Chapter 3

Piece and Justice: Concepts and Institutions in Islam

Jihād and Qīṭāl

Jihād is an Arabic word. Its root is jhd. Some of its derivatives are: jahada, jahūd, juhd, jāhada, ījtihād. All these words contain the meanings of 'striving', 'struggling', or making efforts to advance the Divine causes or purposes.

Al-Mufradāt gives the following description of these derivatives:

394 Al-Qāmūs, p. 141.
Jahd and Juhd mean exertion of one’s power to the utmost of one’s capacity.\(^{397}\)

Al-Ifitihād means keeping one’s own self content on exertion of power and making of tireless efforts; it also means exertion of one’s mental faculty to the utmost of one’s capacity.\(^{398}\)

Jihād and Mujāhadah means exerting one’s powers exclusively for defending oneself from enemy.\(^{399}\)

Then the Mufradāt classifies the enemy into three categories:

i) \textit{al-‘aduww al-Zahir} i.e., the external enemy meaning thereby the non-believers who are at war with the Muslims.

ii) \textit{al-Shayṭān} (the Satan) and

iii) \textit{al-Nafs} (self)\(^{400}\)

Therefore, jihād can be accordingly of three categories. Viz., jihād bi al-kuffar, jihād bi al-Shayṭān and jihād bi al-Nafs.

Ibn Qayyim classifies Jihād into four categories:

\(^{397}\)Ibid, word \textit{Jahd}.

\(^{398}\)Ibid, word \textit{Jahd}.

\(^{399}\)Al-Mufrudāt, word \textit{jahdun}.

\(^{400}\)Ibid, word \textit{Jahd}.
i) *Jihād bi al-Nafs*  
ii) *Jihād bi al-Shaytān*  
iii) *Jihād bi al-Kuffār* and  
iv) *Jihād bi al-Munafiqīn*. He then divides each category into various kinds.

*Jihād bi al-Nafs* is of four kinds: a) to strive for gaining religious knowledge without which one cannot succeed in attaining good of both the worlds. b) to act on the gained knowledge for knowledge unpractised is fruitless. c) to teach those who don’t know otherwise one would be considered as concealer of Allāh’s guidance. d) to suffer with patience hardships in the way of propagation of Allāh’s Religion.

*Jihād bi al-Shaytān* is of two kinds: a) to erase doubts regarding the Truth which Satan raises in people’s minds. b) to do away with the wrong and lustful intentions from one’s own heart which Satan whispers into it.

*Jihād bi al-Kuffār* and *Jihād bi al-Munafiqīn* are collectively of three kinds: a) to use hand (power) against them if possible b) to use tongue against them and if this is not possible then c) by heart (i.e., to hate the wrong doings of these people by heart).401

A *hadith* also throws light on these three kinds of *jihād*:

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“If anyone among you sees a munkar (bad thing), he must stop it with his hand, or with his tongue (if he is unable to stop it with his hand) or consider it bad in his heart (if he can not even say anything against it), and this last option is the lowest degree of Imān.”

The true nature and significance of jihād with regard to its above mentioned three categories can be understood when it is viewed in the context of the fundamental Islāmic teachings of justice and peace which Islām seeks to realize in life of man here and hereafter. Briefly speaking, for the establishment of a sound social order Islām commands its followers to make sustained efforts against all the agents and elements of injustice and turmoil be they human beings who have come to create hurdles in this way or be they man’s own desires and passions that always try to lead him away from his God or be it the devil who misleads man by making bad ways beautiful before his eyes. Sometimes it is easier to fight the external enemy than to fight the internal one. In fact a mujāhid cannot go for fighting the external enemies of truth unless he had purified his heart from selfish desires and

402 Reported by Muslim, Tirmidhī, Ibn Mājah and Nisa’ī vide Fada’īl A ‘māl, By Mawlānā Zakariyyā, Delhi, Idārah Isha’ti Diniyyāt, n. d., part 3 (Fada’īl Tablīgh), vol. 1, P. 8-9.
freed himself from the clutches of devil. That is why when Rasūlullāh ﷺ came back from a Ghazwah he addressed his Sahābah in these words:


Your coming back is for better purpose; You have returned from the smaller jihād to the bigger jihād i.e., to struggle with the temptations of one’s nafs. ⁴⁰³

This is more clearly explained by Allāh’s Messenger ﷺ when he was asked by Abū Dhar ﷺ as to which category of jihād is the greatest. The Messenger ﷺ replied:

ان يجاهاد الرجل نفسه وهو له

(The greatest jihād is) the struggle of man against his selfishness and lust. ⁴⁰⁴

Abū Bakr ﷺ says:

من سلك نفسه في ذات الله أمنه الله من مقتة

One who crushes his self egotistic for attaining nearness to Allāh, Allāh ﷺ saves him from His aversion. ⁴⁰⁵

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⁴⁰³ Kanz al-‘Ummāl, vol. 4, p. 616.
⁴⁰⁴ Ibidem.
⁴⁰⁵ Kanz, loc. cit.
The holy Qur’an throws light on various facts of jihad. Below are quoted some of the Ayat which suffice to give us a clear understanding about the concept of *jihad*:

(Al-Qur’an, Al-Naisā’ 4:95)

"Not equal are the holders back among the believers, save those who are disabled and the strivers in the Way of Allah with their riches and their lives. Allah has preferred in rank the strivers with their riches and their lives above the holders-back, and to all Allah has promised good. And Allah has preferred the strivers above the holders-back with a mighty wage.” (4:95)

In the above quoted Ayah of the holy Qur’an the word *jihad* has been used thrice as antonym of the word *qit’ud* which means sitting idle, abstention, remaining at home at the time of war.406

Allah says:

(Al-Qur’an, Al-Ankabut 29:69)

“And those who strive in Our (cause), —We will certainly guide them to Our Paths: For verily Allah is with those who do right.: (29:69)

Abdullāh Yūsuf ‘Alī explains this Āyāh in these words:

"‘Strive in Our Cause’. All that man can do is to strive in Allāh’s Cause. As soon as he strives with might and main, with constancy and determination, the Light and Mercy of Allāh come to meet him. They cure his defects and shortcomings. They provide him with the means by which he can raise himself above himself. They point out the Way and all the Paths leading up to it.

The Way of Allāh (Sirāt-ul-Mustaqim) is a Straight Way. But men have strayed from it in all directions. And there are numerous Paths by which they can get back to the Right Way, the way in which the purity of their own nature, and the Will and Mercy of Allāh require them to Walk. All these numerous Paths become open to them if once they give their hearts in keeping to Allāh and work in right endeavour (jihād) with all their mind and soul and resources. Thus they will get out of the Spider’s web of this frail world and attain to eternal Bliss in the fulfillment of their true Destiny."⁴⁰⁷

Thus in this Āyāh jihād refers to strivation which is mainly spiritual in nature. To get a more clear understanding of this let us consider this Āyāh:

> وَمَنْ جَهَّلْ فَالَّذِي يَجْهَلُ لَنْ يَفْهَمْ إِنِّي لَعَلَّمَتَ عَبْرَ الْعَالَمِينَ

(Al-Qur’an, Al-‘Ankabūt 29:6)

“And whosoever strives, strives only for himself, verily Allāh is independent of the worlds.” (29:6)

Allāmah Shabīr Ahmad ‘Uthmāni explains this Āyāh thus:

Those people who strive hard and patiently endure trials and tribulations for the sake of Allāh and remain engaged in various mujāhadāt (strivations) Allāh blesses them with a particular type of nūri baṣīrat (Spiritual Light) and explains to them the Ways that lead to Him or to the Paradise. The more they progress in mujāhadāt, the higher stage of the spiritual perception they attain and they begin to understand those things which others cannot even imagine.⁴⁰⁸

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In the above mentioned Qur'anic Ayah (Al-Nisa' 4:95) and other Ayat, *jihād fi Sabī lillāh* is clearly mentioned as having two aspects:

a) *jihād bi al-nafs* meaning striving in the Way of Allah by enduring every kind of hardship in His Way which can sometimes amount to laying one's life for His Cause.

b) *Jihād bi al-mdl* which means that one must spend whatever wealth he possesses in the Way of Allah. 409

Thus when *jihād* means striviation and struggle, then every good and righteous act is included in it. The *Sufīs* consider *jihād bi al-nafs* as striving against one's own treacherous self and call it *jihādi Akbar*. Hākim and Ibn Hibbān quote a *hadīth* that Rasūlullāh ﷺ said:

المجاهد من جاهد نفسه

"The Mujāhid is one who strives against his nafs." 410

Once some women came to Allāh's Messenger ﷺ and sought permission for *jihād* (in the meaning of *qīṭāl* i.e., fighting) He ﷺ said: "Your

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Jihad is righteous Hajj” for enduring the hardships of pilgrimage was including in their jihad.\(^{411}\)

Similarly a Sahabi came from Yemen and requested that he wanted to take part in jihad (fighting). Allah’s Messenger ﷺ asked him if he had parents. He said yes. Then He ﷺ said:

ففيهما فجاجد

"Then serve them that is your jihad”\(^{412}\)

In hadith, saying a word of Justice before a tyrant ruler is a great jihad:

ان عن اعظم الجهاد كلمة عدلا عند سلطان جائر

"Verily the great jihad is saying a word of justice before a tyrant king."\(^{413}\)

Summing up, we may, therefore, say that jihad is incumbent on every Muslim ever and always according to his own capacity and potential. It includes helping Allah’s Religion, propagating His Message, serving the poor and destitute, guiding the astrayed, enjoining right and forbidding wrong, establishing justice, opposing the zulm, always acting upon the

\(^{411}\) Bukhari, Kitab al-Jihad, Kitab al-iman, vide Shibl, op.cit., p. 212.

