



←— RULINGS OF —→
ISLAMIC LAW
A SIMPLIFIED PRESENTATION



◆ CHAPTER 13: ◆

MANDATORY PUNISHMENTS

(HUDUD)



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Chapter 13

Mandatory Punishments (*Hudud*)

The Arabic term *hadd* (plural: *hudud*) is defined as a punishment stated in Islamic law for encroaching on the limits set by Allah. It is also defined as a punishment stated in Islamic law, as a deterrent from committing a similar offence.⁴⁹⁹ The legitimacy of these punishments is based on the Qur'an, the Sunnah and the unanimity of scholars. Specific punishments are stated in the Qur'an and the Sunnah as applicable to certain crimes, such as adultery and theft.

The *hudud*, i.e. mandatory punishments, aim to deter people from committing acts of disobedience of Allah and encroaching on what He has forbidden. Thus, they help to spread security and reassurance in the community. In addition, they serve to absolve the guilty of their guilt. In his report on how the Ansar pledged support and protection to the Prophet (peace be upon him), [Ubadah ibn al-Samit mentions that the terms of that pledge included that 'Whoever commits any of these (offences) and is punished for them, such punishment absolves him.'⁵⁰⁰

⁴⁹⁹ Al-Nadawi, *Al-Fiqh al-Muyassar*, p. 361.

⁵⁰⁰ Related by al-Bukhari, *hadith* No. 6,784; Muslim, *hadith* No. 1,709.

Adultery

Definition and ruling

In Arabic, *zina* stands for both fornication and adultery. Linguistically speaking, it means having sexual intercourse outside marriage. In Islamic terminology, it refers to sexual intercourse between man and woman when there is no legitimate marital relationship, real or imagined, between them.⁵⁰¹

Fornication and adultery are major sins. Allah says: ‘Do not come near adultery. It is indeed an abomination and an evil way’ (17: 32). [Abdullah ibn Mas‘ud reports: ‘I asked Allah’s messenger which sin is the gravest in Allah’s sight? He said: “To attribute an equal to Allah when He is the One who created you.” I said: “This is certainly grave. What comes next?” He said: “To kill your child so that he (or she) does not share your food.” I asked: “Which comes next?” He said: “To commit adultery with your neighbour’s wife.”’⁵⁰²

The nature of this sin

Adultery is one of the gravest and most wicked sins as it leaves very serious effects on both individuals and society. It causes the absence of clarity of lineage, which leads to people’s rights of inheritance being mixed up, and families split and collapse

⁵⁰¹ Al-Nadawi, *Al-Fiqh al-Muyassar*, p. 364.

⁵⁰² Related by al-Bukhari, *hadith* No. 6,861; Muslim, *hadith* No. 86.



as a result, with grave consequences for children and their upbringing. When adultery leads to pregnancy, the child is often brought up by someone who is not its real father. Social ties are considerably weakened by the spread of adultery, and therefore Islam warns very sternly against all sexual relations outside the marriage bond and prescribes severe punishments for it.

The mandatory punishment for adultery

An adulterer can be either a *muhsan* or a non-*muhsan*. A person is defined as *muhsan* if he or she meets the following conditions: 1) Having had normal and legitimate sexual intercourse; 2) The preceding intercourse was in a legitimate marital relationship; and 3) Both man and woman must be at the time of their sexual intercourse sane, free adults. Thus, a *muhsan* person is one who has had sexual intercourse with his wife when they both were lawfully married and free, sane adults. This makes four conditions that must be met for the mandatory punishment for adultery to be enforceable: adulthood, sanity, freedom and a previous sexual intercourse in a legitimate marriage.

The mandatory punishment for adultery is stoning to death, whether the adulterer is a man or a woman. This punishment is confirmed to have been stated and done by the Prophet (peace be upon him).



