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**Punishment of Theft in
Islamic Penal Code**

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**In the Name of Allah the Most
Compassionate and Merciful**

Contents

1. Author's Introduction
2. Islamic Laws and the Ouestion of Theft
3. Conditions and Verdicts of Theft in Islamic Jurisprudence
4. Enforcement of the Punishment
5. Summary and Conclusion

1. Author's Introduction

The laws and socio-juridical regulations which form part of our Islamic culture, are based on divine knowledge and wisdom. These envisage man's welfare as well as his individual and social perfection. A discussion of the dimensions of Islamic legal and penal problems and a description of their philosophy and conditions have a peculiarity which attract men's belief in them, whether such men have accepted Islam as a matter of conviction, or on the basis of reasoning and investigation.

In any case it is the duty of jurists and jurisprudents, as well as investigators and thinkers, to present and analyse laws, particularly Islamic Penal Code, which has long been ignored under the domination of alien culture. For, the more such laws are discussed and analysed, the greater will be their attraction and the more profound will be their proven basic wisdom.

One of these problems is the punishment of a thief which has been explicitly and decisively dealt with in the Qur'an. It may seem strange before anyone can really

understand a verdict of cutting off a human limb. As we have seen, those who are prejudiced have criticised the matter of cutting off a thief's hand. However, when this question is subjected to analysis with a view to identify its conditions, reasons and effects, its fairness and intrinsic wisdom would be evident, so as to offset every objection.

With regard to the brief explanation above, the question of theft and its penal limit has been discussed herein on the basis of the verses of the Qur'an and traditions, as well as the verdicts of jurists. In this way the writer may have performed his small share of duty towards the religion and school of thought which have been a guarantee of our happiness and honour throughout history.

M.T. Rahbar
Tehran, Dec. 1981

2. Islamic Laws and the Question of Theft

«وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا نَكَالًا مِنَ اللَّهِ، وَاللَّهُ عَزِيزٌ
 حَكِيمٌ. فَمَنْ تَابَ مِنْ بَعْدِ ظُلْمِهِ وَأَصْلَحَ فَإِنَّ اللَّهَ يَتُوبُ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ. أَلَمْ
 تَعْلَمْ أَنَّ اللَّهَ لَهُ مُلْكُ السَّمَاوَاتِ وَالْأَرْضِ يُعَذِّبُ مَنْ يَشَاءُ وَيَغْفِرُ لِمَنْ يَشَاءُ وَاللَّهُ عَلَى
 كُلِّ شَيْءٍ قَدِيرٌ» (سورة مائدة/آيات ٤٠/٣٩/٣٨)

The Qur'an, Chapter 5 verses 38, 39 and 40 say:

«As for the man who stealeth and the woman who stealeth, cut ye off their (right) hands, as a recompense for what they (two) have earned; as an exemplary punishment from God; And God is Mighty, Wise.»

«And he who turneth (to God, repent) after his iniquity, and reformeth (himself); then Verily, God turneth unto (mercifully, pardons him); Verily, God is Oft-Pardoning, Merciful.»

«Dost not thou know that God, to Him belongeth the Dominion of the heavens and the earth; He punisheth whom He pleaseth; And Verily, God over all things hath power.»

The above verses have expressed the verdict and philosophy of theft, giving guidance for avoiding such punishment with a reference to God's Wisdom and Mercy. It would be proper to explain briefly the fine and exact points of the above verses:

1) The punishment for theft is prescribed as cutting the hand, while its details and conditions are elaborated in the Islamic traditions and jurisprudence.

2) No difference in punishment is envisaged between a man and woman, thus, showing its importance and decisiveness.

3) The punishment arises from the action of criminals, for which no one else is to blame.

4) The phrase «نكالا من الله» used in the first verse is worthy of notice since it expresses the philosophical basis of the verdict and is an illustration of its wisdom. The literal root of the word «نكال» «نكال» in the dictionary means treating someone in a way to warn him against an act and as a lesson to others.

Cutting a thief's hand is a preventive factor and a form of deterrence to check the commitment of a crime serving at the same time as a warning to others to avoid stealing. It will create a state of mind in them to see the serious consequences of such a deed and the disgrace resulting from it. A constant attention to this matter will create a general immunity for society.