\(^{412}\) Abū Dāwūd kitāb al-Jihād and Tirmidhi kitāb al-jihād.

\(^{413}\) Tirmidhi, Abwāb al-fītan.
commandments of Allāh ﷻ until every breath of a Muslim becomes jihad.

Allāh ﷻ commands this permanent jihad in this Ayāh:

(Al-Qur‘ān, Al-‘Imran 3:200)

“O ye who believe! Persevere in patience and constancy; vie in such perseverance; strengthen each other; and fear Allāh; that ye may prosper.” (3:200)

Thus jihad and Sābr are closely related while the later means:

“Patience, perseverance, constancy, self-restraints, refused to be cowed down. These virtues we are to exercise for ourselves and in relation to others; we are to set an example, so that others may vie with us, and we are to vie with them, lest we fall short; in this way we strengthen each other and bind our mutual relations closer, in our common service to Allāh.414

In fact, the term jihad is a term encompassing very vast meanings. In short all the good endeavors made for the advancement of Allāh’s cause including the da‘wah of Islām done through the preachers tongue or the scholars pen or the soldiers sword or the saints subduing his negative instincts through worshipping etc. are included in Jihad. Thus although the meaning of warfare is included in jihad, it is wrong to use the word jihad

414 A. Y. ‘All. op. cit., Ex. n. 502. See also Shibli, op.cit., p. 216.
exclusively for warfare. And also the basic prerequisite for fighting is that it must be *fi Sabīlillāh* (in the Way of Allāh ﷺ).

A few Āyāt using the word *jihād* in the meaning of fighting in the Way of Allāh ﷺ (*fi Sabīlillāh*) are as under:

(Al-Qur’ān, Al-Baqarah 2:218)

> "Those who believed and those who suffered exile and fought (and strove and struggled) in the Path of Allāh." (2:218)

(Al-Qur’ān, Al-Tawbah 9:41)

> “Go ye forth, (whether equipped) Lightly or heavily, and strive and struggle with your goods and your persons, in the Cause of Allāh.” (9:41)\(^{415}\)

**Qitāl**

Thus the meaning of “fighting” is included in the many meanings of *jihād* whereas the actual word for fighting is *qitāl*. The first ever Āyāh giving permission to the Muslims to fight is:

(Al-Qur’ān, Al-Hajj 22:39)

"To those against whom war is made, permission is given (to fight), because they are wronged;—and verily, Allah is Most Powerful for their aid." (22:39)

Another Æyâh clearly showing that for the meaning of 'fighting' the actual word is qitâl:

(Al-Qur'ân, Muhammad 47:20)

"Those who believe say, "Why is not a Sûra sent down (for us)?" But when a Sûra of decisive meaning is revealed and fighting is mentioned therein...." (47:20)

Therefore, qitâl fi Sabîllillah is one aspect of jihâd fi Sabîllillah and not whole of it.

The following Æyâh draws a clear distinction between qitâl fought for the sake of Allah and that fought for the sake of Satan and brings forth the reality that the believers fight only for the sake of Allah:

(Al-Qur'ân, Al-Nisa' 4:76)

"Those who believe fight in the cause of Allah, and those who reject Faith fight in the cause of Evil (Tagut)." (4:76)

Thus in Islâm, as every jihâd is not war, likewise every war is not jihâd.
The first permission to fight given to the Muslims also gives the justification and purpose of war. Allāh ﷺ says:

(Al-Qur’an, Al-Hajj 22:39-41)

“To those against whom war is made, permission is given (to fight), because they are wronged;—and verily, Allāh is Most Powerful for their aid;—(they are) those who have been expelled from their homes in defiance of right,—(for no cause) except that they say, “Our Lord is Allāh”. Did not Allāh check one set of people by means of another, there would surely have been pulled down monasteries, churches, synagogues, and mosques, in which the name of Allāh is commemorated in abundant measure. Allāh will certainly aid those who did His (Cause);—for verily Allāh is full of Strength, Exalted in Might, (Able to enforce His Will). (They are) those who, if We establish them in the land, establish regular prayer and give Zakat, enjoin the right and forbid wrong: With Allāh rests the end (and decision) of (all) affairs.” (22:39-41)

These Qur’ānic Āyāt sum up the aims and objectives of Qitāl. Permission of Qitāl is given to the people who had been wronged (بَالْهَمِ الظَّلَمَوْا); they had been driven out from their homes for they had excepted Allāh ﷺ as their Lord.

Thus jihād by swords (i.e., qitāl) is not permitted for acquisition of land, nor power, nor for extending a countries boarders but is fought against Zulm —
against injustice and oppression. And why should good and sane people who are upholders of Truth and Justice not rise against oppression and unjust men to save the oppressed and the sacred places where the True Lord is being remembered? Isn’t then, in such case, non-resistance blameworthy and immoral? That is what Allāh ﷺ calls the Men of Faith towards that these Allāh ﷺ fearing people must use force to rescue these helpless folks from the clutches of the enemies of Truth:

 WAL-ˇ KNUM LANTFAW动物园 في سبييل الله والمستضعفين من الرجال
 وانتسءا والولدات على الذين يقولون ربنا أخرجنا من هذه القرية
 الظلمة أهلها وأجعل لنا من لدنك ولياً وأجعل لنا من لدنك نصيرًا (Al-Qur’an, Al-Nisa’ 4:75)

“And why should ye not fight in the cause of Allāh and of those who, being weak, are ill-treated (and pressed)? —Men, women and children, whose cry is: “Our Lord! Rescue us from this town whose people are oppressed; and raise for us from one who will protect; and raise for us from thee one who will help!” (4:75)

Responding this call Allāh’s Messenger ﷺ—the Messenger of Peace — fought the oppressors to save humanity from cruelty and barbarity.

A. Y. ‘Alī explaining the above quoted Āyah writes:

“Even from the human point of view the cause of Allāh ﷺ is the cause of justice, the cause of the oppressed. In the great persecution, before Makkah was won again, what sorrows, threats, tortures, and oppressions, were suffered by those whose faith was
unshaken? Muhammad’s life and that of his adherents was threatened: they were mocked, assaulted, insulted and beaten; those within the power of the enemy were put into chains and cast into prison; others were boycotted, and shun out of trade, business, and social intercourse; they could not even buy the food they wanted, or perform their religious duties. The persecution was redoubled for the believing slaves, women and children after the Hijrat. Their cry for a protector, and helper from Allah was answered when Muhammad the Chosen One brought freedom and peace to Makkah again.416

And then when these just men get success, they bow before their Lord in humility; they help poor and destitute people by establishing the institution of Zakāh and establish the society on the basis of moral values where no one is assailed by the ambition and cupidity of another. Then after establishing peace in land they again come to their normal and ever obligatory action of *al-‘amr bi al-ma‘rūf wa al-nahiyu‘an al-munkar* (i.e., enjoining the right and forbidding the wrong). Darwah is as such the fundamental duty of the Muslims to make Truth and Falsehood clearly distinguished from each other so that there remains no excuse for any wrongdoer that he did not know. And in order to protect the moral order, Qīṭāl becomes a moral obligation of the believers.

Thus from this we may infer that while peace and Darwah as peace activity is fundamental, Qīṭāl is exceptional and defensive.

416 A. Y. ‘Alī, op. cit., Ex. n. 593.
But at the same time if the unjust forces, left unchecked, can pose a threat to the Religion of Truth, pre-emptive measures can be taken against them. The holy Qur’ān guides us in this regard thus:

\[ \text{(Al-Qur’an, Al-Anfal 8:39)} \]

“And fight them on until there is no more persecution, and religion becomes Allah’s in its entirety. But if they cease, verily Allah doeth see all that they do.” (8:39)

Again, Allah says:

\[ \text{(Al-Qur’an, Al-Baqarah 2:193)} \]

“And fight them on until there is no more persecution and the religion becomes Allah’s. But if they cease, let there be no hostility except to those who practice oppression.” (2:193)

In these Ayāt the Muslims have been commanded to fight the enemies of Faith until they cease to persecute them and Islām (peace) becomes dominant to such an extent that it protects its adherents from the non-believer’s, oppression.\(^{417}\)

Therefore, permission of *aitāl* is not only for the occasion when the Muslims are attacked but it is also allowed that if the unjust forces are gaining such power which can prove fatal for the elements and institutions of peace and justice in future, the Muslims can take preemptive measures against these forces until there remains no fear of them.

