

Islam Alone Can Solve the Global Growing Crime Problem

Wherever capitalism's ruling system, Democracy, is implemented, soaring crime rates are evident, and Pakistan is no exception. Ranging from target killings to kidnappings, and rapes to robberies, the media carries shocking news of crimes. What's worse is that in Pakistan, many criminals continue roaming free due to their influence or status. In fact many times the criminals seem to have the protection of the government itself. As a result justice is something very distant. However, before discussing how to deal with criminals, it's important to understand what pushes people towards crimes.

A factor that pushes people towards crimes is the non-fulfilment of their basic needs. A man is unable to fulfil his basic bread and butter for the family through legal means and the state does not care for him. So in frustration he succumbs to committing sin by adopting illegal and corrupt methods to fulfil them. Under a neglectful government, that does not look after the needs of the people, crimes become a necessary act for some men. So in a country where poverty is widespread, and other basic needs are not provided, the tendency towards crimes arises. Moreover, when society is bombarded with materialistic ideas of greed in which wealth and fame are defined as symbols of status and success, some start competing for them, adopting illegal means in order to achieve the target is considered fine. Consequently, when the under the regime's close and continuous supervision, the media and education institutions promote people only on basis of material benefit, many more exert all efforts to achieve them. The ethical, spiritual and moral values are not given their due weight. So as witnessed in Pakistan, where extravagance and showing off are promoted on media, whilst simplicity and seriousness are scorned upon, a people are only encouraged to adopt such lowly standards.

In order to control such crimes, states normally resort to the punishment system. However, despite having a judiciary, states, including the foremost champions of Democracy, continue to witness a growing crime rate. Furthermore, the failure of the judiciary in punishing criminals is evident when well-known criminals roam free and are left untouched. Recently, the mother of the murdered young man, Zain, in the well publicized case, gave a statement that "I have not forgiven the murderer but cannot fight the influential as I have two daughters." Earlier the case of Shahzaib Khan was a hot issue where once again the alleged killers got free, simply because they were powerful enough to influence the judiciary and threaten the victim's family. Even more shocking are the cases of missing persons, where the loved ones have been abducted by the state itself for years, while the family members run back and forth between useless hearings of courts, only to get new dates for even more hearings. Democracy really is the best revenge, punishing the people for allowing it to exist.

Injustice prevails because Democracy opens the door to it through allowing man-made laws. Firstly, the fact that rulers are free to make new laws and amend old ones allows the rulers to manipulate laws as per their will. Therefore, corrupt laws like Article 248 of the Pakistan constitution can be legalised, which gives immunity to the president and governors and prevents them from being called to court. Similarly, the NAP and POPA acts can be legalised which allows the detention and torture of suspects who hold the regime to account and yes its torture of suspects, not criminals, where even that is not allowed by Islam! All this is simply possible because the government has the right to amend laws and thus any oppression can be legalised under the pretext of "waqt ka takaaza hai" (Necessity of the time). Furthermore, according to this democratic constitution, if a criminal has been punished by death penalty, the president legally has the right to forgive him, which makes the president free to forgive whom he likes. In short, oppressive and unjust laws can be legalized when the parliament is given the free hand for making laws. The recent Criminal Prosecution Service Bill passed in Sindh assembly is just another example. So just like dictatorship, where the NRO and LFO can get legal backing to cover the crimes of the ruling elite, Democracy ensures injustice.

Furthermore, the judiciary in Pakistan allows the adversarial system rather than the inquisitorial. The adversarial system is the two-sided structure under which criminal trial courts operate that pits the prosecution against the defence and so is more dependent on lawyers, whereas the inquisitorial system is a legal system where the court or a part of the court is actively involved in investigating the facts of the case and so the judge is not a mere referee between two adversaries. In the adversarial system, justice is done, or more often than not merely seen to be done, when the most effective adversary is able to convince the judge or jury that his or her perspective on the case is the correct one. In an adversarial system, judges merely focus on the issue of the law and procedure and act as a referee in the contest between the defence and the prosecutor. Many legal cases in adversarial systems, and most in the United States, do not go to trial, which may lead to injustice when the defendant has an unskilled or overworked attorney, which is likely to be the case when the defendant is poor. Moreover, there are many appeals which prolong the judgement as the adversaries are given many forums in which to combat their case.

