

CONCEPT OF CRIME AND PUNISHMENT IN THE CONTEXT OF THE LEGAL SYSTEM OF ISLAM AND PUBLIC POLICY PERSPECTIVE

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Abstract

This scholarly paper explores the complexities surrounding crime and punishment within the Islamic legal framework. This study delves into the Quranic passages and Hadiths to analyze the foundational ideas that form the basis of Islamic jurisprudence. The central focus lies on justice, mercy, and deterrence. It comprehensively analyzes criminal crimes and associated punishments, such as hudud, qisas, and ta'zir. Additionally, it explores the court's role in ensuring the just and impartial administration of justice. In addition, the article provides a critical assessment of ongoing discussions about integrating Islamic law into contemporary communities, with a particular focus on examining human rights, gender equality, and cultural considerations. In conclusion, this meticulous examination provides insight into the intricacies of the Islamic legal system and its significance in the contemporary, multifaceted global context.

Keywords: Islamic Legal system, crime, punishment, Quran, Hadith, Law, Policy, Public

INTRODUCTION:

Crime under Islamic law encompasses any act of defiance against the commandments of God, which is subject to punishment in the world as prescribed by the legislator (Ammar & Weaver, 2006). One overarching classification of criminal activity encompasses crimes delineated in the Holy Quran, which are accompanied by prescribed penalties that are immutable and non-negotiable. Crimes falling within this category encompass acts such as apostasy, attempted coup d'état, adultery, slander (the making of false accusations against another), vandalism, highway theft, and the consumption of alcohol. Certain prescribed penalties in the legal system include the amputation of a hand for theft, the punishment of flogging and stoning to death for an adulteress, and, in cases of highway theft, the options of execution, exile, or amputating the opposite hand and feet of the body (Boateng, Pryce, & Alotaibi, 2023). The second classification of criminal acts encompasses transgressions that are subject to retribution or monetary compensation. The Quran establishes punishments for crimes falling within this category, however, also allows for the possibility of pardon by the victim or the victim's guardian. In such a scenario, the perpetrator has the option to make a monetary compensation known as 'blood money' and may also be subject to legal consequences. Crimes falling within this category encompass premeditated murder, semi-premeditated murder, murder resulting from error, and deliberate crimes against human life that do not amount to murder (Sumardi, Umar, Sangaji, Yunus, & Akbar, 2022). The third classification of criminal crimes encompasses activities that are subject to Tazir punishment. These crimes are not explicitly outlined in the Holy Quran or the Prophet's Sunnah but are deemed punishable due to their defiance of divine prohibitions and contribution to moral transgressions (Öner & Banu Karadağ, 2016). The primary sources of Islamic law encompass the Holy Book, known as the Quran, the Sunnah, which comprises prophetic reports, the Consensus, referred to as Ijma', the Analogy, denoted as Kias, Equity, known as Istihsan, Textually Unspecified Interests of the Public, termed as Muslaha Mursala, Avoidance of Harm, referred to as Sad Al-Dharai, Compatibility of Means and Ends, denoted as Istishab, and the process of Checking what is permissible and prohibited (*Definition of Crime according to Islamic Law and Islamic Legislative Sources (from Effect of Islamic Legislation on Crime Prevention in Saudi Arabia - Proceedings, P 35-88, 1976 - See NCJ-87248) | Office of Justice Programs, 1980*). The notion of crime



and punishment holds significant importance within the framework of a legal system, as it plays a fundamental role in upholding societal structure and facilitating the dispensation of justice. Within the framework of the Islamic legal system, the complex relationship between criminal acts and corresponding penalties assumes utmost importance, exerting a profound influence on the fundamental principles of Islamic jurisprudence, commonly referred to as Sharia law. The Islamic legal system offers a distinct viewpoint on crime and punishment, drawing from its extensive historical and philosophical foundations. This perspective is deeply entrenched in religious principles and divine guidance (Terrill, 2013).

The legal framework of Islam, commonly referred to as Islamic law or Sharia, is derived from the principles outlined in the Quran and the Hadith. Sharia, a legal and ethical framework derived from Islamic principles, has influenced the lives of numerous Muslims for more than fourteen centuries, shaping legal systems and societal conventions across different regions (Reinfandt, 2010).