Hence *jihād* in the meaning of *Qitāl* can be classified into two categories viz; defensive and pre-emptive. In addition to the 39th *Āyah* of *Surah al-Ḥajj*, the following *Āyah* throws more light on the defensive category of *Qitāl*:

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\text{(Al-Qur'ān, Al-Baqarah 2:190)}
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"Fight in the cause of Allāh those who fight you. But do not transgress limits; For Allāh loveth not transgressors." (2:190)

Explaning this *Āyah*, A. Y. 'Alī writes:

"War is only permissible in self-defence, and under well-defined limits. When undertaken, it must be pushed with vigour, but not relentlessly, but only to restore peace and freedom for the worship of God. In any case strict limits must not be transgressed: Women, children, old and infirm men should not be molested, nor trees and crops cut down, nor peace withheld when the enemy comes to terms." 418

418 A. Y. ‘Alī, op. cit., Ex. n. 204.
Thus the law of justice is must to be observed in defensive Qitâl, otherwise it is mischief-mongering, not jihâd. Allâh’s Messenger ﷺ has prohibited deforming the enemies dead bodies,\(^{419}\) killing of women and children.\(^{420}\)

Defensive jihâd was permitted in Madînah after the Muslims had been brutally persecuted, tortured and subjected to social boycott at Makkah. But they were not allowed to fight back in that city for many reasons:

They could well have hit back as the small number of believers who had survived their faith unflinchingly belonged to various tribes and the considerations of tribal traditions being very strong in those days would definitely provoke the respective tribes of the believers to side with Allâh’s Messenger ﷺ. But had the believers been permitted to wage Qitâl at that time, the situation would have become quite chaotic and in a state of armed conflict and the resultant civil war a lot of bloodshed would have taken place which Islâm as well as its Messenger ﷺ abhorred.\(^ {421}\) Otherwise, the Muslims

\(^{419}\) Kanz al-‘Ummâl, vol. 4, p. 391 No., 11068.

\(^{420}\) Ibidem No., 11071.

\(^{421}\) S. A. H. Rizvi, Battles by the Prophet, Hyderabad, Mustafa Educational Network Trust (MEDNET), 2001, p. 6-7.
had been longing and praying for the grant of permission as the holy Qur'ān says:

وَيَقُولُ الَّذِينَ آمَنُوا الَّذِينَ آمَنُوا لَا أَنزَلْتُ سُورَةً فَأَنْزَلْتَ سُورَةً مَحِكَّةً وَذَكَرْتُ فِيهَا الْقَالِ

(Al-Qur'ān, Muhammad 47:20)

“Those who believe say, “Why is not a Sūra sent down (for us)?” But when a Sūra of decisive meaning is revealed and fighting is mentioned therein....” (47:20)

For understanding the reality of pre-emptive jihād, let us consider the following Qur'ānic Āyah:

قَاتِلُوا الَّذِينَ لا يُؤْمِنُونَ بِاللَّهِ وَالَّذِينَ نَكَبَتْهُمُ الْحَقُّ مِنَ الْكِتَابِ وَلَا يُحْرِمُونَ مَا حَرَّمَ الَّذِينَ يُؤْمِنُونَ بِاللَّهِ وَرَسُولِهِ وَلَا يُؤْمِنُونَ بِالْحَقِّ مِنَ الْكِتَابِ وَلَا يُكَبِّرُوا بِاللَّهِ كَمُكَبِّرُونَ

(Al-Qur'ān, Al-Tawbah 9:29)

“Fight those who believe not in Allāh nor the Last Day, nor hold that forbidden which hath been forbidden by Allāh and His Messenger, nor acknowledge the Religion of Truth, from among the People of the Book, until they pay the jizyah with willing submission, and feel themselves subdued.”422 (9:29)

Explaining the Āyah, Imām Rāzī in his Tafsīr Kabīr writes that jizyah is not meant to leave the non-believer continue to live in his state of disbelief, its purpose is to save his life so that he can get considerable time to know the

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422 Jizyah will be discussed in detail below in the same chapter.
beauties of Islam and to get acquainted with the solid proofs of it and will thereby accept Islam.\footnote{423}

After quoting Imam Rāzī in order to prove that Muslims can wage preemptive war, Justice Taqī ‘Uthmānī reasons out by quoting ibn ‘Athīr that at the occasion of Qādisīyyah the Muslims explained the purpose of their jihad in these words:

\begin{quote}
واخراج العباد من عبادة العباد إلى عبادة الله
\end{quote}

meaning that their purpose was to lead people from each other’s slavery to Allāh’s true worship.

That implies that the purpose of Jihad is to suppress the enemies of Truth until they become unable to persecute human beings. Explaining this more clearly, Mawlānā Muḥammad Idrīs Kandhlawī writes:

By commanding Jihad Allāh does not intend that the non-believers should be all at once put to death,\footnote{425} but its purpose is that it must be Allāh’s Religion to govern the affairs of world and the Muslims (as

\footnote{423 Justice Mawlānā Muḥammad Taqī ‘Uthmānī, Jihad—Dīfā` Iyā’ Iqḍāmī, (Urdu), Delhi, Farīd Book Depot, 2000, p. 16-17.}

\footnote{424 Ibid, p. 28.}

\footnote{425 See detail below.}
believers in Allāh’s Religion) should live honourable life, and can worship Allāh in peaceful atmosphere without having any fear that the non-believers would create hurdles in their way. Islām is not the enemy of the very existence of its enemies but it is against such power of their’s that could become a danger for the believers.\textsuperscript{426}

He again writes:

The second category of \textit{jihād} is \textit{Iqdāmī Jihād} which means that when the disbeliever's power is so strong that its very existence poses a threat to the freedom of Islām then the Muslims are commanded to go for offensive war against them so that the Muslims remain protected from the persecution of \textit{kufr} and \textit{shirk} and can fulfill Allāh's Commandments with peace and safety, not having any fear.\textsuperscript{427}

But is not such type of war mere barbarity and aggression against a nation's sovereignty? The reply to such question in Kandhlawī's words is:

Islāmic Jihād is fought for the purpose that Truth and true Justice rule the world and self interested individuals or parties cannot disturb world peace. Such war, the purpose of which is to preserve and protect justice, trustworthiness and truthfulness and to uproot bribery, theft, adultery, immorality, licentiousness and selfishness, is not barbarity but the highest worship and great blessing and compassion for God's creatures.\textsuperscript{428}

\textit{Iqdāmī Jihād} is also proved by the Sunnah when Rasūlullāh  before his departure ordered that Usamā’s expedition should be sent against the

\textsuperscript{427} Ibid, p. 23-24.
\textsuperscript{428} Ibid, p. 27.
Byzantians but could not send it during his life time. This expedition was then dispatched by Abū Bakr amidst strong reluctance from great Sahābīs. One of the reasons why Allāh’s Messenger ordered for sending ‘Uṣamah’s army was that he had received informations about the Byzantine emperor’s preparation for attacking the Muslims.

He had also made such intention earlier. At that time Allāh’s Messenger had himself taken initiative with an army of 30,000 men and had reached upto Tabūk. And then the emperor had given up his wrong intention.429

Islam does not allow war to be fought for “national interests” nor for any other materialistic purpose, but it legitimizes war for ending persecution and injustice. Therefore, the Iqdāmī Jihad conducted to deter the evil doers and enemies of peace before they rise to kill peace and subject people to persecution and create hurdles in their way to Truth cannot be termed aggressive. In fact it is by nature defensive as it aims at nipping the

\[429\] Asharah Mubashsharah, p. 111.
evil at the bud and also as killing a poisonous animal before it stings is justified for it saves many precious lives.  

Concluding the above discussion an overview of Rasūlullāh’s treatment with the disbelievers and hypocrites from the time he claimed his Messengerhood to the time he passed away is pertinent.

In the very first wāḥī He was asked to read in the Name of his Lord who created. Then He was commanded to propagate the Message and warn people of the ill-consequences of disbelief.

First he was commanded to warn his own kin:

\[\text{وَأَنْذِرْ عَشَبَتَكَ الْآَقْرَبِينَ}\]

(Al-Qur′ān, Al-Sh'āra' 26:211)

"And admonish thy nearest kinsmen." (26:214)

Then the command came to warn the people of Makkah and its surroundings:

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431 The five Āyāt of Sūrah al-‘Alaq, the 96th Sūrah of the holy Qur′ān were revealed in the cave of Hira.
432 First five Āyāt of Sūrah al-Muddaththir, the 74th Surah of the holy Qur′ān were revealed as the second wāḥī. See Al-Raḥiq al-Makhtūm, p. 108.
"That thou mayest war the Mother of Cities and all around her." (42:7)

Then his da'wah extended to every living being:

“... (Al-Qur'an, Al-Shura 42:7)

"That it may give admonition to any (who are) alive." (36:70)

And then in a gradual manner, a stage reached when it was revealed that Islam is meant for the whole world:

"... (Al-Qur'an, Al-Yasîn 36:70)

"Blessed is He who sent down the Criterion to His servant, that it may be an admonition to all creatures." (25:1)

Thus he invited people towards Islam for more than a decade without fighting any war with them or imposing jizyah on them. He was instead commanded to struggle with patience and fortitude. But the thirteen years da'wah with utmost sincerity, affection and compassion only transformed the Makkans’s initial indulgent indifference to irritation, irritation to wrath

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433 For a detailed account of the gradual stages of da'wah see Shibli, Sirah al-Nabi, vol. 4, p. 185-7.
and wrath to active hostility.\footnote{A. H. Rizvi, op. cit., p. 1.} So he \(\textcircled{\text{9}}\) was commanded to perform \textit{Hijrah} to Madīnah. After more than a year’s stay at Madīnah he \(\textcircled{\text{9}}\) was granted permission to take up arms against the oppressors. He \(\textcircled{\text{9}}\) was asked to fight those who fought him \(\textcircled{\text{9}}\) and not those who did not fight him. Then the command was to fight the polytheists until the Religion becomes Allāh’s \(\textcircled{\text{9}}\) i.e., until the persecution is utterly uprooted and justice, peace and true worship of Allāh \(\textcircled{\text{9}}\) is established.\footnote{Ibn Qayyim, loc. cit.}

After the permission of Qitāl the non-believers got classified into three categories:

a) \textit{Ahl al-ṣulh wa al- hadnaḥ} i.e., those with whom the Messenger \(\textcircled{\text{9}}\) made peace agreements.

b) \textit{Ahl al-ḥarb} i.e., those who were at war with him \(\textcircled{\text{9}}\).

c) \textit{Ahl al- dhimmah} i.e., the non-Muslim subjects of Madīnah.\footnote{Ibidem. See also Syed Qutub, \textit{Ma’ālim fi al-Ṭariq}, Berut, Dār al-Šaraq, 1983, p. 55.}
As such, he was commanded to fulfill his agreement with the first category and whosoever among them broke the agreement he should be fought with.

