



Legitimacy of Imprisonment as a Punishment in Sharīa

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Incarceration has been present in very known history of mankind. Irrespective of the nature of crime, nowadays imprisonment has been practicing everywhere in the world. Like many other states, detention is used for almost every crime in Pakistan, and even Islamic Capital punishments are also replaced with it. It is detrimental not only for the criminal, but his family and the whole society suffer due to it. Likewise, it has no benefits with regard to reformation, retribution and deterrence. Considering the fore mentioned issues, it is important to explore whether it is according to Islamic law or not? After analyzing all causes and aspects of detention given in the Prophetic time and Rashidun caliphate, it is concluded that in those times, imprisonment was just practiced till the decision was taken for the criminal and then, he might set free or granted any *hadd* or *ta'zīr* punishment. Meanwhile, according to Shari'ah, the punishment of arresting the criminal in his house or banishing him from the area is allowed, where he can take his family with him if he wants to. But there is no concept of imprisoning him for years in Sharīa's code of crime and penalty. Imprisonment is not mere a punishment, but a worst and anomalous crime committed by a man against man. The criminal justice system of Pakistan cannot be made effective enough with this practice, instead, every criminal should be dealt with according to his circumstances.

Keywords: Juristic Approach to Imprisonment, Imprisonment in Islam, detention in Islamic law, incarceration

Introduction:

There are two terms used for the prisons in Islamic fiqh that are prison/*Sij'n* (سجن) and the detention/*Habs* (حبس). The *Sij'n* is used only one time in the Holy Qur'an (12:33) in



Journament



اشاريه
 ابرو جرائد



the story of Prophet Yousuf. He said: "O my Lord! The prison is more to my liking than that to which they invite me". *Habs* is an Arabic word and has some synonyms defined below.

The term *Hasar* is taken in the meaning to prohibit, detain and imprison someone. It is also used in the Holy Qur'an (17:08). *Hasar* is used by fuqaha for banning and prohibiting the Haj affairs. It can also be used with the meaning of *Habs* but both of them have some general and particular differences. *Hajar* means to stop or to ban. It is used very frequently among fuqaha, for the person having the prevention from financial authorization and ban from professional activities. The meaning of *waqf*/devotion can be taken as the *habs*. Some renowned jurists defined the *waqf* as the prohibition of something to get the bounty of Almighty Allah. The difference between *habs* and *waqf* is that, the *waqf* is used for the things, while *habs* is for people. Similarly, the term *Habs* is also used in the meaning of *Nafy*/declining or negation. There is a difference of opinion among fuqaha regarding the meaning of the term *Nafy*. The Hanafi, Maliki and Al-Shafi'i jurists use it in the meaning of declining, while the Hanbali jurists take it as stopping or banning.¹ All of these terminologies have been used in the discussion below.

1.1 Legitimacy of Imprisonment according to Primary Sources of Law

a) Some of the occasions from the Early Islamic era that are said to be evidence of the legitimacy of imprisonment, are discussed and analyzed below.

b) The Hadd for Fornication (حدّ الزّنا)

"فعن الشعبي قال أتى علي رضي الله عنه بشراحة، امرأة من همدان وهي حبلى من زنا فأمر بها علي رضي الله عنه فحبست في السجن فلما وضعت ما في بطنها أخرجها يوم الخميس فضرها مائة سوط ورجمها يوم الجمعة"²

It is narrated from shabi that a woman from Hamden was pregnant by the fornication. Hazrat Ali ordered to arrest her. When she delivered the baby, then brought out and got the hadd punishment of fornication.

The case is evident that detention was applied as a waiting period due to the condition of women. The court released her after granting the prescribed punishment.

c) The Hadd of Drinking (حدّ شرب الخمر)

¹ Ministry of Auqaf. (2995), Journal of Ministry of Auqaf, Ed. 16, Pg. 83, 84, 282.

² Ibn e Abi Shaibah, Musannaf, 10, 88.

عن أبي مروان قال أتى علي رضي الله عنه بالنجاشي قد شرب الخمر في رمضان فضربه ثمانين ثم أمر به إلى السجن ثم أخرجه من الغد فضربه عشرين ثم قال إنما جلدتك هذه العشرين لإفطارك في رمضان وجرأتك على الله³

It is narrated from Abu Marwan that a Najashi brought to Ali bin Abi Talib who was drunk. Ali bin Abi Talib punished him with 80 stripes and then imprisoned him and brought him out the next day and punished him with 20 strips and said that I punished you more because you committed the crime in Ramadan.

