



The  
Miraculous  
Nature of  
Legislation in  
the Quran

## Introduction

The Noble Quran includes the perfect guidance for all the concerns of life and human needs in every place and at all times. This is because it was revealed by the All-Knowing Creator, Who knows what is good and bad for His creation as well as what benefits or harms them.

Hence, when He legislates something, it must be of the highest ranks of wisdom. Allaah The Almighty Says (what means): *{Does He Who created not know, while He is The Subtle, The Acquainted?}* [Quran 67:14]

Things become clearer when we contemplate the secular laws and systems that are too inadequate to handle human problems or cope with the needs and requirements of different times and situations. Therefore, those who establish such laws keep modifying, adding and deleting from them, because man is disposed by nature to deficiency and error. Man is also ignorant about the depths of the human soul, future developments, and the best practices and laws that suit humans at all times and places.

This is material evidence of the inability of humans to produce systems that amend their conditions and morals. It also provides unequivocal proof that the Quran is the flawless Speech of Allaah The Almighty that provides a perfect system, which

can handle all people's affairs and guide them to what is best for them in this world and the Hereafter as long as they adhere to its principles and teachings.

Allaah The Almighty Says (what means): *{Indeed, this Quran guides to that which is most suitable and gives good tidings to the believers who do righteous deeds that they will have a great reward.}* [Quran 17:9]

In general, the legislation contained in the Book of Allaah is based on three foundations:

**First:** Removing harm from six things (religion, soul, reason, lineage, honor and property).

**Second:** Realizing benefits; The Quran opens the doors to realizing benefits in all fields and blocks the doors that lead to harm.

**Third:** Adherence to noble morals and sublime practices.

The Noble Quran is the best solution for all the international problems that humans failed to solve, and it contains rules and guidance for all the aspects of human life in this world and the Hereafter.

## Miraculous Nature of Legislation in the Quran

Western nations pride themselves on the fact that their civilization was the first to declare human rights officially for the first time in history and that they have propounded the Universal Declaration of the Human Rights in the twentieth century, considering it the ideal code of human rights throughout history. However, they forgot -- or pretended to forget-- that the Quran stated these rights more than fourteen centuries ago in the most sublime principle that humanity has ever known; Allaah The Almighty Says (what means): *{O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the Sight of Allaah is the most righteous of you. Indeed, Allaah is Knowing and Acquainted.}* [Quran 49:13]

This verse addresses humanity reminding them that they were all created from the same man and woman and that they are equal in birth and origin despite their different races, colors and religions. The Quran, through this verse, stresses the unity of the human race and that no one has precedence over anyone except based on piety.

The Quran contains many sublime principles that prove its greatness and authenticity. These include the following:

1. The principle of freedom of religion and opinion: Allaah The Almighty Says (what means):

- *{There shall be no compulsion in [acceptance of] the religion. The right course has become clear from the wrong.}* [Quran 2:256]
- *{Say, "O disbelievers, \* I do not worship what you worship. \* Nor are you worshippers of what I worship. \* Nor will I be a worshipper of what you worship. \* Nor will you be worshippers of what I worship. \* For you is your religion, and for me is my religion."}*  
[Quran 109:1-6]

1. Fair dealings: Allaah The Exalted Says (what means):

- *{O you who have believed, fulfill [all] contracts.}* [Quran 5:1]
- *{And fulfill the covenant of Allaah when you have taken it, [O believers], and do not break oaths after their confirmation...}* [Quran 16:91]
- *{Those who consume interest cannot stand [on the Day of Resurrection] except as one stands who is being beaten by Satan into insanity. That is because they say, "Trade is [just] like interest." But Allaah has permitted trade and has forbidden interest. So whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allaah. But whoever returns to [dealing in interest or usury] - those are the companions of the Fire; they will abide eternally therein.}* [Quran 2:275]
- *{O you who have believed, when you contract a debt for a specified term, write it down. And let a scribe write [it] between you in justice.}*

***Let no scribe refuse to write as Allaah has taught him. So let him write and let the one who has the obligation dictate. And let him fear Allaah, his Lord, and not leave anything out of it.*** [Quran 2:282]

- 1- Personal laws: The Islamic *Sharee'ah* (Islamic law) has devised a set of fair and well-established rules that handle personal and family affairs. Thus, the *Sharee'ah* offers an integrated and detailed system that handles affairs related to marriage, divorce, pregnancy, *'Iddah* (post-marriage waiting period), breastfeeding, alimony, inheritance, and the rights of children and relatives. At the same time, these laws also include a wide range of comprehensive and general rulings and principles, which guarantee their flexibility and adaptability and allow Muslim jurists to extract rulings that cope with the developments and changes in time and place.
- 2- Criminal law: This is the greatest proof of the legislative greatness of the Quran, especially the prescribed punishments, which embody wisdom, justice and mercy and combine them in such a way that achieves deterrence and guarantees peace and security for people and countries.

### **Foundations of the Islamic *Sharee'ah*:**

All legislations have foundations that ensure their continuity and guarantee that people are reassured about its wisdom and consistency with individual and collective interests.

Thanks to Allaah The Almighty, the Islamic *Sharee'ah* has strong foundations and characteristics that make people follow it out of deep conviction and strong confidence. That is because it agrees with the sound human nature: ***{So direct your face toward the religion, inclining to truth. [Adhere to] the Fitrah of Allaah upon which He has created [all] people. No change should there be in the creation of Allaah}*** [Quran 30:30].

In addition, there are countless evidences that prove that this *Sharee'ah* addresses sound minds, encourages work, calls for *Jihaad* (struggle) in the cause of Allaah The Almighty, and promotes tolerance, freedom, equality, goodness and piety.

The key foundations of *Sharee'ah*:

1. Tolerance: The Islamic *Sharee'ah* does not charge people except with that which is within their capacity, and its obligations are easy, free from hardship and always within the limits of the capability of every person. Allaah The Almighty describes it Saying (what means):
  - ***{He has chosen you and has not placed upon you in the religion any difficulty.}*** [Quran 22:87]
  - ***{Allaah does not charge a soul except [with that within] its capacity.}*** [Quran 2:286]
2. Universality: The Islamic *Sharee'ah* is general and universal. It does not focus on individual, partial or personal cases.



3. Legalizing concessions: The Islamic *Sharee'ah* legislated concessions for people in case of necessity to remove any hardship or difficulty. For example, the *Sharee'ah* imposes fasting on people, but it allows the traveler and the sick person to not fast.
4. Few obligations: The Islamic *Sharee'ah* revolves on five pillars and their related obligations. The Prophet, *sallallaahu 'alayhi wa sallam*, said: ***"Allaah The Exalted has laid down certain duties which you should not neglect, and has put certain limits which you should not transgress, and has kept silent about other matters out of mercy for you and not out of forgetfulness, so do not search for them."***
5. Gradation: The Islamic *Sharee'ah* adopts a gradual approach in enforcing rulings and treating evil and deep-rooted habits and practices, without any complications. For example, Islam forbade drinking alcohol gradually and wisely in such a way that people did not feel any hardship or difficulty in responding to it.
6. Considering people's interests: Islam enforced some rulings at first and then abrogated them, taking people's general interests into account at every step. For example, some rulings of bequest and inheritance were abrogated, which also applies to the change of the *Qiblah* (direction of prayer) from Jerusalem to the Ka'bah in Makkah. There are other rulings that were abrogated too. For example, the Prophet, *sallallaahu 'alayhi wa sallam*, said: ***"(In the past) I forbade you from visiting graves, but visit them now, for they soften the heart, make the eyes shed tears and remind you of the Hereafter."***



### The main principles of *Sharee'ah*:

Islamic *Sharee'ah* is based on the following principles:

1. The principle of monotheism: Islam states that humankind has one true God. Allaah The Almighty Says (what means): *{Say, "O People of the Scripture, come to a word that is equitable between us and you - that we will not worship except Allaah and not associate anything with Him and not take one another as lords instead of Allaah."}* [Quran 3:64]
2. The principle of direct communication with Allaah The Almighty: Allaah The Almighty Says (what means):
  - *{And your Lord Says, "Call upon Me; I will respond to you." Indeed, those who disdain My worship will enter Hell [rendered] contemptible.}* [Quran 40:600]
  - *{And when My servants ask you, [O Muhammad], concerning Me - indeed I am near. I respond to the invocation of the supplicant when he calls upon Me.}* [Quran 2:186]
3. The principle of appealing to reason: Islam considers reason as a prerequisite for obligation and competency for religious duties, especially regarding the worldly affairs and knowing the Creator. Allaah The Almighty Says (what means): *{So take warning, O people of vision.}* [Quran 59:2] *{Then will you not reason?}* [Quran 2:44]

In addition, the Prophet, *sallallaahu 'alayhi wa sallam*, said: *"People's ranks become higher in the sight of Allaah The Almighty in accordance with their minds."*

4. The principle of linking sound creed with noble morals: Allaah The Almighty Says (what means): *{And the servants of The Most Merciful are those who walk upon the earth easily, and when the ignorant address them [harshly], they say [words of] peace.}* [Quran 25:63]
5. The principle of association between religious and worldly affairs in legislation: The rulings of the Quran addressed both religious and worldly affairs equally. Allaah The Almighty Says (what means): *{But seek, through that which Allaah has given you, the home of the Hereafter; and [yet], do not forget your share of the world.}* [Quran 28:77]
6. The principle of equality and justice between all people: Allaah The Almighty Says (what means): *{O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the Sight of Allaah is the most righteous of you. Indeed, Allaah is Knowing and Acquainted.}* [Quran 49:13] The Prophet, *sallallaahu 'alayhi wa sallam*, said to his daughter: *“O Faatimah, work [by doing good deeds], for I cannot avail you against Allaah at all.”*
7. The principle of enjoining what is good and forbidding what is evil: In fact, this principle represents a constitution for all aspects of reform.
8. The principle of consultation: Allaah The Almighty Says (what means): *{and consult them in the matter.}* [Quran 3:159]
9. The principle of tolerance, which is known today as “peaceful coexistence.”

