



## THE CONTRIBUTION OF *FIQH AL-JINAYAT* (ISLAMIC CRIMINAL LAW) IN THE PLANNING OF A SAFE CITY

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### Abstract

The planning towards a safe city is a must, as it is to fulfill the rights of people that we planned for. In Islam, it is a requirement through the realization of *maqasid al-shari'ah* (objectives of Islamic law) that five elements i.e. religion, life, intellect, lineage and property must be preserved or protected in any planning practices. Thus, it is the intention of the paper to present the idea of Islamic criminal law (*fiqh al-jinayat*) so that it can forward the planning of a safe city. For that matter, the six crimes under *hudud* namely *sariqah* (theft), *zina* (illegal sexual intercourse), *qadhif* (false accusation), *shurb* (intoxication), *riddah* (apostasy) and *hirabah* (armed robbery) are discussed at length. The paper also discusses the crimes under *qisas* (retaliation) and *ta'zir* (discretionary punishment). The discussion lays down the principles of Islamic criminal law and sheds light on how Islam deals with criminal happenings in society. It is found that Islam imposes severe punishment on crimes committed. These punishments were carried out in view of the public as a lesson to other community members. The approach is more to educate the public, to instill awareness and a sense of responsibility and care, rather than to punish them. This spiritual dimension in the planning of a safe city is very important in addition to the provision of the physical elements of safety.

**Keywords:** Safe city, Islamic criminal law, Crimes, Society, City planning

### INTRODUCTION

A safe city is commonly known as a city that is physically, socially, and mentally free of threats. Apart from that, a city must be environmentally

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preserved at all times. Another salient feature of a safe city is that the community is well protected from any condition that may aggravate unruliness and disruption. Basically, a safe city is a city where the community is able to live and perform their daily activities in peace and harmony. These characteristics of a safe city pose a challenge not only to the Royal Malaysia Police, but also to all Municipal Councils, Department of Town and Country Planning, Ministry of Housing and Local Government, Malaysian Crime Prevention Foundation, and property developers.

In achieving the above agenda of safe cities, efforts have been put to make a city free from violence such as theft, burglary, and snatch theft that are detrimental to property and life. Much concern is also placed on the avoidance of natural disasters such as floods and landslides through planning measures. Social and moral decay such as drug addiction, white collar crimes, bribery, abuse of power, loss of integrity/public trust are among the threats to a safe city, therefore, many communal programmes are arranged for that reason. Preventive measures from any form of indoor or outdoor accidents such as road accidents, falls from buildings, fires are also installed within the safe city.

The present concept of safe cities encompasses the physical, environmental, and social spectrum. However, the priority of current safe city programmes is on the prevention of property crime in the urban areas. For that matter, 5 measures for immediate action have been taken i.e.:

- a. Separation of pedestrian walkways and motor vehicle lanes
- b. Provision of bollards and barriers
- c. Cleaning/tidying up concealed or unkempt areas
- d. Unobstructed view of public walkways
- e. Lighting up potential crime areas

Apart from these 5 immediate actions, there are many other crime-preventive measures laid down under 3 strategies i.e. designing the physical environment, target hardening and social/community activities and public awareness. For the first strategy, separation of pedestrian and motorized vehicle lanes, provision of bollards, maintenance of landscapes along pedestrian walkways, crime mapping and information –sharing through GIS-based mapping system, review of housing layout guidelines and Crime Prevention Through Environmental Design (CPTED) are the measures in place. CPTED is a crime prevention philosophy based on proper design and effective use of the built environment leading to a reduction in the incidence and fear of crime as well as an improvement in quality of life. The underlying principles of CPTED are casual surveillance, land use mix and activity generator, definition of use and

community ownership, exterior building design, provide good lighting standard, way finding, well designed streets and predictable routes and entrapment locations.

As for the second strategy i.e. target hardening, police post, crime-prevention signages, safety mirrors, alarm, cleaning/tidying concealed and unkempt areas, motorcycle locking facilities, installation of Closed Circuit Television (CCTV), installation of lights along five-foot ways, unobstructed view of public walkways, lighting up potential crime areas, prohibition of business and parking on the five-foot ways and pedestrian footpaths, generating small business activities at vulnerable crime spots and securing private security services are the potential measures being located and planned at strategic places.