It is reported that [Umar addressed the people as follows: ‘Allah sent Muhammad with the message of the truth and revealed the Book to him. His revelations included the verse that mentions stoning and we read and understood it. The Prophet (peace be upon him) enforced the stoning punishment as we did after him. I fear that as time passes someone might say that the stoning punishment is not in Allah’s book. Thus people would err by abandoning something Allah has legislated. The stoning punishment is right and in Allah’s book applicable to stoning, enforceable on adulterous men and women provided the required evidence is confirmed, or pregnancy takes place, or confession is given.’⁵⁰³ Abu Hurayrah reports: ‘A Muslim man came to the Prophet (peace be upon him) in the mosque and called out to him, saying: “O Messenger of Allah, I have committed adultery.” The Prophet (peace be upon him) turned away from him. The man came over to face him and said, “O Messenger of Allah, I have committed adultery,” and the Prophet (peace be upon him) turned away from him. The man did this four times. When he had confessed four times, the Prophet (peace be upon him) called him over, and asked him: “Do you suffer from any insanity?” The man said, “No.” The Prophet (peace be upon him) asked him: “Are you married?” The man said: “Yes.” The Prophet (peace be upon him) said to people: “Take him away and stone him.”’⁵⁰⁴

⁵⁰³ Related by al-Bukhari, *hadith* No. 3,872; Muslim, *hadith* No. 1,691.

⁵⁰⁴ Related by al-Bukhari, *hadith* No. 6,825; Muslim, *hadith* No. 1,691.



An adulterer who does not meet the above-mentioned conditions that make a person *muhsan* is given a lesser punishment. The punishment in this case is 100 lashes and exile for one year. To send the woman adulterer into exile, she must be accompanied by a *mahram*, i.e. a relative whom she is forbidden to marry, such as her father or brother. This punishment is stated in the Qur'an: 'As for the adulteress and the adulterer, flog each of them with a hundred stripes, and let not compassion for them keep you from [carrying out] this law of Allah, if you truly believe in Allah and the Last Day; and let a number of believers witness their punishment' (24: 2). [Ubadah ibn al-Samit reports that Allah's messenger said: 'Take this from me; take this from me. Allah has stated a way for them (i.e. the adulterers): the virgin man and the virgin woman 100 lashes and exile for a year.' Exile means sending the adulterer away from his home town.

Scholars differ on whether the physical punishment should be combined with a year's exile. Al-Shafi'i and Ahmad ibn Hanbal confirm that both are applicable. Malik and al-Awza'i consider that the adulterer is sent into exile and punished physically, but the woman adulterer is not. Abu Hanifah maintains that exile is not added to the physical punishment unless the judge considers that it serves an important purpose. In this case he orders exile, as he determines.

Proof

Before the punishment for adultery is enforced, the crime must first be proven to have occurred. The proof required is one of two things: the first is four confessions by the adulterer, even if these confessions are made at different times. The Prophet (peace be upon him) accepted the confessions of Ma [iz and the Ghamidia woman. Four confessions are required because when Ma [iz confessed three times, the Prophet (peace be upon him) sent him away. Only when he added a fourth confession did the Prophet (peace be upon him) enforce the punishment.

When a confession is made, the person making the confession must make absolutely clear that he has had penetrative intercourse. The reason is that he may speak of adultery but means only having had some pleasure with a woman without actually going as far as penetrative intercourse. In that case, no mandatory prescribed punishment is due. When Ma [iz made his confession before the Prophet (peace be upon him), the Prophet (peace be upon him) said to him: ‘Perhaps you might have only kissed the woman or played with her?’ Ma [iz said: “No...” The Prophet (peace be upon him) repeated his questioning, wanting to make clear that the man meant full intercourse. He hoped that Ma [iz would give reason to make the case short of confirmation. When Ma [iz made it absolutely clear, doubt was removed.

It is absolutely important that the person concerned should stick by his confession throughout. The Prophet (peace be upon him) repeatedly sought confirmation from Ma [iz, hoping that he

would go back on his confession. When there was no way out and the punishment had to be enforced, people stoned Ma [iz. As the stoning was going on, Ma [iz tried to escape and people chased him. When the Prophet (peace be upon him) heard of this, he said: ‘You should have let him escape.’⁵⁰⁵

The other type of proof is the testimony of four witnesses. Allah says: ‘Why did they [who slandered] not produce for it four witnesses? And when they do not produce the witnesses, then it is they, in the sight of Allah, who are the liars.’ (24: 13). For their testimony to be accepted, the following conditions must apply:

1. There must be four of them together. If there are less than four, their testimony is not accepted.
2. The witnesses must be sane adults. Testimony by an insane person, or a boy who has not attained puberty, is unacceptable.
3. They must be men of integrity. Women are not acceptable as witnesses to adultery because they are too honourable to witness an act of lewdness. On the other hand, a person of suspect morality and integrity is unacceptable. Allah says: ‘Call to witness two persons of known probity from among yourselves’ (65: 2).
4. The witnesses must have seen the act of adultery, describing it so graphically as to leave absolutely no doubt that they mean penetrative sex, not mere foreplay or

⁵⁰⁵ Related by al-Tirmidhi, *hadith* No. 1,428; Ibn Majah, *hadith* No. 2,554.

similar pleasurable action. They must have actually seen the adulterer's penis inside the woman's vagina.