5) The phrase «والله عزيز حكيم» in the first verse shows God as mighty and wise, able to do everything and doing them for a proper reason. God resembles neither a powerful person who acts contrary to wisdom, nor a sage who lacks power and finality. Therefore if God orders decisively to cut a thief's hand or to deal him another kind of punishment, this is not an evidence of

His vindictiveness and victory, but a confirmation of His wisdom, realism and advisability of a measure in connection with human beings to be carried out with finality.

6) The word « ظلمه » used in the verse shows that stealing is an unjust deed which deprives the right of other individuals and at the same time endangers social security and hurts human sentiments. Thus, this injustice should be fought against and uprooted, even if it is necessary to cut off an oppressor's hand. This act is like removing a cancerous tumour to prevent its deadly spread.

It has been explained in various traditions that the execution of heavenly punishment is a blessing for society, in the same way that rain is a blessing for dry land. The following sentence is quoted from the Prophet (ص): «The carrying out of a punishment is better than forty days' rainfall.»

7) In the second verse repentance and turning to virtue are recommended in order to remove the traces of crime, and this is considered as God's grace to man. Therefore, if a thief, before being arrested and taken to the court, repents and restores the stolen property to its owner, and begs God for pardon, he will be exempted from punishment. So it is incumbent upon the guilty to regret their deed, and before suffering punishment in both worlds, they could remove the stain of sin and make amends for the damage done to others. The phrase «ان الله غفور رحيم» shows that a guilty person is not always condemned to punishment, and the way of penitence and reform is open to him. He should not close the door of grace on himself, for, God is forgiving and kind and calls upon men to repent.

8) The third verse emphasises that heaven and earth belong to God. He is Almighty and has no need of punishing anyone, and declares that granting salvation and favour and inflicting punishment belong to Him only. He bestows favours and deals punishments to each being according to his wisdom and competence, and this fitness depends on one's own resolution and freedom of choice. Therefore a guilty person can receive pardon by his repentance, whereas his persistence in sin and crime deserves punishment. It is noteworthy that the execution of punishment upon a thief or any other criminal can be a factor in receiving pardon, and in the mitigation of the punishment in the next world.

According to another tradition Hamran asked Imam Bagher (ع): «Will a man who has received punishment in this world, be punished in the next too?» The Imam said: «God is above that.»

The above points show the philosophy of punishment, especially in connection with theft. For example the Qur'an, Chapter 9:112 says:

«(These are) They who turn unto God (seeking forgiveness), ... who enjoin what is good and forbid what is evil, and keep (themselves) in (themselves) in God's (ordained) limits, wherefore proclaim thou (O' Our Apostle) the glad tidings unto the believers.»

There are many other cases, too, in which keeping limits and avoiding their violation have been explicitly recommended. A case is mentioned in the book 'Al-Hodood-Taghrirat' Chapter I that a woman came to Ali (ع) and confessed to adultery four times. The Imam raised his head to heaven and cried: «O' God, she has

confessed four guilts and you said to your prophet: 'O, Muhammad (ﷺ), he who transgresses any of My limits is showing enmity to me.'»

In the traditions of Islamic leaders, the enforcement of limits and its importance have been so repeatedly mentioned that there is no need of quoting them once more. In the next section, we will discuss the question of theft and its conditions from the viewpoint of traditions and jurisprudential verdicts in order to further clarify the problem.

Before discussing punishment for theft and its conditions, let us consider the various punishments according to the secular and common laws of the world in connection with stealings. This is in order to show Islamic punishment is more just and effective.

The crime of theft is such that all nations, on the basis of the knowledge of good and evil and of human nature, have condemned it, and they have envisaged a lawful punishment for it based on their social traditions.

For example Montesqueu in his 'Spirit of the Laws' (P. 210) says:

«In China they tear cruel thieves to pieces, but they do not torture other thieves in this manner. This makes it possible for thieves to steal but to abstain from cruelty or killing.»

«In Russia where the punishment of a thief and murderer is the same, thieves usually commit murder, saying that a dead man can not speak, meaning that he cannot betray them.»

According to the book of 'Reasoning in the Qur'an': «In the laws of ancient times, as illustrated in the book of Joshua, death is assigned as the punishment of theft.»