Finally, the third strategy i.e. social/community activities and public awareness is about creating public awareness through education, installation of lights on the sides, front, and back of the house, distributing pamphlets on crime prevention activities, and community patrol in housing areas.

Much has been done to prevent crimes from happening yet they still happen. Figure 1 shows a crime index comparison between Jan – Dec 2006 and Jan – Dec 2007. The figure indicates an increasing number of criminal happenings within the same period in different years, be it violent crime or property crime.

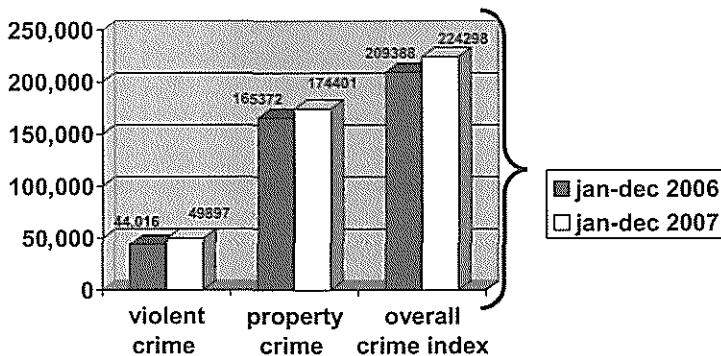


Figure 1: Crime Index Comparison (Jan – Dec 2006 / Jan – Dec 2007)

**Table 1: Crime Index Comparison In The States**

<b>IN THE STATES</b>					
		<b>Jan - Dec 06</b>	<b>Jan - Dec 07</b>	<b>+/-</b>	<b>%</b>
1	KEDAH	1,682	2,439	757	45.01
2	SARAWAK	2,167	2,922	755	34.84
3	KELANTAN	961	1,198	237	24.66
4	SELANGOR	12,395	15,104	2,709	21.86
5	PAHANG	1,077	1,263	186	17.27
6	SABAH	1,702	1,919	217	12.75
7	PENANG	2,951	3,280	329	11.15
8	MALACCA	1,167	1,265	98	8.40
9	TERENGGANU	709	751	42	5.92
10	PERAK	3,039	3,211	172	5.66
11	JOHOR	6,611	6,900	289	4.37
12	KUALA LUMPUR	7,539	7,639	100	1.33
13	N. SEMBILAN	1,843	1,857	14	0.76
14	PERLIS	173	149	-24	-13.87
	<b>MALAYSIA</b>	<b>44,016</b>	<b>49,897</b>	<b>5,881</b>	<b>13.36</b>

With regard to the crimes according to the states, all states in Malaysia are facing an increasing number of crimes ranging from 0.76% to 45.01%; except Perlis, with a crime number reduction of 13.87%. Kedah holds the highest percentage of crime number increase with an increase of 45.01%. However, in terms of crime rate, Selangor holds the highest increment, that is from 12,395 crimes in Jan – Dec 2006 to 15,104 crimes within the same period in 2007. Overall, there is a 13.36% increase in the number of crimes in Malaysia between the years 2006 and 2007.

In Malaysia, crime has been divided into two; i.e. property crime and violent crime. Table 2 shows a 5.46% increase in the number of property crime in Malaysia. All offences have increased in number from 2006 to 2007, except the thefts of vans, lorries and heavy machinery, which are decreasing. The most frequent thefts are motorcycle thefts (65,462), followed by thefts (42,472) and night burglary (20,080).

