41682 - The ruling on one who steals robs or rapes at knife-point or gun-point

the question

What is the ruling on gangs or individuals who steal from people, or kidnap women and violate their honour, all at knife-point or gun-point?.

Detailed answer

Praise be to Allah.

These crimes, which are committed by some people who have no religious commitment, are given a severe punishment in sharee'ah, which is known to the scholars as the hadd for haraabah (waging war against Allaah and His Messenger) or quta' al-tareeq (banditry). This is mentioned in the verse in which Allaah says (interpretation of the meaning):

"The recompense of those who wage war against Allaah and His Messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off from opposite sides, or be exiled from the land. That is their disgrace in this world, and a great torment is theirs in the Hereafter"

[al-Maa'idah 5:33]

The Council of Senior Scholars in the Land of the Two Holy Sanctuaries, under the leadership of Shaykh 'Abd al-'Azeez ibn Baaz (may Allaah have mercy on him) issued a statement concerning these crimes, in which it says:

The Council has studied what the scholars have mentioned about the shar'i rulings which in general dictate the obligation to protect the five essentials of life and ensure that they remain safe. They are: religion, life, honour, mental health and wealth. Islam acknowledges the great danger that can result from crimes of aggression against the sanctity of the Muslims' lives, honour

and wealth, and the threat to public security that this can pose in the land.

Allaah has guaranteed protection for the people’s religion, physical well-being, lives, honour and mental health by means of the punishments which He has prescribed to attain security on both the public and private levels. Implementing the verse concerning the hadd punishment for haraabah in accordance with the rulings of the Prophet (peace and blessings of Allaah be upon him) concerning muhaaribeen guarantees security and peace of mind, and deters those who would think of committing such crimes and transgressing against the Muslims.

Allaah says (interpretation of the meaning):

“The recompense of those who wage war against Allaah and His Messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off from opposite sides, or be exiled from the land. That is their disgrace in this world, and a great torment is theirs in the Hereafter”

[al-Maa’idah 5:33]

In al-Saheehayn it is narrated that Anas (may Allaah be pleased with him) said: Some people from ‘Ukl came to the Prophet (peace and blessings of Allaah be upon him) and were in al-Suffah. The climate of Madeenah made them sick, so they said: O Messenger of Allaah, get us some milk. He said: “I think the best thing for you is to go to the camels of the Messenger of Allaah.” So they went there and drank some of their milk and urine, then when they had recovered and gained weight, they killed the herdsman and drove away the camels. Someone came to the Messenger of Allaah (peace and blessings of Allaah be upon him) shouting for help, and he sent a party out in pursuit of them. Not much of the day had passed before they were caught and brought to him. He ordered that branding irons be heated and their eyes were put out, and their hands and feet were cut off, and not cauterized, then they were thrown into the harrah where they asked for water but they were not given any, until they died.

Abu Qilaabah said: They stole, killed and waged war against Allaah and His Messenger.

Based on the above, the Council has determined the following:

(a)

The crimes of kidnapping, robbery and transgression of the Muslims' sanctity by way of open and audacious hostility is a type of muhaarabah (waging war against Allaah and His Messenger) and doing mischief in the land, which deserves the punishment mentioned by Allaah in the verse in al-Maa'idah, whether that aggression is against people's lives, wealth or honour, or it is scaring wayfarers and cutting off routes (banditry). It makes no difference whether that happens in cities, villages, the desert or the wilderness, as is the correct view of the scholars (may Allaah have mercy on them).

Ibn al-'Arabi said, telling of the time when he was a judge: Some bandits were brought before me who had gone out to attack a group of travellers. They took a woman by force from her husband and the group of Muslims who were with him, and carried her off. Then they were hunted down, caught and brought to me. I asked one of the muftis with whom Allaah tested me about them and he said that they were not muhaaribeen, because haraabah (the crime of waging war against Allaah and His Messenger) applies only with regard to wealth, not rape! I said to them: To Allaah we belong and unto Him is our return (said by Muslims at times of calamity). Do you not know that haraabah (aggression) against honour is worse than aggression against wealth? All people would agree to lose their wealth and have it confiscated from them rather than to see aggression committed against their wives or daughters. If there were any punishment more severe than that which Allaah has mentioned, it would be for those who kidnap women. end quote.

(b)

The Council believes that in the verse in which Allaah says "The recompense of those who wage war against Allaah and His Messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off from opposite sides, or be exiled from the land" the word aw (or) means that there is a choice, as is the apparent meaning of the verse. This is the view of the majority of scholars, may Allaah have mercy on them.

(c)

The majority of the Council believes that the deputies of the ruler – the judges – have the obligation to prove the type of crime and to pass judgement accordingly. If it is proven that it is a crime that constitutes war against Allaah and His Messenger (muhaarabah) and spreading mischief in the land, then they have the choice of issuing a sentence of execution, crucifixion, cutting off a hand and foot on opposite sides, or exile from the land, based on their ijtihaad and paying attention to the situation of the criminal and the circumstances of the crime, as well as its impact on society and what may best achieve the interests of Islam and the Muslims, unless the muhaarib has killed, in which case he should definitely be executed, as Ibn al-'Arabi al-Maaliki narrated that there was consensus among the scholars on this point. Among the Hanbalis, the author of al-Insaaf said: There is no dispute on this point. End quote from a paper published by the Council of Senior Scholars under the title al-Hukm fi'l-Satw wa'l-Ikhtitaaf wa Muskiraat, p. 192-104.