«During the time of the first and second Roman

emperors in most cases they cut off a thief's hand or put him to death.»

«In the judicial laws of old England a thief was in some cases condemned to death. In France a thief was at first penalised with fine, but as this punishment proved to be ineffective, they provided for hanging a thief for the sake of the safety of people and their property.»

Such severe punishments show how troublesome this crime had been for people that they were willing to enforce such strict laws.

In Islam theft is considered as a harmful crime of the first degree among the religiously forbidden acts. The Qur'an in chapter 60:12 enumerates the points to be accepted and undertaken by believers in their allegiance to God and the prophet, and in berating infidelity, the verdict against theft is also mentioned. It says:

«O: (our) Prophet (Muhammad) when come unto thee believer women pledging that they will associate not aught with God, and they will steal not, and they will commit not adultery and kill not their children, and they will utter not slander, nor utter any falsehood which they had forged themselves between their hands and their feet and will not disobey thee in what is fair, then accept thou their pledge, and ask forgiveness for them from God; Verily God is oft-Forgiving, Most Merciful.»

According to tradition the Prophet is quoted as saying¹: «There are four things that ruin a house if they enter it: treason, theft, drinking, and adultery.»

Thus theft is a factor which destroys the home and society, a deed that must be fought against and

prevented seriously in order to let the rule of law flourish.

In one of the narrations attributed to Imam Ali-bin- Mussa- Reza(ع), the Imam gives a warning that the capture of a thief is divine punishment, for, a transgressor of people's property is revealed and disgraced by God, showing that the thief has brought this disgrace on himself. He says²: «A man keeps on stealing until he receives the penalty for it, and it is then that God betrays him in vengeance and deals him his punishment.»

What is noteworthy is that a thief does not always confine himself to stealing people's property. It is often seen that he (or a gang) engages in the murder of one or several beings, or commits similar crimes in order to have access to the money and property of others. This is a good reason why a thief's punishment should be aggravated to prevent such unpleasant consequences. Otherwise negligence in such matters will produce terrible results. In the modern world, imprisonment is provided as punishment for theft, but the inefficacy of it in checking violation of life and property is too obvious to need explanation.

The spread of crime, especially of theft in the civilised world has reached such a degree that there is an outcry of helplessness heard from the countries where crime and treason have ceased to be considered hideous. Recently a newspaper published the proposal of a U.S. Congress member for cutting off a thief's hand, though it was rejected as not being in accord with the laws of that country.

The following statement is quoted from Imam Ali-Ben- Mussa-Reza (ع) about the reason for the verdict of theft¹:

«The reason why the verdict of cutting off a thief's right hand is given, is because the right hand is usually used in manipulating objects, and very often theft is committed with the same hand. Therefore, as it is a very useful limb, this verdict is given as a preventive measure for other people in seizing other people's property illegally. The unlawful usurpation of property is forbidden as a means of preventing all kinds of depravity causing death and destruction, and checking such injustices as quarrels, spite, abandonment of trade and industry and encroachment on other people's rights which are rightfully theirs.»

As you see, the philosophy of forbidding theft is fully propounded in the above narration. It shows that such a dangerous crime deserves the said punishment as a safeguard for other individuals and society.

Let us affirm here that this law and other penal laws do not imply that Islam considers a man and his limbs trifling as it is claimed by some critics. On the contrary the nobility of man is greater from the viewpoint of Islam than can be imagined by the supporters of the defense of human rights. Islam's penal code is based on the nobility of man and his exalted values, and due to the respect that Islam has for him and his working capacity and for social security, it punishes aggressors to eliminate depravity and corruption from the human world. The punishments envisaged for aggressive deeds against life and property show the degree of the exactitude and care bestowed on such matters.

For example the penalty for cutting off an innocent man's hand or fingers is equal to half the blood- money which must be paid for killing someone, (which is 500 dinars, each dinar being about 5 grams of gold). At the

same time, if someone steals the equivalent of a quarter of a Dinar (a little over one gram of gold) his hand is liable to be cut off.