5. The witnesses must be Muslims; as the testimony of an unbeliever in such a case is unacceptable.
6. They must give their testimony in the same session, whether they come together or separately.

If any of these conditions does not apply, the witnesses are deemed to have made a false accusation and the punishment for that offence is enforced against them all.⁵⁰⁶ They would be flogged 80 lashes as Allah said, “And those who accuse chaste women and then do not produce four witnesses – lash them with eighty lashes and do not accept from them testimony ever after. And those are the defiantly disobedient.” (24: 4)

The crime of false accusation of adultery

Qadhf is an Arabic root that originally means ‘throwing stones or similar objects’, and then came to be used to mean accusing others of committing immoral offences such as adultery and fornication, as such accusations also cause harm to the accused. In Islamic terminology it refers to false accusation of adultery or sodomy.

Ruling: Making a false accusation of adultery is one of the major sins and it is forbidden by clear statements in the Qur'an and the Sunnah, and by the unanimity of scholars. It is

⁵⁰⁶ Al-Nadawi, *Al-Fiqh al-Muyassar*, p. 367.

absolutely forbidden to accuse anyone of immoral and lewd action. Allah says: ‘Indeed, those who [falsely] accuse chaste, unaware and believing women are cursed in this world and the Hereafter; and they will have a great punishment’ (24: 23).

Abu Hurayrah reports that the Prophet (peace be upon him) urged believers to ‘avoid the seven major sins’. He mentioned among these the ‘false accusation of chaste believing women of adultery’.⁵⁰⁷ All Muslim scholars agree that making such a false accusation is strictly forbidden and consider it as a major sin.⁵⁰⁸

Punishment for false accusation

Allah has determined that the punishment for anyone who accuses a Muslim of adultery, without providing the necessary proof, is 80 lashes. Furthermore, the accuser is considered a *fasiq*, i.e. ‘transgressor’ and he is totally disqualified as a witness in any case whatsoever. The punishment applies to all accusers, men or women. Allah says: ‘And those who accuse chaste women and then do not produce four witnesses - lash them with eighty lashes and do not accept from them testimony ever after. And those are the defiantly disobedient.’ (24: 4) If such a person repents of his deed, his testimony is accepted. To ensure that, his repentance includes that he acknowledges the falsehood of his accusation, regrets it and prays to Allah to grant him forgiveness. Allah says: ‘Excepted are those who

⁵⁰⁷ Related by al-Bukhari, *hadith* No. 2,766; Muslim, *hadith* No. 89.

⁵⁰⁸ Al-Nadawi, *Al-Fiqh al-Muyassar*, p. 369.

afterwards repent and make amends; for Allah is Much-Forgiving, Ever-Merciful' (24: 5).

Allah has prescribed this severe punishment for the false accusation of adultery for several reasons: 1) protecting society; 2) safeguarding people's honour; 3) putting an end to evil talk; and 4) ensuring that indecency continues to be held as repugnant in Muslim society.⁵⁰⁹

Drinking intoxicants

Khamr is a general word that refers to any substance that enshrouds the human mind. In Islamic terminology it refers to any intoxicating drink, whether it is squeezed, brewed or cooked.⁵¹⁰

Ruling: Drinking any type of intoxicant is forbidden, whether it is in small or large quantities. Indeed drinking is a major sin which is forbidden in the Qur'an and the Sunnah, as well as by the unanimity of scholars. Allah says: 'Believers, intoxicants, games of chance, idolatrous practices and divining arrows are abominations devised by Satan. Therefore, turn away from them so that you may be successful' (5: 90). The order to 'turn away' is a definitive statement of prohibition. [A'ishah reports that the Prophet (peace be upon him) said: 'Any drink that intoxicates is forbidden to take.'⁵¹¹ The Muslim community has

⁵⁰⁹ Ibn Qudamah, *Al-Mughni*, vol. 8, p. 215.

