress? The issues need to be examined seriously to determine the place and value of the Shari'ah and its provisions in the ultimate order of human civilization and happiness. The need for this examination is especially acute in the view of the dogmatic position adopted by the West on these questions. A host of Western writers have said it, and the media continue to harp on the same theme: unless Islam is prepared to relent on these and other legal provisions of the Shari'ah 'there *can* and *will* be no accommodation; only a continuation of Western rejection of Islam'. Such vehemence makes one wonder whether the loud chorus about the Shari'ah, and such of its specific provisions as pertain to women and punishment, is in all cases the result of genuine misunderstanding and moral indignation, or whether the issue is merely being used by some as a whipping-boy to settle scores with Islam - old and new.

No apologies or excuses are needed to explain away or make acceptable to the West what has been so clearly laid down by the Qur'an and the Prophet in this regard and what has been so consistently accepted and adhered to by Muslims. There should be no place in dialogue with the West for such tortuous, self-deprecating arguments as: 'polygamy is permitted, but the conditions of *justice* attached to it makes it effectively prohibited'. Or: 'Corporal punishment is prescribed but hedged in with such unworkable requirements of evidence that it is virtually impossible to carry it out. Or, at least, it cannot be carried out unless an "ideal" just society is established, when it will in any case become unnecessary'.

Why those who advance this specious logic should think that God would lay down things which were impossible to practice is not made clear. As if He does not know how to say what He means, and say it clearly! Such excuses are unfair to the Qur'an and the Prophet, and an affront to their wisdom, and at the same time illogical and implausible to the unconvinced.

## TOWARDS BETTER UNDERSTANDING

I do not intend to convince everyone, for this is humanly impossible; nor offer excuses, for they are neither necessary nor convincing. What I therefore wish to attempt is to discuss the place of justice in the Shari'ah and the basis and nature of the provisions regarding women and criminal punishment in a way that may at least generate understanding and tolerance, if not agreement. It should be recognized that the discussion here can be only brief and general, and perhaps will not do full justice to Islam's position on important and complex issues like the place of women in Muslim society.

## SHARI'AH: THE TRUE EMBODIMENT OF JUSTICE

Specific provisions of the Shari'ah can be properly understood only in the context of its total scheme - its conceptual basis, primary objectives and goals and overall framework.

## CONCEPTUAL BASIS

*Shari'ah* literally means 'way to water' - the source of all life - and signifies the way to God, as given by God. It is the Way, which encompasses the totality of man's life. Being God-given, the *Shari'ah* is the manifestation of His infinite mercy. It is thus also the only true embodiment of, and the best way to, justice.

## THE SOURCE OF JUSTICE

Man's quest for justice without recourse to divine help, and failure to find it, is the most persistent and tragic theme of human history. For justice, an ideal deeply cherished, ardently desired and ceaselessly pursued by mankind from the very first day of its existence on this planet, can never be truly conceptualized nor practiced unless it is rooted in the belief in One God.

He, the infinitely Merciful and Absolutely Just, has created everything with a purpose and in perfect harmony and balance. He has also guided every creation so that it fulfils that purpose. The whole universe and all creation is sustained on this foundation. Justice for man, therefore, as for everything else in creation, lies in obeying God by doing what He has laid down as 'right' and avoiding what He has laid down as 'wrong'. It is only God who can establish in the intricate network of interrelationships and roles, mutual rights and obligations and consequent rewards and punishments on the basis of absolute standards of justice. That is the reason divine guidance is frequently called the 'Balance' in the Qur'an (al-Rahman 55: 1 - 9). All other sources of knowledge and modes of determination, whether scientific enquiry, pure reason or empiricism, suffer from one deficiency or another, being rooted in human imperfection.

## JUSTICE: THE SUPREME PURPOSE

Justice is the supreme purpose and ruling spirit of the *Shari'ah*. It provides the framework for the entire corpus of Islam, shaping and moulding its beautiful configurations. The paramount purpose for which the Prophets were sent and struggled all their lives was to guide man to achieve justice.