Deepening the misery of the common man are the expensive fees charged by the lawyers. If one doesn't pay a heavy fee, the lawyer won't push the case ahead, one has to buy justice. Consequently, the common man is forced to either take loans or continue rotting behind bars, where a huge proportion of the prison population are not convicted criminals, but suspects denied bail through not being able to afford adequate legal representation. Let's not forget, this is not a problem of Pakistan alone. Rather, it's normal in many democratic countries including India and America. Moreover, the prisons have their own corrupt mechanisms, where the poor have a different section while the graduates or rich may avail the class B and class A barracks respectively. Just imagine being behind bars for years simply because someone "influential" registered an FIR against you and you don't have the money to ensure a bail. Yes, it's true, that if you are accused, you can be in jail, even though nothing is proven against you. That's why it's a common saying that if you want to succeed in Pakistan's judiciary, a man needs three things: the age of Nuh (as), the wealth of Qaroon and the patience of Ayub (as)! Besides, the torture that a poor prisoner encounters just adds to the horrors, and many a times such tortured people tend to become a real criminal once they are released from prison.

As if this were all not enough, if one gets a verdict from a lower, sessions court it can be challenged in a High Court and eventually the Supreme Court. As a result justice keeps getting delayed, and simple cases like inheritance and corruption drag on for years, or even decades, prolonging the misery of the people. Besides, if your case is against an influential, the long duration allows the influential enough time to threaten or even kill the common victim or witnesses, and if he is "kind" enough he will only pressurise the victim and witnesses with threats to withdraw the case or abstain from bearing witness. Consequently, often witnesses succumb to the pressure. As an example is the case of Ayyan Ali where a simple case of money laundering was prolonged and during this time the customs officer who knew the reality best was murdered. These problems are not just limited to Pakistan but are readily witnessed in other democratic countries, like India and America. So for instance the ordeal of prisoners at Guantanamo Bay or the sluggish and incompetent Indian judiciary that leaves the raped women in Delhi without justice are just a few of these examples. Looking at this situation many may suggest that if harsh punishments and quick justice was provided, the crime rates would fall drastically. Although this may reduce the crime rate, harsh punishment alone will not eliminate crimes and injustice.

Islam has a totally unique system to control crimes. In fact the focus of Islam is not merely on how to punish criminals, but rather it also promotes a society where crimes are prevented from taking place. Although many people portray the Islamic system to be a collection of punishments, this is not the only thing Islam features. In fact, In Islam punishments are the last resort. Prophet Muhammad (saw) said: «ادْرَعُوا الْحُدُودَ عَنِ الْمُسْلِمِينَ مَا اسْتَطَعْتُمْ، فَإِنْ كَانَ لَهُ مَخْرَجٌ فَخَلُّوا سَبِيلَهُ، فَإِنَّ الْإِمَامَ أَنْ يَخْطِيَ فِي الْعَفْوِ خَيْرٌ مِنْ أَنْ يَخْطِيَ فِي الْعُقُوبَةِ» **Ward off hudood as much as you can. If you find any way out for a Muslim then set him free. If the Imam makes a mistake in granting forgiveness it is better for him than that he**

should make a mistake in imposing punishment.” [Tirmidhi, Ahmed] And RasulAllah (saaw) said: «الذَّرُّ عَوَا الْحُدُودَ عَنِ الْمُسْلِمِينَ مَا اسْتَطَعْتُمْ، فَإِنْ كَانَ لَهُ مَخْرَجٌ فَخَلُّوا سَبِيلَهُ، فَإِنَّ الْإِمَامَ أَنْ يَخْطِئَ فِي الْعَفْوِ خَيْرٌ مِنَ أَنْ يَخْطِئَ فِي الْعُقُوبَةِ» **“Avert the hudud from Muslims as much as you can. So if there is a way out for him, let him off. For verily, it is better for the Imam to error in pardon than to error in punishment.”** [Al-Bayhaqi] In other words Islam does not punish a person simply on the basis of doubt. Before coming to the details of the Islamic punishment system, we need to understand how Islam addresses the problems of crime from its root.