10. The principle of religious freedom: Allaah The Almighty Says (what means): *{There shall be no compulsion in [acceptance of] the religion.}*  
[Quran 2:256]

11. The principle of social solidarity: Allaah The Almighty imposed *Zakaah* (obligatory charity) on the rich and stated that this is the right for the poor, not benevolence.

These principles prove the strength of Islamic legislation, the power of its foundations and the validity of its rulings for all times, places and peoples. This is proved by the fact that the Muslim nation flourished and thrived when it adhered to the Islamic *Sharee'ah* in all its affairs. However, when Muslims turned away from the Islamic *Sharee'ah*, and Muslim jurists relied solely on imitation, some of them even attempted to subject Islamic legislation to their own opinions and fancies. The result was that secular laws were adopted under the pretext that Islamic jurisprudence is no longer relevant to current international developments and modern civilization necessitates following the rich and powerful nations.

Islamic legislation introduced radical solutions to many of the common crimes and prescribed the suitable punishments that guarantee that they will be eliminated from society. The following are some examples:

- **Homicide:** Allaah The Almighty Says (what means):
  - *{And never is it for a believer to kill a believer except by mistake. And whoever kills a believer by mistake - then the freeing of a believing slave and a compensation payment presented to the deceased's family}*

*[is required] unless they give [up their right as] charity. But if the deceased was from a people at war with you and he was a believer - then [only] the freeing of a believing slave; and if he was from a people with whom you have a treaty - then a compensation payment presented to his family and the freeing of a believing slave. And whoever does not find [one or cannot afford to buy one] - then [instead], a fast for two months consecutively, [seeking] acceptance of repentance from Allaah. And Allaah is ever Knowing and Wise.}* [Quran 4:92]

- *{Because of that, We decreed upon the Children of Israel that whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely. And whoever saves one - it is as if he had saved mankind entirely. And our messengers had certainly come to them with clear proofs. Then indeed many of them, [even] after that, throughout the land, were transgressors.}* [Quran 5:32]

The Prophet, *sallallaahu ‘alayhi wa sallam*, said: ***“Everything belonging to a Muslim is inviolable for Muslims; his honor, his blood and his property.”***

The Islamic *Sharee‘ah* considers aggression against the human soul one of the most dangerous crimes. Allaah The Almighty honored man Saying (what means): ***{And We have certainly honored the children of Aadam (Adam)...}*** [Quran 16:70] Hence, Islam imposes a severe punishment on whoever assaults the life of someone else without a legitimate cause. Islam even considers killing one human soul illegally akin to killing all people and considers saving a human soul akin to saving all people.

Moreover, Allaah The Almighty imposed the same punishment for murder and apostasy.

Consequently, the *Sharee'ah* adopts retaliation (*Qasaas*) as a remedy and deterrent with the aim of stopping this aggression. Under Islam, all souls are equal without any difference or precedence. Islam even legislates taking retaliation upon the ruler himself if he kills any of his subjects deliberately and illegally. When imposing this punishment, Islam considers the fact that the heinous crime of the murderer has orphaned the victim's children, widowed his wife and deprived society of one of its productive members, in addition to challenging social sentiments and breaking its system and laws.

The Quran tells us about the first homicide in human history, when the son of Aadam, Qaabeel (Cain) killed his brother Haabeel (Abel) without a just cause. Aadam, may Allaah exalt his mention, used to marry the male of one birth to the female of the other. Hence, it was supposed that Haabeel would get married to Qaabeel's sister, who was more beautiful than the other sister. However, Qaabeel wanted to keep her for himself, while Haabeel obeyed his father's commands, for they were based on Divine revelation. They agreed to return to Allaah The Almighty for judgment by offering two sacrifices. Allaah The Almighty accepted the sacrifice of Haabeel but rejected that of Qaabeel, who objected to the divine judgment and insisted on his position and killed his brother.

The conflict between the two brothers took place because Qaabeel was consumed with envy against Haabeel and the result was a terrible

homicide. This assault greatly grieved Aadam, may Allaah exalt his mention, and he spent his last days in agony and adopted patience until Allaah The Almighty compensated him with his son Sheeth (Seth), may Allaah exalt his mention, who became the apple of his father's eye. Hence, he prepared him to be his successor in prophethood. When Sheeth, may Allaah exalt his mention, grew up and became strong, his father ordered him to take revenge upon Qaabeel, who fled and lived as an outcast. Sheeth, may Allaah exalt his mention, chased Qaabeel until he killed him. Allaah The Almighty Says (what means): ***{And whoever is killed unjustly - We have given his heir authority}*** [Quran 17:33]

Under the just legislation of Islam, the killer absolutely deserves to be killed regardless of the causes of the murder.

Even those who kill themselves (commit suicide) will face a severe punishment on the Day of Judgment, because they despaired of the Mercy of Allaah The Almighty, and no one despairs of relief from Allaah The Almighty except the disbelieving people.

There is no doubt that legislating retaliation (*Qasaas*) is a great mercy from Allaah The Almighty, because it protects people's lives and security and prevents aggression against them. No wonder, as whoever intends to kill another person will hesitate if he knows that it will cost him his life and mean his destruction, which will save the life of many people.

Hence, whoever contemplates the Quranic verse in which Allaah The Almighty Says (what means): *{And there is for you in legal retribution [saving of] life, O you [people] of understanding, that you may become righteous.}* [Quran 2:179], will find all miraculous aspects contained in it legislatively, rhetorically and eloquently. No doubt, this proves the miraculous nature of the Quran.

- ***Hiraabah* (banditry):**

Allaah The Almighty Says (what means): *{Indeed, the penalty for those who wage war against Allaah and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is for them a disgrace in this world; and for them in the Hereafter is a great punishment.}* [Quran 5:33]

The Prophet, *sallallaahu ‘alayhi wa sallam*, stated: *“Everything belonging to a Muslim is inviolable for Muslims; his honor, his blood and his property.”*

*Hiraabah* is punishable under *Sharee‘ah* in two cases:

A- Seizing someone’s property or money by force in an isolated place, away from people.



B- Highway robbery and preventing people from passing with the aim of seizing their properties or terrorizing them.

The *Muhaaribs* (those who commit the crime of *Hiraabah*) from gangs pledge to protect and help each other in harming people, killing them, seizing their properties, or subjecting them to their evil desires.

The Quran stated that the punishment for this crime is the amputation of the right hand. The rest of the limbs will be spared to allow the *Muhaarib* to work and earn his living lawfully if he is deterred. This punishment combines harshness and mercy unveiling an aspect of the miraculous nature of the Islamic legislation in punishment and deterrence. However, the *Sharee'ah* allows killing the *Muhaarib* if he continues to commit this crime and is not deterred. The *Muhaarib* should definitely be killed if he kills anyone whether or not he seizes money.

The Quranic verse mentions other forms of punishment to be imposed on the *Muhaaribs* other than amputation of their hands and feet from opposite sides (to paralyze one-half of the criminal's body). This additional punishment is crucifying them to humiliate them and deter others from committing the same crime.

These crimes expressly show that the Islamic *Sharee'ah* considers the impact of the crime that implies horrible aggression against innocent men, women and children, as well as murder and robbery. Therefore, it imposed a harsh punishment that befits the crime of *Hiraabah*, which includes aggression and terrorizing peaceful people. Moreover, those who commit this horrible crime will suffer great torment in Hell.

In Islam, the crimes that have prescribed punishments require rigorously accurate and evidence including plain confession, admission or unarguable proof, in addition to the testimony of two upright and reliable men made in front of a judge in court.

History proves that when Muslim society adopted the *Sharee'ah*-approved prescribed punishment, it enjoyed security and lived in peace and discipline. Even the criminals at that time gave themselves up to the authorities to be punished according to the Islamic *Sharee'ah* to purify themselves and expiate their sins.

However, when Muslim society became negligent and adopted secular Western laws under the influence of their fake embellishment, corruption and crimes became rampant, and they became almost like the West in terms of rampant crime.