*'We sent our messengers with clear signs, and sent down with them the Book and the Balance so that men may conduct themselves with justice' (al-Hadid 57:25)*

This is also the very ideal for which the community of Islam, the Ummah, exists as a separate entity. *'Thus We made you a just community, that you be witnesses to mankind' (al-Baqarah 2:143)*. And again: *'O Believers, be you upholders of justice, witnessing for God alone' (al-Nisa' 4:135)*.

Indeed, no conception of Islam and Muslim should be possible without justice. Justice, in Islam, lends meaning and colour to all human endeavors, both on an individual level and as a societal ideal, extending from now into eternity. It serves as the ultimate criterion for the internal ordering of the soul and the external regulation of relationships. The Qur'an repeatedly emphasises that *Zulm* - wrongdoing - has absolutely no place in Islam.

## ULTIMATE CRITERION OF JUSTICE

The *Shari'ah* itself is therefore the ultimate criterion of justice and mercy, and cannot and ought not to be measured against changing human standards.

*'And perfect are the words of your Lord in truthfulness, and in justice; His words cannot be changed; He is the All-hearing, All-knowing' (al-An'am 6:116)*.

Having been given by God, through the last of His prophets, and, therefore, for all time to come, it could not be otherwise.

Changes in human understanding, progress in standards of civilization, which is considered to be linear in time, and advances in technology are all supposed to generate genuine pressures on the *Shari'ah* to change or to give up those parts which do not seem to rhyme with the late twentieth century time. But

what has really changed? Has man changed? Essential human nature, its motives and drives, its emotions and desires have remained virtually unchanged throughout the ages. Technology has certainly advanced and some ways of looking at the world have altered but no new definitions of concepts like 'cruelty', 'civilized', 'justice', 'equality' have emerged to command universal adherence. Man's lusts and fears, hopes and anxieties, loves and hates, aspirations, yearnings and longings remain what they have always been. Similarly, the idea that something which evolves later in time is necessarily superior to that which preceded it is also untenable. The only absolute and universal criteria can be those given by God, the All-knowing, whose words are above any change.

## OBJECTIVES AND FRAMEWORK

### PLACE OF THE INDIVIDUAL

The overall scheme of the Shari'ah and its various specific provisions are largely determined by the way Islam resolves the perennial question of tension between the individual and society and the fundamental and crucial role it assigns to the family.

The concept of the individual and the emphasis on his achievement is not the product of modern Western thought, as many people have tried to make the world believe. The individual has always been the cornerstone in Islam's total scheme and plan of justice, though in a way fundamentally different from the Western concept. His status and achievement neither depend upon nor can be measured by the standards of 'consumption'. In the sight of God, real human progress is moral, not material; its real measure is possible in the life Hereafter, not in this world.

This theme is so patently obvious and prominent in the Qur'an that it requires no substantiation. On the Day of Judgment, it will be individuals in their personal capacities, and not groups and societies, who will be held fully responsible and accountable for what they have done in their earthly lives. *'Everyone of them will come to Him on the Day of Resurrection, all alone' (Maryam 19:95)*. And: *'Now you have come to Us, alone, just as We created you the first time!'* (*al-An'am 6:94*).

This is because it is the individual who has been given free will, a moral sense and the knowledge of right and wrong. It is therefore also important that he should be fully enabled to achieve his purpose and realize his potential. This seems to be the primary thread running through the entire fabric of the Shari'ah. His life, person, freedom, possessions and honour are sacred and inviolable: no human being, not even the most powerful ruler, has the right, privilege or authority, unless acting in accordance with the law of God, to take anyone's life, harm anyone physically, take away their possessions or violate their honor.