There is another narration in this regard too.

وعن أبي ماجد عائد بن فضالة الحنفي، قال: كنت عند عبدالله بن مسعود رضي الله عنه قاعدًا، فجاءه رجل من المسلمين بآبن أخ له، فقال له: يا أبا عبد الرحمن، ابن أخي وجدته سكران، فقال عبدالله رضي الله عنه: "تترزوه ومزمزوه وأسئلكهوه، فتترزوه وأسئلكهوه، فوجد سكران، فرفع إلى السجن، فلما كان الغد جئت وحي به⁴

Similarly, it is said by Abi Majid, he said that I was sitting near Abdullah bin Masood and a man brought his nephew who drank the wine. When he was declared as criminal, Abdullah bin Masood detent him and brought him out next day, then granted him the prescribed punishment of drinking.

i. The Detention Between the two Ta'zir Punishments (الحبس بين التعزيرين)

Like other occasions, there are some cases in early Islamic era when the criminals were detent during the two taz'ir punishments, so that they may not escape.

عن مالك بن أنس أنه قال: جعل صبيغ يطوف معه كتاب الله من يتفق به فقهه، ومن يتعلم يعلمه الله. فأخذه عمر رضي الله عنه فضربه بالجريد الرطب ثم سجنه حتى إذا جف الذي به أخرجه فضربه فقال: يا أمير المؤمنين، إن كنت تريد قتلي فأجهز علي، وإلا فقد شفيتني شفاك الله، فغلاه عمر بن الخطاب رضي الله عنه⁵

Through this narration, it came to know that Caliph Umar beat a criminal with wet Palm branches and then imprisoned him so that he may recover. When he had healed, then brought and granted the rest punishment to him. The criminal said to Umar bin Khattab, if you want to kill me, then kill me, else you want to heal me, may Allah heal you. Then he set him free.

³ Abu Jafar Ahmad al Tahawi, Sharah Maani ul Aathar, 3,153.

⁴ Ibn e Abi Shaibah, 36/10; Abdul Razzaq, Musannaf, 13519.

⁵ Ibn e Wazah, Bud'a, 649.

The Detention After the Punishment (الحبس بعد إقامة الحد)

The detention before imprisonment is justified in Islam, but the detention after prescribed punishment cannot be found in Rashidun caliphate. The following narration is used generally as an evidence of detention after punishment:

عن حجية بن عدي، قال: كان علي رضي الله عنه " يقطع ويحسم ويحبس، فإذا برئوا أرسل إليهم فأخرجهم ثم قال: ارفعوا أيديكم إلى الله، قال: فيرفعونها، فيقول: من قطعك؟ فيقولون: علي، فيقول: ولم؟ فيقولون: سرقنا، قال: فيقول: اللهم اشهد اللهم اشهد"⁶ وفي رواية "... إذا أخذ اللص قطعه، ثم حسمه، ثم ألقاه في السجن"⁷

Baihaqi commented on the above mentioned hadith that Caliph Ali ordered the imprisonment for the accountability to set them free, and he did not imprison them as a punishment.⁸

روى سفيان الثوري عن محمد بن إسحاق عن أبي جعفر أن علياً رضي الله عنه قال: حبس الإمام بعد إقامة الحد ظلم⁹

So, it can be clearly seen what Sufiyan Thauri narrated, that Caliph Ali declared the imprisonment after granting hadd, as unjust.

1.1.3 Imprisonment till Death (الحبس حتى الوفاة)

It is said that if a person helps a murderer in killing, he will be punished by imprisonment till death. As he did not kill the person directly, so will surely not be killed on account of it. There comes a case in Khulafa-e-Rashidun era regarding involvement in the murder (حبس المشارك في قتل العمد) and it comes in the hadith narrated by Hazrat Ali as Holy Prophet ﷺ saying:

يقتل القاتل، ويحبس المسك في السجن حتى يموت¹⁰

The above-mentioned hadith does not constitute a basis for law but may become a precedent for an already existing one. How the precedent can be set when the law itself is not proven? At most, it can be said that this legislation was made just for one case. The reasons why the arrestee was imprisoned are not known, he may have been imprisoned while awaiting sentencing during the procedure, or he may have been detained while the case was being settled with him on diyat.