The Islamic legal system has a holistic approach toward crime and punishment, aiming to deter criminal conduct, facilitate individual reformation, and foster social cohesion (Öner & Banu Karadağ, 2016). This research study examines the foundational principles that form the basis of the Islamic perspective on crime and punishment, delving into the philosophical and theological dimensions that shape this distinctive legal framework.

Historical Standpoint:

The historical foundation of the notion of crime and punishment within the legal system of Islam, also referred to as Islamic law or Sharia, has a significant duration of more than 1,400 years. The legal foundations of Islam were formulated and codified throughout the historical period of the seventh century CE under the guidance and leadership of Prophet Muhammad. The foundation of Islamic law is rooted in the Quran and the Hadith. The early Islamic communities were predominantly organized along tribal lines, and the emerging legal framework sought to uphold social cohesion, safeguard individual liberties, and foster principles of fairness and equity (Lange, 2010).

Following the demise of Prophet Muhammad, a cohort of Islamic scholars, commonly referred to as jurists or fuqaha, undertook the task of interpreting the Quran and Hadith to guide on novel societal issues and emerging challenges. The jurists were affiliated with several schools of thought, namely the Hanafi, Maliki, Shafi'i, and Hanbali schools. These distinct schools of thought emerged and evolved in different geographical areas within the Muslim world (Volkov & Hmida, 2021). Qadis were judicial officials designated to administer Islamic law throughout diverse legal jurisdictions. Their primary role encompassed the resolution of conflicts, the enforcement of penal sanctions, and the preservation of justice under the tenets of Islamic jurisprudence (Kamali, 2019). Islamic jurisprudence is founded upon four fundamental sources: the Quran, the Hadith, the consensus among scholars (ijma'), and analogical reasoning (qiyas). These sources served as the basis for establishing crimes, their corresponding penalties, and the procedural aspects of the legal system (Santoso, 2011). Islamic jurisprudence acknowledges various classifications of crimes. These encompass crimes committed against individuals, such as homicide, physical damage, and theft. Additionally, crimes against public order and security, such as insurrection and terrorism, are included. Crimes against morals, such as adultery and alcohol use, are also accounted for. Lastly, crimes against religious beliefs, such as apostasy and blasphemy, are considered crimes against God (Voll, 2007). Islamic criminal law encompasses a range of punishments, which include hudud (prescribed punishments), qisas (retributive justice), and discretionary penalties (ta'zir). Hudud crimes, including theft, adultery, and apostasy, are subject to predetermined punishments outlined in the Quran and Hadith. Qisas is a legal provision that enables victims or their families to pursue retribution in instances of deliberate harm. Ta'zir is a legal concept within Islamic jurisprudence that grants judges the discretion to prescribe suitable penalties for crimes not specifically addressed by the hudud, which are the fixed punishments prescribed by Islamic law (Santoso, 2011).

Fundamental sources on the concept of crime and punishment:

The Quran and the Hadith are the fundamental sources of Islamic law, serving as the basis for establishing rules related to crime and punishment. The Quran, regarded as the divine revelation to Prophet Muhammad, has verses about concepts of justice, ethical behavior, and instructions for

implementing punitive measures. In contrast, the Hadith presents concrete illustrations derived from the life of the Prophet, offering valuable perspectives on his implementation of Sharia in diverse circumstances. A comprehensive grasp of the significance of these esteemed books is necessary for a thorough comprehension of the underlying principles that inform Islamic legal frameworks about criminal crimes and their corresponding penalties (Ahangar, 2014).

The Quran encompasses a multitude of passages that delineate the fundamental tenets of justice, mercy, and accountability. An example of this may be seen in Surah Al-Maidah (5:32), where the significance of human life and the prohibition of homicide are underscored. The verse asserts that the act of taking a life unless it is in response to a life taken or as a result of spreading evil in the country, is tantamount to annihilating the entirety of humanity. Furthermore, saving a single individual can be considered tantamount to saving all of humanity.

