

## Punishment of Theft Offence according to the Egyptian and Algerian Penal Law, an Evaluative Study from an Islamic viewpoint

عقوبة جريمة السرقة في قانون العقوبات المصري والجزائري، دراسة مقارنة في ضوء الشريعة الإسلامية

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### Abstract

The study aimed at evaluating the penalty of theft offence according to Egyptian and Algerian Criminal law in the light of Islamic Law (Shari'a). The study used the descriptive methodology to reach the targets in question. To gather the required data, a review of literature was administered. The study came to the conclusions that: first. Islamic Law (Shari'a) imposes the hand-cut off penalty for theft crime; second, the Egyptian and Algerian Criminal law impose imprisonment and fine penalty for the convicted of theft offence and this contradicts with what Islamic Law (Shari'a) necessitates. The study recommended that the Egyptian and the Algerian Criminal law ought to adopt the hand-cut off penalty for theft crime in response to what Islamic Law (Shari'a) requires.

**Keywords:** penalty of theft offence, Islamic Law (Shari'a), penal law.

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## الملخص:

هدفت الدراسة إلى تقييم عقوبة السرقة وفق القانون الجنائي المصري والجزائري في ضوء الشريعة الإسلامية. استخدمت الدراسة المنهج الوصفي للوصول إلى الأهداف المذكورة. لجمع البيانات المطلوبة ، تم إجراء مراجعة الأدبيات. توصلت الدراسة إلى الاستنتاجات التالية: أولاً. تفرض الشريعة الإسلامية عقوبة قطع اليد على جريمة السرقة ؛ ثانياً: يفرض القانون الجنائي المصري والجزائري عقوبة السجن والغرامة على المحكوم عليه بجريمة السرقة وهذا مخالف لما تقتضيه الشريعة الإسلامية. وأوصت الدراسة بضرورة أن يتبنى القانون الجنائي المصري والجزائري عقوبة قطع اليد لجريمة السرقة استجابة لما تتطلبه الشريعة الإسلامية.

الكلمات المفتاحية: عقوبة السرقة ، الشريعة الإسلامية ، قانون العقوبات.

## Introduction

Praise be to Allah and Peace and Blessings of Allah upon our Prophet Muhammad, his family, his companions and all who follow his guidance to the Day of Judgment .

(O, believers, be pious to Allah and care nothing but to die on Islam) <sup>(1)</sup>.

(O, people, be pious to Allah Who created all of you from a male and a female and who created the female from the male and created all humans from both of them. O, people, be pious to Allah Who you will stand before for Judgment and He will question you about what you have done with your relatives. Remember that Allah observes you all) <sup>(2)</sup>.

(O, believers, fear Allah and say what is right in order that Allah mend your deeds and forgive your sins. Whosoever obeys Allah and His Messenger shall win a great victory) <sup>(3)</sup>.

**To proceed** <sup>(4)</sup>:

Islam accentuates safeguarding properties <sup>(5)</sup>. That's why Islam not only forbids theft and all the ways that lead to but it also imposes particular punishment for those who commit this offence..

But with a quick look at the penal legislations of the Muslim countries, one notices that they ignore what Islam decides

concerning the punishment of theft and follow suit of the secular legislations relating this question in the name of modernity and mercy which turn out to be false.

It is noted that both Egyptian and Algerian legislature follow in the footsteps of this convention.. That is why the question has been raised about how the Egyptian and the Algerian Legislations deal with theft and to what extent they conform with the teachings of Islam. This is the core of the current study.

### **The Problem of the Study**

The study problem is put in the following main question;

**How do the Egyptian and Algerian Legislations punish for theft offence and to what extent do both of them conform with Islam teachings?**

This main question can be divided into the following subcategories;

- 1- What is Islam's viewpoint of the penalty of theft offence?
- 2- How does the Egyptian Legislation punishes for theft and to what extent does it conform with Islam teachings?
- 3- How does the Algerian Legislation punishes for theft and to what extent does it conform with Islam teachings?

