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### Nature and Tends of Islamic Judicial System: A Comparative study

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#### Abstract:

Man is a social being by nature. He cannot live perpetually on his own completely independent of others. People are independent. Consequently, friction arises between them when their personal interests come into conflict with each other, or when what they perceive as their individual rights infringe upon those of others. Conflict between them inevitably break out. In some cases, one party to the conflict might be strong and aggressive while the other is weak and condescending, incapable of defending his rights. Because of this, it becomes necessary for there to be a way to prevent people from oppressing one another, to ensure that the weaker members of society receive justice, and to determine right from wrong when issues get complicated or uncertain. This can only be realized through a judge that has the power to give legal verdicts in case of dispute. For this reason, we find that the existence of a judge is considered by Islamic law and the laws of all the other revealed religions to be both a religious obligation and a necessity of human life. The Islamic laws that confirmed the will of God can ensure justice for humanity, which is absolutely impossible by secular and man-made law. Allah says: The command (or the judgment) is for none but Allah” (Quranul karim, Sura Yousuf, 12:40)<sup>1</sup>

There has been some propaganda by the western society that punishment in Islamic penal code is one kind of cruelty for humanity, such comment to make because of their ignorance about Islamic Law. Islam- the religion that God wants for mankind from the time that HE sent Muhammad, may the mercy and blessings of God be upon him until the Day of Judgment-shows great concern for the judicial system and those appointed to carry out its responsibilities. Islam prescribes for it many legal injunctions. How else could it be, when Islam is the religion of mercy, equality, and justice? It is the religion that comes to free people from worshipping creation and bring them to the worship of God. It is the religion that comes to remove people from oppression and inequity and bring them to the highest degree of justice and freedom.

#### Introduction:

Before the discussion of the nature of Islamic justice system, it is necessary to know what Islam is? Islam is an Arabic word. Its origin from Arabic 'Salmun' Accepting the literal meaning of Islam, submitting to yourself, surrendering yourself to someone, surrendering yourself. In fact, Islam is the name of the whole system of life or a complete Deen. In the great

book Al-Qur'an, Allah (SWT) said, "Islam is the only nominated religion for Allah".<sup>2</sup> In general, Islam is not a religion, which is what is meant by religion, the sum of some teaching sentences or rituals. In fact, Islam is a complete code of life, there is no direction of human life from the birth to the grave until Islam provides any provision. Islam offers specific

guidance on what is personal, whether family, social, or state and international. In order to establish justice in society and the state as a full-fledged life-time, Islam presented an ideal justice system in front of humanity. In the current world, Islamic justice system, like the current judicial system in the country, is not founded on the basis of any man-made doctrine based on space. Rather, it is based on the fundamental meaning of al-Qur'an and the Prophet (peace be upon him)<sup>3</sup> Hadith In this essay, highlighting the different aspects of the Islamic judicial system, it has been identified as the Islamic judicial system and has been identified in its basic features. This basic feature is based on the basis of a comparative review of the Islamic judicial system with the existing judicial system in different countries of the modern world, and ultimately the judgments of Islamic judicial system concluded.

### **Islamic judicial system:**

#### **1. The idea of trial in Al Quranul Karim:**

As the word of judgment, the word Quran has been used in the Quran. The meaning of the word 'Aadal' is to give it to the person who is in need of it. According to the declaration of al-Quran, the authority of justice itself is Allah Almighty, "He is the true Judge."<sup>4</sup>

It has been said elsewhere: "God is the authority; He speaks the truth and is the best among the judges."<sup>5</sup> But Allah does not come with the task of deciding the daily affairs of human society. To do so, he was the Messenger of Allah. He gave the order and accordingly ordered to make judgments accordingly. In this connection, the verses of the Qur'an are well-known: "We have revealed to you the Book which has come to the truth, and it is the truth of what is in front of him in the previous scripture and its protector. So judge according to what Allah has sent down, and leave the truth that has come to you, and do not follow their desires. "<sup>6</sup>

In the case of the trials of justice, on the one hand, it must be done according to the laws of Allah, and on the other hand, justice should be done fairly. The word of Allah: "When you conduct justice among the people, and then judge fairly."<sup>7</sup> The hatred towards

any community should never be judged by you, it will be fair, it is close to piety, and fear Allah, whatever you do, Allah Keeping the news."<sup>8</sup> Even non-Muslims, in the case of non-believers, Allah ordered justice to be done. The Quran says: "He is very interested in hearing his lies and is very addicted to illegal food; if they come to you, judge them or ignore them; if you ignore them, they cannot harm you. And if you judge, judge. God loves the just."<sup>9</sup>

In order to establish judiciary, the Qur'an exhorts all to remain firm in justice, even though it goes against parents or close relatives. It has been said: "Believers are firm in justice. Even though it is against your own parents or relatives; whether he is rich or untouchable, Allah is the competent guardian of both. So do not follow the desires of justice. If you speak louder than words or pass it away, then know that Allah knows what you do. "<sup>10</sup>

The Qur'an Majid has established a strong ideological state and has called for a full justice division. "Indeed, We sent Our Messengers with clear proofs and gave them Scripture and justice, so that mankind might establish justice. I gave iron so that there is a tremendous strength in it and there is such a welfare for mankind. This is because Allah will reveal that, without helping anyone, he helps the Messenger. Allah is the Mighty, the Almighty. "<sup>11</sup>

In the appropriate verse al-Qitab first, then there is mention of al-mizan (justice) and end al-hadid (iron). The relationship between these three is significant. Al-Qitab (Qur'an) refers to ideology and theoretical force, al-Mianan or the right sign of action, and al-Hadid (iron) which is not punctual, opposes and opposes it. The Prophet (peace and blessings of Allaah be upon him) said: The main and ultimate objective of sending, writing and reciting and making iron metal and iron power is to establish justice and justice in human society, so it is very important to establish judiciary in Islamic State system. The concept of trial of al-Quran is not restricted to the court premises only. Rather it extends to all aspects of life. Al-Qur'an invites justice for justice or justice in all areas of life, even in terms of speech. It has been said: "When you