The helper in the murder is said to be imprisoned, and the life time imprisonment is tried to justify by another Prophetic narration.¹¹ As the hadith is mursal¹², so sharī'a rul-

⁶ AL Bahiqi, Sunan, Kitab ul Sirqa, 8, 271.

⁷ AL Bahiqi, AL Sunan al Kubra, 16731.

⁸ Al-Bahiqi, Al sunan al Kubra, 272.

⁹ Ibid.

¹⁰ Al Bahiqi, "Sunan al Kubra," 15546.

ing cannot be derived from it. Also, no example can be presented from the actions of the Prophet Muhammad. Even the Companions had not practiced it.

1.1.4 Detention due to Attack on Rightly Guided Caliphs (حبس من اعتدى)

(على أحد الخلفاء الراشدين رضي الله عنهم)

There are two situations in this regard. First, if the attack is in real (الاعتداء بالفعل) and second, if the attack is just by words (الاعتداء بالكلام). There are two cases in the first situation (الاعتداء بالفعل).

It is narrated by Hanzala bin Naeem that when Ibn e Muljam tried to kill Caliph Ali, Ali bin Abi Talib got injured, he was imprisoned then. In the second case, a person tried to attack but could not do it. It is narrated from Suleman bin Yassar that an Iraqi person tried to kill Caliph Usman but he had not punished him at all, and it was just his generosity.¹³

Both of the cases show that imprisonment was not as a punishment, but just as a part of waiting trial till the decision be taken.

It is narrated by Abdullah bin Umar that Abu Bakar and Umar had not killed a person for killing his slave but they punished him by flogging and then imprisoned him for one year and stop the scholarship (that Muslims receive) of him, in case he did it intentionally.¹⁴

This is the matter of slave and the killer is his guardian/heir and murderer, at the same time. It was only one case and difference of opinion among fuqaha lies in this regard. So, the hadith cannot be taken as an evidence on the legitimacy of imprisonment because a capital punishment of murder is already mentioned in Quran. It was mere an administrative step by judge to do so.

It is narrated by Ibn e Umar that Abu Bakar used to beat the criminals and exile them.¹⁵

If a person steals more than twice then the caliph Abu Bakar would order to imprison him.¹⁶

¹¹ Bulugh ul Maram, Book 9, Hadith 1183.

¹² <https://sunnah.com/bulugh/9/15>

¹³ Umar bin Shubah, Akhbar ul Madina, No.3,244.

¹⁴ Abdul Razzaq, Musannaf, (Maktabah e Islami, Beirut),18139.

¹⁵ Al-Tirmidhi, Jama'i Tirmidhi, (Dar ul Ahya ul Turath ul Arbi, Beirut),1438.

It can be seen that imprisonment is the last option to adopt in this case. Most probably, to achieve the purpose of reformation by providing proper guidance to him.

1.2 Imprisonment according to Muslim Jurists

In early Islamic era, the prisoners of war were the most concerned people. The injunctions related to prisoners of war are tried to imply on the other prisoners too. In Surah Muhammad (47:04), the believers are guided how to deal with the idolaters during war. The portion فَشُدُّوا الْوُثَاقَ (by tighten their bonds) of the verse deals specially with this issue.

There is a difference of opinion among mufasssirin in the explanation of the above-mentioned verse. They hold different opinions about its cause of revelation. Jalaluddin Suyuti in his tafseer jalalyn and Muhammad Shafi Usmani in Ma'arif ul Qur'an said that it was revealed at the occasion of Battle of Uhud.¹⁷ Ibn e Kathir explained it as revealed after the battle of badr about the prisoners of war. The verse has two rules:

When the might and power of enemy breaks and conquered; then rather than killing them, they should be arrested. After this, Muslims are given two ways to deal with the captives of war- either set them free by favoring and without taking any compensation or ransom, or set them free against the ransom. There are many ways through which the ransom can be taken, e.g. by exchanging the Muslims prisoners of war for non-Muslim prisoners of war, by taking a pecuniary ransom etc. The points of law in this verse is apparently in conflict with the verse 67-68 of surah Al Anfal.¹⁸

According to a particular view point of Abū Ḥanīfah, setting the Prisoners of war free with or without ransom is not lawful so the verse of Surah Muhammad was considered as abrogated by the verse of Surah Al-Anfal. But Tafsir Al-Mazhari cleared the point as Surah Anfal was revealed before Surah Muhammad. According to the preferred view of Hanafi school, considering the opinion of companions and jurists-if it is for wellbeing and the best interest of Muslims- is lawful. Ibn e Human wrote in his Fat'h ul Qadir that Abū Ḥanīfah didn't allowed to release the prisoner of war against ransom, as mentioned in the versions of Quduri and Hidayat. But in As-Siyar-ul-Kabir, it is cited as permitted because of the majority's view. The later opinion seems to be preferable.

