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## **The ritual of "Sharia al-Yad" throughout the history of Morocco Between the controls of custom and the developments of Islamic law**

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### **Abstract**

Recently, many print and electronic media outlets have been reporting on practices that enshrine "street justice," or what is known in Moroccan folklore as the ritual of "sharia of the hand," through the agreement of the masses present to implement a customary punitive right against parties that have committed a forbidden act. These represent societal behaviors based on certain provocative actions, whether religious, cultural, social, or psychological. However, they remain unorganized behaviors that are not subject to institutional organization or are backed by certain parties with diverse religious orientations. Rather, they are merely individual or collective behaviors that are immediate and the result of a certain circumstance and are not based on judicial logic. Rather, they are the product of customs that draw their origins from Morocco's ancient history.

**Keywords:** Ritual, law of the hand, custom, law, legitimate violence, historical heritage, disciplinary punishment, dramatization of punishment, lawlessness.

### **Introduction**

Many citizens were subjected to customary punishment that enshrines the ritual of "sharia hand" in Moroccan folk heritage, including, for example, the killing of a member of the auxiliary forces in the city of Agadir in a public park after being subjected to a barrage of beatings and kicks by some citizens and curious people, which ended in his death [1]....on the pretext that he was caught with his lover in an "illegal seclusion"!, by those who claim to forbid evil. In the same context, another media outlet reported a news clipping that was repeated more than once, stating that a group of thieves were caught in the act of pickpocketing and stealing in the weekly markets, which particularly targeted livestock traders, farmers. This is a phenomenon that has become well-known and expected with the approach of Eid al-Adha every year, so these thieves, known among the general public as "**The Faraqish**" which refers to the cattle thieves, a barrage of collective beatings and slapping by those present to punish them collectively in the market square in an atmosphere of celebration and pomp that rises to the level of dramatizing this punishment.

Such observations raise the need to dismantle the components of this ritual disciplinary punishment, and to recall the popular punitive discourse that characterized the history of Morocco in the conflict between the Makhzen and the subjects on the one hand, and between Sharia and custom on the other hand, since the repetition of these customary disciplinary punishments is likely to re-establish the discourse of chaos and recall the state of "lawlessness" that characterized some regions of Morocco during various historical periods, the pace of which increased throughout the nineteenth century, which inevitably leads to undermining the pillars of the state and belittling its security and judicial institutions alike. At the same time, the question is about the legitimate violence that Max Weber considers [2]. The state, which alone has the legitimate authority, has the right to use violence against its delinquent subjects, and it is necessary to investigate the punitive mechanisms adopted by the Makhzen to manage chaos and spread security. Can the return of this phenomenon be considered primarily related to the inability of many individuals to understand the concept of citizenship and coexistence within the state and to break with the era of lawlessness? Or does it reflect the collapse of the moral and value system in Morocco, in parallel with the spread of cases of violence and counter-violence?

There is no doubt that such collective punishment or the law of the hand, arouses disgust among some of the public, while others, especially the victims, approve of it and consider it an appropriate punishment for the accused and a lesson for anyone who would dare to repeat such socially and legally abhorrent acts. This is because the dramatization of the punishment, its pomp and the keenness to implement it in the public square and the presence of a large audience to follow its details carry many symbolic connotations directed at all thieves lurking in the horizon of producing docile bodies and taming and domesticating them, considering this punished body a tool that provides pedagogical lessons to the public.

It is worth noting that the dissemination of news of these phenomena is no longer limited to the national media, but has been internationalized, especially in light of the availability and diversity of social media on the Internet, which has contributed to the dissemination of some images or videos that depict the practice of fornication in public and directly, which confirms that The ritual of hand-cutting is not new, but electronic means have contributed to its exposure and spread. It is sufficient for me to point out the video shown by the channel BBC News as a model for a student in the city of Safi [3]. She was subjected to a barrage of beatings by some villagers, claiming that she had been caught in seclusion with a man, so that they could take public justice, as they claimed, into their own hands, because the incident occurred on the day

of Ramadan, corresponding to...May 24, 2018 [4]. The fact is that this student was on a geological trip to conduct some scientific field research with her driver, according to what she stated to the judicial police after the perpetrators were arrested later.