12 It speak, you will speak just about your relatives. " 12 It has also been mentioned in various places in the Qur'an about justice. The essence of the Qur'anic concept of the Quran is found in the verses of Quran:

- The judgment of Faisalah, the authority of Allah Almighty,
- According to Allah's command and according to the provisions of the Prophet's (peace be upon him) order, the trial must be settled.
- To be fair, we must judge fairly and indigenously.
- Justice is not only extended to the court premises but also to all areas of life.
- It is necessary to establish a independent judiciary in the establishment of justice and to establish an independent judiciary in the Islamic State system

## **2. Origin and evolution of the Islamic judicial system:**

### **2.1 Islam's Eastern Judiciary:**

In the presence of Prophet Muhammad (peace be upon him), the Arab was previously in darkness of ignorance. The Arab society was divided into different tribes. In the case of conflict between the tribes and the chiefs, it was not easy to resolve or settle disputes between the two tribes. Conflicts in clan often turned into bloody wars. There was no Central Court for resolving such disputes. In the pre-Islam era, there was no existence in the Arab world.

2.2. Justice system during the time of the Prophet (peace be upon him) after the emigration of Al-Madinah, the Prophet (peace be upon him) first built a mosque in Madinah and there he solved or judged the problems presented by Muslims to him. After some time, he signed an agreement with Jews, Christians, which is known in history as the Medina Charter and recognized as the world's first written constitution. Through this charter, the establishment of an Islamic state in Madinah took place, the Prophet (peace be upon him) took charge as the head of the state of Madinah and he was appointed as the supreme judge of Medina by his ex officio. According to the condition of Medina, if there is a dispute between the people who signed the charter, the Prophet (peace be upon him) was determined to settle his decision according to Allah's law. In this

way, the Prophet (peace be upon him) expressed his fullness as ruler and judge. During his lifetime, he was also with the head of state, chief of government and chief justice. Jundha said he said, According to the report, the United States will be the world's largest democracy, which includes the United States of America. According to the rules and regulations of the Ministry of Finance, the Board of Directors of the Ministry of Finance, Finance and Human Resources, As the Islamic State of Madinah was expanding, he sent the person appointed by the judge for the distant region of the state and sent him to teach and teach the difficult responsibilities in the court. When the Prophet (peace be upon him) appointed the judge of Yemen, the Prophet (peace be upon him) said: "Do not judge if you will sit before your opponent, after hearing a statement of the other party, you will never perform the judgment till the second party speaks.'15

The Prophet (S) assigned the responsibility of proof to the plaintiff. That is, the person who filed the suit must prove the case by testimony. But how to testify? In this context, the mention of a hadith of the Prophet is enough. Ibn Abbas has related that the Prophet (peace be upon him) has said, "If you see the fact clearly as to seeing the sun, then give evidence. "16 The Prophet (peace be upon him) has set the conditions of acceptability of a witness and fixed the principles of penalties and punishment. In case of prosecution, the possession could be presented as proof of ownership.

### **2.3 At the time of Abu Bakr (Ra.):**

After the death of the Prophet (peace be upon him), Abu Bakr (R) was facing the seat of Khilafah. Had any case brought against Abu Bakr (ra) in this court, he would first try to settle his judgment according to the Qur'anic law. If the Qur'an does not have any related order, he would search for the evidence of the Prophet (peace be upon him) in Sunnat. If there was no solution, he would collect the opinions of the Muslims. As a precedent for the judgment that he gave through Qiyas, it was found in his famous 17 stanzas that his mother-in-law's talent was known. If a person dies leaving a brother and a sister and does not have his father and children, then who is the heir

of the deceased property? Grandfather or brother sister? On this question, Hazrat Abu Bakr (RA) considers fourteen prominent companions to be the heirs of the property in the place of their father and do not make the brother or sister genuine heirs. But a large number of Sahabi (RA) considered the brother of the true warrior against this intention. According to the Qur'an, this disagreement occurs in the interpretation of the words 'kalaala'. According to a group of scholars including Abu Bakr, Kalaala is the person whose father or child is no living. And according to many Omar (ra), that person is Kalaala, whose son Kala is not a son. Allah, O Messenger! People are asking you to ask about Kalaala (fatherless childless) person, say, Allah is giving you the fatwa: If a person dies without a child and has a sister, then she (the sister) gets half of the abandoned property. And if the sister dies as a child. Then he will be his heir. "19 During this time, Umar (R) was the chief justice and Hazrat Zayed bin Sabit (RA) was the office secretary. During the first Khalifah regime, people were so pleased that the author of the book 'Sirat As-Siddiq' said that a case was not filed in court within the first six months of the appointment of judge Umar (ra). Through the introduction of 20 Ijma and Ijtihad, this rule has made significant contributions in the history of judicial system.