Once Hishaam ibn ‘Abdul-Malik, an Umayyad caliph, suspended the prescribed punishment of theft and *Hiraabah* for one year. The result was an unprecedented increase in crime rates until people became insecure and their lives and properties were subject to looting and robbery. In addition, the danger of highway robbers in deserts and populated areas increased. This steady rise in crime rates and growing unrest forced the caliph to cancel the suspension of the prescribed punishments. The announcement of the cancellation of the suspension was enough to deter the criminals and protect people’s rights, properties and souls.

The most horrible crimes of *Hiraabah* in modern times were in the Hijaaz region before the Saudi rule. These crimes targeted the pilgrims on their way to Al-Masjid Al-Haraam in Makkah. At that time, highway robbers used to attack, kill and rob the pilgrims to the extent that the late Islamic jurists considered that it was obligatory for whoever wanted to travel to perform *Hajj* to write his will before leaving his country. The Egyptian and Syrian governments also used to send well-armed soldiers with their *Hajj* missions to protect the pilgrims. However, when King ‘Abdul-‘Azeez Al Su‘ood ruled the Arabian Peninsula and implemented the rulings of *Sharee‘ah* as legislated by Allaah The Almighty and His Messenger, *sallallaahu ‘alayhi wa sallam*, the thieves and high robbers feared the *Sharee‘ah*-approved punishments which were immediately executed. One of his merits worth mentioning is that the

number of robbers upon whom the punishment of amputation was carried out during his 24-year reign did not exceed sixteen cases.

On the other hand, some people criticize the punishment of *Hiraabah* considering it inhumane. Such people consider the punishment in isolation of the crime, and show mercy to the criminal forgetting the victim. In our case, the victim is the group and society whose properties are stolen and whose blood is shed. They forget that the more the crime becomes heinous, the more the punishment should be harsh and deterrent. The Prophet, *sallallaahu 'alayhi wa sallam*, said: ***“Whoever does not show mercy to others, will not be shown mercy.”***

If the punishment of *Hiraabah* had been adopted in the USA or Europe, people would have felt secure and governments would not have been forced to recruit thousands of soldiers or spend millions of dollars to chase and arrest these sinful gangs.

**- The crime of robbery:**

Allaah The Almighty Says (what means): ***{[As for] the thief, the male and the female, amputate their hands in recompense for what they committed as a deterrent [punishment] from Allaah. And Allaah is Exalted in Might and Wise.}*** [Quran 5:33]

The Prophet, *sallallaahu 'alayhi wa sallam*, said:

- *“Everything belonging to a Muslim is inviolable for Muslims; his honor, his blood and his property.”*
- *“By Allaah, were Faatimah, the daughter of Muhammad, to commit theft, I would have cut off her hand.”*

Theft is an evil desire that may lead the thief to commit other horrible crimes to be able to seize others' money and properties secretly or by force under the influence of his evil nature and bad upbringing.

These factors may make him commit murder in some cases if anyone tries to stop him, and he may even kill a whole family in order to steal their money. This evil tendency encourages thieves to form gangs to wreak havoc on earth and interfere with security in many countries. Such gangs can rob banks, government buildings and the rich depending on the power of their weapons as well as criminal methods. These gangs destroy and ruin as they wish, and then the governments suffer the consequences of their actions and spend millions in fighting them.

These gangs also terrorize peaceful people. Thieves steal huge amounts of money and they do not find any way to invest this money except in evil channels and drugs as well as bribing officials to cover up for them and entice them using their money and power. It is well-known that the majority of casinos and brothels are owned by rich gangsters and are protected by their immoral aids.

Given the seriousness of theft and its bad consequences, Islam imposed a severe and deterring penalty for it to ensure that this crime would be eliminated and to limit its evil consequences to a minimum.

The purpose of these penalties is to achieve the interests of the group and to protect people's basic needs and rights that include the soul, reason, lineage and property. To achieve this purpose, Islam adopted two methods:

- 1- Refining the Muslim soul through Muslim society, which should be based on uprightness, love, moral purity and cooperation in acts of goodness and piety.
- 2- Islamic criminal law and its prescribed punishments that aim at protecting the people's basic needs and right to security. The punishment for apostasy protects the religion, retaliation (*Qasaas*) protects souls, the prescribed punishment for drinking alcohol protects reason, the prescribed punishment for adultery and slander protects honor and lineage, and so on.

#### **The punishment for theft:**

The Islamic *Sharee'ah* fought theft through a severe punishment, which is amputation of the hand, in order to eliminate this crime and deter whoever thinks of assaulting people's properties whether secretly or openly.

This punishment cuts off the means that the thief uses to commit his crime so he cannot use it again to commit theft. The rationale behind the legislation of the amputation of the hand of the thief is that horrible crimes require severe and painful penalties to deter their perpetrators away from leniency. This is necessary to apply the principle of “*You reap what you sow.*” Moreover, such a severe punishment will brand the criminal and warn people against him.

### **Conditions of amputation of the thief’s hand:**

The following are the conditions which must be met in order to establish the penalty of theft:

- The thief must be sane and mature.
- The thief must be in no “need” for what he stole and there must be no form of coercion whatsoever.
- The stolen item must be in the ownership of another person, kept in a secure place and be equivalent to a *Nisaab* (known measure) or more. The *Nisaab* is no less than 17 grams of gold or an equivalent amount of money or any other property. If someone steals anything less than this *Nisaab*, then his hand would not be amputated.



Islamic jurists unanimously agree that the right hand of the thief should be amputated for the first theft, if he commits theft again, then his left foot should be amputated according to some Islamic jurists, who argued that this aims at paralyzing the movement of the thief. If he commits theft for the third time, then he should be imprisoned until he sincerely repents or dies without any further amputation.

**Cases when the punishment for theft should not be established:**

- If the theft happens in public places during working hours, where there are no security measures or in locations to which the thief has access.
- The stolen item was in a place that does not meet the requirements of security and safeguarding.
- Theft among parents and children of the same family or between the husband and his wife and vice versa.
- If the stolen money or property has no known owner.
- If the thief is a creditor of the owner of the stolen money, who was procrastinating or refusing to repay the debt. Nevertheless, the stolen money, in such a case, should not exceed the value of the debt.

Some people ignorantly criticize the Islamic punishment for theft raising doubts regarding the wisdom of the *Sharee'ah* and arguing that this punishment is merciless and harsh.

They weep over the amputated hands forgetting what these sinful hands committed and the peaceful people they terrorized. They feel pity for the criminals rather than for the victims. Reality proves that theft rates have decreased significantly in Islamic countries that apply the rulings of *Sharee'ah*. For example, in Saudi Arabia, which applies Islamic *Sharee'ah*, the cases of amputation of hands are very few.

We call on the other Islamic countries to imitate Saudi Arabia in order to provide their citizens with personal and social security. Fairness necessitates considering this issue objectively, for the *Sharee'ah* does not want to amputate hands because it likes to do so, but because it aims at protecting these hands from amputation through the severe punishment that deters thieves from continuing with their crimes.

Is there any form of mercy that exceeds this which uses harsh penalties to maintain security and prevent crimes?

## **The Legislative Miracle in Fighting Crime**

No legislation can be considered successful in achieving its purposes unless it meets four criteria:

- (1) Fulfilling the objective for which it was introduced
- (2) Achieving this in the least time possible
- (3) Doing so with the least cost
- (4) And with its positive aspects exceeding its negative ones.

If any of these criteria are not met, the legislation or law can never be successful or effective in fulfilling what it was drawn up for. With regard to fighting crime, success is contingent upon decreasing the crime rate in a short period, along with avoiding expensive costs and negative results in the process of applying the legislation in question.

Based on various studies conducted on criminalization and penal systems since the early ages until today, we find that none of these four criteria or even two of them were met in any legislation except that of the Noble Quran -- particularly in the field of combating crime. This legislation is stated in the texts of the Quran, explained in the texts of the *Sunnah* (Prophetic tradition) and interpreted and applied through the sayings and acts of the honorable Companions and Muslim scholars.

Here we explain how the Quranic legislation uniquely meets these four criteria and other questions related to this issue:

**First: The Quranic legislation succeeded in fighting crime within a short period of time**

The best evidence to prove the success of this legislation in fighting crime is to make a comparison between the crime rates in Arab society before and after the advent of Islam. When the Quran was sent down to the Arabs, lawlessness was the basic rule, as they used to worship idols, sever kinship ties, loot property, and kill each other in unending wars.

The Divine Revelation only took twenty-three years to change their conditions completely until crime became an exception after having remained the basic feature of their society for centuries. Their enmity turned into brotherhood that was stronger than blood, revenge transformed into tolerance, and they enjoyed security to the extent that anyone could travel from the east of the Arabian Peninsula to its west fearing none but Allaah The Almighty and a wolf that may eat his sheep. Indeed, the following Quranic verse applied to them perfectly: ***[{And remember the favor of Allaah upon you -- when you were enemies and He brought your hearts together and you became, by His favor, brothers.}](#)*** [Quran 3:103]

On the other hand, modern secular laws, whose authors believe them to be the best laws in the field of fighting crime, have not yet succeeded in fighting crime, two centuries after drafting them. This is admitted by Western lawmakers themselves.