The Messenger was in detail guided about how to deal with all the above mentioned three categories of non-believers in Surah Al-Bara'ah, the 9th Surah of the holy Qur'an. Qitāl was commanded to be waged against the enemies from among the Jews and the Christians until they paid jizyah or embraced Islām. The Kuffār (disbelievers) and the Munāfiqūn (hypocrites) were asked to be dealt with the sword while the later were given sound proofs and tongue only was used to convince them with knowledge. Their external actions were excepted and their internal hypocritical intentions were left to Allāh. And it was never allowed that force should be used against them. Treaties with those Pagans who had treacherously broken their terms were denounced and the Mu'āhidun (those with whom the Muslims had made peace agreements) were divided into three groups:

438 See detail below.
a) those against whom *Qitāl* was commanded. They were those who had broken their terms. So he ﷺ fought and overcame them.

b) Those who kept their promise and did not break their terms. No *Qitāl* was made against them and the Messenger ﷺ was commanded to fulfill his term with such people.

c) Those with whom there was neither any peace treaty nor did they fight the Muslims. They were given four months time for adjustments or repentance. After this period, he ﷺ waged *Qitāl* against them.439

Thus the pre-emptive measures taken against the enemies of Islām were in fact defensive in nature as the unjust forces were always in search of opportunities to crush the just order established at Madīnah. That is why Allāh ﷺ commanded the Muslims to gather power against their enemies which would serve as a deterrent to them and others who might be inclined

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to follow their example and act treacherously towards Islām and its adherents.\footnote{A. Y. ‘Ali, op. cit., Ex. n. 1224-A} Allāh says:

\begin{quote}
Wa 'aḍū al-lāhuma astuttam min qūwah wa-mīn Rabbat al-khīl tharuhūth bi-
\textit{aḍū al-lāhuma wa-āḍū kum wa-‘alārīn min dunhum lāta\\ud83d\udc85ta\\ud83d\ucda0n\\ud83d\udcda0hum Allāh yalmum\\ud83d\udefa'}
\end{quote}

(Al-Qur‘ān, Al-Anfāl 8:60)

"Against them make ready your strength to the utmost of your power, including steeds of war, to strike terror into (the hearts of) the enemies, of Allāh and your enemies, and others besides, whom ye may not know, but whom Allāh doth know." (8:60)

The command for making ready the best weapons against the enemy has been given only to instill wholesome respect into the enemy for Islām and its just cause.\footnote{Ibid. Ex. n. 1225.}

But since peace is central to Islām and there is no merit merely in a fight by itself, therefore, in order to establish the reign of peace and righteousness and Allāh’s Law, the Muslims are commanded to be always ready for peace if there is any inclination towards peace on the enemy’s side.
even if there may be a certain risk of treachery on the enemy’s side.\textsuperscript{442} Allāh says:

\begin{quote}
\textasciitilde \text{وَأَنَّكُمُ الَّذِينَ يُؤْمِنُونَ بِاللَّهِ وَرُسُولِهِ أَخْبَرْتُمُ الْمُشَّرِكِينَ بِغَيْرِ عِلْمٍ حَتَّى يَفْتَنُوكُمُ الْمَلَأُ الْكَافِرُونَ أَنْ تَكُونُ نَارُ الْآخِرَةِ لَمْ يَكُونَ حَتَّى يَفْتَنُوكُمُ الْمَلَأُ الْكَافِرُونَ أَنْ تَكُونُ نَارُ الْآخِرَةِ لَمْ يَكُونَ حَتَّى يَفْتَنُوكُمُ الْمَلَأُ الْكَافِرُونَ}
\text{Al-Qur’ān, Al-Anfāl 8:61}
\end{quote}

"But if the enemy incline towards peace, do thou (also) incline towards peace, and trust in Allāh: for He is the One that heareth and knoweth (all things)." (8:61)

It now seems pertinent to seek the actual meaning and interpretation of some particular Qur’ānic Āyāt pertaining to \textit{Qitāl}. Such Āyāt convey wrong signal to the non-believers if taken out of their respective contexts. It is generally alleged that Islām commands its adherents to kill the non-Muslims indiscriminately wherever they find them. Such Āyāt are mostly found in \textit{Sūrah Tawbah}. Few of such Āyāt are as under:

\begin{quote}
\text{بِرَاءَةٍ مَّنَ الْلَّهِ وَرُسُولِهِ إِلَى الْمُتَّلَكَتِينَ غَيْرَ عِلْمٍ حَتَّى يَفْتَنُوكُمُ الْمَلَأُ الْكَافِرُونَ}
\text{Al-Qur’ān, Al-Tawbah 9:1-5}
\end{quote}

\textsuperscript{442} Ibid. Ex. n. 1228-29.
“A (declaration) of immunity from Allāh and His Messenger, to those of the Pagans with whom ye have contracted mutual alliances:-
Go ye, then for four months, (as ye will), throughout the land, but know ye that ye cannot frustrate Allāh (by your falsehood) but that Allāh will cover with shame those who reject Him.
And an announcement from Allāh and His Messenger, to the people (assembled) on the day of the Great Pilgrimage, that Allāh and His Messenger dissolve (treaty) obligations with the Pagans. If then, ye repent, it were best for you; but if ye turn away, know ye that ye cannot frustrate Allāh, and proclaim a grievous chastisement to those who reject Faith.
(But the treaties are) not dissolved with those pagans with whom ye have entered into alliance and who have not subsequently failed you in aught, nor aided any one against you. So fulfill your engagements with them to the end of their term: for Allāh loveth the righteous.
But when the forbidden months are past, then fight and slay the Pagans wherever ye find them, and seize them, beleaguer them, and lie in wait for them in ever stratagem (of war).” (9:1-5)

These Āyāt were revealed to the Messenger ﷺ in 9 A.H. when the Makkan Pagans had already done great atrocities to the Muslims. When the Muslims performed hijrah to Madīnah, the Pagans did not even let them live a peaceful life but waged wars against them.443 Peace treaty of Hudaybiyyah had been made but the Pagans had broken it.444 They had also brutally killed the Messenger’s allies in the Haram.445 In this backdrop when further

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443 It is historically proved that all the battles fought by the Messenger ﷺ with the Pagans were in self-defence. For detail see A. H. Rizvi, op.cit., p. 12, and also the books on Ṣirāh and maghāzī giving detailed account of the reasons of such battles.
444 Shibīl, op. cit., vol. 1, p. 262.
peace treaty with the Pagans seemed fruitless, these Āyāt were revealed. Thus these Āyāt pertained to those particular enemies of Islām who were always trying to cause harm to the Muslims and had been given enough time to change their attitude, not to all the non-believers in Islām.

The holy Qur‘ān testifies thus:

"Allāh forbids you not, with regard to those who fight you not for (your) Faith nor drive you out of your homes, from dealing kindly and justly with them: For Allāh loveth those who are just.

Allāh only forbids you, with regard to those who fight you for (your) Faith, and drive you out of your homes, and support (others) in driving you out, from turning to them (for friendship and protection). It is such as turn to them (in these circumstances), that do wrong." (60:8-9)

“Allāh forbids you not, with regard to those who fight you not for (your) Faith nor drive you out of your homes, from dealing kindly and justly with them: For Allāh loveth those who are just.

Allāh only forbids you, with regard to those who fight you for (your) Faith, and drive you out of your homes, and support (others) in driving you out, from turning to them (for friendship and protection). It is such as turn to them (in these circumstances), that do wrong.” (60:8-9)

“Even among the enemies of Islām, actively fighting against Islām, there may be individuals who may be in a position to require protection. Full asylum is to be given to them, and opportunities provided for hearing the Word of Allāh. If they accept the Word, they become Muslims and brethren, and no further question arises. If they do not see their way to accept Islām,

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446 Ibid. p. 19.
they will require double protection: (1) from the Islamic forces openly fighting against their people, and (2) from their own people, as they detached themselves from them. Both kinds of protection should be ensured for them, and they should be safely escorted to a place where they can be safe. Such persons only err through ignorance, and there may be much good in them.\footnote{447 A. Y. 'Alī, op. cit., Ex. n. 1253.}

The holy Qur’ān testifies thus:

\begin{quote}
(Al-Qur'an, Al-Tawbah 9:6)

"If one amongst the Pagans ask thee for asylum, grant it to him, so that he may hear the Word of Allāh; and then escort him to where he can be secure, that is because they are men without knowledge." (9:6)
\end{quote}

Now, the following \textit{Āyāt} provide the reasons why the treaties with the Pagans were denounced thus:
(Al-Qur’an, Al-Tawbah 9:7-13)

“How can there be a covenant before Allâh and His Messenger, with the Pagans, except those with whom ye made a treaty near the Sacred Mosque? As long as these stand true to you, stand ye true to them: For Allâh doth love the righteous.