#### **2.4 At the time of Hadrat Omar (Ra.):**

The second caliph, Omar (ra) (634-644), made significant contributions to the development of the judicial system. He distinguished the judiciary from the governance department to an independent and neutral organization. Previously the provincial governor (Wali) conducted the affairs of the judiciary. Hadrat Omar appointed the chief qazi (qadi-ul-kuhat) in each province and one in every district. Workers' fair wages are set to stop the way of buying. The fatwa department is established for resolving problems. Hadrat 'Ali, Hadrat' Uthman, Hadrat Muwaj bin Jabal, Hazrat Rahman bin Auf, Hadrat Ubay Ka'b, Zaid bin Thabit, Hadrat Abu Huraira (R) belonged to this division Was there. However, during the second caliph, there was no separate Court for Criminal Offenses. The same judge judged both civil and criminal cases. But in

order to maintain law and order, Omar (ra) formed 'Ahadas' or Police division. Omar (R) first introduced the punishment in the prison and the countryside. According to SAQ Husain 'For the first time Umar established prisons. In Makkah he purchased the house of Safwan bin Umayyah and converted it into a prison. Such prisons were established in important provincial centres. Umar was also responsible for introducing exile as a punishment.'<sup>21</sup>

After Abu Sawazan Sackafi was given a drink on the island, he was punished for an island. The historic order of Prophet Omar (peace be upon him) sent to Abu Musa al-Ashar, the ruler of Kufa, has been explained in detail in detail of the basic principles of the judge. Literal translation of the order is as follows: "Praise be to Allah. Now justice is a very fulfilling duty. In your presence, in your courtroom and in your judgment, all humans will be treated equally, so that they do not lose faith in weak justice and do not expect vigorous grace. The burden of proof is on the plaintiff and the denial is to take oath. Compromise can be done, but justice should not be done to justify injustice and injustice. There is no barrier to change your decision after reviewing. (If the prediction is wrong). If a question arises, and if there is nothing in the Qur'an or the Sunnah of Sunnah, then think again about the question. Preliminary cases will also be considered as precedents and then they will appear in the analogy conclusions. The person who wants to present the witness must be conditional. If he proves the claim, then establish his right, otherwise his case will be dismissed. All Muslims are trustworthy. But not those who have betrayed or gained false testimony, or who are skeptical about the heirs. '23

#### **2.5 At the time of Uthman (ra):**

In the case of judicial system, the third caliph of the Muslim world, Uthman (RA) (644-656), follows the objects of his predecessors. Hadrat 'Uthman made many difficult issues easier through many Ijtihad. For example, in the case of a lion, camels were trained. But Hadrat Uthman considered it worth it to replace his camel instead. '24

## 2.6. Ali's time:

Hazrat Ali (RA) (656-660), the last caliph of the Khaledafay Rashidin, made an important contribution to the law and justice. With the appointment of Malik ibn Harik Asher as the governor of Egypt, 658 AD, he sent important letters about the necessary remedies, in which he directed the important aspects of the judicial system. The following parts of the letter are quoted below: "Take the best person from among the people, and choose the best person." He will be a person who is afflicted with family thinking, who can not be scared, who is not afraid of anybody's rebuke, who does not forget again and again, who is not centered, who does not judge without knowing the indictment of all the facts, Measure matters carefully and think all the thoughts deeply and decide only if the prosecutor or prosecutor It's not easy to find people but it's not easy. Once it is found suitable for this position, after giving him appointment, he will give such a reasonable honor, which he can live with his comfort with his dignity and stay above greed. You will give him such a high position in your court, which nobody can think of getting.

Ali (RA) was full of expert in Fiqh and Ijtihad. In the field of innovation in the field of Quran Majid Ijtihad and Masayel, he was unique, 'Ali, or the successor of the rise, is Ali Ali.' In the case of crime and punishment, Hazrat Ali (R) established an important point. The number of borrower was not specified in the punishment of alcohol, Ali (R) defines 60 lashes. 27 The mere crime of pleading guilty is not enough, it is necessary to engage in original crime. Once a person cut the house Sid; But before he was stolen, he was caught. When Ali was presented before Ali, he did not punish him. This Jewish man steals the armor of Hazrat Ali (ra) of the caliph. Khalifatul Muslameen filed a suit in the court of Shari'ah as the general public. He (Khalifa) presented his son Hazrat Hasan and Custodass Kunbar as witnesses. But Kazi dismissed the case only because, according to Islamic judicial policy, Khalifatur Muslimeen could not produce a neutral witness. Seeing this condition, Islam embraces and says, "There is such a system of justice which is true religion". 28 The independence

of the judiciary and the prevalence of law and order of the law by making a case arriving in the High Court of the Caliph or head of the state and by rejecting the Khalifa's case in a fearless heart, will be a unique phenomenon in the history of the world.

It is clear that in the proper discussion it is clear that the justice system established by Allah and established by the Prophet (peace be upon him) in the Islamic State of Madinah was developed during the Khulafay Rashidine period and due to the research of the subsequent Imams, Islamic justice system was established on a very firm foundation. Presently, Islami management in Muslim countries, despite its not being established in the state level, has many rules and institutions existed for the unique features of the Islamic judicial system.

## 3. The source of Islamic law:

The legal authority of the law in the Islamic judicial system is 4 (four). Such as al-Qur'an, Sunnah, ijma and qiyas Below is the relationship between the sources of the source.

### 3.1 Al-Qur'an:

The first and most important source of Islamic law is' Al-Qur'ân. 'The Qur'anic words are literally' which has been read or recited. This is the message of God sent down to the unlettered and illiterate Prophet, which has been revealed to the right people. Prophet Muhammad (peace be upon him), after receiving revelation from Allah, first preached Islam in Makkah and later established an Islamic state. During the twenty-three years of the Prophet's (peace be upon him) work in Makkah and Madinah, he received revelation or revelation from God for various times and events of his life. Though the Qur'an is the primary source of Islamic law, there is no elaborate explanation for the law. Details and supplemental questions, space-time, location and social conditions are left to the person's well-being. In the personal and social life of the people, there are clear points on how to do the things of the people in matters of marriage, succession laws, business, criminal penalties and international relations. On the other hand, its prohibition rules, such as alcoholism, interest, gambling, murder, theft, adultery, lying and cheating

and prostration of anyone other than Allah, etc. are in any way changed. In brief, the four fundamental characteristics of the Qur'an are: First of all, the Qur'an was revealed not only on one hand, but also in small, different times, on the need of the Prophet Muhammad (peace be upon him). These verses are considered in the direction of the direction of the Muslim Ummah for the constitution and the need for legislation. Secondly, the Qur'an is just a few general principles and greater direction. There is no detailed explanation. Thirdly, the scope of the legal revelations of the Qur'an is limited and the number is less (6666 Khana verses only about 200 Khariya Sharia). Fourthly, Al-Qur'an is mainly a book on belief and morality.