فَكَأَنَّمَا أُحْيَاهَا وَمَنْ جَمِيعًا النَّاسَ قَتَلَ فَكَأَنَّمَا الْأَرْضُ فِي فَسَادٍ أَوْ نَفْسٍ بَغِيرِ نَفْسٍ قَتَلَ مَنْ أَنَّهُ إِسْرَائِيلَ بَنِي عَلَى كَتَبْنَا ذَلِكَ أَجَلٍ مِنْ
 ٣٢ لَمُسْرِفُونَ الْأَرْضُ فِي ذَلِكَ بَعْدَ مِنْهُمْ كَثِيرًا إِنَّ تَمَّ بِالْبَيْتِ رُسُلْنَا جَاءَتْهُمْ وَلَقَدْ َّ جَمِيعًا النَّاسَ أَحْيَا

Hence, We decreed for the progeny of Israel that anyone who unlawfully takes a life, except in cases of retribution for murder or spreading corruption in the land, shall be held accountable as if they have exterminated the entire human race. Conversely, whoever preserves a life shall be regarded as if they have safeguarded the entirety of humanity. Although our messengers had already presented them with unequivocal evidence, many of them persisted in transgressing throughout the land (Al-Quran; Surah Al-Maidah; Verse 32).

The Quran stipulates a particular punishment within the framework of stealing, serving as a deterrent. According to verse 5:38 of Surah Al-Maidah, it is prescribed that the hands of both male and female thieves should be amputated as a form of retribution for their actions, serving as a deterrent punishment sanctioned by Allah. Furthermore, it is essential to note that Allah is revered for His immense might and wisdom. The purpose of this punishment is to deter theft and safeguard the property rights of both individuals and society as a whole.

٣٨ حَكِيمٌ عَزِيزٌ وَاللَّهُ َّ اللَّهُ مِنْ نَكَالٍ كَسَبَا بِمَا جَزَاءُ أَيْدِيَهُمَا فَاقْطَعُوا وَالسَّارِقَةُ وَالسَّارِقُ

Regarding male and female individuals engaged in theft, amputate their hands to deter such actions, as decreed by Allah. Allah is characterized as possessing ultimate power and wisdom (Al-Quran- Surah Al-Maidah; Verse 38).

In Sahih Muslim, Book 17, Hadith No. 4175, punishment for theft is accounted as:

“A’isha stated that the Messenger of Allah ﷺ enforced the punishment of amputation on a thief who had stolen an amount equivalent to a fourth of a dinar or more.”

The Hadith offers additional elucidation and practical application of the legal principles drawn from the Quran. An illustrative instance may be found in a widely recognized Hadith, which is recounted in Sahih Muslim, wherein the prescribed punishment for engaging in adultery is mentioned. According to the teachings of the Prophet Muhammad ﷺ, individuals who engage in adultery are subject to certain forms of punishment. Unmarried individuals are to get one hundred lashes, while those who are married are to be stoned until death. Implementing this stringent punishment is intended to protect and uphold traditional family values while maintaining the sacredness of the institution of marriage. As stated in Sahih Muslim, Book 17, Hadith No. 4191:

'Ubada b. as-Samit reported: Hazrat Muhammad ﷺ said, "Receive (teaching) from me, receive (teaching) from me." Allah has established a prescribed path for women. If an unmarried male engages in adultery with an unmarried female. They should be punished with one hundred lashes, with a period of banishment lasting for one year. If a married male engages in adultery with a married female, the prescribed punishment is one hundred lashes and death by stoning.

Islamic jurisprudence likewise focuses much stress on the principles of justice and fairness. The Quran provides admonishment against the practice of favoritism and corruption, especially in cases where individuals are related by blood. In the Quran, Allah emphasizes the importance of believers remaining steadfast in their commitment to Allah, serving as impartial witnesses in matters of justice,

and not allowing personal hatred against any group to hinder their ability to act justly. The concept of justice is closely aligned with righteousness, thereby emphasizing the need for fairness.

تَتَّبِعُوا فَلَا بِيَهْمَا أَوْلَىٰ فَاللَّهُ فَعِيرًا أَوْ غَنِيًّا يَكُنْ إِنْ ۖ وَالْأَقْرَبِينَ الْأَوْلَادِينَ أَوْ أَنْفُسِكُمْ عَلَىٰ وَلَوْ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ قَوْمِينَ كُفُونَا ءَامَنُوا الَّذِينَ يَأْتِيهَا ۖ ۱۳۵ خَيْرًا تَعْمَلُونَ بِمَا كَانَ اللَّهُ فَإِنْ تُغْرَضُوا أَوْ تَلَوُّوا وَإِنْ ۖ تَعْدِلُوا أَنْ أَلْهَوَىٰ

O believers, It is imperative to uphold the principles of justice and act as witnesses for Allah, even when it may contradict one's interests, familial ties, or affiliations. Regardless of their wealth or poverty, Allah is the most capable of safeguarding their interests. It is imperative to refrain from allowing one's aspirations to lead to a deviation from the principles of justice. If one distorts or withholds testimony, it is essential to acknowledge that Allah possesses complete awareness of one's actions. (Al-Quran- Surah An-Nisa; Verse 135).