### IMPORTANCE OF SOCIETY

Having said that, it is important to recognize that the individual lives in a society without which he can neither survive nor find fulfillment. Social order and its good are not separate from or in conflict with individual good. Both should stand together - fused and harmonious, co-operating and assisting - in the service of their One God. Both are inter-dependent and in equilibrium. Both have their well-defined functions and orbits to follow. *'It behooves not the sun to overtake the moon, nor does the night outstrip the day. Each floats in its orbit' (Yasin 36:40)*. Also the balance is provided by divine guidance in the tensions between various components of human life - between the individual and society, between man and woman. The congregational nature of all forms of worships - whether prayers, charity, fasting or pilgrimage - and great stress on the formation of the Ummah as an integrated whole amply reflect Islam's concern for society and its employment as a means of the individual's development, purification and self-realization.

## THE FAMILY

The family is the most fundamental unit in the total scheme of social order in Islam. It enjoys the highest status and the most prestige. It is the fount of the human race, its culture, society and civilization. Procreation is made possible because of sexualisation and it is institutionalized in the family. Similarly the family achieves the development of the individual and his transition into society.

The family is a divinely inspired institution in the sense that it came into existence with the creation of man. *'O Mankind, remain conscious of your duty to your Lord, who created you of a single soul; and, of like nature, created its mate; and from the pair of them created and spread many men and women'* (*al-Nisa' 4:1*). A man and woman, only because they are different and yet complementary, are capable of forming the unity of family, which is essential for the fulfillment of the individual and the realization of the common good. The family is thus the cradle of the individual and the cornerstone of society.

The family Islam cultivates and strengthens faith in One God. It preserves and communicates values and culture. It provides a stable environment for the development and fulfillment of the individual and enriches the lives of all its members, providing each the caring and sharing, which he or she needs.

However, like any other social institution, the family can survive only if the roles within it are clearly differentiated and strictly followed.

As only women are capable of bearing children, even if no other differences between men and women are accepted, Islam assigns to the female the primary responsibility for home and family; while man is assigned the primary responsibility for life outside the home. Every institution needs a head and the role of head of the family and responsibility for its economic support also devolve on the male. Despite this primary division, men have the duty to share household burdens and women are not debarred from roles outside the home. And within the home, the woman shares the power and responsibilities of the head of the family, and may even become one if circumstances so require.

## NATURAL SEQUELS

It therefore follows that any act which vitiates against the individual or which tends to weaken or disrupt the social order, especially the family, is no less a serious crime than, say, high treason against the state. The Shari'ah has accordingly made every possible arrangement to ensure, within the constraints of human limitations and imperfections, that the individual is not hampered in seeking in his fulfillment and carrying out the purpose of his creation; that the two pillars of the family, man and woman, continue to participate in and strengthen the family in accordance with the roles assigned to them; and that the social fabric is not damaged by any single person's vandalism.

The role assigned to both man and women by the Shari'ah and the arrangements it makes to protect and reinforce these roles can only be appreciated in the above perspective. Similarly, the severe penalties for extra-marital sex, theft, libel and drinking, and the prescription of requital, or *qisas* for murder and physical injury, must be seen in the context of this overall scheme of life.

## WOMAN

### ROLES WITHIN THE FAMILY

The social roles assigned by the Shariah to man and woman within the family emanate from one simple but profound reality: the two are biologically and sexually different; only the woman can bear children. Other important psychological, physical and social differences follow from this. But even if, for the sake of argument, these other genuine differences are dismissed as having been 'socially caused', the reality of this biological and sexual difference is impossible to deny.

Obviously the role of bearing children is one that the woman can neither shirk nor transfer, unless the era of test-tube babies is ushered in or mankind decides to extinguish itself. Sex difference, reproduction, role of differentiation, sexual morality, survival of the family, healthy child development and the health and strength of society are closely inter-linked and mutually dependent phenomena, in which sex-based role differentiation is the key to the stability of the entire system. If it is abandoned, the whole chain will snap: sexual morality will collapse, personality disorder will be rampant, and anarchy and chaos will be the order of the day. In short, the family will vanish.

There is no convincing case however for saying that role differentiation is socially caused; on the contrary, the cumulative weight of all evidence, whether from pre-history or history, indicates unmistakably that every society has chosen to do things the same way, even the contemporary West, which is so vociferous in professing 'equality of the sexes'. No society is on record, which has ever progressed without placing woman in full charge of the home.