How (can there be such a covenant) seeing that if they get an advantage over you, they respect not in you the ties either of kinship or of covenant? With (fair words from) their mouths they please you, but their hearts are averse from you; and most of them are rebellious and wicked.

The words of Allâh have they sold for a miserable price, and (many) have they hindered from His Way: Evil indeed are the deeds they have done.

In a believer they respect not the ties either of kinship or of covenant! It is they who have transgressed all bounds.

But (even so), if they repent, establish regular prayers, and pay Zakat they are your brethren in Faith,--Fight ye the chiefs of unfaith: For their oaths are nothing to them: that thus they may be restrained.

Will ye not fight people who violated their oaths, plotted to expel the Messenger, and attacked you first? Do ye fear them? Nay, it is Allâh Whom ye should more justly fear, if ye believe!” (9:7-13)
The last Āyah (13) confirms that it were the Pagans who had started the war first by violating their oaths, expelling the Muslims from Makkah and then attacking them. So the Muslims’ retaliation was quite justified. And in Āyah (12) the phrase "so that they may be restrained from committing injustice and oppression" clearly says that even the defensive war in Islām is not for taking revenge but it aims at ending oppression and upholding just order.445

Jizyah

It is also accused that Islām warns the non-Muslims either to except Islām, or pay jizyah, otherwise they will be fought. The following Āyah is quoted:

قَاتِلُوا الَّذِينَ لا يُؤْمِنُونَ بِاللَّهِ وَلَا يَحْرِمُونَ مَا حَرَّمَهُ اللَّهُ وَرَسُولُهُ وَلَا يَهْدَّبُونَ دِينَ الَّذِينَ حَرَّمَ اللَّهُ وَرَسُولُهُ وَأَوْتُوهُ الَّذِينَ حَقَّ مِنَ الْدِّينِ حَتَّى يَعْطُوا الْإِجْزَاءَ عَنِ الْبَدْوِ الْبَصِيرُ (Al-Qur’an, Al-Tawbaw 9:29)

"Fight those who believe not in Allāh nor the Last Day, nor hold that forbidden which hath been forbidden by Allāh and His Messenger, nor acknowledge the Religion of Truth, from among the People of the Book, until they pay the jizyah with willing submission, and feel themselves subdued." (9:29)

For a comprehensive explanation of the above quoted Āyah, the understanding of the institution of Jizyah is most warranted.

Jizyah literally means compensation. A synonym of jizyah is jāliyah (pl: Jawālī or Jāliyāt) which literally means the group of people who moved from their native land and settled in other land. It later came to mean as the non-Muslim citizens of a Muslim state.\(^{449}\)

Thus the derived meaning of Jizyah, which became its technical meaning, was that it was a poll-tax levied from those who did not accept Islām, but were willing to live under the protection of Islām, and were thus tacitly willing to submit to its ideals being enforced in the Muslim State.\(^{450}\) The tax was to be levied only on able-bodies males, and not on women or children.\(^{451}\)

The non-Muslims living under the Muslim State were actually exempted from compulsory military service, and were guaranteed protection in return of the jizyah. Tabarī writes that when the people of contributed the sum agreed upon, they expressly mentioned that they paid this jizyah on condition that “the Muslims and their leader protect us from those who

\(^{449}\) See Al-Munjad, word Jāliyah See also Muhammad al-Faruque, Jizyah in Early Islām: Theory and Practice in “Islamic Culture”, Hyderabad, July 1987. vol. 41. No. 3, p. 55.

\(^{450}\) A.Y. Ali, op.cit., Ex. n. 1281.

\(^{451}\) Arnold, Preaching of Islām, p. 60.
would oppress us, whether they be Muslims or others."452 Again, when Khālid b. Walid made treaty with some towns in the neighbourhood of Hira, he wrote, "If we protect you, then jizyah is due to us; but if we do not, then it is not due."453

The Muslims were very particular about these conditions and observed them with rigidity. This is well evidenced by an incident in the Khilāfah of ʿUmar, the second Khalifah of Islam. "The Emperor Heraclius had raised an enormous army with which to drive back the invading forces of the Muslims, who had in consequence to concentrate all their energies on the impending encounter. The Arab general Abū ʿUbaydah, accordingly wrote to the governors of the conquered cities of Syria, ordering them to pay back all the jizyah that had been collected from the cities, and wrote to the people, saying, "We give you back the money that we took from you, as we have received news that a strong force is advancing against us. The agreement between us was that we should protect you, and as this is not in our power, we return you all that we took. But if we are victorious we shall

452 Quoted by Arnold, op.cit., p. 61.
453 Ibidem.
consider ourselves bound to you by the old terms of our agreement.”454 “In accordance with this order, writes Arnold, “enormous sums were paid back out of the state treasury, and the Christians called down blessings on the heads of the Muslims, saying, “May God give you rule over us again and make you victorious over the Romans; had it been they, they would not have given us back anything, but would have taken all that remained with us.”455

Only those males who could otherwise take part in military services and were exempted from this service were to pay jizayh whereas the destitute, females, children, slaves, monks, hermits, the aged poor who were incapable of work and the poor who were dependent for their livelihood on alms, the blind, the lame, the incurable and the insane, unless they happened to be wealthy, were also exempted from jizyah.456 Hence those Christians who served in the Muslim army were exempted from jizyah.457 “The collectors of the jizyah”, writes T. W. Arnold, while quoting from Imām Abū Yūsuf’s Kitāb al-Kharāj, “were particularly instructed to show leniency, and refrain from all harsh treatment or the infliction of corporal

454 Ibidem.
455 Ibidem.
punishment, in case of non-payment." Once 'Umar saw a Jew begging and asked him why was begging. He replied that he was begging in order to pay jizyah as he could not work because of being poor and old aged. 'Umar took him to the Bayt al-Māl, fulfilled his need, and told the incharge of the Bayt al-Māl: Take care of these people. By Allāh it is not fair to have eaten their earnings (by taking jizyah) when they had been young and ignore them now when they are old. Know that Zakāh is meant for the Fuqarā' and masāḵīn (the poor) and he is among the masāḵīn of the Ahl al-Kitāb (the Jews and Christians). He exempted him and others like him from jizyah.

Jizyah was first levied after Ghazwah Tabūk in 9 A. H. when Makkah had already been liberated and the number of Muslims was enormous while none of them had embraced Islām merely to gain exemption from the jizyah. Later also, when Islām was extended to distant lands, it cannot be said that the non-Muslims accepted Islām with one of the reasons to save themselves from jizyah and the insult they had to suffer because of it, for the reasons:

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458 Preaching of Islām, p. 60.
i) Jizyah was too moderate to constitute a burden, the normal tax at first being 1 dinār per head. In countries where the standard was a silver one, it was the equivalent, 12 dirhams. For the rich dhimmīs (money changers, dealers in cloths, land owners, merchants and physicians) the tax was next placed at 4 dinārs or 48 dirhams while for the poor (tailors, dyers, cobblers and shoemakers) it was half i.e., 2 dinārs or 24 dirhams per head.460

ii) Instead of jizyah, the new Muslim had to pay the Zakāh annually levied on most kinds of movable and immovable property.461

iii) Had the non-Muslim subjects of the Muslim state aceepted Islām in order to escape jizyah, then only those males should have become Muslims who had to pay it whereas the old aged, females, children, religious heads, handicapped who were already exempted from it, should not have accepted Islām.

iv) Before the Āyah of jizyah (i.e., Al-Tawbah 9:29) was revealed, all the idol-worshippers of Arabia had accepted Islām.462

461 Arnold, op. cit., p. 59.
Is Jizyah meant for the purpose that the dhimmīs, while paying it should clearly look as degraded and should live as second class citizens in the Muslim State? The Qur'ānic Words: "with willing submission, and feel themselves subdued", quoted above, have been misinterpreted in this way and hence need explanation:

The Arabic phrase 

\[
\text{اعطاءه عن يد}
\]

signifies, 'He gave it in acknowledgement of superiority of the receiver; that the power (\(\text{عن يد}\)) of the latter was superior to that of the giver and \(\text{صغرون}\) signifies that they have accepted the authority of the law of Islam.\(^{463}\)

Ibn Taymiyyah explaining this Ayah writes:

\[
\text{والمراد باعطائها النهائيه بالعقد}
\]

which means that the non-Muslims should pay jizyah to show that they respect their agreement of loyalty with the state.\(^{464}\)

Explaining the term \(\text{عن يد}\). Mawlānā Mawdūdī writes that here does not mean 'hand' but it refers to loyalty. Hence \(\text{اعطى ثلاثين نقدا} \) means giving in submission. Thus \(\text{عندية الجزية عن يد}\) means that they pay

jizyah with willing submission.... Just as paying of tax to the state is sign of loyalty.465

Explaining, Ibn Qayyim writes:

"Sighar signifies that they willingly accept the authority of Allāh’s Law and abide by the constitution of justice. And the paying of jizyah is indication of this willingness."466

Thus imposition of jizyah on the dhimmis is not any punishment for them but it serves the purpose that their loyalty to the state (as must every citizen be loyal to his state) is confirmed through its paying. Their being (Subdued) means that they should live (peace-fully) not possessing any considerable power to spread mischief.467 While, instead of jizyah, the Muslim citizens of the same Islamic state have to pay various types of Sadaqāt468 for proving their loyalty to the state and system they believe.