Unlike the current society where wealth and fame are the criteria of success, basic needs are not fulfilled and the judiciary is for the privileged, Islam sets the standard of taqwa as the criteria of success. So by instilling taqwa amongst the masses, via its media and education system, individuals of society are encouraged to adopt the right path, even in cases where the state is not watching. This was seen consistently in the era of the Khilafah, where Umar (ra) heard a daughter reminding her mother gently that cheating through mixing water in milk is seen by Allah (swt) even if the Khalifah is not aware of it. In addition to this, what further prevents a man from moving towards crimes is the public opinion regarding criminal actions. These days wealth and fame are considered standards of success, thus we see people adopting illegal ways to become wealthy, and people appreciate them, even though they know their actions are criminal. Under the regime's close supervision, the media promotes corrupt politicians, usurping businessmen, immoral celebrities and mafias, while discouraging scientists, intellectuals and sincere people, resulting in people opting for corrupt professions readily. An influential politician or ruler is given a protocol while a scientist like Abdul Qadeer Khan would be placed under house arrest. So, naturally when fame and wealth are the sole criteria of success instead of taqwa, people would resort to bribes and corruption in order to meet their targets. However, when the criteria of right and wrong is the Hukm of Allah, the people would abhor any sinful act and would confine themselves to the halal options, further discouraging an individual from performing that sin and we see that even if they did, they would be so remorseful and regretting that they would present themselves before the court, seeking the Hudood of Allah (swt) as a means of repentance for RasulAllah (saaw) said, «تُبَايَعُونِي... فَمَنْ وَفَى مِنْكُمْ فَأَجْرُهُ عَلَى اللَّهِ، وَمَنْ أَصَابَ شَيْئًا مِنْ ذَلِكَ فَعُوقِبَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ» **“Give me the oath (Bayah) Whoever amongst you fulfils his pledge, his reward will be with Allah, and whoever commits any of those sins and receives the legal punishment in this world for that sin then that punishment will be expiation for that sin.”** [Muslim]

Moreover, if at state level the haraam is prohibited and the halal is facilitated through laws, crimes will naturally be reduced. So for instance if marriage is encouraged and facilitated while free mixing, seclusion between a man and a woman, uncovering of the awrah, and corrupt events like Valentine's Day are barred, inevitably rapes and molestations will see a significant drop. Similarly, the non-fulfilment of basic needs is an important factor pushing many people towards crimes. As seen today, many areas like Thar and Baluchistan lack basic facilities, even though Pakistan is a resource rich land. However, poverty is just presented as a norm, and in the absence of true accountability, rulers simply portray it as an unsolvable issue. On the contrary, an Islamic ruler is bound to fulfil the basic needs of each and every individual and provide opportunities for them to avail luxuries. And it was only in the Islamic history that we witnessed periods where there were people paying zakat but no one in need of it, such as occurred in the era of Omar bin Abdul Aziz, where Yahya bin Saad went to Africa to collect Zakah and distribute it, but returned with the Zakah as there was none needy for it. Therefore, if the fear of Allah is instilled in individuals, if sincere people are promoted and criminals discouraged, if the public opinion is built on the Islamic standard of halal and haraam rather than greed and fame, and if the basic needs of people are being ensured along with facilitating people at state level in performing good deeds, then certainly crimes would reduce. Its only after all these factors, that if a person commits a crime, that the punishment system effectively plays its role in acting as a deterrent from crimes and providing justice to the victims. Besides this, it's only punishments that are found in Islam that act as a Kaffarah for the sin of the crime on the Day of Judgement, which is not the case of the punishments introduced by man-made laws. So punishment is not the first recourse in

Islam, as is commonly presented, but rather it's the last recourse in controlling crimes.