## **DIFFERENT BUT NOT INFERIOR**

Hence the principle in the Shari'ah: the woman's place is in the home. However, it is very important to note that to be different is NOT to be inferior. Islam attaches no stigma to being a woman; there is no inferior nature, no myth of fall and no responsibility for original sin. To bear and rear children is no disgrace either. To rule over and manage the kingdom of home - that haven of human happiness and progress - is no mean achievement. Home and children can be degrading and a burden only in a society which chooses to make them so. In Islam, domesticity is not a devalued sphere of human life, nor is home in any way inferior to public life. Indeed, the very epithet 'confined to the four walls of the home' is absurd to a Muslim, as the home in Islam, far from being a place to be looked down upon with contempt, is more important and sacred than even a parliament building or a university, and certainly more prestigious, creative and rewarding than the shop floor or secretarial desk, where two thirds of 'emancipated' women finally end up working.

## **EQUALITY, NOT SIMILARITY**

Equality is one of those human yearnings, which usually elude definitions. Its translation into roles, rules and norms has always been subjective. Unfortunately, it is being used by modern feminists as a slogan in their campaign to erase all role differentiation. It is being used, too, as a smokescreen from behind which to direct the barrage of attacks against the Shari'ah for its various provisions regarding women.

That equality is a profound human urge and a genuine human ideal is beyond doubt. What is equally true and obvious is that equality of role does not necessarily mean similarity of role. Once equality is confused with similarity, the only possible conclusion is: 'A truly equal two-sexed society is unimaginable'. Ending role differentiation is bound to have catastrophic consequences as already noted, for the interlinked phenomena of sexual morality, the family, reproduction, child-rearing, personality development and society, as is already evident in the West. Even such an apparently relatively minor phenomenon as the spread of contraceptive techniques has been profoundly instrumental in promoting extra-marital sex, changing sex values, upsetting and confusing roles, disrupting the family and devaluing child-rearing and home life. Population control may have been achieved but a glaring question mark over the final destiny of the human race has appeared.

Islam recognizes the obvious differences between man and woman and shapes their social roles accordingly, but it lays no less emphasis on the similarity of their essential natures as human beings and on their right to equality of opportunity to find fulfillment through their roles in this world and, finally and more importantly, in the eyes of their God in the life hereafter. According to the Shari'ah, man and woman are equal as human beings and have an equal number of mutual obligations and rights. The family unit has the man as its head, for no institution can survive without a head; but this in no way makes the woman unequal to man. She is not obligated even to take her husband's name and lose her identity. Her share in inheritance is one-half of the male share, but she is under no obligation to make any financial contribution to the maintenance of the family.

Many specific provisions of the Shari'ah regarding the rights and obligations of women, their conduct and behaviour, their dress and segregation, marriage and divorce laws and work outside the home can be better understood in this light. But, what is equally important to bear in mind is that some of the prevalent practices in the Muslim societies today, that have come into vogue as a result of centuries of decadence and stagnation as well as un-Islamic influences, should not be used to understand and judge Islam.

## **SEX OUTSIDE MARRIAGE**

Sex, in Islam is not a taboo to feel guilty about. It is a natural and creative urge, a God-given gift. But the bond of marriage must be tied before enjoying the pleasures of sex, which are the rewards for the responsibilities that the man and woman bear in rearing a family; these joys lighten the burden and cement and bind the relationship. To seek sex outside the limits set by God is a sin, to seek it within these limits is therefore an act of worship.

If sex inside and outside marriage were equally legitimate or easily available, the sacred institution of the family would be gradually destroyed. Islam therefore not only completely prohibits all forms of sexual deviation and pre and extra-marital sex; it arranges to make them highly inaccessible and also severely punishable. Hence the regulations about covering various parts of the body and the social mixing of the sexes.