For example, a French judge of the Court of Cessation, whose country is considered the legislative role model especially in its former colonies including Algeria, said in the opening of a conference on protection from criminality that was held in Paris (1959):

*I am no more than a judge in the justice authority, and I have never paid attention to the principles of crime prevention, because that was not my job; rather, my job was and still is in punishment, not prevention. I dedicated my whole life to my work in fighting criminals and deviant people mercilessly. The only weapon that law has put at my disposal is traditional punishment. I sometimes used to pass harsh and severe sentences to the armies of criminals and people who rebelled against society. I did my best to make the punishment fit the crime, I always wondered, like many of my colleagues, whether the weapon that we have, has become useless!*

*I felt and I still feel much pain and bitterness whenever I remember that we are like the legendary fighters of multi-headed monsters, which just grow new heads whenever they lose one.*

*I spent many years in office; however, I notice that the number of criminals is stable if not increasing, because whenever we sentence them to prison, exile, or the guillotine, many criminals succeed them at larger numbers.*

Obviously, this is a plain confession of the failure of modern laws in fighting crime, as supported by reality and statistics. Nevertheless, we have quoted these words here because they represent a significant testimony of a Western legislator.

Some people claim that the success of the Quranic legislation is mainly due to the fact that Allaah The Almighty diverted the hearts and minds of the Arabs from thinking about crimes or committing them, just as He diverted them from imitating the Quran. However, this is wrong because it is well-known that some of those who alleged to be prophets, such as Musaylimah the Liar, tried to imitate the Quran but failed.

The success of the Quranic legislation is mainly due to its unique scientific methodology in fighting crime. Hence, any society that adopts this methodology at any time or place will certainly succeed. We deduced this methodology from the texts of the Quran and the *Sunnah*. This methodology is the secret behind the success of the Quranic legislation within such a short period of time.

### **Islam's methodology in fighting crime:**

Crime is an abnormal behavior that threatens the security of individuals and the stability of societies, and destroys states. Hence, ancient as well as modern societies handled this issue very carefully and all societies developed mechanisms for fighting crime. Such mechanisms developed over time along with the

development of societies. At first, it was confined to punishment alone; however, in modern societies these mechanisms expanded to include prevention, correction, and treatment in addition to punishment. According to modern statistics, these methods did not achieve the purposes behind them; hence, criminalists started searching for alternative methods and the search continues.

Likewise, international efforts represented in periodic UN conferences on criminology since 1951 C.E. until the present era (the last conference was held in Vienna in 2000 C.E.) and the commissions' conferences addressed this issue. Participants in these conferences diagnosed the causes of this phenomenon extensively and introduced various theories for fighting crime. Of course, these activities cost a great deal of money without bearing any fruit regarding the crime rates in the participating countries. On the contrary, the crime rates are steadily rising and society has fresh criminal graduates every day in all fields of criminality. Of course, this proves that the methodologies that are adopted in fighting crime have failed. Therefore, if there is a sincere intention to fight crime, then we have to search for alternative methodologies.

Islam, which is the religion of reform and righteousness, confronted the phenomenon of rampant criminality, until committing crimes became an exception to the general rule of uprightness. In several cases, criminals used to turn themselves in to the authorities to be punished and purified from the sins they had committed. We should not forget that this happened in a society where criminality



was the general rule, especially murder, theft, and adultery in addition to many other crimes. Allaah The Almighty refers to this meaning Saying (what means): ***{And remember the favor of Allaah upon you - when you were enemies and He brought your hearts together and you became, by His favor, brothers.}*** [Quran 3:103]

Similarly, this was also expressed by Ja‘far ibn Abu Taalib, may Allaah be pleased with him, when he said to Negus, *“We were a people in a state of ignorance and immorality, worshipping idols and eating the flesh of dead animals, committing all sorts of abomination and shameful deeds, severing kinship ties, treating neighbors badly and the strong among us exploited the weak...”*

The revolutionary change that Islam made in Arab society, turning criminal activity from a rule into an exception decisively proves that its mechanisms in fighting crime are very successful. We all agree that the crime rates in modern Muslim societies can never be compared to those in the pre-Islamic Arab society, thus, Islam’s methodology is the most effective solution to handle this problem with the lowest costs.

Consequently, rediscovering this methodology has become an obligation, especially given that the criminal phenomenon is growing under the inability and ineffectiveness of the current methods employed to fight it.

Upon exploring the relevant texts in the Quran and *Sunnah*, as well as the events of the prophetic *Seerah* (biography), rulings of the Rightly-Guided Caliphs and sayings of the honorable Companions, one finds that the Islamic methodology in fighting crime has two modalities: The first focuses on preventing crime in principle, while the second focuses on ensuring that the crime will not be committed again by the criminal himself or by any other member of the society.

Contemporary criminalists call the first method “prevention” and the other, “correction or punishment.”

### **First: The preventive method**

This method represents an unprecedented legislative approach that remained exclusively Islamic for more than ten centuries, as Western legislators only paid attention to this method during the last two centuries, following long studies and research by criminalists. Nevertheless, their suggestions and recommendations are still useless as proved by the increase in crime rates. Moreover, this method is inferior to other methods of correction and punishment. However, in Islam, this method is equal to punishment or even takes precedence over it. This method is gradual and starts from the criminal’s soul to the whole society according to a logical sequence that cannot function well if its order changes. This gradual method accords with the Quranic verse, in which Allaah The Almighty Says (what

means): *{Indeed, Allaah will not change the condition of a people until they change what is in themselves.}* [Quran 13:11]

**This methodology comprises the following phases:**

- 1- **Self-correction:** The first act Islam promoted was changing the souls from within through conviction and evidence. The heart is the commander of the physical body that one uses to commit sins and crimes. Hence, if one successfully controls the heart, he will be able to control his body. However, the question is: how did Islam manage to control hearts? This was only possible by connecting it to belief in Allaah The Almighty, for faith is a fundamental factor and a creative power that makes people work and be committed. No one, including the atheists, denies the role of faith. Dr. Yoosuf Al-Qaradhaawi expressed this meaning, saying, *“We have seen many thinkers and philosophers who do not believe in Allaah The Almighty; nevertheless, they believe in the power of belief in Allaah, namely, they believe that faith is a guiding, effective, and creative power. They could not deny the good influence of belief in Allaah on the individual and social life. Hence, some of them said, ‘If God had not existed, we would have had to invent him.’”* [Al-Eemaan wal Hayaah ‘Faith and Life ‘ by Dr. Al-Qaradhaawi]

This may explain why ancient societies made their own gods, because they realized the role of faith in maintaining social stability. In Islam, faith has six

pillars and each pillar plays a role in the individual's life. When one believes in Allaah The Almighty and His Attributes such as hearing and sight, he will know that Allaah The Exalted watches him at all times and in all places. This generates self-monitoring, which is more effective than any form of surveillance carried out by other people. That is because such mortal people may forget, sleep or so on. When one believes in the angels, their attributes and the nature of their jobs, he will know that whatever he says or does will be recorded. Consequently, he will avoid doing any misdeed including crimes. When one believes in the Last Day and its horrors, reckoning and punishment, he will avoid what may make him accountable on that day.

'Umar ibn Al-Khattaab, may Allaah be pleased with him, was making the rounds at night when he heard a woman whose husband had gone with the soldiers on a long campaign saying:

*The night has grown long, and its end is dark and black,*

*I am sleepless since I have, with whom to play, no lover,*

*If there was not (the Lord) whose Throne is above the Heavens,*

*The sides of this bed, would roll, shake and quiver!'*

Umar, may Allaah be pleased with him, then conferred with his daughter Hafsah, may Allaah be pleased with her, on how long a woman can be patient for her husband to return. After some moments of hesitation and

embarrassment, in which he convinced her that this question was for the general good of the Muslims, she replied, “*Six months.*” After this, ‘Umar, may Allaah be pleased with him, never sent an army on a campaign for more than six months.