### 3.2 As-Sunnah:

The word sunnah means the path, the path shown by Prophet Muhammad (peace be upon him). Sunnah is one of the main sources of Islamic law, which is a fundamental source of the Qur'an. For example, in the holy Qur'an, the believers have repeatedly been asked to pay Salat and pay Zakat. But they were not given detailed rules and procedures. In the Sunnah of the Prophet (peace be upon him), the rak'ah prayer should be performed in any manner, the rules of the Wudu rule and the zakat, and the details of how much it is available. Thus, the Sunnah encompasses the Islamic law and principles described in the Qur'an, and with it new approval is given in accordance with the new law and the Prophet (peace be upon him). The words of the Prophet (peace be upon him) are included in the Sunnah, interpretation, behavior, explanation, explanation, examples and examples (except the Qur'an). In short, the Sunnah is the knowledge base, which holds the decisions of the Prophet (peace be upon him) as a judge. Hadith collection with information about personal behavior, nature, habit, harassment of the Arabs in its lifetime, and general advice of adherents of the Arabs. It is a rich and multicultural intelligence that still affects the life of 150 million Muslims worldwide. The Sunnah is emphasized as the sacred instrument of Islam only after the Qur'an. There is a consensus among all the Muslims, especially the Islamic scholars, that there is a need to accept and follow the Prophet's (peace be

upon him) Sunnah in order to reach the ideals of life. In the Holy Qur'an, Allah Almighty says: "O you who believe! If you believe in Allah and the Hereafter, then obey Allah. Obey Allah's Apostle. "Whoever obeys the Messenger (peace be upon him), he has obeyed Allah. " 32 You accept what the Prophet (peace be upon you) give you, and refrain from what you forbid from it, and fear Allah. 'Likewise, the greeting of the Prophet (peace be upon him) is called the historic speech of Hajj: "O people! I'm going to leave you two things, if you hold it firmly, you will never go astray. It is the Book of Allah and the Sunnah of His Prophet. 34

### 3.3 Al-Izma:

The literal meaning of ijma is the consensus. A special time is the consensus of Muslim commandments on a particular question as Ijma in the definition of law. This is the most important source of Islamic law after the Quran and Hadith. There are several sayings in the Qur'an and Hadith in support of Ijma. For example: "You are obedient to Allah, to the Apostle and to those who have the power of loyalty among you. '35 In relation to the legal right and to perform any duty, the Prophet (peace be upon him), his companions, or the lawmakers of any particular period unanimously reached any consensus, the conclusions that were adopted to solve the problems of the present. If there is no direct solution to any problem between the Qur'an and Hadith, then Ijma is required. But it will not be in any way conflicting with the Quran and Hadith. For example, to determine the punishment of 80 lashes for drinking. 36. And the Messenger of Allah After the death of Abu Bakr (RA) to be nominated the caliph. Messenger of Allah In his lifetime, he allowed Hadrat Abu Bakr to lead the prayer. 37 From the incident, the Companions reached the same Ijma of the medium of Kiyas.

### 3.4 Al Qaas:

Kyas means comparative estimate Analytical argument in the light of the Qur'an, Hadith and Ijma, in English, which is referred to as 'auspicious day'. That question is al-Quran silent. Al-Hadith is silent, the question is, when the solution seeks, where can it be found? Only then have to take refuge in Kyas. In simple words, the decision on the new question in

relation to the argument that was established on the basis of the original law is called qiyas. The Hadith that is significant in the support of Qiyas, it is noteworthy

"Ras` Allah When Mu'adh bin Jabal (ra) appointed the governor of Yemen, he asked, 'On what basis will you judge? Mu'adh said, "On the basis of the Book of Allah. Then the Messenger of Allah Asked, 'If you do not get any solution in this? Then he said, 'The Messenger of Allah According to Sunnah. Re ras Allah He said, 'If you can not even solve it? "In that case, I will judge on the basis of Ijtihad. 'Mu'aj responds. He was delighted to hear both of them and praised Allah, Ras Allah. Through this hadith, there is clear support of Kyas.

#### **4. Crime and Punishment:**

Islam is the word of vice and evil. It is a sin or a crime not to use anything or things that are not given properly or to use the object that has been created. Islam divided the crime of social crime into three parts. Such as Hudud, Kisas and Tajirat. Below are descriptions of them.

##### **4.1 Al Hudud:**

Hudud is the crime whose punishment is determined and which can not be done less. Generally, six offenses, such as drinking, stealing, armed robbery, adultery, slander and abandonment of Islam (stubbornness) are considered to be of hudud class. But the punishment of drinking alcohol and apostasy is not particularly available in the Qur'an. Sunnah or Raswalda Sa The samadhi of these punishments is also found through its practical work. 39 The four crimes which have been described in the Qur'an and Sunnah are discussed below

##### **A) Theft:**

The legal definition of the theft is to take ownership of the goods to the place of custody of the owner without permission. Except for lack of habit, punishment of habitual or occupational stereo is punishable by hand. It has been said in al-Quran that "if you steal men or women, then you should take them away, this is the result of their deeds and Allah's ordained punishment. Allah is Mighty, Wise. '40 of

the Prophet Churike is regarded as a scandalous crime. A woman from wealthy and noble family of Medina was caught stolen. Prophet s The case was filed in the court, Usama Ibn Zayed (ra) started recommending the accused, Mustafa Sa. He said in a serious voice "The people of the former people have been destroyed only when a person of noble family had stolen (or similar crime) from him, but he would have punished him if he was a person of weak or low caste. If this Fatima, if I had been killed by Allah, had been killed by Allah, then I would not have cut her hand or cut her hand.