## **POLYGAMY**

Polygamy is permitted by the Qur'an; though it is not enjoined, as some people apparently believed. Justice is enjoined, as far as is humanly possible, otherwise one should remain monogamous. Thus, disadvantages of a polygamous marriage are recognized, but not to the extent of prohibiting it legally. This legal provision can be properly understood only in the context of Islam's position on two important issues, as already explained. Firstly, that the family is the cornerstone of human society and any extra-marital sex is completely prohibited. Married life is the most desirable way of life - Islam wants a woman to be a wife and never a mistress. Both man and woman have to make some sacrifice to make a success of family life. Secondly, Islam's law is for all times to come and should therefore, as far as is practical, cater for all possible social and individual situations. Legal provision, like a total ban on divorce or polygamy may indeed result in far more serious consequences than they may solve. Even in countries where polygamy is illegal, it may be argued, monogamy is fairly rare, so sex outside marriage is considered as polygamy, as it should be.

It is left to the societies and individuals, within the freedoms and prohibitions laid down by Islam, to regulate their conduct, as they may desire. What is important to note is that it takes a woman, in addition to a man, to make a polygamous marriage; for no marriage in Islam can never take place without her consent. And the first wife can also claim a divorce if she cannot live with the situation. Hence it is entirely within the power of individuals virtually to eliminate polygamy without recourse to law.

## **MARRIAGE AND DIVORCE**

Women's consent is an essential legal condition for marriage in Islam. If such consent is not being obtained in Muslim societies today, the problem is a result of social circumstances, not of the legal provisions of the Shari'ah. The situation must change once the Shari'ah is implemented.

It is certainly simple in theory for a man to divorce his wife in Islam. But it is found to be very difficult for him to do so in practice; the very low rate of divorce is enough to prove this. Indeed, the power to divorce is more of a responsibility to save the marriage. Among the things permitted by God, divorce is the most disliked by him, said the Prophet. On the other hand, while the woman cannot pronounce divorce like the man, it is not difficult for her to obtain one, even on the ground of her husband's physical appearance not being to her liking.

## WORK OUTSIDE THE HOME

To preserve the role differentiation and to retain the incentives for strengthening the family, Islam discourages women from working outside the home. This discouragement in no way prejudices a woman's right to own property, to conduct business, to receive and impart education, to engage in cultural and creative activities, and even take up job when necessary. Yet to ask woman to work outside the home is indeed to make her unequal; it is to ask her to take on the enormous stress of doing two jobs.

The urge to work is only natural, but work as the center of life is one product of a society which is consumption-oriented and where status depends on earning capacity. Women work today, not only through economic necessity, but because they are under other subtle pressures; accusations of wasting their talents on 'degrading' domestic chores, lack of status, boredom and isolation. In Islam, as we have already noted, the whole orientation of the individual and society is radically different. Work is still very important, but the real goal in life is to please God.

## PUNISHMENTS

Punishments have always been considered an integral part of the concept of justice. Indeed, a common man would find it hard to think of justice as something very different or separate from rewarding or punishing people according to how well or badly they observe the body of the mutual rights and obligations obtaining in their society. But if the concept of punishment is universal, the controversies surrounding it are nonetheless intense. We shall now look at some basic Islamic principles concerning punishments.

## BASIC PRINCIPLES

Man is responsible for his actions: this simple truth provides the whole basis for the justification of punishment. For, to fulfill the purpose of this creation, he has been granted the freedom to choose and act, and the moral sense to distinguish between right and wrong. Responsibility goes with knowledge and freedom. Punishment cannot therefore be meted out to anyone for someone else's actions, for acts intended but not performed or for acts done under duress or while not of sound mind. Everyone must be equal before the law and their guilt must be established by the due process of justice.

## REPENTANCE AND PUNISHMENT

Punishment in Islam has nothing to do with the notions of atonement, expiation or wiping away of sin. A crime is essentially an act of injustice to one's own self, a sin against God. It can be wiped away only by God, and that He does when a person turns to Him, truly repentant and seeking forgiveness. Between man and God, therefore, the total emphasis is on repentance, and punishment can be no substitute for it. But a crime is also an act against the social order and in this sphere mere repentance cannot be a substitute for punishment which is a means of protecting and strengthening the society.