Abul 'alai Muarra once posed a question as to how a hand worth five hundred dinars could be severed as punishment for stealing just one-fourth of a dinar. Sayed Fazi, the author of Nahjul-Balagha replied Muara by saying that an innocent's hand represented a trust, which enhanced its value, while a criminal's hand attracted no quantitative evaluation. Another explanation was that one who was subjected to oppression deserved greater compensation than another who had himself betrayed his own trust and transgressed.

3. Conditions and Verdicts of Theft in Islamic Jurisprudence

In the books of Jurisprudence a number of conditions are mentioned for the execution of the verdict, a summary of which will be mentioned here from the book 'Tahrir- al- Vassila'.

1) A thief must be an adult to undergo punishment. A child under age who commits theft is punished by the religious magistrate in the way he deems advisable.

2) Soundness of intellect is the next condition. So a lunatic who steals is not punished in that way, and if thieving is repeated and correctional punishment proves useless, he is punished by the magistrate in the way he sees fit.

3) Freedom of choice is another condition. So a person who is forced to steal is not punishable in that way.

4) Absence of necessity is another condition. So if a person is constrained by necessity to steal, that punishment is not applied, and he is punished as the

magistrate deems it advisable.

5) Encroachment deserving extreme punishment should have taken place against a protected area or spot such as a safe for keeping money and jewels, or a chest that is locked, or a store etc. So, if such doors are left open or accidentally broken by someone, and another person commits stealing, neither of them receives the punishment of hand-cutting. Of course, they are still punishable below that limit, and the stolen property must be returned.

6) If the thief removes a property from protected places by himself or with another's aid or even with the help of a lunatic or an undiscerning child, he is punishable.

7) The thief should not be the owner's father. If he is, he is not liable to that punishment for seizing his son's property. But in the case of other relatives, stealing is punishable.

8) The theft must have occurred secretly. So, if it is seized openly, it is not considered theft and is, therefore, not punishable. Of course there are other punishments for it as well as the necessity of returning the property.

In addition to the above eight conditions there are certain other conditions, too, to be met before the hand-cutting punishment. They are as follows:

A) When there is no doubt which may prevent the application of the maximum penalty. For example if a partner takes more than his share of partnership, thinking it to be permissible, he does not receive the maximum punishment, even if he has taken more than the limit permitted by law. Or he may be aware of the amount of his share, but does not take the money as theft, and intends to make a reckoning afterwards. In

that case he is not liable to the hand-cutting punishment.

B) Non-participation in the stolen property. So if he takes what is his right and no more, he is not punished as a thief, unless he takes more than his right or equivalent of the amount expressed by the law.

C) If a person with whom something is deposited seizes it, he is not a thief. Nor is a person who carries off something mortgaged or rented to another.

D) If a woman takes some of her husband's money as an obligatory alimony which he has failed to pay her, she is not considered a thief, on condition that she does not take more than her due. But if she takes more than the legal amount, it is considered theft. If a guest takes something of the host's which the latter has concealed from him, he is a thief, but if it is not concealed and not placed in a protected place, it is not liable to maximum penalty.

E) The limit in value for stolen property is a quarter of one gold dinar. Thus if the stolen property is valued up to that amount or more, the theft is liable to maximum penalty.

F) A thief, who steals during a period of famine, is not liable to maximum penalty.

G) There is a difference of opinion concerning the theft of endowed property and tithe money. The verdict about such cases may be studied in the relevant books of jurisprudence.

H) If two people join to steal something the value of which is below the legal limit, they are not liable to maximum penalty.

I) Theft is not legally proved unless the accused makes two confessions, or two just witnesses confirm

the theft.

J) Confession is valid provided the confessor is of age, sound in mind, and having option. Confession by a child under age, a lunatic and a person forced to confess, or made in jest or negligence or in sleep or forgetfulness, is not valid. Confession must also not be obtained through threat.

K) If a person retracts after confessing twice and denies the theft, the execution of punishment is debatable.

L) But if the guilt is proved and two just witnesses testify it, his denial or repentance does not prevent the enforcement of the penalty.

M) If the accused repents before his guilt is proved, the penalty is rendered null and void. But repentance after confession does not remove the penalty. Some jurists have declared about this case that the Imam or magistrate have the option of pardoning or confirming the punishment.

N) If the thief before being arrested and tried and condemned secures the legal ownership of the stolen property by such acts as the purchase of it from its original owner, or the owner himself gives it away to him, there is no penalty, even if the accused is already introduced to the court.