466 Ibid. 126.
467 Ibidem.
468 Sadaqāt Wājibah such as jitrāh, a kind of poor fund incumbent on all legally rich (i.e., who have as much wealth (Nisāb) on which Zakāh is due) Muslims and to be paid at the end of Ramadān before the ‘Id al-Fitr prayers. ‘Ushur, the 10th or in some cases 20th part of their land harvest. Similarly they have to offer sacrifice (Ar: Adhā and Ur: qurbānī) of particular kinds of animals by slaughtering them on the occasion of ‘Id al-Adhā etc. etc.
'Uqūbāt in Islām

Islām classifies 'Uqūbāt (punishments) in three ways: (i) Ḥadd (ii) Qisās (iii) Taʿzīr

Ḥadd (Pl: hudūd)

In Arabic ḥadd means “limit” (which separates one thing from another or stops one thing from intruding into another).469

In the Sharī‘ah ḥadd is a punishment prescribed for the violation of ḥuqqāq-Allah (rights of Allah)470

Only those punishments are included in ḥadd which are fixed by the holy Qur‘ān or the Messenger ﷺ.471 Therefore those punishments against which ḥadd has been fixed are only six:

469 See Rāghib Isfahānī, op. cit., word ḥadd, p. 333, A doorkeeper is called ḥaddād because he stops from entering the door. See Al-Tanqīḥ al-Ḍurūfī fī masā’il al-Quḍūrī (Ar.), Delhi, Kutub Kāngah Rashidiyyah, 1333 A.H., kitāb al-Ḥudūd, P. 214.

470 As previously said elsewhere in this work above that man has to perform two fold obligation: on one hand he has to abide by the commandments of his Creator, on the other he has to fulfill his responsibilities towards His creation. Accordingly, rights are divided into two kinds: (i) those which relate to Allāh ﷺ, which in turn relate to the people collectively as the purpose of Allāh’s ﷺ Sharī‘ah is the welfare of His creation. (cf. Maqāṣid al-Sharī‘ah above), (ii) those which concern the people individually while the first kind of rights is termed ḥuqqāq-Allah (in Western legal philosophy’s ‘public rights’) and concerns the obligations of a person to Allāh ﷺ, the second kind of rights is termed ḥuqqāq al-‘Ibād (in Western legal philosophy: ‘private rights’) referring to the obligations of a person to fellow men. See M. Taqī Aminī, Time changes and Islamic Law, Delhi, IAD, 1988, P. 90-91 and also Justice Tanẓīl al-Raḥmān, Jurm wa saza‘ kā Islami fiṣṣafah (Ur.), Delhi, DQ, 1988, P. 13.

471 Tanẓīl al-Raḥmān, loc.cit.
(i) theft (ii) dacoity (iii) adultery (iv) fornication (v) slandering chaste women (vi) drinking of liquor and (vii) apostacy.\textsuperscript{472}

Out of these six, 'Uqubāt (punishments) against (i) to (iv) have been prescribed by the holy Qur‘ān whereas hadd against (v) and (vi) has been fixed by the Sunnah.

The holy Qur‘ān prescribes cutting off of hands in case of theft, execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land in case of dacoity; flogging (for unmarried male or female) and stoning to death (for married male or female) in case of adultery; and flogging with eighty stripes and rejecting the offender’s evidence ever after in case of slandering chaste women (and men).

Allāh commands thus:

\begin{quote}
السرقة فاقطعوا أيديهماء جزاء بما كسبا لكلا مرب الله
\end{quote}

(Al-Qur‘ān, Al-Mā‘īdah 5:38)

"As to the thief, male or female, cut off his or her hands: A retribution for their deed and exemplary punishment from Allah." (5:38)

\textsuperscript{472} There is difference of opinion regarding the crime of rebellion as to whether it falls within the ambit of hadd. Those who hold that it is a crime against which hadd has been prescribed in the holy Qur‘ān maintain that the ninth āyah of Surah al-Hujurat, 49 pertains to the rebels also. But history as well as fiqh sources reveal that there has been no fixed punishment given to the rebels. As such rebellion falls within the ambit of ta‘zīrāt not hadd. See for detail Ma‘ārif al-Qur‘ān, vol. 8, P. 111-12 and also Dr. A. A. Āmir, Islam Mayn Jurm wa sazā, Delhi, DQ, vol. 1, P. 42 -52.
(Al-Qur’an, Al-Ma’idah 5:53)

“The punishment of those who wage war against Allah and His Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land.”473 (5:33)

(Al-Qur’an, Al-Nur 24:2)

“The woman and the man guilty of fornication flog each of them with a hundred stripes.”474 (24:2)

(Al-Qur’an, Al-Al-Nur 24:4)

“And those who launch a charge against chaste women, and produce not four witnesses to support their allegations, —flog them with eighty stripes; and reject their evidence ever after: for such men are wicked transgressors.”475 (24:4)

“One who renounces his religion (Islam), kill him.”476

473 The Jamhūr (i.e., the majority of ‘Ulamāʾ constituting the mainstream) hold that this Ayah pertains to robbers and dacoits in general although it was revealed about those who renounced Islam during the time of Rasūlullāh ﷺ and fled away with some camel and were arrested and their hands and feet were ordered to be cut off and their eyes to be separated away with hot rods. See A. A. Āmir, op. cit., vol. 1, P.21.

474 This punishment is for a free, sensible and mature man and woman not married or not made intercourse yet if married. As for married persons, their punishment according to Sunnah, is rajm (stoning to death). See Ibn Qudāmah, Al-Mugni, Egypt, 1348 H., vol 10, P. 120-21, vide A. A. ‘Āmir, op. cit., vol. 1, P. 29.

475 This Ayah, by consensus of opinion, also covers slandering chaste men. “Chaste women have been specifically mentioned, according to commentators, because slandering them is more abhorrant.” See A. Y. ‘Ali, op. cit., Ex. n., 2958.
Abū Sa‘īd says that Rasūlullāh Ḥ Ḥ beat the drinker of wine with forty *darbāt* (strokes). Umar Ḥ changed it into forty lashes and later when this crime increased, he accordingly increased the punishment to eighty lashes after duly consulting the *Saḥābah*. Keeping in view the difference of opinion among the *fuqahā* (Jurists) regarding the number of lashes, it can be said, as also stated by 'Alī Ḥ, that eighty lashes is the *ḥadd* prescribed by Umar Ḥ with the consent of the *Saḥābah*. 477

**Qisās**

Like *hudūd, qisās*, punishments are also fixed in the *Shari‘ah* with the difference that while *hudūd* are prescribed against the violation of *ḥuquq-Allah*, *qisās* concerns *ḥuquq al-‘Ibad*. 478

In fact *qisās* is an equivalent punishment against an offence against private rights. Allāh Ḥ says:

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478 Al-Qudūrī, *loc.cit.* See also Dr. A. A. Amir, op. cit., vol. 1, P. 55.
"O ye who believe! The law of equality is prescribed to you in cases of murder: the free for the free, the slave for the slave, the woman for the woman." (2:178)

Those crimes for which qisas is prescribed include murder (deliberate) and causing harm to human body.

The holy Qur’ān commands further:

(Al-Qur’ān, Al-Baqarah 2:178)

(Al-Qur’ān, Al-Ma‘āidah 5:45)

(Al-Qur’ān, Al-Bānī Isrā‘īl 17:33)

(Al-Qur’ān, Al-Ma‘āidah 5:45)
Ta'zīr

The literal meaning of *ta'zīr* is helping somebody out of respect for him.\(^{479}\)

Technically, *ta'zīr* concerns those punishments which are not fixed by the *Shari'ah* but it remains upto the concerned authorities (the state, or the judicial magistrate etc.) to give a suitable punishment for a particular case.\(^{480}\)

In case of those offences where no punishment has been fixed, (i.e., such cases are neither covered by the *hadd* nor the *qisās*) "or where, though the penalty is appointed but could not be imposed because of doubt, and non-imposition is likely to produce mischief, then the judge (qadi) shall have to act according to his own conclusions reached after due thought and reflection. Circumstances or affairs are of an infinite variety, hence, action according to one's own conclusions is definitely preferable."\(^{481}\)

Legally speaking, *hadd* expresses the correction appointed and specified by the *Shari'ah* on account of the right of God, and hence the extension of the term *hadd* to *qisās* (retaliation) is not approved, since the latter is due as a right of man, and not as a right of God; and in the same

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\(^{479}\) *Al-Mufradāt*, word 'azara, P. 333.

\(^{480}\) A. A. Amir, op. cit., vol. 1, P. 15.