¹⁶ Abu Yusuf Yaqoob bin Ibrahim, Kitab ul Khiraj, (Dar ul Maarifa, Beirut),174.

¹⁷ Jalal ud din Mahalli, Jalal ud din Suyuti, "Tafseer al Jalalayn," trans. Feras Hamza (Aal al-Bayt Institute for Islamic Thought,2008),487.

¹⁸ It is not for a Prophet to have captives of war until he had made a great slaughter (among the enemies) in the land. You desire the commodities of this world, but Allah desires (for you) the Hereafter. Allah is Mighty and Wise. Were it not for a prior decree from Allah, a severe torment would have touched you for what you took.

If any disbeliever arrested, the leader has four options whether killed them, if seems appropriate or imprisoned them if they are on the best of interest of Muslims or setting them free by taking ransom or exchanges Muslim prisoners or release them without charging them anything. The scholars of Madinah, includes Al-Shafi'i and Abu Ubayd holds this opinion. Tahawi cited that it is the view point of Abū Ḥanīfah too, but his general opinion was the one discussed above.¹⁹

So the above discussion shows that there are four options that Muslim leader or judge have, for the Prisoners of war. It is mentioned in Maariful Qur'an that there is a consensus over the opinion that the judge or Muslim leader has a permission to either kill or bond them. But there is a difference among freeing them with ransom or without ransom, majority of jurists considered the second opinion lawful as well. This is all about enslaving the Prisoners which was custom in Arab, not imprisoned them as a punishment.

A hadith is recorded in Sahih Muslim by the authority of Anas that about eighty Makans were climbed down the Mount Tan'im having the intention of sudden attack on the camp of Muslims and Holy Prophet was among the members of camp. All of them were captured, but Holy Prophet released them without taking any ransom. At this occasion, the verse cited below of Surah Al-Fateh was revealed.

وَهُوَ الَّذِي كَفَّ أَيْدِيَهُمْ عَنْكُمْ وَأَيْدِيَكُمْ عَنْهُمْ بِبَطْنِ مَكَّةَ مِنْ بَعْدِ أَنْ أَظْفَرَكُمْ عَلَيْهِمْ²⁰

“It is He who held their hands back from you, and your hands from them in the valley of Makkah, after giving you victory over them.”

Mostly, the imprisonment is justified from the following verse of Holy Qur'an

إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُنَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ

خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ²¹

The punishment of those who wage war against Allah and His Apostle and strive with might and main for mischief through the land is: execution or crucifixion of the cutting off of hands and feet from opposite sides or exile from the land: that is their disgrace in this world and a heavy punishment is theirs in the Hereafter.

¹⁹ Qurtubi, V. 16, 228.i

²⁰ Al Qur'an, 48:24.

²¹ Al-Qur'an, 05:33.

The above mentioned verse of Qur'an defines the punishment for robbery (حرابه). There is a consensus that robber has the right upon Allah and his servants.²²

There is a difference of opinion among jurists about the portion *أَوْ يُنْفَوْا مِنَ الْأَرْضِ* of the verse.

- a) According to one opinion, it means to put the robber into the prison.
- b) While the other opinion is to send him from one city to the other and keep him in the prison until his forgiveness revealed.

The second opinion was narrated by Malik from Abul Qasim. Both of the opinions are narrated by Imam Malik. Abū Ḥanīfah supported the later opinion. According to Ibn e Mahabsun, the word Nafy in the verse means to escape from the Imam due to the fear of hadd. After controlling it, it is not correct to exile him.

According to Al-Shafi'i school, exile is not a purpose but if they escape, then will be chased. According to one opinion, this is the purposeful punishment so he will be exiled and imprisoned forever. Another opinion is to exile them from the dar ul Islam to dar ul Kufr. So, the most obvious order in this regard is to exile them from the country.