### **The Objectives of the Study**

Based on the pre-raised questions, the study objectives are as follows;

- 1- Investigating Islam viewpoint of penalty of theft offence.
- 2- Investigating how the Egyptian Legislation punishes for theft and to what extent it conforms with Islam teachings.
- 3- Investigating how the Algerian Legislation punishes theft and to what extent it conforms with Islam teachings.

### **The importance of the Study**

The study importance is shown in two aspects;

First: Theoretically;

The study seeks to bridge the gap in this area to develop what previous studies have come to.

Second: Practically;

The study draws the attention of legislators to adopt the Islamic viewpoint concerning the penalty of theft offence. .

**The Methodology of the Study**

The study has used the descriptive methodology to reach the targets in question. To gather the required data, a review of literature has been administered.

**The Scheme of the Study**

The study has been planned as follows;

- Introduction.
- Chapter I.
- Chapter II.
- Chapter III.
- Conclusion.
- Bibliography.

The introduction has been given. So, the coming lines will tackle the other points in further detail.

**Chapter I**

**The Penalty of Theft from the Viewpoint of Islam**

Islam not only forbids theft, but it also prescribes a particular penalty for it so as to deter anybody from attempting to commit this offence <sup>(6)</sup>.

The punishment Islam assigns for theft is cutting off the offender's hand <sup>(7)</sup> on condition that he or she meets definite stipulations <sup>(8)</sup>. This punishment is called Hadd A-Sareq i.e. the penalty of the thief.

There is abundant evidence of the penalty of the thief as follows;

**I. Evidence from the Holy Book:**

Allah, exalted be He, says: **(And as for the male thief and the female thief, cut off 'from the wrist joint' their 'right' hands as a recompense for that which they committed, a punishment by way of example from Allah. And Allah is All- Powerful, All-**

**Wise)** <sup>(9)</sup>. Al-Fakhr A-Razi, may Allah have mercy on him, says: " This verse shows that stealing property entails hand-cut off " <sup>(10)</sup>.

Ibn Katheer, may Allah be merciful to him, says: " In this verse, Allah, exalted be He, orders the believers to punish the thief by having his hand cut off " <sup>(11)</sup>. Ibn Battal, may Allah have mercy on him, says: " This verse makes it obvious that the penalty of theft is hand-cut off " <sup>(12)</sup>. A-Sarkhasi, may Allah be merciful to him, says that: " As to theft ... the thief's hand must be cut off as it is clearly shown by this verse " <sup>(13)</sup>.

## **II. Evidence from Sunna:**

-First Evidence; Abu-Hureirah, may Allah please him, reported that the Prophet, peace and blessings of Allah upon him, said; " Allah has cursed the thief; his hand is cut off for stealing a small thing (an egg for example) as it is for a big thing (a rope for example) " <sup>(14)</sup>. A-Nawawi, may Allah have mercy on him, said, " This prophetic say indicates that how foolish a thief is since he has his hand cut off for a trifle thing that equals no more than a quarter of a dinar (an old Arabic dinar equals 4.25 gram of gold) " <sup>(15)</sup>. Ibn Hajjar, may Allah have mercy on him, said, " This prophetic say shows a thief is so imbecile that he sells his hand for a trivial thing " <sup>(16)</sup>.

### **- Second Evidence;**

A'aesha, may Allah please her, reported that Qurashis were worried about the Makhzomian woman who was accused of theft. They asked, " Who dare to intercede and recommends her to the Prophet but Usamah Ibn Zaid who the Prophet loves!". Usamah went and recommended her to the Prophet. The Prophet wondered, " Do you intercede in a penalty Allah has decided to be imposed on thieves?". Then, he delivered a sermon saying: " O, people, what destroyed those who were before you was that they were unjust; if a man of power stole something, he would escape punishment. If he wasn't, he would be punished. By Allah, if Fatimah, my daughter stole, I would cut off her hand " <sup>(17)</sup>. This prophetic say clearly intensifies that " Allah prescribes that the thief's hand must be cut off " <sup>(18)</sup>, " The Imam must be fair when carrying out the penalty " <sup>(19)</sup> and " Intercession in prescribed penalties is not permissible " <sup>(20)</sup> as it is shown from the rebuke of the Prophet to Usamah " <sup>(21)</sup>.

