

Punishment Prescribed For Certain Sins

2794. If a person commits adultery with one of his mehrams who are united by ties of consanguinity like mother and sister he should be killed under the orders of the Religious Head and the same order applies if an unbeliever commits adultery with a Muslim woman. It has been said in many traditions that awarding one of the religious punishments becomes the cause of people abstaining from unlawful things; it secures their present world and the Hereafter, and it is more beneficial for them than rain falling for forty days.

2795. If a free man commits adultery he should be whipped one hundred times, and if he commits adultery thrice and is whipped one hundred times on each occasion, he should be killed, if he commits adultery for the fourth time. If a person has a permanent wife or a slave girl, and has had sexual intercourse with her in the state of being adult, sane and free, and on have sexual intercourse with her any time he likes, and in spite of that he commits adultery with a woman, who is adult and sane, he should be stoned to death.

2796. It is well known that if a man sees another man committing adultery with his wife, and has no fear of sustaining harm, he can kill both of them. However, it appears difficult that this order should be valid. However his wife does not become unlawful for him.

2747. If an adult and sane person commits sodomy with another adult and sane person, both of them should be killed. And the religious Head can kill the person guilty of sodomy with a sword, or bum him alive, or tie his hands and feet and hurl him down from a high place, and under the conditions mentioned in Article 2795 can lapidate him.

2798. If a person orders someone to kill a person unjustly and if the murderer and the person who orders him are both adult and sane the murderer should be killed and he who ordered him to commit murder should lie imprisoned for life.

2799. If a child kills his father or mother intentionally, he should be killed, and if a father kills his child intentionally he should pay diyah (blood-money) in accordance with the orders which will be related later

and should be beaten as much as the Religious Head may deem fit.

2800. If a person kisses a boy lustfully the Religious Head can whip him thirty to ninety nine times as he deems fit. And it has been narrated that the Almighty Allah puts a nozzle of fire in the mouth of that man; the angels of the heavens and the earth and the angels of blessing and wrath curse him, and Hell will be ready for him. However, if he repents of his sin his repentance is accepted.

2801. If a man arranges the meeting of a man and a woman or adultery or of a man and a boy for sodomy, he should be whipped seventy five times. And it is well known that after whipping him seventy five times his head should be shaved and he should be taken round in the streets and the bazaars and should be expelled from the place where he performed this act. However, this order is not proved.

2802. If a person wants to commit adultery with a woman or sodomy with a boy and it is not possible to restrain him from doing so without killing him, it is permissible to kill him.

2803. If a peon attributes adultery or sodomy to a Muslim man or woman, who is adult, sane and free, or calls him/her a bastard, he should be whipped eighty times with his dress on.

2804. If a person who is adult and sane drinks wine voluntarily, and knowing it to be unlawful he should be given eighty lashes on his first and second offence and should be killed if he commits the sin for the third time. And if he is a man he should be stripped bare, while he is being flogged, with his private parts covered.

2805. If a person who is adult and sane steals $3\frac{3}{5}$ grains of coined gold or anything of equivalent value, and he satisfies the conditions prescribed for it in law, four fingers of his right hand should be cut from their root on his first offence, and the palm of his hand and the thumb should be allowed to remain in tact. If he repeats the offence his left foot should be cut off from the middle and if he steals for the third time, he should be imprisoned for life and his expenses should be paid from the public treasury (Bait ul Maal) and in case he commits theft for the fourth time, whether in the prison or outside it, he should be killed.

Compensation

2806. If a person. who is adult and sane, kills a Muslim intentionally and unjustly, and the person killed is a man or a boy, his guardian may forgive the murderer or kill him. However, if the person killed is an infidel and his murderer is a Muslim, the murderer cannot be killed. And if the person killed is a Muslim woman or girl and though her Muslim murderer can be killed, yet if he is a man, half of the diyah should be given to her guardian and if he is an insane person or a minor, only diyah should be given, and her diyah is obligatory on Aqilah.

The meaning of 'Aqilah will be explained later. Moreover, the guardian is permitted to take as diyah from the murderer the quantity upon which the two parties agree and this should be based on the diyah which

has been fixed in law. As the quantities fixed by law for diyah are different the option to fix the same lies with the murderer and he can adopt that which is easier for him. Hence he can give the price of silver which is less than other kinds of diyah and calculated in terms of the old Iranian coin Qiran which used to be of one mithqal its price comes to 525 tumans.