O) The enforcement of the penalty depends on the application of the owner of the stolen property. Therefore even if the theft is proved in the ways mentioned above, he may be exempted from punishment in the absence of the owner's demand for penalty.

P) If the stolen property is returned to its owner's place by the thief, the penalty is not enforced.

approached to solve peoples' problems. Even the Caliphate in spite of its extreme policy, was obliged to approach Hazrat Ali (ع). At the same time, however, Hazrat Ali (ع) had no obligation of approaching others.

Clearly, these facts show that Shi'aism came into existence through Islam itself and the Holy Prophet (ص) himself laid its auspicious foundation in accordance with the Divine Will. This was to safeguard Islam and the Muslims from decline and dissension, and to promote the attainment of perfection and progress. Factually, Shi'ism is a natural and only outcome of Islam, and it was necessary for Islam to give birth to it, because Shi'ism is that very Islam which, after the demise of the Holy Prophet (ص), advanced on the path prescribed by the Holy Prophet (ص) by the Will of God.

4. Enforcement of the Punishment

Another matter which is noteworthy is the Islamic judicial system in trials and enforcement of penalty. In this system the fairness of the judge, and the competence and legality of the court are basic in the formation of society. It is clear then that no detail may be disregarded by the religious magistrate. He must act justly and impartially to all concerned on the one hand, and must himself be a believer and follower of divine injunctions on the other.

Ali (ع) in one of his worthy discourses has given a warning about the danger of discrimination in the enforcement of penalty, as a factor in destroying nations. He also speaks of theft and its penalty and says that among some nations when nobles committed theft they were pardoned, while the weak and lower classes were severely punished for the same act.

Here a story may be cited of an argument narrated by historians between a poor Sufi and Ma'moon the Abassid Caliph. Ibn-Senan says: «In Khorassan I was in the presence of Imam Ali- ben- Mussa- Reza(ع) when

Mamoon, too was present. A Sufi who had committed theft was brought before Ma'moon. He looked dishevelled and had a mark of prostration and devotion on his forehead. Ma'moon looked at him and said: «How ugly it is to steal with such a feature and face.» The Sufi said: «I was obliged to do so, and not by choice. For, you seized what was rightfully mine and edrived me of my share of religious tithes.»

Ma'moon asked: «What right do you have to such taxes?» He said: «God has in the Our'an divided tithes into six parts and also spoken of spoils. And you as a caliph have deprived me of it, though I am a distressed wanderer and carry the Our'an with me.» Ma'moon asked: «Should we cease to carry out God's injuctions for the sake of your fables?» The Sufi answered: «You should first purify yourself from pollution, and then others, and punish yourself first before punishing others.» The Imam answered: «He wishes to say that as you have committed theft, he has done so, too.»

Ma'moon was roused with anger at this outspoken answer and turning to the Sufi said: «*How can you cut off my hand when you are my servant and slave?*» Ma'moon shouted with surprise: «I, your slave? Woe upon you!» The Sufi said: «For, your mother was a slave bought out of the Muslim fund, and thus you are the slave of all Muslims east and west until they make you free, and I have not freed you yet. Moreover you have usurped the tithe money and have failed to give what is due to the Prophet's descendants and to me and others. Also, an unclean person cannot purify another like himself. This should be done by the virtuous. One who deserves punishment cannot punish others, unless he begins with himself. Have you not heard God's words that say: 'Do

you order others to do good and forget yourself? Have you no power of reasoning while you read God's Book? Ma'moon turned to the Imam and said: «What should I do with this man?» The Imam answered: «God told Muhammad (ﷺ) that He has granted reason to the wise and ignorant, and the world is based on reason. And this man spoke with reason.» Ma'moon let the man go, and retired to his house to think of a way to get rid of the Imam, which he did with poison and killed him.

In conclusion it would be fitting to give a brief translation of the analysis of theft in the book of «The Interpretation of Fi- Zalalel- Qur'an» by Sayed Qotb.