Table 2: Crime Index Comparison For Property Crime

<b>PROPERTY CRIME</b>				
<b>Offences:</b>	<b>Jan -Dec 06</b>	<b>Jan -Dec 07</b>	<b>+ / -</b>	<b>%</b>
Burglary (night)	20,080	24,440	4,360	21.71
Car thefts	11,154	12,427	1,273	11.41
Thefts	42,472	44,617	2,145	5.05
Burglary (day)	8,792	9,159	367	4.17
Motorcycle thefts	65,462	67,584	2,122	3.24
Snatch thefts	11,074	11,127	53	0.48
Van, lorry and heavy machinery thefts	6,338	5,047	-1,291	-20.37
<b>TOTAL:</b>	<b>165,372</b>	<b>174,401</b>	<b>9,029</b>	<b>5.46</b>

In view of violent crime, the number has increased by 13.36% as shown in Table 3. Out of 11 offences listed under violent crime, only 3 indicate reduction of rate that are murder (-2.97), robbery without firearms (-11.43) and robbery with firearms (-18.55). Other than that, the number of offences is increasing ranging from 8.88% to 159.53%. Gang robbery without firearms has the highest percentage of increase, i.e. 159.53%, followed by rape (29.46%) and criminal intimidation (21.20%). The most frequent occurrences are robbery without firearms (19,467), criminal intimidation (6,699) and assaults (5,843).

Looking at the above crime-preventive measures and crime index comparison, one might ask; are there any other approaches or measures to reduce the increasing number of crimes happening in Malaysia? Therefore, the paper presents the idea of Islamic criminal law in coping with the increasing number of crimes happening in Malaysia. The paper hopes to instill awareness among policy makers and the public of how Islam deals with crimes against individuals or the public. This awareness will lead to the planning of safe city.

### **WHAT ISLAMIC CRIMINAL LAW CAN CONTRIBUTE TO THE PLANNING OF SAFE CITY?**

First and foremost, creating public awareness through education is where Islamic law can contribute to the planning of a safe city in the sense that a different approach has been taken by Islamic law. Apparently, the division of crimes in Islamic law is based on the kinds of punishment rather than a division based on the nature of crimes committed as in common law.

Table 3: Crime Index Comparison For Violent Crime

<b>VIOLENT CRIME</b>				
<b>Offences:</b>	<b>Jan - Dec 06</b>	<b>Jan - Dec 07</b>	<b>+ / -</b>	<b>%</b>
Gang robbery Without firearms	2,723	7,067	4,344	159.53
Rape	2,454	3,177	723	29.46
Criminal intimidation	6,699	8,119	1,420	21.20
Assaults	5,843	6,806	963	16.48
Gang robbery with firearms	67	77	10	14.93
Rioting	2,291	2,608	317	13.84
Molest	2,064	2,320	256	12.40
Extortion	1,554	1,692	138	8.88
Murder	606	588	-18	-2.97
Robbery without firearms	19,467	17,241	-2,226	-11.43
Robbery with firearms	248	202	-46	-18.55
<b>TOTAL:</b>	<b>44,016</b>	<b>49,897</b>	<b>5,881</b>	<b>13.36</b>

Source: *New Straits Times*, January 9, 2008

It is clear in common law that crimes are classified according to the nature of its occurrences as stated in Table 2 and 3 above. As for punishment, murder is classified by Section 302, in the Malaysian Penal Code: "Whoever commits murder shall be punished with death". Punishment for theft is classified by Section 379: "Whoever commits theft shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both, and for a second or subsequent offence shall be punished with imprisonment and shall also be liable to fine or to whipping." Punishment for forgery is classified by Section 465: "Whoever commits forgery shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both."

In contrast, crimes in Islamic law are classified by the kinds of punishment, i.e. *hudud*, *qisas* and *ta'zir*. For instance, the crime of murder is classified under *qisas*, the crime of theft is classified under *hudud* and the crime of forgery is classified under *ta'zir*. In order to get a clear idea of the classification of Islamic criminal law, it is appropriate to briefly discuss here the crimes and its punishments implied by each category i.e. *hudud*, *qisas* and *ta'zir*.

## HUDUD CRIME AND THEIR PUNISHMENT

Although some jurists hold a different view concerning the number of *hudud* crimes, either by adding offences or reducing them, the majority of jurists agree that there are six offences of *hudud* crimes, namely: *sariqah*, *zina*, *qadhif*, *shurb*, *riddah* and *hirabah*.<sup>4</sup> Therefore, this paper will focus on these crimes.