### **1. The Historical Roots of the Sharia Punishment of the Hand**

This axis aims to delve into the details of contemporary Morocco as it was formed in the late Middle Ages, so we may not need to remind again that this collective retribution, or what is known as Sharia al-Yad, is not something new to Moroccans, but rather a ritual disciplinary punishment that draws its origins from historical periods prior to the present time, and was established as an anthropological concept linked to the social and historical structure of Morocco, which developed within the historical process of the Moroccan space and society. Examples are not what we lack in this context, as there are many references in the Moroccan historical heritage extending from the Middle Ages to the beginning of the twentieth century, about numerous cases in which Moroccans applied the Sharia al-Yad ritual as a punitive retribution practiced by society through individual initiatives or at the behest of the ruling authority itself through its local representatives of leaders and workers, especially against those who had political ambitions that conflicted with public policy or did not conform to the orientations of the local representatives of the Makhzen, including leaders, pashas, and others. Therefore, the moment of catching them red-handed in a delinquent act constituted an opportunity to settle scores with them and get rid of them simply.

The context may not allow for monitoring and tracking all the cases of recurrence of the law of hand in the history of Morocco in an attempt to establish this phenomenon, as this will not be an easy task at all. Such work exceeds the capabilities and potential of a single researcher, especially since the traditional source material only provides intermittent coverage in time and place, as the books of hisbah and jurisprudential incidents are full of such cases, in addition to the source material provided by Moroccan historians until the beginning of the twentieth century, that is, shortly before the imposition of the protectorate system on Morocco and its repercussions on the legal customs that Moroccans have adopted since the Middle Ages, after France worked to abolish all punitive customs and replace them with new legal texts in an attempt to subjugate the people to accept them and abandon their old customary punitive practices.

However, it is noticeable that the source material provided by the newsmen leaves the impression that its talk about the

punishment of “Sharia al-Yad” comes within the framework of its monitoring of the general political situation in Morocco, meaning that cases of Sharia al-Yad were growing when the central authority weakened and its role in maintaining security and eliminating banditry, highway robbery, and looting and plundering declined, which also indicates the existence of tension in the relations between the representatives of the Makhzen and the tribes. It is also noticeable through these source references that cases of insecurity and resorting to looting were not limited to some members of society from the general public only, but were also practiced by some servants of the Makhzen, including members of the army, on whom the Makhzen relied to maintain security and protect the affairs of the country and its people. In many cases, some Makhzen men resorted to adopting this ritual and applying the punishment of an eye for an eye by giving the family of the victim the choice between taking a ransom from the family of the guilty party or applying retaliation to him by one of the members of the victim’s family.

Perhaps such observations are a reason to delve into the history of this customary punishment that Moroccans have been using to manage their issues and disputes in the absence of the Makhzen law, especially in the countryside and areas far from the eyes of the central Makhzen or its regional and local representatives in general. It may seem through this reference that we will find our way to root this punishment within the mythology of the Middle Ages, based on the fact that the basic features of such punishments have been formed and many of their constants have been established since this period.

Those interested in medieval history are well aware of the great difficulties and obstacles facing the researcher if he seeks to explore the world of customary punishments that draw their origins from the customs that Moroccan tribes used to use to resolve their disputes and issues in the absence of Sharia, not because of the scarcity of source material, but because of the overlap between disciplinary punishments, discretionary punishments, and customs, and the difference in the political and ideological orientations of historians and their position in historical time and geographical space. Moreover, the text contained in these sources speaks of these punishments in a general way without elaborating many details. What increases the ambiguity of this situation is the overlap of source references between discretionary punishment and hadd: if discretionary punishment means blame, severe beating, discipline, prohibition, and diversion from something, then hadd is represented by the number of punishments that should not lead to death. Or as Ibn Manzur stated, the hadd are the prohibitions of God and His punishments that He linked to sins, and the origin of hadd is

prohibition and separation between two things, as if the limits of Sharia separated between the permissible and the forbidden [5].