⁵¹⁰ *Ibid.*, p. 304.

⁵¹¹ Related by al-Bukhari, *hadith* No. 242; Muslim, *hadith* No. 2,001.

always universally agreed that it is forbidden. Scholars have also included all types of narcotics and drugs such as cannabis, amphetamines, cocaine, benzodiazepines, heroin, etc.

Reason

One of the greatest and most important blessings Allah has given to man is the mental faculty which distinguishes him from other creatures. Intoxicant drinks cause a person to lose his mind, lead to quarrels and hatred between people, prevent people from attending to their prayers and other aspects of worship. Therefore, Allah has forbidden drinking because of these multiple evils. Intoxicants are indeed an important means used by Satan to cause people harm. Allah says: ‘Satan seeks only to stir up enmity and hatred among you by means of intoxicants and games of chance, and to turn you away from the remembrance of Allah and from prayer. Will you not, then, desist?’ (5: 91).

Punishment

The punishment for drinking intoxicants is 40 lashes, but it may be increased to 80 if the Muslim ruler determines that such an increase is needed to make the punishment a more effective deterrent. [Ali said concerning the case of al-Walid ibn [Uqbah: ‘The Prophet (peace be upon him) and Abu Bakr applied a punishment of 40 lashes, while [Umar made it 80.

Both ways are Sunnah, and this last one is what I prefer.⁵¹²
Anas reports: ‘The Prophet (peace be upon him) used to punish drinking by 40 lashes, using shoes and dried branches.’⁵¹³

Conditions: To enforce this punishment, the following conditions apply:

1. The offender must be a Muslim. Islamic punishments do not apply to unbelievers.
2. He must be an adult, having attained puberty. A young child is not punishable.
3. He must be sane, for punishment does not apply to a madman or one who is mentally impaired.
4. He should have freely chosen to use intoxicants. Punishment does not apply in a situation of compulsion. The last three conditions are based on the Prophet’s (peace be upon him) statement: ‘Allah pardons my community whatever they do by genuine mistake, omit out of forgetfulness, or have to do under compulsion.’
5. He must know that Islam forbids drinking intoxicants.
6. He should know that what he drinks is an intoxicant. If he drinks it believing it to be something else, no punishment is due.

The punishment for drinking becomes enforceable in either of two situations: 1) A free confession by the offender, stating that he has drunk an intoxicant out of his own free choice; or 2) The testimony of two Muslim men of probity that he has done so.

⁵¹² Related by Muslim, *hadith* No. 1,707.

⁵¹³ Related by Muslim, *hadith* No. 1,706.

Theft

Definition, ruling and punishment

Theft is defined in Islam as ‘To take something belonging to another person stealthily from where similar things are normally kept, subject to certain conditions.’

Theft is forbidden because it is an aggression on other people’s rights and taking their property unlawfully. Its prohibition is based on the Qur’an, the Sunnah and the unanimity of scholars. Allah expels the person who commits this major sin from His grace. Narrated 'Aisha: ‘The hand of a thief was not cut off during the lifetime of the Prophet (peace be upon him) except for stealing something equal to a shield in value.’⁵¹⁴

Under Islamic law theft is punishable by cutting the hand of the thief, whether a man or a woman. Allah says: ‘[As for] the thief, the male and the female, amputate their hands in recompense for what they committed as a deterrent [punishment] from Allah. And Allah is Exalted in Might and Wise.’ (5: 38). Muslims are agreed that theft is strictly forbidden and that the punishment of cutting the hand of the thief should be generally enforced.⁵¹⁵ There are a number of strict conditions that must

⁵¹⁴ Related by al-Bukhari, *hadith* No. 6,792.

⁵¹⁵ Al-Nadawi, *Al-Fiqh al-Muyassar*, p. 375.

be fulfilled in order for such a punishment to be implemented. Among these conditions:

- 1- It should be stolen stealthily. If it was taken publicly or by force in broad day light, people can come to his rescue and help.
- 2- The stolen property should be something of worth, because that which is of no worth has no sanctity.
- 3- The value of the stolen property should be above a certain limit, which is three Islamic dirhams or a quarter of an Islamic dinar⁵¹⁶, or their equivalent in other currencies.
- 4- The stolen property should have been taken from a place where it had been put away or secured, like a drawer or safe.
- 5- The theft itself has to be proven, either by the testimony of two qualified witnesses or by the confession of the thief twice.
- 6- The person from whom the property was stolen has to ask for it back; if he does not, then the thief's hand is not to be cut off.