-Third Evidence; A'aesha, may Allah please her, reported that the Prophet, peace and blessings of Allah upon him, said, " A thief hand must be cut off if he is proved guilty of stealing something that worth a quarter of a dinar and more " <sup>(22)</sup>. Ibn Hajar, may Allah be merciful to him, says: " This prophetic say is evidence that the thief's hand must be cut off if he proved guilty " <sup>(23)</sup>.

### C. Evidence from the Consensus of Scholars:

There is complete unanimity that the punishment of theft is estimated. There is complete unanimity that The punishment for the thief is hand-cut off. These unanimities were reported by many Scholars. Ibn Battal, may Allah have mercy on him, said, " Ismail Ibn Ishaq said, ' When Allah said, **(And as for the male thief and the female thief, cut off 'from the wrist joint' their 'right' hands)**, There has been complete unanimity that The thief must be punished by having his hand cut off " <sup>(24)</sup>.

Al-Kasani, may Allah have mercy on him, said, " As to the ruling of theft, we say, with Allah' speed, that theft has two rulings: one of them related to the person and the other related to the property. As to what is related to the person, the person's hand must be cut off as Allah says, **(And as for the male thief and the female thief, cut off 'from the wrist joint' their 'right' hands)** <sup>(25)</sup> ... and there is a complete unanimity of Scholars on it " <sup>(26)</sup>.

Ibn Qudamah, may Allah be merciful to him, said, " there is a complete unanimity of Scholars on that the thief's hand must be cut off " <sup>(27)</sup>.

A-Nawawi, may Allah have mercy on him, said, " there is a complete unanimity of Scholars on that the penalty of the thief is to have his the hand must be cut off " <sup>(28)</sup>.

Al-Khateeb A-Sherbini, may Allah have mercy on him, " The evidence, that precedes the unanimity of Scholars, on cutting off the thief's hand is the holy verse saying, **(And as for the male thief and the female thief, cut off 'from the wrist joint' their 'right' hands)** <sup>(29)</sup> " <sup>(30)</sup>.

A-Rassah', may Allah be merciful to him, said, " The Chapter of Theft; the cutting of the thief's hand is unanimously agreed upon " <sup>(31)</sup>.

From this, it is clear that Allah has prescribed the penalty of hand-cut off for the thief to protect the thief himself from thinking of committing this offence and to protect the society from his evil act. Al-Qadi Ia'd, may Allah be merciful to him, points out the reason prescribing the penalty of hand-cut off for thieves, saying, "Allah, exalted be He, safeguards people's properties by prescribing the penalty of hand-cut off " <sup>(32)</sup>.

A-Nawawi, may Allah have mercy on him, explains that "Allah has prescribed this harsh punishment on thieves since it is harder to get evidence on and to deter thieves from thinking to steal others' properties " <sup>(33)</sup>.

Ibn Al-Qaiem, may Allah be merciful to him, emphasizes this meaning saying, "Allah, exalted be he, has prescribed that a thief's hand must be cut off if he steals a thing that worth a quarter of dinar and more since this organ is the means by which others' properties are stolen. It must be removed so as not to be used to commit this offence onwards. This is the most effective deterrent from taking people's properties by stealth and the optimal way to protect the thief from his evil intentions and to keep the society safe from the evil of thieves " <sup>(34)</sup>.

## **Chapter II**

### **The Penalty of Theft from the Viewpoint of the Egyptian Criminal Law**

The Egyptian penal law prescribes five penalties for theft offence. They are; detention, labor detention <sup>(35)</sup>, imprisonment, rigorous imprisonment and life imprisonment <sup>(36)</sup>.

Rule (315 A) prescribes the penalties of life and rigorous imprisonment saying, "Any person proved guilty of theft in public places shall receive life or rigorous imprisonment ...".

Rule (316) prescribes the penalty of rigorous imprisonment saying, "Rigorous imprisonment is imposed on night theft that are committed by two persons or more and one of them at least carries a concealed or unconcealed weapon".