It seems that the cases of applying the law of the hand were growing when the central authority weakened and its role in maintaining security declined and looting, banditry and highway robbery spread, so the power of the law of the Makhzen (the authority of the Makhzen) declined, leaving room for tribal customary practices. It is also noted through the source references that the cases of insecurity and the spread of banditry were not limited to the general public of the marginalized and marginalized, but some of the servants of the Makhzen participated in them, as we mentioned earlier, either at the behest of the Makhzen itself to terrorize the rebellious tribes or out of their desire to exploit the fragile security situation to achieve some material gains, including some members of the army and their leaders, on whom the Makhzen relied to maintain security and take care of the affairs of the country and its people.

Therefore, I tried to interrogate a sample of these historical sources related to the subject, perhaps they would help in monitoring some of its aspects and help in rooting this punitive practice in the history of Morocco and explain its continuity until a late period of pre-protectorate Morocco, although such a statement does not mean at all conducting an inventory of all the cases of legal hand-holding witnessed in the history of Morocco, for the reasons that were monitored above.

The search for the establishment of the ritual of the Sharia of the hand and its roots leaves the impression among researchers that this ritual is not a product of contemporary circumstances, but rather its roots extend to historical periods dating back to at least the Middle Ages of Morocco’s history. It was linked to social customs that were deeply rooted among members of Moroccan society, which used to exact retribution from those who attacked it, although it may seem that this is not always the case, that is, the image of the society that was attacked. The custom/Sharia of the hand is also applied as an internal practice among members of this society itself, and even within its tribal, clan, or even family components... and the intervention of the local Makhzen apparatus is not awaited to carry out its duty in such cases. It is worth noting that the application of this ritual was not limited to punishing the attackers, but rather included individuals and groups that fell into religious prohibitions, such as publicly breaking the Ramadan fast, or those who were caught in the act of practicing vice and obscenities, such as drinking alcohol or having illicit sexual relations, to cases of stoning and throwing stones at those who urinate on walls [6]. and other things that

provoked reactions against these violators based on the prevailing belief in the Moroccan mentality that not acting in a timely manner is considered cowardice or normalization and acceptance of these deviant societal behaviors. Although it was often a suitable opportunity to get rid of some opponents of the ruling authority, which took, for example, being late for prayer at the mosque as a pretext to settle accounts with them after some of its servants were empowered to punish them in the manner of the Sharia law. In this context, we read in Ibn al-Zayyat an example of a similar situation that occurred during the time of the Almohads, employing bloody violence in cases of legal retribution by killing those who failed to perform prayer on time [7].

It is noted that the ritual of the Sharia of the hand was growing in the countryside, where the authority of tribal customs prevailed over the authority of the Sharia of the Makhzen, due to the distance of the decision-making centers in the Makhzen from these tribes, especially those who had taken the mountains as their residence, which opened the way for customary interpretation, based on the fact that custom is not subject to clear legislation and differs according to cases, tribes, the nature of the geographical area, the type of crime committed, and the overlap of custom with jurisprudential retaliation. In this regard, Al-Wansharisi says: "The punishments are subject to interpretation according to the action, the perpetrator, and the nature of the action. [8]." This indicates the existence of a hidden conflict between the two parties: the Makhzen, which is trying to control the security scene by activating Sharia law, and the tribe, which is trying to resort to custom. [9]. And to ensure its continuity as the sole judicial body.

There is no doubt that the representatives of the Makhzen, especially the leaders, had a large share of control over the prevalence of the Sharia law ritual among Moroccans through their control over the nature of the relations between the tribes and the Sultan and the extent of the balance and imbalance of these relations and directing the features and size of the physical presence of the Makhzen as a mechanism for exercising authority, which required special administrative management that achieved the greatest degree of spatial control over the symbolism of administrative authority and monitoring and containing the threats that could be issued by the tribes, especially those rebellious against the Makhzen law.

These leaders exercised their authority based on custom, traditions, and customs, or royal decrees and letters, and not on the Sharia, which was the prerogative of judges. This allowed them to control the punitive scene of the tribes and confused their use of the customs prevalent among

them. Turning a blind eye to some ritual practices associated with the punishment of death within the tribal domain.