After quoting the verse on theft, he writes:

«The Islamic order is complicated, and its philosophy and injunctions cannot be easily understood without careful attention to its whole nature and principles and the guarantee for their execution. Moreover, in practice the details of verdicts do not seem expedient for human communities unless the whole system is put into practice. Thus the adoption and selection of certain verdicts will not by themselves be effective, for, Islam does not lend itself to separation of parts.»

The problem of theft is no exception to the above rule. Islam has first envisaged a right of life for every individual in an Islamic society as well as the use of all the necessary means and possibilities to safeguard that life. Thus every person has the right to eat, drink, wear clothes, and have a home to live in comfortably and safely. This right must be observed by the whole society and by the government which represents it to meet all the above needs as long as a person is able to work. It is the duty of both society and government to inform every

person of the types of proper tasks and supply the means of work. If a person is in need on account of the absence of work or means or inability either temporarily or permanently, he has the right to resort to the following ways to meet his needs:

- 1) Through his relatives.
- 2) Through the people of his locality.
- 3) Through public fund, collected by means of tithes, and if this is inadequate, it is incumbent upon the government to invite assistance from the rich. In this way the wide gap between the various classes of society will be reduced.

Islam also imposes limitations on gathering wealth by forbidding it except through legitimate means. Controlled individual wealth in Islam lessens any temptation on the part of the needy to steal, especially as the Islamic social order is duty - bound to look after the destitutes.

Furthermore Islam is in charge of the education of people to guide their thoughts to proper channels of trade and industry, and if the income obtained in this way proves inadequate, assistance is given through honourable means.

Thus, what need is there for a man to steal? In such a case theft is not caused by need, but by a desire to rob, an act which creates fear in the society and destroys security.

In a society where everyone has the right to secure a legitimate livelihood, to avoid usury, hoarding, bribery, etc. and to rely in certain cases on the help which may be obtained through tithes, everyone feels secure in such a society and has no fear of transgression through theft. Therefore, when all the above conditions are fulfilled,

there is no room for lenience to a person who commits theft.

Theft is seizing the property of others which has been kept in a safe place. So, if something is placed in trust with a person and he seizes it for himself, or if someone is allowed to enter a house and steals something there, his act does not render him liable to the penalty of severing his hand. The same verdict applies to refusal to return borrowed property, of stealing crop which has not been harvested, or property exposed to view. In such cases other punishments such as whipping, reproaching, advising or imprisonment are given as the magistrate deems advisable. •

Now let us consider the reason for cutting off a thief's hand. Such a person intends to add to his own wealth from other people's labour. He is not content with his own income, and wants to gain additional means of spending and enjoying luxuries, or freeing himself from work, or safeguarding his future.

Islam combats such motives, and when a hand or a foot which are the means of stealing is removed, there is no likelihood of resorting to such acts, and it will serve as a warning to others.

Human laws mostly envisage imprisonment as the penalty for theft, but this has not been effective in reducing or preventing this crime. The only effect of it is to resort to theft again and again with greater knowledge and experience after being released from prison.

Those who are against this punishment say that humanity and civilisation do not accept it and therefore it is impracticable. Do they mean by this that a thief must be rewarded by humanity and civilisation and encouraged in his vice to add to crimes and cause terror

in society?

Can logic and intellect be put aside and man's nature be forgotten and past experiences of nations be ignored, and fallacies be approved?

The punishment of cutting a thief's hand is supported by human thought and investigation, and is in the interests of both the individual and society in reducing such a crime and safeguarding social security.

5. Summary and Conclusion

1) The Islamic penalty for theft is a just one. It neither allows severe punishments such as death or lynching a thief which were prevalent in some communities, nor provides for too much latitude in this matter in terms of simple imprisonment, which has proved inadequate as a measure to prevent such a crime. Thus severing a hand may be considered a reasonable measure as compared to the other existing penalties.

2) The Islamic punishment emphasises faith and morals and security of millions of people against transgression upon lives and property of human beings, and the subsequent damage that theft may produce. Every wise and just person will admit that if a few transgressors are dealt Islamic punishment, it is preferable to jeopardising a society by increasing the rate of crime by illogical and unwise lenience and tolerance.

3) Considering the conditions mentioned above, the application of maximum penalty is so narrowed

down to an improbable number of cases in which this penalty is enforced. At the same time a few such cases will serve as an effective warning to others, to check the possibility of this crime altogether. The history of early Islam is a proof of this statement.