Rule (316) bis Second prescribes the penalty of imprisonment saying, "Imprisonment is imposed on theft offences of wire and wireless telecommunication".

Rule (316) bis Third prescribes the penalty of detention saying, " Detention for a period that is not less than six months and not more seven years is imposed on theft offences that are committed in means of transport ".

Rule (317) prescribes the penalty of labor detention saying, " Labor detention is imposed on theft offences that are committed in an inhabited house, a house prepared for inhabitation, its annexes or in any worshipping house ".

It is noticed that the punishment of theft varies from case to case taking into consideration the different circumstances of each case. This is to meet an essential principle which is the gradation of punishment.

In spite of the importance of these penalties as in estimated punishment in reprimanding and censuring those who are proved guilty of theft <sup>(37)</sup>, they break what Islam decides as a punishment for this offence. Islam prescribes that the thief's hand must be cut off if he proves guilty of stealing something which worth a quarter of a dinar and more.

It is also noticed that the previous Acts are unconstitutional as they breach the codes of punishment the Egyptian constitution adopts. Act Two of the 2014 Egyptian constitution prescribes that: "Islam is the established religion of the country ... and the principles of Islam are the main source of legislation". According to this Act, Islam is the main source of the codes of punishment the Egyptian constitution embraces. In the light of this, the Egyptian Penal Law, including the before-mentioned Acts - must abide by what Islam states. Since these Acts impose the penalties of detention and imprisonment on the thief's part, not hand-cut off as it is decided by Islam, they break the constitution and thus they are unconstitutional.

Furthermore, the penalties of detention and imprisonment are not as effective, repressive and deterrent <sup>(38)</sup> as the penalty of having the thief's hand cut off .

### **Chapter III**

#### **The Penalty of Theft from the Viewpoint of the Algerian Criminal Law**



The Algerian penal law criminalizes theft and prescribes four penalties for theft offence. They are; detention, fine <sup>(39)</sup>, interim imprisonment and life imprisonment.

Rule (350) of The Algerian penal law prescribes that: " Any person proved guilty of theft shall receive detention from one to five years and fine from 100, 000 Algerian dinars to 500, 000 Algerian dinars ".

Rule (351) (amended) prescribes that: " Persons proved guilty of theft shall receive life imprisonment if those persons, or one of them, carry concealed or unconcealed weapons even if the theft is committed by one of them and there is no another aggravating factor ".

Rule (353) (amended) states that: " Interim imprisonment from ten to twenty years and fine from 1000, 000 Algerian dinars to 2000, 000 Algerian dinars shall be imposed on any person proved guilty of committing theft with at least one aggravating factor of the following;

-If the theft is committed with violence or threatening to use it.

-If the theft is committed at night.

-If the theft is committed by two persons or more ... ".

It is observed that the Algerian penal law follows suit of its Egyptian equivalent. Like the Egyptian penal law, the Algerian legislation prescribes penalties of detention, interim (rigorous) imprisonment and life imprisonment.

However, the Algerian penal law differs from its Egyptian equivalent in that it prescribes the penalty of fine on the part of the guilty.

In spite of this, the Algerian penal law breaks the teachings of Islam. Islam imposes the penalty of hand-cut off on the part of the thief. The Algerian penal law ignores this penalty too and imposes the penalty of imprisonment which is ineffective in comparison with that of Islam.

It is also noticed that the previous rules are unconstitutional as they breach the codes of punishment the Algerian constitution adopts. The Preamble of the 1989 Algerian constitution and the 1996 Algerian constitution and its 2016 amendments states that: "

Algeria is the homeland of Islam". Rule (10) in the 1996 Algerian constitution and its 2016 amendments says: " It is not permissible for the authorities ... to break the codes of Islam". According to these rules, Islam is the main source of the codes of punishment the Egyptian constitution embraces. In the light of this, the Algerian Penal Law, including the before-mentioned rules - must abide by what Islam states. Since these rules impose the penalties of detention and imprisonment on the thief's part, not hand-cut off as it is decided by Islam, they break the constitution and thus they are unconstitutional.