These primary sources provide the foundational framework for assuring societal organization, safeguarding individual liberties, and upholding a fair and cohesive community.

The ideas underlying Islamic criminal jurisprudence encompass vengeance, deterrence, and rehabilitation. The principles mentioned are designed to uphold societal harmony, safeguard the rights of individuals, and ensure the administration of justice in an impartial and just manner. The Islamic legal system incorporates the fundamental elements of Hadd punishments, Qisas (retaliation), and Ta'zir (discretionary penalty), which collectively handle several classifications of crimes and their respective sanctions.

بِالْمَعْرُوفِ فَاتَّبِعْ شَيْءٌ أَخِيهِ مِنْ لَهْ عَفَىٰ فَمَنْ ۖ بِالْأَنْثَىٰ وَالْأَنْثَىٰ بِالْعَبْدِ وَالْعَبْدُ بِالْحُرِّ ۖ وَالْحُرُّ بِالْحُرِّ ۖ الْقَتْلَىٰ فِي الْفِصَاصِ عَلَيْكُمْ كُتِبَ ءَامَنُوا الَّذِينَ يَأْتِيهَا ۖ ۱۷۸ أَلِيمٌ عَذَابٌ فَلَهُ ذَلِكَ بَعْدَ اعْتَدَىٰ فَمَنْ ۖ وَرَحْمَةً رَبِّكُمْ مِنْ تَخْفِيفٍ ذَلِكَ ۖ بِإِحْسَانٍ إِلَيْهِ وَأَدَاءٌ

O believers! "The law of` retaliation is set for you in cases of murder—a free man for a free man, a slave for a slave, and a female for a female. But if the offender is pardoned by the victim's guardian, then blood money should be decided fairly, and payment should be made courteously. This is a concession and mercy from your Lord. But whoever transgresses after that will suffer a painful punishment. (Al-Quran- Surah Al-Baqarah; Verse 178)

Islamic law promotes the implementation of stringent penalties for specific crimes, while concurrently placing significant emphasis on the principles of compassion and pardoning. The Islamic legal system places significant importance on the notion of Tauba, which refers to remorse, as well as the potential for seeking forgiveness from both Allah and the victim. This feature exemplifies the equitable approach that Islam adopts in addressing crime and rehabilitation, fostering a climate that motivates offenders to undergo a transformation and reintegrate into the fabric of society.

Implementing the notion of crime and punishment per the Islamic legal system is guided by numerous fundamental ideas. The Sharia legal system places significant emphasis on the imperative of upholding a fair and cohesive societal structure by enforcing predetermined penalties for acts that are deemed unlawful in nature. Although the precise sanctions may differ based on ideological perspectives and geographical nuances, the fundamental aim stays unchanged: to foster societal harmony, discourage unlawful conduct, and establish a fair perception for those affected by crime and the broader community (Hakeem et al., 2012).

In contemporary Islamic legal frameworks, there is a growing emphasis on preserving due process and protecting human rights in adjudicating criminal matters. In modern Muslim-majority nations, there is a coexistence of ancient practices, such as the implementation of Hudud (set punishments), alongside the incorporation of civil and criminal codes that encompass a wider spectrum of transgressions (Terrill, 2015). There is a current endeavor to achieve a harmonious integration of Islamic law with modern legal principles and internationally recognized human rights standards. The present-day implementation of the notion of crime and punishment within the legal framework of Islam aims to achieve a harmonious equilibrium between upholding Islamic principles and safeguarding the rights of individuals, thereby fostering the development of an equitable and all-encompassing justice system in contemporary society (Putra & Ahyani, 2022).

CONCLUSION

In summary, the examination of crime and punishment within the legal framework of Islam is a complex and intricate topic. Islamic law, drawing its foundations from the Quran and the Hadith, offers a comprehensive structure for the administration of justice, with the primary objectives of safeguarding individual rights, upholding social harmony, and promoting the reformation and reintegration of those who have transgressed the law. Gaining a comprehensive comprehension of the concepts and historical backdrop of the Islamic legal system provides illumination regarding the distinctive method Islam adopts for crime and punishment. This endeavor offers vital insights into the noteworthy facet of Muslim civilizations across the globe.

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