This diyah is authentic in terms of the old coin Qiran and not in terms of Rial which is current nowadays. And if a person kills another person by sheer mistake e.g. if he shoots an animal and kills someone by mistake, the guardian of the person so killed is not entitled to kill that person. He can, however, take diyah from the Aqilah (i.e. the relatives of the killer from father's side) and in the event of their not giving the same, he can take it from the killer himself.

And if a person kills someone in such a way that it resembles intentional murder e.g. if he strikes someone with a tool by which one does not usually die, and he does not also intend to kill him, and kills him by chance, the killer should, in these circumstances, pay the diyah himself and the guardian of the person killed is not entitled to kill him (i.e. the killer).

2807. In case the person killed is a man and a Muslim and free, the diyah which the killer should give consists of one of the following six things:

(i) In the case of intentional murder it is 100 camels which have entered the sixth year of their lives and in the case of killing by mistake or the killing which resembles intentional murder the age of the camel is less than this,

(ii) 200 cows;

(iii) 1000 sheep;

(iv) 200 hullahs (robes). Every robe consists of 2 pieces of cloth and it is better that they should have been made in Yemen.

(v) 1000 legal mithqals of gold, a mithqal is equal to 18 peas.

(vi) 10,000 dirhams, every dirham consists of $12\frac{1}{2}$ peas of coined silver.

And if the person killed is a woman who is a Muslim and free, her diyah in each of the above mentioned things is half of the diyah of a man. And if the person killed is a zimmi infidel his/her diyah is 800 dirhams in the case of a male and, 400 dirhams in the case of a female. And if the person killed is a non-zimmi infidel no diyah is payable. And the diyah of a slave or slave girl who is killed is his/her price, provided it does not exceed the diyah of a free person and even if it is a case of intentional murder the murderer who is a free person cannot be killed for the sake of a slave or slave girl.

2808. The diyah of the following things is like the diyah of killing a person, the details of which have been given before.

- (i) If a person makes another person blind in both the eyes or cuts off his four eyelids he should pay full diyah. And if he blinds his one eye he should pay half of the diyah for killing.
- (ii) If a person cuts off the two ears of the other person or perform some such act that the later becomes totally deaf. And if he cuts off one of his ears or makes him deaf in one ear, it is necessary for him to give him half of the diyah for killing. And if he cuts off the lobe of his ear it is better that he should make a compromise with him.
- (iii) If somebody cuts off the entire nose or the soft part of the nose of another person.
- (iv) If someone cuts off the tongue of a person from its root. And if he cuts off a part of his tongue, it should be seen as to how many letters that person has become incapable of pronouncing and then the entire diyah should be divided in proportion to the letters which that person has become incapable of pronouncing, and diyah should be paid in that ratio. And it is better that this diyah should be compared with the diyah which works out by measuring the part of the tongue which has been cut off (i.e. half or one third or one fourth etc.) and whichever part of the diyah is more should be paid.
- (v) If someone breaks all the teeth of another person (in which case full diyah shall be payable). And in case he breaks some teeth of the other person and that person is a man, he should pay 500 dirhams per tooth as diyah or the front teeth (which are twelve in number) and 250 dirhams per tooth for the other teeth (which are seventeen in number). And if that person is a Roman her diyah is equal to that of man so long as it does not equal $\frac{1}{3}$ of the diyah and when it reaches $\frac{1}{3}$ of the diyah the diyah for the teeth of the woman is half of the diyah for the teeth of man.
- (vi) If someone amputates both the hands of the other person from the joint. And if he amputates his one hand from the joint, he should pay half of the diyah payable or killing a person.
- (vii) If someone amputates ten fingers of another person (in which case full diyah shall have to be paid). And the diyah of the person whose fingers are amputated is $\frac{1}{3}$ of the diyah of hand for the thumb and $\frac{1}{6}$ of it for each of the other fingers, and if the diyah of the woman reaches $\frac{1}{3}$ of the diyah for killing a person, it will be half the diyah of man.
- (viii) If someone cuts of both the breasts of a woman (in which case full diyah shall be paid). And in case he cuts off one breast he should pay diyah equal to half of that which is payable for killing a woman.
- (ix) If somebody cuts both the leg of a person up to the joint, or the ten toes of his feet. And the diyah of each toe of the feet is the same as the diyah of each finger of the hand.
- (x) If somebody removes the testicles of a man (for which full diyah shall have to be paid).
- (xi) If somebody subjects a person to such hardship that he may lose his intelligence (for which full diyah shall have to be paid). And if he breaks the back of a person in such a way that it becomes impossible to set it right, he should pay full diyah, although it is better that he should make a compromise with the

oppressed person.