No doubt that the punishment Islam imposes for this crime is the best way to guard the society from the dangers of crime because of the following;

First; it has the ability to restrain the wrongdoer from returning to the world of crime <sup>(40)</sup> whereas the punishment imposed by the secular law proved to be ineffective to realize this target <sup>(41)</sup>.

Second; it rehabilitates the wrongdoer and strengthens his weaknesses to be a good citizen<sup>(42)</sup> whereas the punishment imposed by the secular law is likely to increase the tendency to delinquency especially when the offender is mixed with other criminals in prison<sup>(43)</sup>.

Third; it deters others from entering the world of crime <sup>(44)</sup> whereas the secular penal legislations fail to accomplish this purpose<sup>(45)</sup>.

### **Conclusion**

The study came to two the following findings:

First; Islam imposes the hand-cut off penalty for those who are proved guilty of theft provided meeting the cut off stipulations of and the punishment must be witnessed by a party of believers.

Second; the Egyptian penal law imposes an alternative penalty. It prescribes the penalty of imprisonment on thief. This breaks the punishment codes of Islam

Third; the Algerian penal law also imposes an alternative penalty. It prescribes the penalty of imprisonment on those who are proved guilty of theft. This breaks the punishment codes of Islam as well.

In the light of these findings. The study recommends that the Egyptian and Algerian legislator should impose the penalty of hand-cut off on those who are proved guilty of theft . This comes in agreement with what Islam dictates in this question and goes line in line with the 2014 Egyptian Constitution Second Act states saying:" Islam is the established religion of the state ... and Islam teachings are the main source of legislation".

In the light of these principles, the study suggests that Acts (315 A) of the Egyptian penal law and Act (50) of the Algerian penal law should be modified as follows:

-Any person proved guilty of theft shall receive hand-cut off penalty and their punishment must be witnessed by a party of believers.

**Note:** It should be taken into consideration having the other Acts relating to the Chapter of Theft in the Egyptian Penal Law amended in the light of what suggested in this research.

#### **Notes**

- 1) Surat Al-Imran (The Family of Imran) III, verse: 102.
- 2) Surat An-Nisaa (The Women) IV, verse: 1.
- 3) Surat Al-Ahzab (The Confederates) XXXIII, verse: 70.
- 4) Al-Albany, **Sahih Al-Targheeb wa Tarheeb**, edit. 1, p.3.
- 5) Al-Kasani, **Badae'h A-Sanaeh**, edit. 2, vol. 7, p. 66 and Waba A-Zoheili, **Al-Fiqh Al-Islami wa Addellateh**, edit. 2, vol. 7, p. 5422.
- 6) Ibn Rushd, **Bediat Al-Mojtahid**, no edition, vol. 4, p. 229, A-Rasaa', **Al-Hidia Al-Kafia**, edit. 1, vol. 1, p. 504, Al-Khateeb A-Sherbini, **Moghni Al-Mohtaj**, no edit., vol. 5, p. 465, Ibn Qudamah, **Al-Moghni**, edit. 3, vol 9, p. 104 and Waba A-Zoheili, **Al-Fiqh Al-Islami wa Addellateh**, edit. 2, vol. 7, p. 5422.
- 7) Al-Qurtobi, **Al-Game' Lahkam Al-Qura'n**, no edition, vol. 11, p. 185 and A-Nawawi, **Al-Menhaj Sharh Sahih Muslim Ibn Al-Hajjaj**, edit. 2, vol. 11, p. 185.
- 8) There particular stipulations that should be met to carry out the penalty of hand-cut off. Of which; the thief must be sane, mature, free-willed not a relative or a spouse to the owner of the stolen thing. In addition, the stolen thing must be not less than a quarter of a dinar and kept in an inaccessible place. Refer to; Al-Kasani, **Badae'h A-Sanaeh**, edit. 2, vol. 7, pp. 66-81, A-Rasaa', **Al-Hidia Al-Kafia**, edit. 1, vol. 1, p. 507, Al-Khateeb A-Sherbini, **Moghni Al-Mohtaj**, no edit., vol. 5, pp. 489-490, Ibn Qudamah, **Al-Moghni**, edit. 3, vol 9, pp. 104-120 and Waba A-Zoheili, **Al-Fiqh Al-Islami wa Addellateh**, edit. 2, vol. 7, p. 5431-5456.
- 9) Surat Al-Ma'idah (The Table Spread with Food) V, verse: 38.
- 10) Al-Fakhr A-Razi, **A-Tafsier A-Kabeer**, edit. 3, vol. 11, p. 351.
- 11) Ibn Katheer, **Tafseer Al-Kora'n Al-Azeem**, edit. 1, vol. 3, p. 97.
- 12) Ibn Battal, **Sharh Sahih Al-Bukhari**, edit. 2, vol. 8, p. 411.