##### **B) Robbery:**

It is narrated about the punishment of robbery in al-Qur'an: "The punishment of those who fight against Allah and His Messenger, and destroys the world, is that they will be killed or crucified, or their hands and feet will be cut off from the opposite direction or It will be exterminated from the land and it is their torment to the world and their greatness in the Hereafter. According to the meaning of this verse, the punishment of robbery is only one hand and the other side of the foot. That means the right hand cut or cut legs and if the person is killed in robbery, then punishment is death penalty.

##### **C) Sexual immorality:**

For the sake of adultery stones are punished for killing married people. This punishment is determined by the Prophet (peace be upon him). This is the only way to determine the Sunnah. 43 And for the unmarried, the punishment of adultery is one hundred crores. The Qur'an has been expressed in the Quran

"The adulterers and the adulteress will give each one a hundred strokes; Do not let compassion be shown to you in the exercise of Allah's command, if you believe in Allah and the Hereafter. And a group of believers see their punishment. "45

##### **4.2 Kisas:**

In Islamic law, the punishment of homicide, physical injury, instead of murder, is equivalent to the injury and injury to similar injuries. Under Islamic law, it is called Kisas. In this case, the command of Allah

Almighty is, "O you who believe! The provision of Kisas has been given to you concerning the dead. Instead of free people, independent people, slaves rather than slaves and women instead of women. But it is lawful to show some apology from the brother and make it like the proper rules and earn it honestly. This is the light and mercy from your Lord. Even after that, there is a severe punishment for those who transgress. "If the person who is injured or wounded by a murderer or a deceased person, can be liable to plead guilty to the death of a deceased person, if someone is accused of murder or physical injuries, he will compensate the complainant, then the judge acquits it." If convicted, he was punished. Compensation for death and physical injuries is called 'Daiyat'. If one of the more heirs of the deceased killed a murderer, the other heirs / heirs can not claim kisas. But they will be able to claim the part of the 'due' compensation.

#### 4.3 Tajir:

According to the above-mentioned judgments for all other offenses except for the offense and the offenses of the Kisas class, the judge can give any kind of punishment or both types of punishment to the perpetrator according to the importance of his crime, from whipping to imprisonment, till imprisonment. In Islamic law, the punishment of this class is called Taji.

#### 5. Civilian Responder:

If any of the other property is lost or destroyed by the Islamic law and if it is proved wrong, and if it is proven, then it is bound to return the property or similar properties to the plaintiff. In addition, if the beneficiary receives or enjoys the claim from the property, it will also be returned to the plaintiff.

#### 6. Confirmation:

The witness is the evidence of the plaintiff and the way of the denial of the plaintiff's claim, the Islamic judicial system has given considerable importance to the witness. Alhalah Subahanahu wa Ta'ala of the Mahabrata Al-Qur'an said:

"When the witnesses are called, they will not refuse."<sup>48</sup> means that if the witness is summoned, he

must be present in court. Only if the witness is present in the court, a witness must disclose exactly what he knows. The confidentiality of testimony is the culprit. It's been a wish. "Do not conceal the testimony, but whoever conceals it, his heart is guilty."<sup>49</sup> The verse of this verse is that the testimony can not be concealed. If you want to give true testimony in all respects, then also go against yourself. The Quran has been called to the believers in a very strong way: "O you who believe! You will stand firm in justice, the witnesses of Allah. Although it is against yourself or your parents and your relatives; It is the guardian of both the merciful or the unreasonable God."<sup>50</sup> The verse of this verse is that the witnesses are not primarily of any particular party of the witnesses of Allah. To protect the interests of a particular party, no one has given Islam some urgent conditions regarding the witness to ensure that no evidence is given. Witness must be full adult; No unmarried adult witness is acceptable.

Complete and healthy conscience must be completed, the testimony of a madman or a distorted person is not acceptable. The believer must be full believer in Allah and His religion. The testimony of a person who has been previously accused of corruption is not acceptable. The witness must be justified-right. The unenlightened witness of a person without a character or violation of the Shari'ah<sup>51</sup> The testimony of the Qur'an has been called 'Shahadat'. Its literal meaning is presence. That is, the person who was present at the time of the incident, who witnessed the occurrence in his own eyes or directly learned about the incident, later testified. After that, we are witnessing. Completely incomplete description, which is presented in the court of law, in the matter which clearly describes the narrator.<sup>52</sup> This is the definition of testimony. On the basis of confession of the two faithful men of the incident or on the basis of confession of the accused four times, in the case of the murder, four convicted witnesses or convicted four accused on the basis of confession of the accused, and convicted of false allegations of adultery, convicted and punished. The testimony of two witnesses, or the accused, can be punished for drinking and stealing. The punishment of the Tajree



class is punished according to the confession of the accused or on the evidence of two witnesses. In the civil case, the plaintiff has to present at least two credible witnesses to prove his plaintiff. If there is no special provision for prosecution, if the plaintiff or the accused cannot present any witnesses, the plaintiff's claim is that the Qazi has to deny the Holy Shi'a. Otherwise, the judge is bound to take a decision against the defendant.