Ibn Al-Qayyim, may Allaah have mercy upon him, reported that once a patrolling party brought a man whom they found in a place of ruins with a knife dripping with blood in his hand and a slaughtered person in front of him. ‘Ali, may Allaah be pleased with him, asked the man about what had happened and he said, “*I killed this man.*” Therefore, ‘Ali, may Allaah be pleased with him, ordered him to be taken and executed. When the soldiers took him, a man came hurriedly and shouted, “*O people, do not execute him and bring him back to ‘Ali.*” The soldiers took the man back to ‘Ali, may Allaah be pleased with him. When they arrived, the man who had come running said, “*O Commander of the Believers, I am the killer.*” ‘Ali, may Allaah be pleased with him, said to the first man, “*Why did you say that you killed while you did not?*” He answered, “*O Commander of the Believers, what could I do? The patrol came and saw the man slaughtered, and I was carrying a knife dripping with blood in a place of ruins. So, I feared that they would not believe me and I feared that it would turn into Qisaamah. Hence, I admitted a crime that I did not commit sacrificing my soul for the sake of Allaah The Almighty.*”

‘Ali, may Allaah be pleased with him, said, “*What ill-minded behavior! What is your story?*” The man said, “*I am a butcher. I went to my butchery, slaughtered a cow, and skinned it. While I was working with the knife, I felt that I must answer the call of nature immediately. So, I hurried to a nearby place of ruins and urinated there. On my way back to the butchery, I found a slaughtered man in front of me. I was taken by surprise and stood watching with the knife in my hand. I remained so until your men came and took me. Of course, people said that I must have killed that man. I was sure that you would never believe me, so I admitted a crime that I did not commit.*”

‘Ali, may Allaah be pleased with him, said to the other man, “*What is your story?*” He said, “*Satan seduced me and I killed the man to steal his money. Then I heard the patrol, so, I left the place of ruins and saw that butcher in the same condition that he described to you. So, I hid in a corner until the soldiers arrived and brought him to you. When you ordered him to be killed, I knew that I would be responsible for his death too. Hence, I decided to tell the truth.*”

Thereupon, ‘Ali, may Allaah be pleased with him, said to Al-Hasan, “*What is the suitable ruling on this case?*” Al-Hasan answered, “*O Commander of the Believers, if he had killed a soul, he has just saved another soul. You know that Allaah The Almighty Says (what means):* ***{Except for those who return [repenting] before you apprehend them. And know that Allaah is***

***Forgiving and Merciful.*** [Quran 5:34]” Therefore, ‘Ali, may Allaah be pleased with him, released both of them and paid the blood money from the *Bayt Al-Maal* (treasury).

These two examples clearly indicate the influence of faith; in the first example, belief in Allaah The Almighty and the Last Day with its horrors and torment deterred the woman from committing adultery, and the same belief saved two souls in the second example.

Faith in Islam is not mere words or thoughts; rather, Islam transformed these thoughts and beliefs into a reality through acts of worship including the deeds and sayings that refine and cultivate souls. In this way, a change of heart will be accompanied by a change in the entire body.

Whoever contemplates acts of worship and their miraculous order and diversity will realize this fact. For example, prayer, which is the first and most important act of worship in Islam, is performed five times a day. Certainly, this helps in refining the soul and keeping it pure throughout the day. This distribution also plays an important role in dissuading people from drinking alcohol (before its final forbiddance), when Allaah The Almighty Says (what means): ***{O you who have believed, do not approach prayer***



*while you are intoxicated until you know what you are saying* [Quran 4:43]

Likewise, fasting is a spiritual school that plays a great role in refining the soul and eliminating its evil desires, before turning into determination. That is why Allaah The Exalted Says (what means): *{O you who have believed, decreed upon you is fasting as it was decreed upon those before you that you may become righteous}* [Quran 2:183]

Furthermore, the Prophet, *sallallaahu 'alayhi wa sallam*, said: *“...the Fast is a shield...”* [Al-Bukhaari]

The majority of crimes among Muslims today are committed by people with weak faith, or people who do not observe prayer or fast. This is what I have noticed in my social environment. Hence, I call on Muslim rulers to take care of strengthening faith and urging people to observe the acts of worship, because crimes are committed when one's faith reaches its weakest form. The Prophet, *sallallaahu 'alayhi wa sallam*, said: *“The one who is committing fornication is not a believer at the time he is committing fornication, the one who is stealing is not a believer at the time he is committing theft...”* [Al-Bukhaari]

If we make a comparison between the crime rates in Saudi Arabia, Egypt, the USA and Russia, we notice that the lowest crime rates are in Saudi Arabia, followed by Egypt, then USA (where a car is stolen every two minutes) and finally Russia. Undoubtedly, this accords with the strength of religious commitment regardless of the laws or number of policemen. Nevertheless, this important aspect has no place in modern secular legislations.

- 2- **The duty of the family:** Parents are obliged under Islam to provide their children with an Islamic and faith-boosting upbringing to implant the aforementioned factor (self-correction) in their hearts from their early childhood.

Acquiring faith and noble morals as well as observing acts of worship do not come without sincere and diligent effort on the part of parents. Such efforts start even before the child's birth and continue until adulthood. Islam urges parents to take care of this issue starting with choosing a wife, who would be the first teacher of the child. Therefore, Islam forbids marrying the disbelievers and urges Muslim men to choose righteous and pious Muslim women as wives. Islam also stressed the importance of a good upbringing. Allaah The Almighty Says (what means): ***{O you who have believed, protect yourselves and your families from a Fire whose fuel is people and stones}*** [Quran 66:6]

The Prophet, *sallallaahu 'alayhi wa sallam*, said: **“Anyone who has three daughters, or three sisters, and fears Allaah regarding them, and is good to them, Allaah will certainly admit him into Paradise.”** [Al-Bukhaari]

The Prophet, *sallallaahu 'alayhi wa sallam*, also guided us to other practical steps in the process of upbringing. After choosing a righteous mother, the Prophet, *sallallaahu 'alayhi wa sallam*, commanded us to choose a good name for the child. He also provided us with the methodology that we should follow in training our children to perform their religious duties and acquire noble morals. The Prophet, *sallallaahu 'alayhi wa sallam*, said: **“Command your children to perform prayer when they are seven years old, and beat them for (not offering) it when they are ten, and separate them in beds.”** [Abu Daawood]

The Prophet, *sallallaahu 'alayhi wa sallam*, also reminded parents that their children learn by example, which means that they must set a good example for their children. This good upbringing was fruitful and the crime rates decreased significantly during the time of the *Taabi'oon* (the generation following the Companions).

After that, the Muslims established the *Hisbah* (or *Muhtasib*) system. The job of the *Muhtasib* is to enjoin what is good and forbid what is evil

regarding things that are not part of the direct responsibilities of rulers, judges, ministers and the like.

However, many religious affairs are considered the common responsibility between the ruler and different officials, hence, whoever performs this duty, must be obeyed by the people.

- 3- **The duty of the larger family ('*Aaqilah*):** Under Islamic legislation, '*Aaqilah* (one's male parental relatives) are collectively responsible for some aspects of the children's upbringing. '*Aaqilah* share in paying the blood money in case of accidental killing and semi-intentional killing by one of their relatives. Of course, this is an exception to the Islamic principle, which states that civil and criminal liability is exclusively limited to the killer, as Allaah The Almighty Says (what means): ***{And no bearer of burdens will bear the burden of another}*** [Quran 35:18]

This means that the parental relatives are required to take care of each other's children so they will not find themselves forced to pay for a crime they did not commit. Certainly, this will make them cooperate in the upbringing of their children and making up for the negligence of some of their relatives in their responsibilities. They should train their children to be cautious and to avoid deviance. The concept of '*Aaqilah* has no counterpart in modern legislations.

- 4- **The duty of neighbors and friends:**

Islam considers the neighbors and friends of the criminal partially liable for the crimes he committed on their property, houses, shops or so on through the legislation of “*Qisaamah*”. Scholars consider this law one of the foundations of the Islamic legislation and a key measure to correct people and achieve general interests. Therefore, the honorable Companions, *Taabi’oon*, and scholars adopted this law.

This rule was first applied during the lifetime of the Prophet, *sallallaahu 'alayhi wa sallam*. According to a *Hadeeth* (narration),

*Muhayyisah ibn Mas’ood and ‘Abdullaah ibn Sahl went towards Khaybar and they separated near the palm-trees. ‘Abdullaah ibn Sahl was killed. They accused the Jews (of killing him). When his family came to the Prophet, sallallaahu 'alayhi wa sallam, he said: “Let fifty (persons) among you take oath for leveling the charge (of murder) against a person among them, and he would be surrendered to you.” They said, “We have not witnessed this matter ourselves. How can we then take an oath?” He then said: “The Jews will exonerate themselves by the oaths of fifty of them.” They said, “O Messenger of Allaah, they are non-believing people!” Thereupon the Messenger, sallallaahu 'alayhi wa sallam, paid the blood money for him.”*  
[Muslim]

Certainly, this law leads to more solidarity in taking precautions and monitoring, which makes it more difficult for the criminal to commit any

crime, particularly murder. Moreover, this legislation stresses the importance of verification of testimony in such a way that ensures that the suspect will receive a fair trial.

Hence, *Qisaamah* has two benefits in fighting crime: the first is regarding the killer, who should know that if he commits a crime and is discovered, the residents of his area will be involved in the crime. Of course, the result will be greater precaution and stronger determination to uncover the killer, which happens in most cases. In such a case, the killer will think a great deal before committing a crime.

The second benefit is regarding the relatives of the murdered person, as *Qisaamah* prevents them from leveling accusations without sufficient proofs. However, today crimes are committed without any legislation to force the supposed witnesses to make their testimony. Nevertheless, the oaths made within the *Qisaamah* system become worthless unless they are made by people who realize the value of their oaths and the consequences of lying in this respect. This can only happen in a believing society that fears Allaah The Almighty and His punishment. That is why the relatives of ‘Abdullaah ibn Sahl, may Allaah be pleased with him, refused to accept the oaths of the Jews in *Qisaamah* and the Prophet, *sallallaahu 'alayhi wa sallam*, paid the blood money.