2809. If a person kills another person by mistake he should, besides paying diyah as mentioned in Article 2806, set a slave free. And in case he cannot set a slave free he should fast consecutively for two months. And if he cannot do even that, he should feed fully sixty indigent persons. And if a person murders another person intentionally and unjustly he should in the event of forgiveness or taking diyah (i.e. if the heirs of the murdered person forgive him or take diyah from him) he should fast for two months and feed sixty indigent persons and set one slave free.

2810. If a person who is riding an animal does something as a consequence of which that animal harms someone, he is responsible for it. Furthermore, if a person does something offensive, as a consequence of which the animal harms the person riding it, or someone else, the offender is responsible for it.

2811. If a person does something as a consequence of which a woman has an abortion and what is aborted is free and is governed by the orders of Islam, and it is in the form of a sperm, its diyah is 20 mithqals of coined gold, each mithqal consisting of 18 peas. And if it is "Alaqah" i.e. coagulated blood its diyah is 40 mithqals; if it is "Muzgha" i.e. a lump of flesh its diyah is 60 mithqals; if its bones have been built its diyah is 80 mithqals; if its flesh has been formed on the bones but soul has not yet entered it, its diyah is 100 mithqals; if soul has also entered it, and it is male child, its diyah is 1000 mithqals; if it is a female child, her diyah is 500 mithqals of coined gold; and in all these cases it is sufficient if ten dirhams of silver are given for every one mithqal of gold.

2812. If a pregnant woman performs an act as a consequence of which she has a miscarriage, she should give diyah for it to the heir of the child in the manner explained in the foregoing Article and she herself does not get anything out of it.

2813. If a person kills a pregnant woman he should give diyah for the woman as well as for the child.

2814. If a person scratches the skin of a man's head or face, he should give 1/100 of the diyah of the murder of person as mentioned in Article 2807; if the wound reaches the flesh and tears it also to some extent he should give 1/50 of the said diyah if it tears the flesh a good deal, he should give 3/100 of the said diyah; if it reaches the delicate cover of the bones he should give 1/25 of the diyah; if the bones become apparent he should give 1/20 of the diyah; if the bone is fractured he should give 1/10 of the diyah; if some tiny bits of bone come out of their place he should give 3/20 of the diyah and if it reaches the surface of the brain, he should give 33/100 of the diyah.

2815. If someone slaps a person on the face or strikes him with something in such a way that his face becomes red, he should give 1 1/2 mithqal of coined gold each mithqal being of 18 peas; if his face becomes dark blue he should give him 3 mithqals; and if it becomes black, he should give him 6 legal mithqals of coined gold. In case, however, some other part of the body of the person attacked becomes red, dark blue, or black, the offender should give him half of what has been mentioned above.

2816. If someone wounds or cuts of a part of the body an animal belonging to another person, and the meat of the animal is lawful to eat, he should give to its owner the difference between its value when it is sound and when it is defective.

2817. If someone kills a dog belonging to another person and it is a hunting dog, or a dog, which looks after the house, or a dog which looks after the farm; he should pay its price to the owner, and if the price of the hunting dog is less than forty dirhams it is necessary to give forty dirhams for it.

2818. If an animal destroys the crops or property belonging to a person, and the owner of the animal has been negligent in looking after it, he should compensate the owner of the property or crops for the damage done to it.

2819. If a child commits a major sin, his guardian (or, for example, his teacher, with the permission of the guardian) can beat him as much that he may be corrected and diyah may not become obligatory.

2820. If a person beats a child so much that diyah becomes obligatory that diyah is the property of the child; and if the child dies the diyah should be given to his heirs. And if for example, a father beats his child so much that the latter dies. the diyah will be taken by other heirs of the child and his father will get nothing out of it.

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