\(^{481}\) Taqī Amīnī, op. cit., P. 90.
manner, the extension of qisas to ta'zir (or discriminatory chastisement) is not approved, as ta'zir is not specified or determined by any fixed rules or law, but committed to the discretion of the Qadi.\footnote{See the Hedaya: Commentary of the Islamic Laws, Tr. Charles Hamilton, Delhi, KB, 1985, vol. 2, P. 1-2.}

In Islam the concept of punishment is related to faith and conscience, in its interaction with the belief of punishment in the life hereafter, the heavenly reward for abstention from wrongdoing and because punitive measures include repentance.

The punishment, therefore, aims at crime prevention, deterrence and rehabilitation.\footnote{Abd al-Rahim, Gafir Muhammad, “The Concept of Punishment in Islamic Law in Relation to the Contemporary Legal Trends”, AJISS, Mar. 1990, vol. 7, No. 1, P. 124.}

The holy Qur'an in clear words brings forth the reality that faith in God's absolute Justice on the Day of Judgment can prove to be the most effective deterrent against crime:

\begin{quote}
وحَبَ يَقِيلُ مَؤَمَّنَا مِتْعَادًا فِي جَهَنَّمَ خَالِدًا فيَّ وَعَضِبَ اللَّهُ عَلَيْهِ وَأَعَدَّهُ عَدَاءًا بَعِيدًا
\end{quote}

(Al-Qur'an, Al-Nisa' 4:93)

“And he who kills a believer willfully, he requital is Hell as an abider therein, and Allah shall be wroth with him and shall curse him and shall prepare for him a torment terrible.” (4:93)
Allah ﷺ “not only punishes but forgives”. Since His ﷺ ‘Will or Plan’ is the true standard of righteousness and justice, it is His Will that can really define the bounds or forgiveness or punishment. Hence like punishment, forgiveness also plays its own role:

(Al-Qur’an, Al-Ma‘idah 5:39)

“But if the thief repent after his crime, and amend his conduct, Allah turneth to him in forgiveness; for Allah if Oft forgiving, Most Merciful.” (5:39)

That is because the original design in the institution of punishment is not to legitimize widespread killing and “barbarity” in the name of law but to stop people from the commission of offensive actions. “And the absolution of the person punished is not the original design of it as is evident from its being awarded to infidels in the same manner as to Muslims.”

Faith and belief also plays its role in preventing and controlling crime in society when the Shari‘ah, while on one hand takes every step to discourage crime and punish criminals, encourages doing of commendable deeds on the other, thereby helping to build up a just and peaceful order:

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44 The Hedaya, loc. cit.
whoso kills a person, except for a person, or for corruption in the land, it shall be as if he had killed all mankind, and whoso brings life to one, it shall be as if he had brought life to all mankind.” (5:32)

One may ask that ‘Uqūbah (punishment) in Islam cause great harm to the offender and in case of qīsās, it not only puts the offender to trouble but also (in murder cases) decreases a member from the whole human society. Hence, by their nature, the ‘Uqūbāt in Islam seem to have been designed for causing harm to mankind.

In response to the above argument, it is pertinent to know as to why the criminal should be punished. Two reasons can be there for which a criminal should be punished:

(i) by violating ḥuqūq-Allāh (private rights) or ḥuqūq al-‘Ibād (public rights), a criminal commits injustice against the individual as well as the society. For example by taking an innocent life, a murderer not only commits injustice against the individual he has murdered but also with the society of which the later was a member.
(ii) if the criminal is left unpunished, it will amount to harming the whole society. That, in other words mean: the killer’s death is the society’s life. The holy Qur’ān testifies:

\[\text{Al-Qur’ān, Al-Baqarah 2:179}\]

“In the Law of Equality there is (saving of) life to you. O ye men of understanding; that ye may restrain yourselves.” (2:179)

Explaining how ḥisāṣ restrains from crime, A. M. Daryābādi writes:

“The knowledge of the Law of retaliation restrains from intentional slaughter or culpable homicide and so is a source of life to two persons. Islam, the ideal-practical religion of humanity, does fully recognize the need of a law of retaliation, in sharp distinction from an unqualified justitio which makes endless every affairs when once it has been started, and which is at best suited only to the savage stages of society.”

But for the institution of ‘Uqūbat, a criminal would always roam freely fulfilling his nefarious designs without any fear of being punished in the same manner he committed the crime. Thus a mere imprisonment for some time for the crime of murder does not serve the purpose of law as the criminal, after suffering the imprisonment, comes out jail. This may at times raise strong feelings of hatred and vengeance among the heirs of the murdered, giving, in turn, rise to an unending chain of murders and counter

\[485\] Daryābādi, op. cit. vol., p. 112.
However, *qisas* may have its own limitations. Therefore, though recognizing it in theory, the holy Qur’ān discourages this form of remedy in every possible way. Allāh ﷺ has, hence, allowed His stern justice to be mingled with mercy⁴⁸⁶ when after ordaining *qisas*, He says:

(Al-Qur’ān, Al-Baqarah 2:178)

"Yet whoso is pardoned aught by his brother, let the service be honourable and payment with kindness. This is an alleviation from your Lord and a mercy: so whoso will transgress hereafter, for him shall be a torment afflictive." (2:178)

Thus “the whole penalty can be remitted if the aggrieved party agrees, out of brotherly love.”⁴⁴⁸

While Islām considers the murder of an individual as a heinous crime, it also legitimizes lawful vengeance in order to meet the demand of justice and peace in society.⁴⁸⁸

One important thing is that although the heirs of the murdered have every right to take *qisas*, "they can compound with the offender for money, or, if they

⁴⁸⁶ Ibidem
⁴⁴⁷ A. Y. Ali, op. cit., Ex. n. 185.
⁴⁸⁸ Ibid. P. 29
But if they choose retaliation, then there is consensus that they cannot kill the murderer with their own hands, but the state may impose the punishment because it is not always easy to determine where *qisas* is actually applicable and also because there are high chances that heirs of the offended may transgress the prescribed limits of the law and may in turn become oppressors themselves.  

Hence, the essence of the institution of 'ugubat, especially the law of *qisas* is insistence on justice, impartial and unalloyed, and a negation of all iniquities. No favour or partiality is to be shown in this respect.

Let us consider one more Qur’anic Ayah:

(Al-Qur’an, Al-Banî Isrâ’il 17:33)

“Nor take life—which Allah has made sacred—except for just cause.” (17:33)

This Ayah says that although life is sacred and it is most heinous to take any life, but a person can be killed if the cause is just. That means if a person kills any other person or spreads *fasād* in the land (5:32), he can be killed in

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389 Ibid. P. 111  
390 *Ma’ârif al-Qur’ān*, vol. 1, P. 381.  
391 Daryābâdî, loc. cit.
retaliation and also for mischief itself becomes responsible for the loss of so many lives. The holy Qur'ān testifies:

\[ \text{وَالفَتْنَةَ أَكْبَرَ مِنَ الْقَتْلَ} \]

(Al-Qur'ān, Al-Baqarah 2:191)

"Tumult and oppression are worse than slaughter."\(^{492}\) (2:191)

Thus the law has every reason to end up one mischievous life for saving hundreds.\(^{493}\)

Now, since Islām stands for equality of mankind, that is why the law of qisās “only takes account of three conditions in civil society: free for free, slave for slave, woman for woman (2:178). Among freemen or woman, all are equal: you cannot ask that because a wealthy; or high-born, or influential man is killed, his life is equal to two or three lives among the poor or the lowly. Nor, in cases of murder, can you go into the value or abilities of a slave. A woman is mentioned separately because her position is different. She does not form a third class, but a division in the other two classes. One

\(^{492}\) The term al-fitnah has a vast meaning. It has generally been translated as trial, temptation, tumult, sedition, oppression, persecution whereas “persecution” itself means the suppression of some opinion by violence, force, or threats. See A. Y. 'Aīl, op cit., Ex. n. 239.

\(^{493}\) Mawdūdī, Al-Jihād fi al-Islām, P. 29-34.
life having been lost, do not waste many lives in retaliation: at most, let the law take one life under strictly prescribed conditions.\footnote{A. Y. Ali, Ex. n. 182.}

Since punishment in Islam is not primarily fixed to harm the criminal but it aims at eradicating crime from society. True, the offender, when punished, suffers for his evil deeds, but it basically sets an example for the whole society, ‘to demonstrate that all those who dare violate the divine injunctions have to suffer severe penalties. Thus, they constitute an effective instrument for the prevention of crime, an admonition to all and a directive to the people to refrain from actions carrying divine displeasure’.\footnote{Ib. P. 91.}

So the ‘uqūbāt have a special place in the arrangements prescribed for the smooth functioning of a just society and in fact are a means to carry out the duty of eradicating evils of every kind and variety.\footnote{For detail see Magāsid al-Shāri‘ah above.}

Now, before trying to find out why such severe punishments as cutting off of hands, stoning to death etc. have been prescribed in Islam, it is adequate to mention the basic purpose of the shari‘ah.\footnote{Ib. P. 91.}
Briefly, the society Islamic Shari'ah intends to establish is primarily based upon the principles of justice and peace.

In 12 Nabawiyy (the 12th year of Prophethood of Rasūlullāh ﷺ) was made the first bay'ah of 'Aqabah on the conditions that the people (present at the occasion) of Madīnāh:

(i) would worship Allāh alone and would not ascribe any partner to Him.