Ibn Hazm (d.1064), a Zahiri jurists commented over the imprisonment by saying that God commanded for the justice to be done and the delaying strategies and prisons be forbidden. The prisons and delaying strategy are unjust. The delaying is to prevent a creditor by getting the quick satisfaction about his claims.²³

He criticized the punishment of imprisonment for debt and generally emphasized in his opinion that no Muslim can be prohibited by moving freely on the earth until he is restricted by Qur'an or Sunnah.²⁴

This is a different perspective about imprisonment. As mentioned above, other fuqaha are in favor of imprisonment by concentrating on the impression meant for debt as Ibn e Hazam did.

Only few references are available in literature about the imprisonment in general. Ibn e Hazam questioned and argued whether it should be considered as a penalty (Ta'zir) or a precautionary measures (ihtiyat).²⁵

²² Bidayat ul Mujtahid wa Nihayat ul Muqtasid, 1212.

²³ Ibn Hazm, "Muhalla," vol. 8.

²⁴ Ibid., vol. 11, 1.

²⁵ Al-Sarakhsi, "Mabsut," vol. 9, 38.; Rosenthal, Concept, 4.

His analogy on the imprisonment for debt is based on the case of unchaste women and his punishment of resting her in the house, and thus, called it as a legal punishment by acknowledging the imprisonment for debt as a compulsory punishment.

It demonstrates that different kinds of imprisonment such as pre-trial detention, punitive detention and administrative detention were not considered and discussed separately by the Muslims Jurists. They only focused on the administrative detention and somehow on pre-trial detention too. But unfortunately, there is not a well enough literature discussion to be present for the punitive detention separately.

1.3 Genre of Imprisonment in Islamic and Modern Law

The punishment of imprisonment in Islamic law is different than the punishment in Modern law. Unlike Modern law, the imprisonment is not considered a punishment in Islamic law and had only given to a person for some reasons, i.e. on the basis of suspicion, to take decision for them, for any administrative cause, etc. The jurists have opposed the long-term imprisonment for transgression and general crimes.²⁶

The majority of jurist have the opinion that judge or legislator is liable to give punishment of imprisonment for certain crimes liable to Ta'zir punishment, and a Muslim ruler should make proper institutions for convicted criminals, doubtful persons and accused people waiting trial.²⁷ This punishment can be given separately or along with other punishments such as whipping or fine, according to the situation.²⁸

According to one opinion of Al-Shafi'i school, the imprisonment can be extended to one year only but the other opinions among Al-Shafi'i school of thought holds the opinion that it can be extended to as much time as the legislator feels better for the reformation of the convict. The opinion of Malik, Abū Ḥanīfah and Ahmad bin Hanbal, the quantum of punishment of imprisonment can be left over the decision of legislator or judge. Usually, the criminal is imprisoned for a limited time period but it can be unlimited for some dangerous crimes. These type of prisoners will remain ever in the prisons and they can only be released from the prisons by mending their conduct or repenting.²⁹

If the punishment cannot be proved by a single case of the Prophetic and Khulafa e Rashidun caliphate, on what ground these analogies are made?

²⁶ Abdul Qadir Audah, *Islam ka Fojdari Qanoon*, Vol.I, 694-695.

²⁷ Anwarullah, *The Criminal Law of Islam* (A.S. Noordeen, 1997), 247.

²⁸ Ibn e Qudamah, Vol.X, 348.

²⁹ Abdul Qadir Audah, *Islam ka Fojdari Qanoon*, Vol.I, 694-695.

As there are no terminologies present in the Islamic jurisprudence, so the terms for the types of imprisonment is taken from Modern Western Law, so that the various types of imprisonment can be discussed.

1. Administrative Detention, detaining a person for compulsion, generally to compel an obstinate debtor to pay.
2. Pre –trial detention, keeping a person in jail until his trial begins. It aimed to protect the right of other humans by proper inspection and investigation, protection of proof and unhindered trial.³⁰
3. Punitive detention, aims to separate the criminal from people and to protect the society from him.

The purpose of the first two is custody and protection, practiced in early Islamic era, while the third is a punishment practicing nowadays.