### **7. Qazi as judge:**

In the Islamic judicial system, the Caliph or the provincial governor in his judicial office appointed Kazir, ie the judge's post. Prophet Muhammad Mujahid bin Jabal, Abu Musa al-Ashari and Ali bin Abu Taleb were assigned the responsibility of the trial. Islam has mentioned some of the qualities and conditions of the judge who must remain present in the judiciary. The factors are: 53 Full adulthood, conscience-intellect, fitness, honesty, character and Ijtihad's qualifications 54, purity of birth, full knowledge of knowledge and discretion, judicial abilities, talents and talents. Kazi must be judged in the public place. The passage of the quiz was prohibited. Supplements cannot be taken from anyone other than close friends or young friends. To refrain from working in an angry situation. The 56 administrators could also handle the prosecution. Kazi was given the verdict and decree by all the criminal courts, and Kazi helped him in his work. The judicial system in the Khalifah era did not maintain Muslim power and rule in India. They appointed Qazi-ul-Qujat in the head of the judicial system and gave him the power to supervise the work of the other Qazi and to hear the verdict against them, and if someone was angry with Qazi ul-Kujjat, the king himself would judge the appeal against his verdict.

### **8. The characteristics of the Islamic judicial system:**

Recognition of the sovereignty of the great lord of the Islamic judicial system. Because the law is the sole right of Allah .57 the great scripture al-Qur'an has been condemned, but no one has the right to dictate and make laws except Allah. 58 The Prophet (peace be upon him) has presented the world since the world,

and the eternal fundamental law of the Islamic judicial system is the duty of the judges to enforce the law of Allah on His bondmen, which is a duty of duty, not to be a representative of Amir or Khalifa in the judicial court. In fact, he will be in the position of God as the representative of the Islamic system

### **8.1 The judiciary's full independence:**

In the Islamic judicial system the judiciary is free from the influence of the governing body. Within the court limits, there will be no importance of the position of the caliph (head of state). Under the Islamic State, a person cannot be exempt from appearing before the judge due to his hereditary, personal or official rank. A common citizen can file a lawsuit against any person in the state. Even this case may be filed against the caliph himself, and if the defendant's authority is proved then Allah's law will also apply to the caliph.

### **8.2. Full functionality of the rules required for justice:**

Islam did not cease to impose the condition of the judge to have certain qualities, but rather made certain rules and regulations of performing the judicial functions. There are specific provisions for easy and easy decision-making. For example, if one of the parties has to work on the boundary, it must be explained in a nostalgic manner and forced to compromise. The judgment cannot be written in anger. Salam, respect, seating, viewing, talking, assigning, etc, etc., in the case of the parties, etc., to maintain full equality between the parties.

### **8.3 Providing judgment based on acceptable testimony:**

Islam has imposed so much importance on testimony that its history is rare in world history. In Islam's viewpoint, being a just and right person of the witness is so important that the judge is justified-right. Apart from this, there is only one who has the right knowledge of the matter. Prophet Muhammad Irshad said: "When the witness can see the phenomenon emerging as bright as the sun, then he gives testimony. Otherwise, do not dare to do so. '59 In the Islamic jurisdiction, the evidence of the person who

is accused of defamation, mischief is not a testimony. Allama Shibli Nomani said, That every Muslum was qualified to give evidence prodivede that he had not undergoneany punishment previous abd provided also that his false testimony had not been already proved. 60

Even the parents, the husband and the wife, the slave-boss, etc., testify to each other. In the history of Islam, we see that the fourth caliph, Ali, took away the armor of Ali and presented the petition in court. Qazi asked him to produce a witness according to the rules of the judge. Then he presented his son Hazrat Hasan and the slave Cuban as a witness in court. But Kazi dismissed his claim only for this because he (Khalifatul Muslimeen) could not present a neutral witness according to the Islamic law.

#### **8.4 Confirmation of the judgment of the judge:**

In the Islamic judicial system, the verdict has been made to ensure the judgment of the judge properly. In some cases, if the court finally gives verdict, special care has been taken so that no one can foil its effectiveness. Islam's view is that it must be implemented on the culprit after it has been proven to have the precise peace (hadda) of the crime. Whether the criminal is weak or weak. Highly-oppressed 7-year-old or not, No man should be allowed to act as a man or woman, and it can not be done in any way. Nobody has the right to show any kind of weakness or to delay it, or to show mercy in any form, to enforce Allah's command.

#### **8.5 Everyone is equal in law:**

Under the law of Islamic Criminal Law there is no difference between the small, the poor, the ruling people, the upper and the lower and lower. The Prophet Muhammad (peace be upon him) used to submit himself for trial and revenge. Abu Shahima, son of Hadrat Umar Farooq (R) of the second caliph, was also sentenced to death by the Caliph himself for his crime of drinking alcohol, and he left his life in it. 61 Abdullah, the son of Egyptian governor Amr ibn Aas, beat a man who complained to the court of the caliph, and Omar himself, whipped him with a whip. 62

#### **8.6 Confidence of justice for all irrespective of religion:**

Where the plaintiff, the defendant, both are Muslims. Islam cannot justify justice there. Islamic hukamatikera always have to maintain justice standards. The judges will not have any focus on whether either side is a Muslim or if both parties are non-Muslim. His impartial trial sentence equally applies to all non-Muslims, irrespective of Muslims. On one side, a bias towards the Muslim person is an unpardonable crime on behalf of Muslim justice.

#### **8.7 Simple process of trial:**

In the traditional litigation system, advocates usually try to win the case even though they are criminals. But in the Islamic judicial system, there is no shortage of advocacy in the present system, legalists work as judges for determining the title of the Mukdmaan and analyzing the facts. Even if the judicial law does not appeal to the court in time, then the right to get justice is not liable.

#### **8.8 Justice of the State of Justice:**

Establishing justice in the eyes of Islam is one of the main responsibilities of the state. Justice and justice cannot be called 'Islamic State'. In the Islamic judicial system, the disqualification of court fees, like contemporary judicial system. Because the poor people are unable to pay the fees and can be deprived of fair trial. Islam will stop any kind of barriers to the establishment of a welfare state.