(ii) would not steal nor would commit adultery.

(iii) would not kill their children.

(iv) would obey Allāh’s Messenger ﷺ in every respect.⁴⁹⁸

When Heraculius asked Abū Sufyān ﷺ as to what the Messenger ﷺ invited them towards, he replied that he ﷺ invited them to worship none but Allāh and not to assign partners to Him ﷺ, not to follow their ancestors (in polytheism), to pray Salāh, to speak truth, to guard chastity and to strengthen kinship.⁴⁹⁹

⁴⁹⁸ Q. S. Mansūrpori, Rahmah li al-Ālamīn, P. 77.
Similarly, when Matruq Shayaanī asked Allah's Rasūl ﷺ as to what he invited people to accept; he replied: I invite people to accept that there is no god but Allah ﷺ and that I am the Messenger of Allah ﷺ. Then Matruq asked: what more do you invite to? In reply he ﷺ recited this Ayah to him:

جَعَلْنَاكُمْ سَبِيلًا لِلْغَيْبِ وَلِأَقْطَارِ الْأَشْرَافِ وَلِأَطْلُبُوا الْغَيْبَةَ وَلَا رَكُبَتْ يَدُهُم مِّنْهَا وَلَا وَقَادَتْهُم مِّنْهَا

وَمَعِينًا وَلَا تَقْلُلُوا النَّفْسَ الَّتِي حَرَمَ اللَّهُ إِلَّا بِالْحَجِّ ذَلِكُمْ وَسَعِكَم بِهِ عَلَى مَعْلُوم

(Al-Qur'ān, Al-An`ām 6:152)

"Come I will rehearse what Allah hath (really) prohibited you from: join not anything with Him: Be good to your parents, kill not your children on a plea of want; We provide sustenance for you and for them; come not nigh to indecent deeds, whether open or secret; take not life, which Allah hath made sacred, except by way of justice and law: thus doth He command you that ye may learn wisdom." (6:152)

Then Mafrūq again asked: what more do you invite to? The Messenger ﷺ in reply recited this Ayah to him:

إِبَّانَ الْحَمْدِ لِلَّهِ وَالْهُدَى وَالْأَحْسَانَ وَالْإِحْسَانَ الْقُرْآنِ

وَبَيْنِهِ عَزْبَ الْفَحْشَا وَالْمَنْكَرَ وَالْبَغْيِ

(Al-Qur'ān, Al-Nahl 16:90)

"Allah commands justice, the doing of good, and giving to kith and kin, and He forbids all indecent deeds, and evil and rebellion. He instructs you that ye may receive admonition." (16:90)
Therefore, as in the *Shari'ah*, there is a systematic interrelationship between its commandments with justice being central to the whole system. There can be no gainsaying the fact that the 'uqabat have been prescribed for the safety and preservation of individual as well as collective social life.

Hence in punishing the criminal, the overall impact on the society caused by the crime he commits is taken into consideration.\(^{300}\)

Shah Waliyyullah maintains:

For some crimes Allah has prescribed *hadd*. Such crimes make very disastrous impact on society and cause *fusūd* on earth. Man's self is inclined towards such vices and (if not checked) they become his second nature. Very often the offended person cannot keep away the harm from him... In such crimes warning the criminals about the chastisement of the Day of Judgment is not sufficient but it needs to curse them and punish them sternly so such examples remain always before people and they may not dare commit such crimes.\(^{301}\)

That implies that the punishment itself must be so effective that the desired goal is successfully achieved. Hence effective punishments can be of two kinds:

(i) those inflicting bodily pain.

(ii) those inflicting psychological pain.

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\(^{300}\) *Justice Tānẓīl al-Rahmān*, op. cit., P. 120-21.

An effective punishment can be that containing both the aspects at the same time. Therefore, when hand of a thief is chopped off, it gives him bodily pain. meets the plea of the oppressed with justice, on one hand, and discourages other people to the extent that for the pain and shame the punishment brings, none of them dares to commit the same crime in normal conditions.

Adultery and murder are closely related to each other. While killing of an innocent person results in the loss of one life, adultery results in the loss of whole generation:

(i) it destroys the basis of the family

(ii) illegal sexual relationships are not usually made for reproducing offsprings but they are made for fulfilling lust. This results in the decrease of human population as the graph of marriages goes on decreasing.

502 Ibid, P. 403.
... and number of legitimate children survives, they don't prove beneficial for the society as they live among uncertain
relations.  

(i) hence, it works against the interests of children born or to be born

(v) it may cause murders and feuds and loss of reputation and property

(vi) it loosens permanently the bonds of society.

'Not only', therefore, 'should it be avoided as a sin, but any approach to
temptation to it should be avoided.'

That is perhaps why the holy Qur'an surprisingly mentions murder and
fornication simultaneous at many places. The following Ayat, for example,
testify this:

\[
\text{وَلَا تَقْرِبُوا الْفَوَاحِشَ مَاتِهَا وَمَا بَطَنَتْ}
\]
\[
\text{وَلَا تَقْتِلُوا النَّفْسِ الَّتِي حَرَّمَ اللَّهُ عَلَى الْإِنسَانِ}
\]

(Al-Qur'an, Al-An'am 6:152)

"Come not nigh to indecent deeds, whether open or secret; take not life, which Allah hath
made sacred, except by way of justice and law." (6:152)

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504 Tanzil, op. cit., P. 121.
505 A. Y. Ali, op. cit., Ex. n. 2215.
506 Ibidem.
Nor come nigh to adultery: for it is an indecent (deed) and an evil way. Nor take life which Allah has made sacred—except for just cause." (17:32-33)

Those who invoke not, with Allah, any other god, nor slay such life as Allah has made sacred, except for just cause, nor commit fornication." (25:68)

The three crimes mentioned and expressly condemned in the above quoted Ayah are: (1) "false worship, which is a crime against Allah; (2) the taking of life, which is a crime against our fellow creatures; (3) fornication, which is a crime against our self-respect, against ourselves".... "All the three crimes are specially detestable and infamous, and as ignominy will be added to other punishments, the penalty will be double that of ordinary punishment."

Islam believes in freedom of thought. That is why that it abhors coercion in matters of faith. The holy Qur'an testifies in these words:
Muslim person for recantation? In fact Islam does not believe in compelling a non-Muslim to become Muslim. It rather hold that the Islamic Message should be presented before him in pure and pristine form and no force should be used:

(Al-Qur'an, Al-Nahl 16:125)

"Invite (all) to the way of thy Lord with wisdom and beautiful preaching; and argue with them in ways that are best and most gracious." (16:125)

But it also makes great difference between a non-Muslim who rejects the message of Islam and a Muslim who rejects Islam after having accepted it as Allah’s Religion.

506 A. Y. Alt. Ex. n. 299.
therefore holds that the apostates should first be tried to convince rationally if they have got any doubt in their mind about the truthfulness of Islam.\(^{510}\) If they return back and repent, they should be forgiven,\(^{511}\) and if they still reject, for no genuine reason, they should be killed. Why? Because now, Islam considers them as rebels.\(^{512}\)

Freedom of thought in Islam has its own meaning in a specific perspective. But if this right is exploited for immorality and if any element other than the 'purely ideational' is permitted to influence the deciding process of the mind, as in case of the apostate who has no genuine grievance against Islam, (and if he has, he is necessarily to be convinced), this right becomes vitiated.\(^{513}\) Thus apostacy leads to subversion in a just and peaceful society where the non-Muslims as *dhimmis* enjoy the same rights as human beings as do the Muslims.

One of the most important aspects of the *Sharī'ah* of Islam is that whereas it prescribes severe punishments, it also takes extreme caution in their

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\(^{509}\) Islam and other Faiths, P. 320.

\(^{510}\) Dr. Abdul Aziz Amir, op. cit., P. 39.

\(^{511}\) *Fatih al-Bāri, kitāb al-Ḥudūd*, "Istiṣlāb al-murtaddin wa al-muṭāridin wa qitālūhum," vol. 12, P. 333.


\(^{513}\) Islam and other Faiths, P. 350.
imposition. As far as possible people are saved from prescribed punishments. Allah’s Messenger ﷺ directed the judges in these words:

"Shut off prescribed penalties by doubts."⁵¹⁴

Following this ‘Umar ﷺ declared:

"It is better for me to eliminate the prescribed punishments by doubts than to impose them in the face of doubts."⁵¹⁴

Secondly, where the guilt of the accused is not proved beyond doubt, the ‘uqūbāt will not be imposed. The evidence must be of a high probative value, definitely supporting the allegations against the accused, in the absence of such evidence, ta’zirāt (statutory penalties) can be prescribed by law if there is evidence to support such a decision.

Otherwise the accused will not be punished at all.⁵¹⁶


⁵¹⁵ Ibidem. See also Taql Amnī, op. cit., P. 89.

⁵¹⁶ T. Amnī, op. cit., P. 89.
Thirdly, the standard to which evidence and testimony should conform, to justify the imposition of prescribed penalties, is also very high and, impeachable proof is a condition precedent for the award thereof. Extreme caution is the rule for the evaluation of the probative value of evidence and testimony produced against an accused. Consequently, the sphere of prescribed penalties is reduced considerably.