Apparently, *Qisaamah* was legislated to punish the residents of the place where the murdered person was found due to their negligence in preventing the crime or uncovering the criminal. Al-Kaasaani, may Allaah have mercy upon him, commented on the rationale behind the *Qisaamah* system saying,

*It was legislated to punish the residents of the place where the murdered person was found for their negligence in what they are obliged to do regarding protecting this person and securing their area. Their negligence in this respect, in spite of their ability, makes them liable. Hence, the Sharee'ah (Islamic law) punished them to prevent such negligence and to urge people to perform their duties. The people's share in the liability of Qisaamah and blood money are assessed according to their responsibility for protection and maintaining security in the area. That is because the more one is responsible for protection and security, the more he is liable for negligence, especially given that whoever owns or benefits exclusively from a place is considered responsible for protecting whoever enters it, for the Prophet, sallallahu 'alayhi wa sallam, said: “**Profits are deserved due to liability.**” Allaah The Exalted Says (what means): **{It will have [the consequence of] what [good] it has gained, and it will bear [the consequence of] what [evil] it has earned.}** [Quran 2:286]*

Furthermore, when a murdered person is found in a property that belongs to an individual or group through ownership, possession, or usufruct, they will be accused of murder. Hence, the *Sharee'ah* forced them to make *Qisaamah* to

exonerate themselves from the charge. Their liability to pay the blood money is because the murdered person was found in their property. ‘Umar, may Allaah be pleased with him, referred to this meaning when he was asked, “*Will we make oaths and pay [the blood money] money at the same time?*” He answered, “*Your oaths spare your blood, and you pay the blood money because the murdered person was found in your area.*”

#### 5- **The duty of society:**

The Islamic *Sharee'ah* made society a partner in the reform process as a whole, including fighting crime, so that it plays the role the individual fails to play himself or the role that the family fails to play with its members. All societies always have some immoral and weak people who do not benefit from faith or acts of worship. In addition, there are always negligent heads of the family, who do not bring up their children properly to keep them away from crime. Hence, the only authority that can prevent such people from committing crimes is society. Society in Islamic terms is that which contributes to a moral public opinion, suppresses evil and enables good to prevail. Therefore, Islam calls for enjoining good and forbidding evil, and considers the upright members responsible for the deviant ones within the limits of their power.

However, correction should take place leniently and should be separate from violence or harshness.



Islam considers enjoining good and forbidding evil a duty on each member of the society according to his ability. However, this collective duty transforms into an individual duty on the capable person if no one else performs it. Allaah The Almighty Says (what means): ***{The believing men and believing women are allies of one another. They enjoin what is right and forbid what is wrong...}*** [Quran 9:71]

The Prophet, *sallallaahu 'alayhi wa sallam*, said: ***“Whoever among you sees an evil, must change it with his hand; if he is unable to do so, then with his tongue; and if he is unable to do so, then with his heart; and that is the weakest form of faith.”*** [Muslim]

Islam draws a connection between this duty and the ultimate fact in the Muslim's life, namely faith, which represents a stronger motive for the believer to work than penalty. Many of the wrong conditions existing in some Islamic countries do so because many violations to the Islamic *Sharee'ah* are protected by the secular laws, which strongly contradict the believer's common-sense duty to change the evil. However, such a feeling does not exist among non-Muslims, who have no motivating factor that spurs them to object to or try to change any social or religious violations in their society.

Islam did not consider this general commandment to all people sufficient, but the Quran calls for the formation of a group whose mission is to enjoin good and forbid evil. Allaah The Almighty Says (what means): ***{And let there be [arising] from you a nation inviting to [all that is] good, enjoining what is right and forbidding what is wrong, and those will be the successful.}*** [Quran 3:104]

Later, the Muslims established the *Hisbah* (or *Muhtasib*) system. The job of the *Muhtasib* is to enjoin what is good and forbid what is evil regarding things that are not part of the direct responsibilities of rulers, judges, ministers and the like.

However, many religious affairs are considered common responsibility between the ruler and different officials, hence, whoever performs this duty, must be obeyed by people.

The role of the society in general, and the *Muhtasib* in particular, is preventive and does not only prevent crimes, but also other violations and evils that eventually lead to crimes. We all know minor evils that transform into major crimes. For example, making passes at a girl may end in two crimes: adultery and killing. Statistics show that a significant percentage of murders are killings for the sake of "honor". Likewise, neglecting the duty of

enjoining good leads to crimes because many people commit crimes under the sense of injustice. However, if the duty of enjoining good is performed well, such crimes would not be committed.

#### 6- The legislative role:

This role is represented in the legislative texts in the Quran and the *Sunnah*, as well as the relevant decisions, rulings and sayings made by the Rightly-Guided caliphs. When we speak about the preventive methodology, we cannot shed light on the texts that handle types and amounts of punishment, because it comes after committing the crime (We will tackle this issue when speaking about the correction methodology). Here, we want to shed light on the texts of the *Sharee'ah* that specify the measures meant to prevent crimes. In the Islamic jurisprudence, this preventive methodology is called *Sadd Ath-Tharaa'i* (Elimination of means that lead to unfavorable results). Islam forbade some behaviors not because they are forbidden, but because they lead to crimes. For example, Islam forbids insulting the disbelievers, because they will retaliate by insulting the Creator. Allaah The Almighty Said (what means): ***{And do not insult those they invoke other than Allaah , lest they insult Allaah in enmity without knowledge.}*** [Quran 6:108]

The Prophet, *sallallaahu 'alayhi wa sallam*, also forbade abusing one's parents. However, when people asked, "O Messenger of Allaah, can a man abuse his own parents?" The Messenger of Allaah, *sallallaahu 'alayhi wa sallam*, said: ***"He abuses the father of somebody who, in return, abuses the former's father and mother."*** [Al-Bukhaari]

Avoiding having one's parents abused starts from refraining from abusing others' parents.

In the field of crime, we find many texts forbidding some actions and behavior that are not crimes in themselves, but which eventually lead to crimes. The examples include the commandment to lower one's gaze and the forbiddance of exposing a woman's adornment illegally because they lead to the crime of adultery or fornication, which, in turn, leads to abortion and killing. This also applies to the forbiddance of pointing at others with a weapon, because this may lead to harm. The Prophet, *sallallaahu 'alayhi wa sallam*, said: ***“None of you should point at his brother with a weapon because he does not know that Satan may make it loose in his hand and, as a result, he may fall into a pit of Hell-fire (by accidentally killing him).”*** [Al-Bukhaari]

Likewise, handing over an unsheathed sword is forbidden, because the one who hands such a sword or the one who takes it may make a mistake and harm the other one. Hence, handing a sheathed sword is safer.

The Prophet, *sallallaahu 'alayhi wa sallam*, also said: ***“When an oath of allegiance is taken for two caliphs, kill the one for whom the oath was taken later.”*** [Muslim]

That is because the existence of two rulers at the same time causes conflicts, turbulence, and killing. Islam also forbade selling arms at the time of conflict because this fans the flames of war.

Ash-Sha'bi, may Allaah have mercy upon him, reported that 'Umar ibn Al-Khattaab, may Allaah be pleased with him, was once roaming Al-Madeenah at night when he heard a woman saying, *"Could I not be given wine to drink or be allowed to go to Nasr ibn Hajjaaj [who was a very handsome man]?"* On hearing that, 'Umar, may Allaah be pleased with him, said, *"Not in my lifetime, by Allaah!"* Then he ordered Nasr to be brought to him in the morning and asked him to leave Al-Madeenah and go to Basra. According to another narration, 'Umar, may Allaah be pleased with him, ordered Nasr's hair to be cut, but this made him more attractive. So, 'Umar, may Allaah be pleased with him, ordered Nasr to wear a turban but this also was of no use. So, he banished him to Basra. In Basra, he proved to be somewhat immoral, so the governor there, Abu Moosa Al-Ash'ari, may Allaah be pleased with him, banished him to Persia. There, he acted immorally again, so, the governor there wanted to banish him for the third time. Therefore, Nasr threatened to join the disbelievers and stay in their land. They wrote to 'Umar, may Allaah be pleased with him, telling him about this threat. So, he ordered them to shave his head, roll up his shirt and make him stay in the mosque.

When ‘Ali, may Allaah be pleased with him, was asked about the penalty for drinking alcohol, he said, “*If one drinks alcohol, he would become delirious, and when he becomes delirious, he will slander; and it is known that the punishment of the slanderer is eighty lashes.*” [Muwatta‘ Maalik]

Thus, Islam adopts the principle of elimination of means that lead to unfavorable results, while modern legislations adopted an odd method; allowing some acts and criminalizing their results. For example, they allow adultery, but criminalize abortion in most cases.

## **Second: The methodology of correction**

This methodology comes after committing the crime and it has distinctive features in the Islamic *Sharee'ah*. This methodology is free from obscurity or discrepancy, and it aims at ensuring that the crime will not be committed again in addition to fixing the damages it caused. This methodology includes the penalties and their alternatives such as blood money, reconciliation, and forgiveness, in addition to expiation.