## PROPORTIONAL JUSTICE

It is important to note that there is no concept in Islam of the punishment being exactly and justly proportional to the crime. Absolute and truly proportional justice would require the exact and complete evaluation of such complex factors as intentions and motives, the surrounding circumstances, the causes and repercussions- factors which human judges must consider but cannot evaluate fully and which only God, in the new moral order to be set up in the life after death, can measure. Islamic punishments are not therefore to be judged on the scales of proportional and full retribution. They are however laid down by the Being who is infinitely Merciful and Wise, and are therefore more suitable for the particular crimes than what can be prescribed by any human legislatures or judges.

## PART OF A WHOLE

Most importantly, punishments are only a part of a vastly larger integrated whole. They can neither be properly understood, nor successfully or justifiably implemented in isolation. First, law is not the main, or even major, vehicle in the total framework for the reinforcement of morality; it is the individual's belief, his God-consciousness and *taqwa*, - that inherent and innate quality which makes him want to refrain from what displeases God and do what pleases Him. Second, justice is a positive ideal, which permeates and dominates the entire community life; it is not merely an institutionalized means of inflicting punishment. Third, and consequently, a whole environment is established where to do right is encouraged, facilitated and found easy and to do wrong is discouraged, inhibited and found difficult. All men and women are enjoined, as their foremost duty, to aid, exhort and commend each other to do good and to avoid evil.

## FUNCTIONAL NATURE

Penalties in Islam are more of a functional nature, to regulate and deter. God has laid down a body of mutual rights and obligations, which are the true embodiment of justice. He has also laid down certain bounds and limits to be observed and maintained for this very purpose. If men and nations desire to move in peace and safety on the highways of life, they must stick to the 'traffic lanes' demarcated for them and observe all the 'signposts' erected along their routes. If they do not, they not only put themselves in danger, but endanger others. They therefore naturally make themselves liable to penalties -not in vengeful retribution - but to regulate the orderly exchanges in man's life in accordance with justice.

It is a significant contribution of Islam that these penalties are called *hudud* (boundaries) and not punishments: they are liabilities incurred as a result of crossing the boundary set by God. An important consequence of these *hudud* having been laid down by God, and not by man, is that it is beyond human authority to reduce or supercede them out of a sense of mercy greater than that of God; nor can a tyrant or autocrat add to them out of a greater sense of strict justice. For no one can be more merciful or wiser or more just than God himself.

Another important function which these punishments serve is educative, and thus preventive and deterrent. The Qu'ran alludes to this aspect when it describes them 'as exemplary punishment from God' (al-Ma'ida 5:38). Punishments are thus designed to keep the sense of justice alive in the community by a public repudiation of the acts violating the limits set by God. They are expected to build up in the society a deep feeling of abhorrence for transgression against fellow human beings, and therefore against God - a transgression which, according to the Qur'an, is the root cause of all disorders and corruption in human life.

## RETRIBUTION - QISAS

Apart from punishments for transgressions like extra-marital sex, theft, libel and drinking, the Qur'an also provides for the principle of *qisas* - retribution. When a person causes physical injury or harm to a fellow human being, Islam gives the injured party the right of equal requital - the well-known principle of 'an eye for an eye, a tooth for a tooth'. This procedure is persistently labeled by critics as primitive and uncivilized. In the Islamic view of history, it is worth pointing out, what is primitive has never been necessarily uncivilized. The first man was given all necessary knowledge and guidance, and though he may have been technologically backward compared to the twentieth century, he definitely was not humanly backward. Uncivilized is what man thinks and does in deviating from the divine order.

In the eyes of the Qur'an 'in retribution (*qisas*) lies the source of life for you'. The reasons are obvious. First, the right of retribution belongs to individuals, not society or the state; this simple shift in responsibility results in a profound and far reaching change in the whole system of implementing justice. The state does not have to intervene every time two human beings are involved in a dispute.