- 13) A-Sarkhasi, **Al-Mabsout**, no edition, vol. 9, p. 133.
- 14) Narrated by Al-Bukhari and Muslim. . Refer to, Al-Bukhari, **Sahih Al-Bukhari**, edit. 1, Book of Hudud, Chapter : Cursing the Thief, Hadith no. (6783), p. 159 and Muslim, **Sahih Muslim**, no edition, Book of Hudud, Chapter: The Penalty of theft and Quorum, Hadith no (1687), p. 1314.
- 15) A-Nawawi, **Al-Menhaj Sharh Sahih Muslim Ibn Al-Hajjaj**, edit. 2, vol. 11, p. 183.
- 16) Ibn Hajar, **Fath Al-Bari**, no edition, vol. 12, p. 83.
- 17) Narrated by Al-Bukhari and Muslim. . Refer to, Al-Bukhari, **Sahih Al-Bukhari**, edit. 1, Book of Hudud, Chapter : Carrying out the Prescribed Penalties on the Noble and the Humble, Hadith no. (6788), p. 160 and Muslim, **Sahih Muslim**, no edition, Book of Hudud, Chapter: Cutting off the Noble Thief's Hand and others, Hadith no (1688), p. 1315.
- 18) Ibn Battal, **Sharh Sahih Al-Bukhari**, edit. 2, vol. 8, p. 410.
- 19) Ibn Battal, **Sharh Sahih Al-Bukhari**, edit. 2, vol. 8, p. 417.
- 20) Ibn Rushd, **Bediat Al-Mojtahid**, no edition, vol. 4, p. 236, A-Nawawi, **Al-Menhaj Sharh Sahih Muslim Ibn Al-Hajjaj**, edit. 2, vol. 11, p. 185 and Waba A-Zoheili, **Al-Fiqh Al-Islami wa Addellateh**, edit. 2, vol. 7, p. 5430-5431.
- 21) Ibn Battal, **Sharh Sahih Al-Bukhari**, edit. 2, vol. 8, p. 418.
- 22) Narrated by Al-Bukhari and Muslim. . Refer to, Al-Bukhari, **Sahih Al-Bukhari**, edit. 1, Book of Hudud, Chapter : The Quorum of Theft, Hadith no. (6789), p. 160 and Muslim, **Sahih Muslim**, no edition, Book of Hudud, Chapter: The Penalty of Theft and its Quorum, Hadith no (1684), p. 1312.
- 23) Ibn Hajar, **Fath Al-Bari**, no edition, vol. 12, p. 107.
- 24) Ibn Battal, **Sharh Sahih Al-Bukhari**, edit. 2, vol. 8, p. 414.
- 25) Surat Al-Ma'idah (The Table Spread with Food) V, verse: 38.
- 26) Al-Kasani, **Badae'h A-Sanaeh**, edit. 2, vol. 7, p. 84.
- 27) Ibn Qudamah, **Al-Moghni**, edit. 3, vol 9, p. 103.
- 28) A-Nawawi, **Al-Menhaj Sharh Sahih Muslim Ibn Al-Hajjaj**, edit. 2, vol. 11, p. 181.
- 29) Surat Al-Ma'idah (The Table Spread with Food) V, verse: 38.
- 30) Al-Khateeb A-Sherbini, **Moghni Al-Mohtaj**, no edit., vol. 5, p. 465.
- 31) A-Rasaa', **Al-Hidia Al-Kafia**, edit. 1, vol. 1, p. 507.
- 32) Al-Kady Iad, **Ikmal Al-Mo'llem be Fawaed Muslim**, edit. 1, vol. 5, pp. 495-496.
- 33) A-Nawawi, **Al-Menhaj Sharh Sahih Muslim Ibn Al-Hajjaj**, edit. 2, vol. 11, p. 181.
- 34) Ibn Al-Qaiem, **I'lam Al-Mowaqee'n an Rabb Al-Alamin**, edit. 1, vol. 2, p. 48, p. 74.
- 35) The penalty of detention is the slightest custodial sentence. The sentenced is detained in one of the central prisons. There are two types of detention; the first type is detention without labor. The other type is detention with labor. Detention with labor is permissive in the case of misdemeanors and mandatory in the case of theft offences. For further detail refer to; Mamoun Salamah, **Qanon Al-Okobat; Al-Qesm Al-Khas**, edition 3, p. 648 and Mohamed Zakki Abu-Amer, **Qanon Al-Okobat; Al-Qesm Al-Aam**, no edition, pp. 510-511.
- 36) The penalty of imprisonment has two types;