In Pakistan, the imprisonment for a definite term is imposed on the minor offences. The minimum time for a definite imprisonment is one day. But there is a difference of opinion amongst jurists about the maximum time period of imprisonment. According to Maliki, Hanafi and Hanbali school of thought, there is no fixed time period for the imprisonment and it varies from person to person and offense to offense. According to Al-Shafi'i school of thought, the maximum period for the imprisonment for the purpose of investigation is one month and for the punishment, it can be six months and it must not extend one year. This view of Shafi'i school is based on analogy(qiyas) with the punishment of fornication for an unmarried person. According to Shafi'i jurists, as the punishment of banishment for fornication is one year and it is the hadd punishment so the Ta'zir must not longer than hadd punishment. One opinion of Al-Shafi'i jurists is also similar to other three schools. According to all schools of thought, it is allowed for a judge to impose the imprisonment as an additional punishment as per circumstances.³¹

The long-term imprisonment is imposed to a habitual and a dangerous criminal whose reformation, in the opinion of judge, cannot be done by the ordinary punishments. It is allowed by all schools of thought until the death or repentance of the criminal.³² It is the punishment similar to the punishment of armed robbery(hiraba). The case is that the

³⁰ Rule 6 of United Nations Standard Minimum Rule for Non-Custodial Measures (Tokyo Rules,1990).

³¹ Al-Shawkani, "Fat'h ul Qadir," Vol.4, 216.

³² Bahutti, Kashshaf al Qina, Vol.6, pg.126.

one punishment defined for robbery is banishment, and interpreted as an imprisonment because of the repentance or death. Despite all discussion, the condition in Islamic Law for considering imprisonment as a Ta'zir punishment is, if no other punishment can work for his reformation.³³

Banishment (*Al-Nafy*) is another Ta'zir punishment which the modern writers have felt separately than the imprisonment. It is the punishment for fornications. According to Hanafi school of thought, it is an additional punishment of fornication, and other schools of law considered it as a hadd punishment, as the hadd punishment defined for fornication is-one-year banishment and one hundred lashes.³⁴ It is stated by Abu Ya'la in "Punishment in Islamic law" that besides the crime of fornication, banishment is considered as a Ta'zir punishment for the offenders who may encourage others to do the same crime.³⁵

The punishment of banishment may last until the behavior of offender is considered as improved or according to the exact time mentioned in the sentence. It is written in "Punishment in Islamic law" that nowadays banishment cannot consist of anything except imprisonment. The reason is; as the banishment can be city to city, country to country or from criminal's county to a foreign county but it will not fulfil the actual purpose of banishment i.e. to save other people from the same crime and its impacts. It is argued that as no country can accept the prisoner as an immigrant, nowadays so his exile cannot work effectively as it had worked in the European Colonial Era. So, the only possible solution for the banishment is the imprisonment.³⁶ But this is just one interpretation of meaning of banishment, the whole system cannot be based upon it.

Conclusion:

Imprisonment is not mere a punishment, but a worst crime committed by a man against man. In Shari'ah, there is a concept of punishment to arrest the criminal in his own house or banishing him from the area, where he can take his family with him if he wants. No example can be presented from the actions of the Messenger of Allah. The idea of imprisonment itself is generated later and Qur'an and Sunnah are devoid of it. Even it was not a practice of companions. Imprisonment has always been a sentence

³³ Muhammad S. EL-AWA, Punishment in Islamic Law (American Trust Publications, n.d),106.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

like referrals, where the prisoner is kept awaiting sentence. Once, Ma'az bin Asad brought his debtor to Holy Prophet ﷺ. He ordered to stick him first, and then asked to Ma'az, what do you want to do with your debtor?³⁷ This case also shows that the purpose of detention was to take decision for the criminal. Neither a single Qur'anic verse, nor hadith provides an evidence of imprisonment as a punishment in Islam.

To defend the imprisonment, banishment (Nafy) is interpreted as imprisonment, which is just one interpretation and the whole law cannot be based upon this one interpretation. The debate over the prisoners of war in the Holy Qur'an was not to confine them lifetime or ten to fifteen years, but just to take decisions for them. The purpose of reformation cannot be fulfilled by the punishment of imprisonment and similarly, there is no system to check the repentance of the criminal, and has no option to overcome his mistake. So, imprisoning someone only, till the decision taken for him was practiced during the Prophetic and Khulafa e Rashidun's era. Therefore, it cannot be expected from any Muslim government to include this punishment in its statutes of punishments.

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