Thus, instead of starting an irreversible process of trial and punishment, it leaves the ground open for settlement between individuals, without interference by impersonal bureaucratic machinery, though under no circumstances can the individual take the law into his own hands.

The injured person in his turn may forgo his right to retribution by forgiving, or may agree to accept a monetary or token recompense instead. The Qu'ran, in fact, highly recommends the act of forgiving. Thus, under *qisas* punishment is avoidable without burdening the executive or judiciary with the dilemma of whether to exercise mercy. As against a court which must act according to law once a case is brought before it, an individual is free to act as he wishes. Justice has to be blind, but an individual may take circumstances into account, and suspend judgment in the hope of being forgiven by God in the hereafter. Very few realize that the principle of *qisas* even allows capital punishment to be avoided.

## MERCY AND LENIENCY

Having prescribed punishments and imposed strict and meticulous, though not impossible, conditions of evidence, Islam has built in a whole range of principles and precepts which reflect not a frenzied desire to flog and stone but a compassionate urge to avoid and eschew. Islam does not allow either the state or individuals to spy upon people unless well-founded suspicion exists that a crime is being committed or a fellow human being's rights or interests are in jeopardy. Nor is it obligatory to report every crime. Where possible, settlements outside court are preferred. The punishment is swiftly over; the guilty man and his family do not have to live with the kind of lengthy public stigma that they would have had to endure in the case of a prison sentence at the end of a trial. The imposition of divinely prescribed *hudud* enhance, and not diminish, the individual's dignity and stature in society and before God.

## ALLEGED CRUELTY

As to the alleged cruelty of physical penalties, one wonders if to deprive a man of his freedom -- his most precious and valuable possession - and his right to act and continue to make moral choices, to live with his family, to work and support them is not more cruel. Indeed, a prison term can inflict untold misery on innocent people whose lives are intertwined with the life of the prisoner. Prison becomes a school for hardening criminal behavior and a breeding ground for recidivism. Why should it be considered more cruel for a man found drug trafficking to be given ten lashes than to be sent to languish in prison for, say, ten years.

## REFORM SYNDROME

Why does Islam want to punish and not reform? The question is fallacious, for in Islam every institution of society is value oriented and owes a responsibility towards the moral development of every person from the cradle to the grave. Reform is therefore a pre-crime responsibility and not a post-crime syndrome and nightmare. Islam makes every effort to ensure that inducement to commit crime is minimal. Once the crime is committed, the best place for reform is in the family and in society, where a criminal is to live after punishment, and not in a prison where every inmate is a criminal; unless of course a society considers itself to be more corrupt and less competent to effect reform than a jail! Against this, the 'modern, enlightened' approach is to provide every inducement to crime by building a society based on conspicuous consumption; to make society, education and every other institution 'value - free' and then to try to reform a criminal by segregating him and keeping him in a prison.

## PROCEDURAL JUSTICE

Sentences in Islam are certainly harsh, but still more strict and severe are the procedures laid down to be observed before a man may be convicted. These procedures are modeled on the paradigm of the Day of Judgment, when even God, though he is All-knowing, and Just, will not punish anybody unless He establishes his guilt. To let nine criminals go free is preferable to convicting one innocent man, said the Prophet.

## CONCLUSION

The Shari'ah is an integrated homogenous whole. Once one understands its basic concepts, objectives and framework, one cannot but conclude that it is capable of creating the most human and just society, a peace and blessing for mankind. Difficulties only arise when critics try to measure the ocean of divine knowledge, wisdom and justice with their own thimble of pedestrian criteria and standards. Today's Muslim societies are not model societies – they are infested with ills and evils - yet the comparatively stable family life, absence of delinquency, low crime rates, much greater freedom from drugs and alcoholism, warmth of brotherhood, generosity and mutual aid and help - all these are the legacies of that divinely given code of life, the way to Justice, which once they used to adhere to, and yearn to have the change to return to - the Shari'ah.