In Islam, the judge is not above law, so if he abuses his powers, he can also be accounted and will be punished, which is something not witnessed under Pakistan's current judiciary. He is confined to settle the disputes according to what Islam has determined as Halaal and Haraam. At-Tirmidhi has narrated from Kathir bin 'Amr bin 'Awf Al-Muzani narrated from his father, from his grandfather, that the Messenger of Allah (saaw) said: «الصَّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ، إِلَّا صَلْحًا حَرَّمَ حَلَالًا، أَوْ أَمْرًا حَرَامًا، أَوْ أَمْرًا حَرَامًا» **“Reconciliation is allowed among the Muslims, except for reconciliation that makes the lawful unlawful, or the unlawful lawful. And the Muslims will be held to their conditions, except the conditions that make the lawful unlawful, or the unlawful lawful.”** This is a Hasan Sahih Hadith. And also, Ibn Hibban has narrated in his Sahih from Abi Hurairah that the Messenger of Allah (saaw) said: «الصَّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ إِلَّا صَلْحًا أَحَلَّ حَرَامًا أَوْ حَرَّمَ حَلَالًا» **“Reconciling between Muslims is permissible, except reconciliation that forbids something that is allowed, or allows something that is forbidden.”** Any violation will mean the judge will be referred to the courts himself. The judge is bound by the Islamic law, which of course is derived from the Quran and Sunnah, so the law is accessible to the common man and cannot be amended with new ordinances or bills like LFO, NRO and POPA. And as we all know the Islamic texts are from Allah (swt), who is the All-Knower and Creator of every human, these laws will never be biased towards any segment of society. Allah (swt) said, ﴿إِنَّمَا يَعْلَمُ مَنْ خَلَقَ وَهُوَ اللَّطِيفُ الْخَبِيرُ﴾ **“Should not He Who has created know And He is the Most Kind and Courteous, All-Aware.”** [Surah al-Mulk 67:14]

With the culture of taqwa prevalent, even a judge would be encouraged to ensure quick justice as he knows he will be accountable on the Day of Accounting. It is not allowed for him to be swayed by any one of the disputing parties and his job is to understand the reality exactly and apply the legal rulings. So in the presence of the accountability factor, along with the fear of Allah (swt), a judge is more likely to ensure justice, rather than defer it for material gains as is witnessed today. It's the law of Allah that is implemented through the Islamic judiciary, where there is no favouritism or privilege based on power or status or any other matter. The rights of the weak are restored to them, regardless of their race, status, gender, school of thought or religion. When it was requested that a woman who committed theft be pardoned because she was from a noble family, RasulAllah (saaw) warned the Muslims by saying «إِنَّمَا أَهْلَكَ الَّذِينَ قَبْلَكُمْ أَنَّهُمْ كَانُوا إِذَا سَرَقَ فِيهِمُ الشَّرِيفُ تَرَكَوهُ وَإِذَا سَرَقَ فِيهِمُ الضَّعِيفُ أَقَامُوا عَلَيْهِ الْحَدَّ وَأَيْمُ اللَّهِ ...» **“The people before you were ruined because when a noble person amongst them committed theft, they would leave him, but if a weak person amongst them committed theft, they would execute the legal punishment on him. By Allah, were Fatimah, the daughter of Muhammad, to commit the theft, I would have cut off her hand.”** [Bukhari] Thus Abu Bakr as-Siddique (ra) affirmed to the people upon becoming the Khaleefah, “The weak amongst you is strong before me till I return to him his right, Allah willing, and the strong amongst you is weak before me till I take the right from him Allah willing.” And Khalifah Umar bin al-Khattab (RA) when he outlined the attributes a judge requires in an Islamic court, said, “The task of the judiciary is an undisputed obligation and a sunnah to be followed. Seek to comprehend when people have recourse to you, for it is no use to speak of a right if it is not put into effect. See that your face, your justice and your sitting are the same between people, such that the lord does not hope for your partiality, nor the weak despair of your justice...”

Moreover, unlike Democracy, in Islam, the inquisitorial judicial process is followed. The task of studying the reality, bringing the relevant divine rulings and deriving a judgement falls upon the judge, a state employee. He is not merely a referee between a prosecution and a defence, but plays an active role in determining the truth. He will examine the reality of the case carefully and judge upon it using the laws derived from the Quran and Sunnah. So he will take care to understand the points of view of all the disputing parties, rather than advocating for one alone. RasulAllah (saaw) said, «إِذَا تَقاضَى إِلَيْكَ رَجُلَانِ فَلَا تَقْضِ لِلأَوَّلِ حَتَّى تَسْمَعَ كَلَامَ الآخرِ فَسَوْفَ تَدْرِي كَيْفَ تَقْضِي» **“If two men come to you do not give a judgment for one of them until you have heard what the other has had to say, then you will be able to judge.”**