### HADD AL-SARIQAH (THEFT)

The term *sariqah* in Islamic law means taking someone else's property from its proper custody secretly.<sup>5</sup> Given this meaning, nobody can be found guilty of this crime unless four key elements are established and proved. They are:

1. Secrecy, which means taking something without the victim being aware and without his permission, such as stealing someone's property from his house while he is away or asleep.<sup>6</sup>
2. The stolen thing is an article of property.<sup>7</sup> It is important to note as well that in the sense of *hadd al-sariqah*, the crime will be tried under the provisions of *ta'zir* rather than *hadd* if the stolen property does not meet the four following conditions:
  - a) The stolen property is movable and transferable. This is because the nature of *sariqah* demands moving something and taking it away from its proper custody to the custody of the perpetrator and, naturally, this could not happen unless it was movable from one place to another.<sup>8</sup>

<sup>4</sup> EL-AWA, Mohamed S. *Punishment in Islamic Law*. Indianapolis: American Trust Publications, 1993, p. 2.

<sup>5</sup> 'AWDAH, Abd al-Qadir. *Al-Tashri' al-Jina'i al-Islami muqaranan bi al-Qanun al-Wad'i*. 12<sup>th</sup> Edition. Beirut: Muassasat al-Risalah, 1993, vol. 2, p. 514. Wizarat al-Awqaf wa al-Shu'un al-Islamiyyah. *Al-Mawsu'at al-Fiqhiyyah*. 2<sup>nd</sup> Edition. Kuwait: Tiba'at dhat al-Salasil, 1989, vol: 1, p. 288.

<sup>6</sup> 'AWDAH. *Al-Tashri' al-Jina'i al-Islami muqaranan bi al-Qanun al-Wad'i*. vol. 2, p. 518.

<sup>7</sup> IBN HAZM, Abu Muhammad 'Ali bin Ahmad bin Sa'id bin Hazm al-Zahiri. *Al-Muhalla bi al-Athar*. Beirut: Dar al-Afaq al-Jadidah, n.d., vol. 11, p. 337. AL-KASANI, 'Ali al-Din. *Bada'i' al-Sana'i*. 2<sup>nd</sup> Edition. Beirut: Dar al-Kitab al-'Arabi, 1982, vol. 7, p.67. IBN QUDAMAT AL-MAQDISI, Abu Muhammad 'Abdullah bin Ahmad. *Al-Mughni*. Beirut: Dar al-Fikr, 1405H, vol. 9, p.96.

<sup>8</sup> 'AWDAH. *Al-Tashri' al-Jina'i al-Islami muqaranan bi al-Qanun al-Wad'i*. vol. 2, p.543.

- b) The stolen property is absolutely valuable in Islamic law. What is meant by this is that the stolen property is valuable for a Muslim and subject to transactions. This is because some property is valuable to non-Muslims but not Muslims, for example wine, beer, pork and other forbidden things. In this case, the perpetrator is rather subject to provisions of *ta'zir* than *hadd*.<sup>9</sup>
  - c) The stolen property is in its proper custody.<sup>10</sup>
  - d) The stolen property should be worth a minimum amount. According to the Maliki, Shafi'i and Hanbali schools, the minimum value of the stolen property should be three *dirhams* or one quarter of a *dinar*. Meanwhile, according to the Hanafi school, the minimum value of the stolen property is ten *dirhams* or one *dinar*.<sup>11</sup>
3. The stolen property belongs to another person without any doubt. If someone is confused whether the property in someone else's hand actually belongs to him or not and he steals the said property under this confusion, he can be punished under *ta'zir* but not *hadd*.<sup>12</sup>
  4. *Mens rea* or criminal intent. This is because Islam is concerned not only with what is apparent, the deeds, but also what is not apparent, the intention behind the deeds.<sup>13</sup> Criminal intent will be taken into account when the perpetrator steals something willfully and with the knowledge that his action is prohibited.<sup>14</sup>

With regard to the punishment of *sariqah*, after all the said elements and conditions are established and proved, the cutting off of part of a limb is imposed by Islamic law. This punishment originates from the Qur'anic verse: "As for the male thief and the female thief, cut off their hands as a recompense for what they have earned; an exemplary punishment from Allah; and Allah is Mighty, Wise."<sup>15</sup>

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<sup>9</sup> *Ibid.* p. 544.