This contributed to the tension in relations between the local population and the representatives of the Makhzen, many of whom were keen to serve their personal interests and strengthen their influence and privileges. Some cases developed after the tension in relations between the two parties to the point of assassinating some leaders who themselves were victims of the application of the Sharia of the hand ritual, as happened in the city of Fez, where a revolution broke out against the leader of the Sultan, Abu Ali al-Rusi, in revenge for his oppression and burdening them with fines. They employed Sharia of the hand against him when they mutilated his body and dragged it through the alleys of Fez. [10]. During the eighteenth century.

Al-Wansharisi's legal rulings provide us with techniques that remained in use during the Marinid era, such as the punishment of flogging anyone who committed the vice of adultery, and the punishment of shaving the heads of effeminate boys and imprisoning them with their fathers instead of imprisoning them [11].

## **2. The law of the hand between custom and law**

It seems that there is no escape from dismantling the relationship between the duality of custom and law, and how did Moroccans reconcile between applying custom and submitting to the Makhzen law and the extent of its contribution to the crystallization of the ritual of the law of the hand?

The answer to this question leads to research into the nature of the relationship between custom and law among Moroccans and the extent to which it controls the punitive rituals they adopted.

In this context, jurisprudential writings, especially books of jurisprudential fatwas, constitute an indispensable source for studying the duality of custom and law in pre-protectorate Morocco and the overlap between them, since Moroccan criminal jurisprudence draws its origins from Islamic criminal jurisprudence and jurisprudential interpretations. Based on this, custom in Morocco was linked to the desert and to the Amazigh tribe in particular at a time when law was linked to the city and the Makhzen. From this standpoint, the features of these two concepts emerge, since the tribe relied from the beginning on custom to manage the cases and disputes of its members, considering this custom an inherited judicial system that the tribes used to employ and adapt thanks to the interpretations of the group [12]. There is no doubt that this custom was the result of the failure of jurisprudence to answer new issues in the lives of Muslims, which necessitated the existence of a custom or legal structure that takes from the

Sharia what is compatible with those issues and was not contradictory to it, but rather a local alternative to it in some limited issues with the existence of complete overlap between custom and Sharia, reflecting the development of the legal system in Morocco. Because of the clear difference between Islamic laws and the old customs and practices of the people of Morocco, or the necessity and new developments in transactions that are not always governed by the rules of Islamic law.

Perhaps such a statement also prompts us to monitor the role of judges, representatives of Sharia law, and jurists who contributed in turn to crystallizing the principles of Islamic legislation by adapting and modifying many customs in an attempt to reconcile custom and Sharia law, especially among some tribes that were not merely “loose” tribes, but rather managed their affairs and maintained security, peace, and order in a society in which the authority of the Makhzen was absent. In this context, researcher Rahal Boubrik cites: In a comparison between tribal violence and Makhzen violence, authority in the desert tribal society as a model in which relations were not based on violence and coercion as is the case in the central state society [13]. Which raises the question once again: Were these sanctions during this period a manifestation of a political crisis, or a comprehensive solution to the stability of power and security in Morocco? Or did they remain merely temporary solutions that could not hide societal contradictions? Even more than that, did they represent a manifestation of opposition to religious law that is inconsistent with the tribal customary system?

I may not venture to say that some of the Makhzen’s practices contributed to the establishment of the ritual of the hand-cutting law among Moroccans. We have indicated above that the Makhzen, in its attempt to contain opponents and contain their political ambitions, had no choice but to adopt this ritual and to harness a group of “thugs” to implement it against some opponents. We read in the anonymous author of “The History of the Saadi Takamadrit State” how Sultan Muhammad al-Sheikh al-Saadi got rid of some scholars who remained loyal to the Marinids by adopting this ritual, after intelligence information was leaked about the disloyalty of Imam Abd al-Wahid al-Wansharisi, whose hand was amputated by a group of thugs who intercepted his path at one of the gates of al-Qarawiyyin, and he was eventually liquidated without a trial [14].