- 1- **Penalty:** There is no difference of opinion among Muslims regarding the lawfulness of penalties and their various forms; unlike modern legislation that differs greatly in this regard. Some modern legislation opposes penal laws and calls for aborting them or changing their name. On the other hand, some modern legislation call for keeping the penal law, but they disagree regarding some types of penalties -- particularly the death penalty. They also disagree regarding the penalties that usurp freedom and the suggested

alternatives. However, no one can ever think about cancelling the penal system of the Islamic *Sharee'ah* which represents one of its principles. Penalty in Islam has a series of advantages that distinguish it from modern secular laws, and each one of these advantages plays a distinctive role in fighting crime.

These advantages include the following:

**(A) Joining justice and mercy:** Of course, joining justice and mercy is not easy. Modern laws gave precedence to the principle of mercy depending on the famous saying, which states, “*Justice is above the law and mercy is above justice*”. Consequently, the criminal became the focus of these laws as they speak about his criminal behavior, the nature of his crime and whether he is a perpetrator or a culprit, as well as his conditions and excuses, paying no attention to the victim in a clear violation of the principle of justice. This happens because they blatantly depend on emotion instead of reason. Jeremy Bentham criticized this attitude in his book “*The Principles of Morals and Legislation*”, considering that the absurd people who want to make their 'perceptions' a law for others actually allege that they are infallible. He also said that such people rely on what they call "sense", which, in fact, contradicts reason.

In such a case, the penalty offers no material or moral benefit for the victim or his relatives, as a result of fusing the rights of the individual and the rights of the state and society. However, Islam keeps the right of the individual independent from the right of the state, and adopts justice

without neglecting mercy. Justice means that whoever commits a crime should be punished and this is a mercy for the whole society. Islam also retained a margin for private mercy, but within the framework of justice, by giving the victim (or his relatives) the right to choose between punishing the criminal, reconciling with him or forgiving him. Islam also calls for forgiveness, as Allaah The Exalted Says (what means): ***{But whoever overlooks from his brother anything, then there should be a suitable follow-up and payment to him with good conduct. This is an alleviation from your Lord and a mercy. But whoever transgresses after that will have a painful punishment.}*** [Quran 2:178]

Switching to mercy under the Islamic law is a joint decision between the criminal and the victim, unlike the unjust mercy that prejudices the right of the victim like the case with presidential pardons that save killers and other criminals.

Even in the rare cases when the criminal receives the death sentence, the penalty is hardly executed. Professor Abu Al-Ma'aati mentioned that the courts in Egypt issued only one death sentence in 1970 C.E., while the number of murder cases that year amounted to 1611 ranging from homicide and beating to death. Likewise, in 1970 C.E., the courts did not carry out any death penalty even though the number of murder crimes was 1562.



In Algeria, the death penalty has been suspended since 1994 C.E., and many countries, such as those in Europe, have canceled the death penalty altogether. Of course, this makes the victim and his relatives feel the brunt of injustice on one hand, and encourages the criminal on the other hand.

Excessive mercy towards the criminals led to a massive surge in crime rates in spite of the countless conferences and studies that discuss the issue of fighting crime. That is because the recommendations made by these conferences stress the necessity of adopting a so-called “humane” approach when dealing with dangerous criminals.

**(B) Equality between people regarding penalty:**

Under the Islamic *Sharee'ah*, penalties do not differentiate between a ruler and an ordinary citizen or between nobles and commoners. All people are equal in front of the Islamic penal law without any difference between the head of the Muslim state and the weakest citizen.

It was narrated on the authority of Abu Firaas that ‘Umar ibn Al-Khattaab, may Allaah be pleased with him, said in one of his *Khutbahs* (sermons), “*I have not sent my governors to beat you or take your properties. So, whoever faces any of these acts should report it to me, and I will take revenge on the governor for what he did.*” ‘Amr ibn Al-‘Aas, may Allaah be pleased with him, interrupted ‘Umar, may Allaah be

pleased with him, saying, “*What if a governor disciplines one of his subjects? Will you take revenge on him for that?*” ‘Umar, may Allaah be pleased with him, said, “*Yes, I swear by Allaah I would take revenge on him, as I saw the Prophet, sallallaahu 'alayhi wa sallam, allowing people to take revenge on himself.*” [Al- ‘Iqd Al-Fareed]

There are many other relevant examples throughout Islamic history including the incident of the woman from the tribe of the Makhzoom, [Saheeh Al-Bukhaari], and ‘Umar’s ruling against Jabalah ibn Al-Ayham who slapped a man from the tribe of the Fazaarah. Such just and fair rulings ensure the elimination of the injustice of rulers and officials.

Such equality does not exist in modern penal legislations and favoring some officials is even legalized under the so-called “diplomatic” or “parliamentary” immunity. Of course, such legal immunity encourages criminality, because those who enjoy it do not fear punishment like the other people. This appears clearly in the behavior of some legally “immune” officials who draw their guns and threaten others with death for trivial reasons, shoot someone due to mutual disputes, or escape trials.

Such reckless behavior and crimes would not have happened if there had been equality between all people.

**(C) Deterring the criminal and soothing the victim or his relatives:**

Those two factors are particularly important in punishment. There are two types of deterrence:

- Individual deterrence: that dissuades the criminal from committing the crime again.
- General deterrence: that dissuades others from committing the crime.

A penalty that does not achieve either type of deterrence can do more harm than good. The pre-Islamic Arabs used to consider this issue as proved by one of their famous sayings regarding the execution of a killer: *“The best thing to prevent killing is the killing [of the killer]”*.

This is because killing the killer blocks the way before retribution with all its evils and problems, and spares the lives of many people. Whoever contemplates the *Sharee'ah*-approved penalties notices this characteristic clearly. For instance, the thief is punished by the amputation of his hand. Of course, the sight of the amputated hand represents the greatest deterrence that reminds the thief himself and other people of the punishment of theft and frightens them so they keep away from committing this crime. The same thing applies to the penalty for adultery, and one can easily notice the deterrence implied in this penalty by reading the verse in which Allaah The Almighty Says (what means):

*{...And let a group of the believers witness their punishment.}* [Quran 24:2]

On the other hand, secular laws lack this characteristic, as proved by the fact that many criminals commit their crimes again and again due to the triviality of the punishment.

Soothing the relatives of the victim is more important than deterrence. This is because deterrence dissuades the criminal from committing the crime again in addition to dissuading other people from thinking about the crime, but without soothing the victim's relatives, they will commit other crimes. Vengeance is a human instinct and it should be released from the souls of the victim's relatives in an organized way under the supervision of the state. If this is not done, vengeance may either be released terribly, haphazardly, unlawfully and unjustly, leading to additional crimes or it may be kept suppressed to burn the heart and torment the victim's relatives continuously. Of course, this may cause them to suffer psychological disorders.

Whoever contemplates the Islamic penalties notices their effectiveness in fighting crime at the first instant because they deter the criminal and soothe the victim and his relatives. The retaliation, which is applicable in cases of intentional crimes including murder, wounding or beating, prevents the criminal and other people from committing this crime again.

In other words, whoever seeks to kill others knows that he practically seeks to kill himself. Of course, there is no rational person who seeks to get himself killed or to have some of his limbs amputated. The penalty that gives the victim the right to inflict the same harm upon the criminal who has harmed him deliberately, as long as it was not torture, is one of the fairest, most deterrent and most soothing penalties.

Professor Abdul-Qadir 'Oodah says:

*The penalty of retaliation is the best and fairest penalty that humanity has ever known, because it ensures that the criminal's punishment is equal to his criminal act. This penalty maintains security and stability in the best possible way, because when the criminal knows that he will be punished in the same way and manner in which he intends to commit the crime, he will often refrain from committing the crime. That is because the criminal or the killer usually commits his crime under the influence of the desire to survive and the wish to be dominant and victorious, but knowing that he will not survive after committing his crime drives him to save himself by sparing the life of his would-be victim.*

In addition to the penalty of retaliation, which is applicable in cases of intentional crimes where inflicting a similar harm on the criminal is possible and after refusal of forgiveness on the part of the family of the victim or the victim himself, there is the lashing penalty in some prescribed punishments

such as slander, fornication and drinking alcohol. The penalty of lashing entails many benefits including the following:

- It achieves deterrence given the fact that it is executed in front of people.
- It does not disable the criminal or make him incapable of taking care of his own affairs and the affairs of his family.

On the other hand, the penalty of imprisonment, as it is applied today, provides the perpetrator with a great chance to become criminally educated as a result of socializing with other experienced criminals inside the prison. Moreover, it prevents the criminal from taking care of his family, which may make his children take the same way.

Given these negative effects of the penalty of imprisonment, many criminalists called for the cancelation of penalties that confiscate freedom stressing the necessity of finding alternatives. This call was made during international conferences; for example, the Sixth UN Congress on the Prevention of Crime and Treatment of Offenders (Caracas, Venezuela 1980) discussed the disadvantages of penalties that confiscate freedom and there was unanimous agreement that this punishment should remain an exception and that resorting to it should be as limited as possible.

The deterrence achieved through physical penalties, to which we have partially referred earlier [we did not speak about amputation of the hand, stoning to death and discretionary punishments], is also achieved through

soothing penalties such as the payment of blood money in cases where retaliation is impossible whether in crimes against the soul or the body.