⁵¹⁶ Islamic *dinar*: 22k gold (.917) equivalent to 4.25 grams; *dirham*: pure silver equivalent to 3.0 grams.

Reasons

Islam respects the right of people to own their property and forbids any aggression against this right, whether it is by theft, embezzlement, cheating, bribery, betrayal of trust or any other way of unlawfully taking other people's property. A thief is a bad element in society and if he is unpunished, his evil may spread and cause very serious consequences. Therefore, Islam prescribes this punishment so that it serves as a deterrent to others, stopping them from committing this crime, and to ensure the protection of people's property and rights.⁵¹⁷ It should be noted that such a punishment is only carried out for stealing stealthily as mentioned above in the conditions.

Discretionary punishments

Definition and purpose

When used in a context of Islamic law, the Arabic term *ta [z]ir* refers to 'punishment for any act of disobedience to Allah which does not carry a mandatory punishment or require a particular recompense.'⁵¹⁸ It is required for any such sin, whether by doing what is forbidden or neglecting what is obligatory, provided the Muslim ruler is aware of it. The

⁵¹⁷ Al-Nadawi, *Al-Fiqh al-Muyassar*, p. 376.

⁵¹⁸ Ibn al-Qayyim, *I [lam al-Muwaqqi [in*, vol. 2, p. 99.

Prophet (peace be upon him) said: ‘No beating may go above 10 lashes except in mandatory punishments stated by Allah.’⁵¹⁹

The enforcement of any *ta [zir* punishment is subject to the Muslim ruler’s discretion: he may exact it or leave it, as he deems to be in the best interests of the Muslim community.

Ta [zir punishments are needed to protect society against chaos and corruption, stop injustice, subject offenders to legal retribution and deter others from following their example.⁵²⁰

Enforcement

Sinful actions that require the enforcement of a *ta [zir* punishment are of two types. The first is to neglect or omit duties when one is able to fulfil them, such as the repayment of debts, delivering things held in trust to their rightful owners, safeguarding the property of orphans and delivering these when the orphans come of age. Any of these may be punished by *ta [zir* until the person concerned does his duty. This is based on the *hadith* reported by Abu Hurayrah who quotes the Prophet (peace be upon him): ‘Delaying the repayment of a debt by a person able to repay it is an act of injustice.’⁵²¹ In another narration: “allows his punishment”

⁵¹⁹ Related by al-Bukhari, *hadith* Nos. 6,848 and 6,849; Muslim, *hadith* No. 1,708.

⁵²⁰ Ibn Qudamah, *Al-Mughni*, vol. 9, p. 328.

⁵²¹ Related by al-Bukhari, *hadith* No. 2,400; Muslim, *hadith* No. 1,564.

The other type of actions requiring *ta [z'ir* is to do what is forbidden, such as spreading false rumours against people, backbiting, favouritism in jobs, taking bribes, lesbianism, etc. No specific punishment is made mandatory for these and similar matters.

Extent of punishment

Allah has not prescribed any measure in *ta [z'ir* punishments, leaving this to the discretion of the judge as he determines to fit the crime. Some scholars are of the view that *ta [z'ir* can go as high as the capital punishment if this serves the interests of the Muslim community, as in the case of a Muslim acting as a spy for the enemy. Such scholars maintain that if the death penalty is the only way to stop such people, then it should be enforced.⁵²²

Types of *ta [z'ir* punishment

Ta [z'ir punishments may be classified as follows:

1. Physical punishments, such as flogging and death.
2. Punishments related to property, such as fines or breaking or destroying tools that are necessary for doing what is forbidden, such as wine bottles, gambling games, etc.
3. A combination of physical and financial punishment, such as the case of punishing someone who steals from a place other than a secure one by lashes and a double fine. The

⁵²² Ibn Qudamah, *Al-Mughni*, vol. 8, p. 325.



Prophet (peace be upon him) ruled that a thief who steals the hanging dates before they are placed in the store incurs a punishment of flogging and a double fine. A thief who steals from the store is punishable by cutting his hand.

4. Punishments of imprisonment and exile.
5. Moral punishments, such as public rebuke.