#### **9. Islamic judicial system versus contemporary judicial system:**

It has been mentioned before Allah Subhanahu wa Ta'ala that the Prophet The laws that have been presented in the world, therefore, the eternal fundamental law of the Islamic judicial system. On the basis of the judicial system in the world today, the law of human laws is based on the basis of the law. In the Islamic judicial system, the judge acts as God's representative, and the attitude behind the responsibility is that the ultimate accountability of his work with Allah. But in another judicial system, the judge does not take responsibility for the accountability of Allah.

In the judicial system of judicial system, the standards that have been imposed in the judicial system are not seen in contemporary judicial system. In Islamic system, no one can be a judge other than faith, righteous, impartial, and wise and prudent person. In the case of appointing judges of the other judicial system, there is no similar stringent criteria, because the moral values are also obtained by the non-discriminatory person. Recently, the person accused of filing a certificate fraud in Bangladesh has been appointed as Judge of the division of the High Court. As a result, the likelihood of establishing full justice by such a judge is unlikely. The scope of the Islamic judicial system has also been resolved in connection with the election of witnesses, due to the fact that the scope of giving false evidence is discontinued. But where Islamic law is not in vogue. The fact that the real culprit was acquitted of the murder of a real culprit by giving false evidence is being done there. But in the Islamic judicial system, the present system of the present system is not available. There legalists will work as judges for determining the nature of the Mukdmaan and for analyzing the incident. Religious and unbiased prejudice is one of the characteristics of Islamic justice system. In other contemporary judicial systems, it is in principle not accepted in principle in case of impartial justice, but in principle it is not accepted. For example, the South African trial court can be mentioned. There, a court was sent to judge two accused. One of them is white, white is white. The black accused raped a white woman. He was ordered to disobey him. The white assaulted a black man, who was tormented by fire in the fire. He was fined 20 pounds and was given the monthly installment. This is also a fact of contemporary judicial system, which cannot be imagined in Islamic judicial system. **64** It is seen in the history of the world that almost all the people have been deprived of human rights and justice in all ages. In the name of law, religion reform, etc. and now people are discriminating between people, injustice, torture and torture. Wonders of the World: This kind of word has been found to be effective in most of the human society. In ancient India, Hindu scholars Manu started social discrimination and injustice by raising caste

discrimination. Greek philosopher Plato (c. P.427-347)

The idea of justice is: "Democracy is a government system that gives birth to divisions, which is full of chaos and full of inequalities. '66 But, in Islamic judicial system, all are equal in law. When a person is in the seat of the judge, he will judge fair and insoluble according to the law of God.

Nobody is above the law. But we can see that the British Penal Code does not make any mistake, so no penalty can be imposed on it, it is not possible to make any difference in the law, it is said that Srut has been placed above the law.

The judiciary has full freedom in the Islamic judicial system. According to Islamic law, there is no core obstacle for the judge to give a fair judgment against the caliph or head of the state. In the contemporary judicial system, the independence of the judges is officially acknowledged, but in effect they are not free from the influence of the governing body. For example, India can be mentioned. A High Court Judge of the Delhi High Court transferred Agarwal to the Indira Gandhi Government High Court and transferred him as the judge judge. The reason for this was that Justice Agarwal ruled against the government in the case of various detention cases. **68** If the judge's verdict is final, then there is no leniency in the Islamic judicial system to take effect. The ability of the Caliph to impose a sentence (Hadad) is not for the caliph or the head of the state. But in the constitution of Bangladesh, the President has been given the power to waive any penalty. The original commentary of the article in relation to the Constitution is as follows: "The President shall have the power to grant any delay, delay and restraint of any sentence, and to waive, suspend or reduce any riot, by any court, tribunal or any other authority." **69** Only complete justice is possible (eeriness). Because the accountability of the judge is ultimately to the great Lord Allah. Establishment of justice The responsibility of the Islamic State (eg. WB) is not possible to establish true justice or justice due to human weakness in the other judicial system established by Human Law. The true justice can only be guaranteed in the Islamic judicial system.

## Conclusion:

Justice and justice are the subject matter of every human being. Some people can not deprive anyone of this country's natural resources such as water, light and air. Likewise, in the absence of the concept of human rights of the first condition of justice, discrimination among people was established in all other societies except Islamic society. The Prophet (peace be upon him) established an ideal judicial system by establishing an Islamic state in Madinah so that the equal rights of all citizens were ensured. Later, during the Khalafay Rashidin it expanded. Then there was no comparison between the history of the entire human race that was established in justice. But because of not having a clear idea about the Islamic judicial system and not knowing the Islamic view of crime and punishment, some European writers have said that the statutory punishment of Islam is barbarous and defamatory. Some exemplary punishment of Islam may seem inhumane and inauspicious. But thinking a little deeply, it will be seen that this punishment is not inhuman and is not indecent. Because Islam gives the punishment only when it can be ensured that there is no obligation in the back of the perpetrator and there is no reasonable cause and current to do so. For example, Islam gave the thief's hand cut. But where there is little doubt that the thief is not punished for handcuffing because it is forced to steal only due to hunger. Within the last four hundred years of the history of Islam, only six people's hands were strapped. **70** So it is clearly evident that in the Islamic judicial system the thief is not cut off, but the purpose is to stop the crusher completely. That is why Islam tried to eradicate crime before the punishment. The events that we see in the introduction of the Islamic Penalty are nothing but a burning example of establishing true justice.

## Information:

## Instructions:

1. Al-Qur'anul Karim, 12:40
2. The Qur'an, 3: 19
3. (Peace and blessings of Allaah be upon him), according to the instructions and interpretation of verse 56 of Surah Ayzab of

al-Quranic verses, with the pronunciation or reading of the name of the Prophet (peace and blessings of Allaah be upon him) in the name of the Prophet (peace and blessings of Allaah be upon him) This prayer is very important to read 'The Prophet (peace and blessings of Allaah be upon him). We first wrote broadly for the first time in brief 'sa. I wrote. But when reading, the full prayer will be read.