Even the right to forgive, which is exclusively limited to the victim himself or his family rather than the rulers as in the case with modern laws, achieves deterrence and soothing at the same time. This is because when the victim feels that the fate of the criminal is contingent upon his will regarding punishment or forgiveness, he will be satisfied and consoled. Moreover, forgiveness will represent a stiff psychological punishment against the perpetrator.

However, forgiveness is limited to the crimes that exclusively or mainly affect the right of the individual. Hence, it does not apply to crimes that affect the right of society. It is noticed that presidential pardons in festivals and national occasions became one of the causes behind the rampancy of crime, as proved by the surge in crime rates following every presidential pardon.

- 2- **Expiation:** Expiation is a different punishment and it is limited to homicide. This penalty takes one of two forms: fast or emancipation. The difference between the aforementioned penalties and expiation is that the latter is personal and neither the judge nor the ruler can force the criminal to execute it. In other words, it is related to the faith of the criminal and his desire to make up for what he missed because he committed the crime. This expiation

removes the sin that one committed and attaches him to belief in Allaah The Exalted and the Last Day. It also reminds him of these meanings after the negligence and forgetfulness that afflicted him while committing his crime.

### **Second: Low costs of the Quranic legislation and its infallibility:**

The low costs required for the execution of the Quranic legislation can easily be perceived when we compare it to the costs of the execution of modern legislations locally and internationally. On the international level, many international institutions were established to fight crime such as Interpol and international criminal courts, not to mention the conferences that are held everywhere for the same reason. Of course, these institutions and activities consume huge funds without delivering any tangible improvements in the field of fighting crime. On the contrary, the recommendations of some criminalists worsened the problem of the criminal phenomenon. Moreover, there is no consensus regarding many issues such as the definition of the crime, terrorism, and so on.

On the local level, let us take Algeria as an example to shed light on the costs of fighting crime. In Algeria, there are at least two ministries working in the field of fighting crime (The Ministry of Justice and The Ministry of Prisons), in addition to their affiliated administrative bodies in all provinces such as courts and prisons. For example, there are 250 employees working in a prison that accommodates 650 prisoners, i.e. an employee per two or three prisoners. We can also read the numbers in a different way by saying that this prison in fact has 900 individuals. If



we added the costs of maintenance and the needs of inmates (prisoners and guards), in addition to the costs of the courts and ministries as well as the departments of legislation, the costs will be unimaginable.

In other words, the costs of the process of fighting crime starting with the phase of legislation, then trial and finally execution do not fit the results and fruits.

In the Province of Annaba, the police and security authorities recorded more than 25,000 crimes in the first three months of 2003 (Al-Khabar Newspaper May 22<sup>nd</sup>, 2003 C.E.), with a rate of 27 crimes per day and this was in the winter season when the crime rate is usually low.

The negative aspects of the process of fighting crime are mainly related to the punishment of imprisonment, which is very rare in the Islamic legislative system. However, it is widely used today, while some criminalists in the Caracas Congress (1980 C.E.) called for limiting the use of imprisonment and proposed alternatives such as lashing. We can summarize the negative aspects of imprisonment as a penalty in the following points:

- 1- Prison itself does not represent a deterrent penalty, because deterrence requires pain and publicity of the penalty. Does prison cause pain? Not exactly, as Yoosuf, may Allaah exalt his mention, said (what means): ***{"My Lord, prison is more to my liking than that to which they invite me}*** [Quran 12:33]

The wife of Al-'Azeez also said (what means): ***{"What is the recompense of one who intended evil for your wife but that he be imprisoned or a painful punishment?"}*** [Quran 12:25]

This proves that prison is different from pain. We should notice that she was speaking about prisons that were significantly inferior to those we have today. It is almost sure that some prisons today are more comfortable than the criminal's house, which means that prison encourages crime rather than fights it. According to a report of Egypt's Prison Authority to Geneva Conference in 1955:

*By the advent of the Egyptian revolution in 1952, the Egyptian Republic witnessed renaissances in various fields including the prisons' sector. We have improved food and clothes, established cantinas, allowed smoking, radio and films. We also introduced sports and acting. Furthermore, we facilitated visits and correspondence, established libraries, and cancelled administrative monitoring and the first crime.*

The results of these reforms were summarized by Kamaal Al-Dusooqi who wrote about the prisoner who deliberately strangled the first child he met following his release and turned himself in to the police to return to prison (*Al-Sihash* Newspaper September 18<sup>t</sup>, 1957). In Algeria, many of the criminals who are released in the morning are arrested at night and many homeless people commit crimes just to enter prison to get shelter.

- 2- The penalty of imprisonment adversely affects the interests of the convict. For example, if he has a job he will lose it, if he is a student, he will not complete his study, and if he is a merchant, his business will slump.

Moreover, this punishment affects his children and family, which means that the punishment lacks the condition of “exclusivity”, for which criminalists called ceaselessly, because it deprives the children of parental care and denies the wife her most important marital rights. So, when the convict leaves the prison, he finds that his family has been destroyed and his children have taken the same road.

- 3- Reality proves that prisons do more harm than good. It may even serve as a school for teaching the techniques of criminality as they put different types of criminals together giving them a chance to learn from each other. Hence, the novice thief may graduate from prison as a professional thief.

The criminal will also learn how to hide the traces of his crime and how to avoid the previous mistakes that led him to prison. Moreover, spending long terms in prison means that the criminal will find it extremely difficult to adapt to normal social life after his release.

Prison also destroys the life of the convict and when he leaves it, he finds himself in a hopeless situation without any way to catch up with the society or make up for his loss other than returning to the crime, especially given that there is no correctional follow-up after the release. In addition, after his release, the prisoner faces high walls of precaution that deprive him of socializing with other members of society, because all people fear him and avoid dealing with him. He will not find anyone to befriend him other than a former ex-convict or someone who wants to learn principles of criminality

from him. Anyway, the prisoner will find himself taking the road of crime again.

The Quranic legislation avoids all the aforementioned negative aspects and many other negative aspects as its penalties do not affect the convict's rights or duties. So, if someone was punished by lashing or retaliation, he can return to his work and join his family immediately without the need for a building to host him or guards to serve him. Moreover, the Quranic penalties are deterring and soothing in addition to expiating the sins that resulted from the crime. The rulings stated in the Quranic texts are very simple and low cost, yet they have succeeded in making unprecedented achievements within a short period of time unlike other legislations that require huge funds and a long time to achieve less beneficial results. Of course, this proves the inimitability of the Quranic legislation in fighting crime.

### **Advantages of the Islamic Legislation:**

Any legislation should have advantages that ensure its continuity and guarantee that people are satisfied with its wisdom and consistency with individual and collective interests.

Thanks to Allaah The Almighty, the Islamic *Sharee'ah* has strong foundations and characteristics that make people follow it out of deep conviction and strong confidence. That is because it agrees with sound human nature: ***{So direct your***

*face toward the religion, inclining to truth. [Adhere to] the Fitrah of Allaah upon which He has created [all] people. No change should there be in the creation of Allaah}* [Quran 30:30]. In addition, there are countless evidences that prove that this *Sharee'ah* addresses sound reason, encourages work, calls for *Jihaad* (striving in the cause of Allaah The Exalted), and promotes tolerance, freedom, equality, goodness and piety.

### **Why is it miraculous?**

After reading the contents of this research, you will realize the difference between secular penal laws and the miraculous Divine penal laws, which also apply to all human laws and the corresponding Divine laws.

Certainly, you have read the introduction of this research and know why reasonable people accept the Commandments of their Creator without doubt or discussion. Allaah The Almighty described such people Saying (what means): *{The only statement of the [true] believers when they are called to Allaah and His Messenger to judge between them is that they say, "We hear and we obey." And those are the successful.}* [Quran 24:51]

They have prospered and succeeded in this world and the Hereafter simply because they follow the best of what they hear and obey the Commandments of Allaah The Almighty.

After that, whoever seeks the truth should not go further into debate because the truth is crystal-clear and so is falsehood. The truth prevails simply because it is from Allaah The Exalted, while evil is from Satan and his followers. Allaah The Almighty Says (what means):

- *{O mankind, the truth has come to you from your Lord, so whoever is guided is only guided for [the benefit of] his soul, and whoever goes astray only goes astray [in violation] against it. And I am not over you a manager}* [Quran 10:108]
- *{There has come to you from Allaah a light and a clear Book. \* By which Allaah guides those who pursue His pleasure to the ways of peace and brings them out from darknesses into the light, by His permission, and guides them to a straight path.}* [Quran 5:15, 16]
- *{O mankind, there has come to you a conclusive proof from your Lord, and We Have sent down to you a clear light.}* [Quran 4:174]
- *{Those who follow the Messenger, the unlettered prophet, whom they find written in what they have of the Torah and the Gospel, who enjoins upon them what is right and forbids them what is wrong and makes lawful for them the good things and prohibits for them the evil and relieves them of their burden and the shackles which were upon them. So they who have believed in him, honored him, supported him and followed the light which was sent down with him - it is those who will be the successful.}* [Quran 7:157]