The same observation can be made about the Moroccan regime’s use of the punishment of parading criminals and revolutionaries in an attempt to humiliate and defame the guilty. When the guilty person is paraded on the back of a donkey, most often to further humiliate him and parade him

through the city’s alleys, this moment constitutes an opportunity for the audience, and children in particular, to poke the prisoner and mock him, which was what inaugurated the beginnings of the practice of the ritual of the hand in later stages.

### **3. The reality of the law of the hand between the fixed and the variable**

Digging into the historical heritage of Morocco as mentioned above does not mean at all that the ritual of Sharia al-Yad was established and limited to the Middle Ages. Rather, Moroccans preserved the practice of this ritual and reproduced it in a new form that suited the circumstances in which Moroccans lived. The available source material continues to raise indications of the practice of this ritual during the eras following the Middle Ages, especially during the stages of instability in the security situation in Morocco, either as a result of the collapse of the central authority and attempts to establish a new authority or because of the emergence of a new actor on the Moroccan scene, which is the European infiltration that was inaugurated by the Iberian invasion of the Atlantic and Mediterranean coasts. Moroccan historians later realized the extent of the influence that Europeans had on Moroccan customs and rituals, including what Al-Nasiri observed when he said: **Know that the freedom that the Franks created in these years is certainly the work of the heretics because it requires the abandonment of the rights of God, the rights of parents, and the rights of humanity, most importantly....** [15]. We read in the same context about the prevalence of the ritual of the hand-shaking during the reign of Sultan Sidi Muhammad bin Abd al-Rahman when a commotion occurred in the Qarawiyyin Mosque in the year 1282 AH during the performance of Friday prayers when a thief tried to assault a merchant from Fez. The worshippers stopped the prayer and everyone left the mosque before the attacker was arrested and punished collectively [16]. Until recently, when the protectorate was imposed on Morocco, this ritual would become common among Moroccans, as described by Professor Abdel Wahab bin Mansour, who held the injustice of the leaders and the laxity of the tribes responsible: “Until the middle of the nineteenth century, Morocco was ruled by old governmental and administrative apparatuses that did not respond to the requirements of the age, and it was also managed by unjust ministers, governors and leaders... who had free rein over lives and money... under a rotten governmental and administrative apparatus like this apparatus, nothing but injustice was inflicted on the subjects and nothing but tyranny was inflicted on them, and the inability of the Moroccan governors to do justice to the oppressed pushed the people to rely on themselves to do justice to themselves.” [17].

In the context of searching for the roots of the ritual of Sharia al-Yad and its articulation between the original and the present, we may not overlook the external influence that the Arab tribes settled in Morocco since the Islamic conquest carried. There is no doubt that the Arab heritage of the East, in particular, is full of many references that are related to the spread of Sharia al-Yad among these tribes, especially with regard to revenge against murderers. Many poems and novels were composed about this phenomenon until it fed among them shame and cowardice not to retribute against the murderer and how many tribal wars lasted for many years due to the desire to take revenge against a murderer, rapist or thief. Despite the attempt of the Islamic religion to institutionalize punishments and prevent this retribution by applying the limits, a hidden resistance continued to accompany the Arab tribal system, and without a doubt this mentality migrated to Morocco and contributed to establishing the foundations of the ritual of Sharia al-Yad since an early time before the emergence of the central state.

Based on the above, reality confirms that understanding this ritual and trying to root it may not be correct from the historical perspective only, but rather it requires encompassing the various pillars of the phenomenon and recalling many social and religious angles and taking them into consideration, especially the religious angle, since many of those who practice this ritual justify their work with religious and moral deterrents, especially during the month of Ramadan, against those who have begun to call for public breaking of the Ramadan fast, based on the fact that they do not consider this act to be against the law, but rather the result of provocative action that rebels against prevailing norms and traditions, so it must be confronted with a violent act. Likewise, it is a provocation to the state's structures and institutions and a violation of public law, which is likely to re-establish the culture of chaos and violence and weaken the concept of the state, and even more than that, it damages the state's reputation on the global level, as we have in the events of the killing of two foreign tourists in the Imlil area on the outskirts of Marrakech during the month of December. 2018 is a prime example of this.

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