4. Al Qur'anul karim, 6: 62
5. Al-Qur'anul Karim, 6: 57
6. Al Qur'anul Karim, 5: 48
7. The Qur'an, 4: 58
8. Al-Qur'anul 5: 8
9. Al-Qur'anul Karim 5:42
10. Al Quran is 4: 135
11. Al-Qur'anul Karim 57:25
12. Al Qur'anul karim, 6: 152
13. Maulana Muhammad Abdur Rahim, State and Government of Al Qur'an, Khairun Prakashan, Dhaka, p.217
14. Excuse The first day of the week, underground offspring, windsurfing, landslide, 1970s, 23
15. Maulana Muhammad Abdur Rahim, The State of Al Quran and the Government, Praguti, p.217
16. Exemplified in the aforesaid, p.166.
17. Maulana Muhammad Jubair, Khalafay Rashidin or Life and Work of the Four Caliphs, Meena Book House, 73-74
18. Hafiz Imamuddin Ibn Kassir, Translation: Dr. Muhammad Mujibur Rahman, Tafsir Ibn Kassir, Dhaka, 2003, p. 674
19. Al-Qur'anul Karim, 176
20. The body is covered with all-round tissue, it is important to look after the body, tooth and toothache. Jurhat Ufar Zahur 1990, 5
21. Inquiries, Orphan, O. 53
22. Maulana Muhammad Abdur Rahim, State and Government of Al Qur'an, Praguti, p.264.
23. Abdul Moudud, Hazrat Omar, Sixth Publication, Ahmad Publishing House, Dhaka, 1997, p.114
24. Maulana Muhammad Jubair, Pragti, pp.216-217

25. Shamsul Alam, Hazrat Ali (ra) is an important administrative letter, Islamic Foundation, Bangladesh, Dhaka 01983, p.14-015
26. Al Haj Mahomed Ullah, Ibid.P-9
27. Maulana Muhammad Jubair, Pragutta, p.285
28. Syed Abul Ala Maududi, Anu Akram Faruq, Al Jihad, Modern Publishing, Dhaka-1953 p.150
29. There is no other Islamic State other than Iran in existence in the Muslim world. Yet the application of the Islamic judicial system in many Muslim countries, including Saudi Arabia, is particularly noticeable.
30. Md. Nurul Islam, Oriental President, Azizia Book Depot, Dhaka, Second Publication, p20-22
31. Al-Qur'anul Karim, 4:59
32. Al-Qur'anul Karim, 4: 80
33. Al Qur'anul Karim, 59: 7
34. Abul Hussain Muslim Ibn Hajjaj Anisapuri, Sahihul Muslim, Hukachatunnabi Chapter, First Volume, P-397
35. Al-Qur'anul Karim, 4:59.
36. Abul Hossain Muslim Ibn Anisapuri, Pragutta Kitabul Hududabad section P. 231
37. Meshkat Sharif, 1 vols, p-102
38. Abu Abdullah Muhammad ibn Isma'il al-Bukhari, Kitabur Maghazi chapter, second volume, p-439
39. Mohammed S.El Awa Punishment in Islamic Law. A comparative study, Raby Printing Press, Delhi, 1983, P-2.
40. Al Qur'anul Karim, 5:38
41. Mostafa As Sibay, Translation: Akram Farooq, Islamic Human Love, (Monthly Earth: Dhaka, March Number, 1999), p.27
42. Al-Qur'anul Karim, 5: 33
43. Mohammed S.EL Awa, Ibid, Cit P.17
44. Al-Qur'anul Karim, 24: 2
45. Al-Qur'anul Karim, 24: 4
46. Al-Qur'anul Karim, 2: 43
47. Kazi Ebadul Haque, Evolution of Judiciary, Bangla Academy, Dhaka, 1998, p.138
48. Al-Qur'anul, 2: 282
49. Al-Qur'anul Karim, 2: 283
50. Al Qur'anul Karim, 4: 135
51. Maulana Muhammad Abdur Rahim, State and Government in the Qur'an, Khayrun Projection, Dhaka, p.229
52. Pragita, p.230
53. Pragita, p.222
54. Hedayah, 6th volume, p.357-61
55. According to Imam Shafei, most women will not be judges in Islamic country but according to Imam Abu Hanifa. See Abdur Rahim, The principle of Islamic Jurisprudence, New Delhi, 1911, p.370.
56. Abu Abdullah Muhammad ibn Isma'il al-Bukhari, Pragutta, Kitabul Ahkam, p.786
57. the law of writing is only Allah's. Many people can remember that what is the legality of the law written in parliament?
57. The answer is that law is not a new law; rather, it will be only part of the system developed from the rule of Allah's law.
58. Al-Qur'anul Karim, 12:40
59. Maulana Muhammad Abdur Rahim, The Role of Islamic Politics, Praguti, p.177
60. Shibli Numani, Umar the great, Vol-2, Lahore, 1957, p.62-63
61. Maulana Muhammad Abdur Rahim, The Role of Islamic Politics, p.111
62. Syed Abul Ala Maududi Progress, p.1151
63. Daily Sangram, 30 August 2005
64. Maulana Muhammad Abdur Rahim, Introduction to Islamic Politics, Praguti, p.111
65. Morris Stockhammer, Plato Dictionary, Philosophical, New York, 1903, P.56
66. Pragita, p.1141
67. Pragita, p.149
68. Md. Abdul Halim, Constitution, Constitutional Law and Politics: Bangladesh context, Rico Participants, Dhaka, 1995, page 247
69. Ministry of People's Republic of Bangladesh, Ministry of Law and Parliamentary Affairs, 1995, (Amended) p.35
70. Muhammad Qiub, Islam in Berajale, modern publication, Dhaka, ninth reform, 1997, pp.