4) When the conditions are lacking, no extreme punishment is inflicted on the accused, though he is called to account to determine the kind and extent of punishment deemed advisable by the magistrate. This will prevent the spread of a crime, as envisaged by the Islamic penal code. Theft is like a cancer tumour which endangers the life of individuals and society, and it must speedily be removed. Like adultery it shows a complete lack of belief and faith.

5) In an Islamic society where legal provisions and various possibilities exist for the proper education of individuals and combatting vices on the one hand, and provision of the means of livelihood and employment by the government on the other, there is no room for any one to offer any excuse for violation of the rights of others and to abase oneself by such despicable acts.

Therefore it is considered necessary to enforce such a penalty, together with social and educational changes, which take place in harmony with Islamic culture, law and ethics. In fact the enforcement of the above law is related to the second stage of social evolution and serves as an exception in the case of breaking the law. What is of great importance in educating individuals in a human and religious manner for a wholesome society, in such matters as opinion and acts, morals and divine sovereignty is a safeguard of social, economic and political justice, education, obligations and responsibilities of both individual and collective kinds.

The history of early Islam shows how the Prophet (ﷺ) created an honest following out of an ignorant community of the time, when crime was considered most ugly and despicable, and self sacrifice and devotion in the way of God and human beings were the rule of the day, and when no prison was filled with criminals and no gallows set up for anyone. If a person committed a sin, he presented himself to the court for punishment.

In short, belief in divine punishment and a moral undertaking on the one hand, and fear of legal punishment on the other, are factors which reduce the probability of crime to its minimum point, especially if the legal punishment is given decisively as an efficacious check to crime. This becomes possible when the guilty are handed over to the court of justice without any indulgence.

We should add here that in the cases of civil law in Islam the question of pardon, by the plaintiff, of the guilty is considered important, being a sign of morality and virtue and an effective means of the moral correction of the guilty. That is why in the case of theft, the pardoning of the accused by the owner of a stolen property prior to his condemnation by the court exempts him from maximum penalty.

In conclusion two significant points may be mentioned in connection with the guilty, one of which is the psychological effect of sin and crime on the spirit of a guilty person, and the expectation of God's punishment and social notoriety; and the other is the material loss of earning capacity subsequent to punishment for the family of the guilty person. These two matters are not confined to a thief, but related to all

those who suffer legal punishment. Concerning theft, repentance before God and returning the stolen property to its rightful owner will produce an easy conscience, a relief from divine punishment, and acceptance by society.

It is related from either Imam Bagher (ع) or Imam Sadegh (ع) that when a person has committed theft, or adultery or given to drinking of which sins no one is aware and the guilty person is not arrested or he has repented, if he begins to follow the path of righteousness he will be exempted from maximum penalty.

It is also narrated by Imam Sadegh that some thieves whose theft was seen and to which they had confessed were brought before Ali (ع). The Imam inflicted the punishment and asked Ghambar to see to their wounds and problems and report to the Imam. This was done, Ali (ع) gave each of them two suits of holy garments and then they were brought before him. He turned to them and told them to raise their arms to heaven and cry to God that Ali (ع) had cut off their hands. They did so. Then the Imam said loudly: «O, God, I acted according to your Book and your Prophet's tradition.» Then he turned to them and said: «If you repent, your hands will be returned to you in the next life, otherwise you will go to hell as you are now.» Then he ordered Ghambar to pay them their travelling expenses to return home.

Concerning the next point which is the material loss caused to a condemned person by the enforcement of the penalty, there are also certain obligations for the Islamic government to provide for his family if he is unable to work.

It is related from Imam Sadegh (ع) about a thief

whose right hand had been cut by ALi (ع) that for the second offense his left foot was cut and for the third offense he was condemned to life imprisonment, while his family were supported by the public treasury. Islamic jurists' verdict, too, is to provide for a punished thief who is poor, or imprisoned, out of public funds.

- (1) Vassael- o- Shia, Chapter 1, Narration 3.
- (2) The same, Chapter of Forbidden Acts, Narration I.
- (3) Vassael- o- Shia, Chapter 1, Narration 2
- (4) Vassael- o- Shia, Chapter 3, Tradition 5.