[Tirmidhi and Ahmad] And RasulAllah (saaw) said, «مَنْ ابْتُلِيَ بِالْقَضَاءِ بَيْنَ الْمُسْلِمِينَ فَلْيَعْدِلْ بَيْنَهُمْ فِي لِحْظِهِ وَإِشَارَتِهِ وَمَعْدِهِ وَلَا يَرْفَعْ صَوْتَهُ عَلَى أَحَدِ الْخَصْمَيْنِ مَا لَمْ يَرْفَعْ عَلَى الْآخَرَ» **Whoever Allah tests by letting him become a judge, should not let one party of a dispute sit near him without bringing the other party to sit near him. And he should fear Allah by his sitting, his looking to both of them and his judging to them. He should be careful not to look down to one as if the other was higher, he should be careful not to shout to one and not the other, and he should be careful of both of them.** [Baihaqi, Darqutni, Tabarani]. The judge, whether he is a man or women, Hanifi or Jafari, must be knowledgeable in Islam for he or she will judge by it. And the one who judges by other than Islam is in Hellfire, Rasullah (saaw) said, «الْقَضَاءُ ثَلَاثَةٌ: وَاحِدٌ فِي الْجَنَّةِ، وَآثَانٌ فِي النَّارِ، فَأَمَّا الَّذِي فِي الْجَنَّةِ فَرَجُلٌ عَرَفَ الْحَقَّ فَقَضَى بِهِ، وَرَجُلٌ عَرَفَ الْحَقَّ فَجَارَ فِي الْحُكْمِ، فَهُوَ فِي النَّارِ، وَرَجُلٌ قَضَى لِلنَّاسِ عَلَى جَهْلٍ فَهُوَ فِي النَّارِ» **The judges are of three types: one is in heaven, the other is in fire. As for the one who is Jannah, he is the man who knows the truth and judges by it, whereas the one who knows the truth and aggrieves it in judgment, he is in fire. And the man who judges for the people on ignorance is also in fire.** [Abu Daud] It was the application of this system that saw an extremely low crime rates under Islamic rule for centuries.

And it must be re-emphasized, if we try to apply punishments in isolation, it would not yield the desired results in full. Rather what is needed is a comprehensive replacing of the current system with an Islamic one, which would bring back peace and security as had been witnessed in the time of the Khilafah. So to achieve practical results, it is important that along with the punishment system, the economic system of Islam is implemented, which fulfils the basic economic needs of people. Similarly, the education policy and media policy of Islam is applied, which dissipates the Islamic thoughts and criteria to society, generating individuals who take Islam as their criteria and adopt halal means in all their actions and also generates a public opinion where people condemn and account anyone adopting Haraam. Also, in the ruling system, the law making is no longer in the hands of man, as opposed to Democracy where men make law to allow them the liberty to amend laws and provide legal covers for corrupt actions. And lastly, the social system of Islam must be applied to ensure a strong family values, where human dignity and relations are protected. In short, it's only a radical change that can address this issue comprehensively. So simply applying the Islamic punishments without addressing the other factors would not yield the proper results.

In the case where there is no authority that rules by the Hukm (legislation) of Allah, it is an obligation on all Muslims to work sincerely and diligently to establish the authority that rules by Islam because it is Fard (obligation). Allah (swt) said addressing the Messenger (saaw): ﴿فَاحْكُم بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ عَمَّا جَاءَكَ مِنَ الْحَقِّ﴾ **“So judge between them by what Allah has revealed and do not follow their inclinations away from what has come to you of the truth.”** [al-Ma'idah: 48] And He said: ﴿وَأَنْ احْكُم بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ وَاحْذَرْهُمْ﴾ **“And judge, [O Muhammad], between them by what Allah has revealed and do not follow their inclinations and beware of them, lest they tempt you away from some of what Allah has revealed to you.”** [al-Mai'dah: 49]. The address to the Messenger (saaw) to judge between them by what Allah has revealed is an address to his Ummah (saaw), and its implication is to find a ruler after the Messenger of Allah (saaw) who judges between them by what Allah has revealed, and the command in the address notes the command; the subject of the address is an obligation (Fard), and this is an indication for the obligation as in Usul, and the judge who judges between Muslims by what Allah has revealed after the Messenger of Allah (saaw) is the Khaleefah and the individuals appointed as judges by him. The ruling system in Islam is the system of Khilafah. Moreover, establishing punishments and all other rulings is obligatory upon him and it is obligatory upon the Ummah to appoint him. So let us strive for the re-establishment of the Khilafah (Caliphate) on the Method of the Prophethood at a time when its cooling sight appears on the horizons.

Written for the Central Media Office of Hizb ut Tahrir by

Engineer Waqas - Pakistan