a- life imprisonment: in which the sentenced spends all his life in prison , but if he or she is on good behavior, they are set free as long as they spend twenty years at least.

b- Rigorous Imprisonment: in which the sentenced spends a period not less than three years and no more than fifteen years in prison. For further detail, refer to; Mohamed Zakki Abu-Amer, **Qanon Al-Okobat; Al-Qesm Al-Aam**, no edition, pp. 505-508.

37) In Islam, penalties are divided into two types;

a-Definite penalty; it is a prescribed penalty which the judge is not authorized to modify.

b-Indefinite penalty; it is not a prescribed penalty. The judge is authorized to estimate the suitable penalty that takes into consideration the circumstances of the crime.

For further detail, refer to; Ibn Al-Qaiem, **Jame' Al-Fiqh**, edit. 1, vol. 1, pp. 410-412, Mohamed Abu-Zahra, **Al-Jarema wa Al-Oqoba fe Al-Fiqh Al-Islami**, no edition, pp. 52-65 and Mohamed Saleem Al-Awwa, **Fe Usul A-Nezam Al-Jinaei Al-Islami, A Comparative Study**, no edit, p. 243.

38) Mamoun Salamah, **Qanon Al-Okobat; Al-Qesm Al-Khas**, edition 3, pp. 622-630 and Mahmoud Najjuib Hosni, **Elm Al-Eqab**, edit. 3, pp. 94-97.

39) The fine penalty is defined as a sum of money that the sentenced has to pay as punishment. For further detail, refer to; Mamoun Salamah, **Qanon Al-Okobat; Al-Qesm Al-Aam**, edition 3, p. 663 and Mohamed Zakki Abu-Amer, **Qanon Al-Okobat; Al-Qesm Al-Aam**, no edition, p. 521.

40) Mohamed Saleem Al-Awwa, **Fe Usul A-Nezam Al-Jinaei Al-Islami, A Comparative Study**, no edit., p. 253.

41) Hani Al-Manaeli, **Al-Okoba fe A-Tashrieh Al-Islami**, no edit., p. 51.

42) Mohamed Saleem Al-Awwa, **Fe Usul A-Nezam Al-Jinaei Al-Islami, A Comparative Study**, no edit., p. 253.

43) Hani Al-Manaeli, **Al-Okoba fe A-Tashrieh Al-Islami**, no edit., p. 53.

44) Mohamed Saleem Al-Awwa, **Fe Usul A-Nezam Al-Jinaei Al-Islami, A Comparative Study**, no edit., p. 253.

45) Hani Al-Manaeli, **Al-Okoba fe A-Tashrieh Al-Islami**, no edit., p. 53.