<sup>10</sup> *Ibid.* pp. 554 -557.

<sup>11</sup> EL-AWA. *Punishment in Islamic Law*. p.3.

<sup>12</sup> 'AWDAH. *Al-Tashri' al-Jina'i al-Islami muqaranan bi al-Qanun al-Wad'i*. vol. 2, p.588.

<sup>13</sup> *Ibid.* p.608.

<sup>14</sup> 'AWDAH. *Al-Tashri' al-Jina'i al-Islami muqaranan bi al-Qanun al-Wad'i*. vol. 2, p.608.

<sup>15</sup> Surat al-Ma'idah, 5:38.



## HADD AL-ZINA (ILLEGAL SEXUAL INTERCOURSE)

Literally, *zina* means illicit sexual intercourse.<sup>16</sup> In this regard, Islamic law differs from modern penal systems by considering any sexual intercourse outside marriage as criminal, so long as it is voluntary, whereas in modern penal systems sexual intercourse outside marriage is considered legal and not a crime, if voluntary.<sup>17</sup>

It is important to clarify that in Arabic, the term *zina* applies both to fornication, which is defined in English as sexual intercourse between an unmarried man and an unmarried woman, and adultery, which is defined in English as sexual intercourse between two individuals, at least one of which is married.<sup>18</sup>

The punishments, correspondingly, are different from one to another. For the former, the punishment is one hundred lashes as prescribed in the Qur'anic verses: "The male and the female who commit *zina*: scourge each of the twain with a hundred stripes. And let not tenderness in the law of Allah take hold of you in regard to the twain, if you believe in Allah and the Last Day. And let a band of the believers witness this chastisement."<sup>19</sup> And for the latter, the punishment is stoning to death.

## HADD AL-QADHF (FALSE ACCUSATION)

The crime of *qadhif* refers to accusing a chaste man or woman of committing *zina* or denying his or her lineage. The main condition in this case is that the victim must be a sane adult Muslim who is known to be a chaste person. A slanderer, however, has the right to prove his case by producing four witnesses. Otherwise, his accusation will be malicious and he is liable to eighty lashes, his testimony will never again be accepted and he will be considered a sinner (*fasiq*) until he repents.<sup>20</sup>

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<sup>16</sup> IBN MANZUR, Abu al-Fadl Jamal al-Din Muhammad ibn Mukrim. *Lisan al-'Arab*. Beirut: Dar Sadir, 1990, vol. 14, p.359.

<sup>17</sup> EL-AWA. *Punishment in Islamic Law*. p. 14.

<sup>18</sup> COWIE, A P.(ed.). *Oxford Advanced Learner's Dictionary*. 4<sup>th</sup> Edition. Oxford: Oxford University Press, 1989.

<sup>19</sup> Surat Al-Nur, 24: 2.

<sup>20</sup> SIDAHMAD, Muhammad 'Ata al-Sid. *Islamic Criminal Law: The Hudud*. Petaling Jaya: Muhammad 'Ata al-Sid sid Ahmad, 1995, p. 70.

## HADD AL-SHURB (INTOXICATION)

*Shurb* means drinking alcoholic beverages or intoxicants. In the pre-Islamic era and the early years of Islam, drinking intoxicants was a common practice among the Arabs. This is why in the early years of Islam, drinking intoxicants was not prohibited all at once, but step by step.<sup>21</sup>

Unlike other types of *hadd* punishment, the punishment for drinking intoxicants was not prescribed by the Qur'an, but only by the Sunnah, without fixing the number of lashes. As such, the four main schools of Islamic law are not unanimous concerning the number of lashes which should be imposed. According to the Hanafi, Maliki and Hanbali schools, the *hadd* punishment for drinking is eighty lashes, whereas, according to the Shafi'i school and another view of the Hanbali, the punishment is only forty lashes.<sup>22</sup>

## HADD AL-RIDDAH (APOSTASY)

This crime is equated with the renunciation or abandonment of Islam by one who professes the Islamic faith. According to jurists, *riddah* may be committed with reference to belief, word or deed. The person concerned should be in full possession of his senses and should have acted voluntarily.<sup>23</sup>

Just as with *hadd al-shurb*, there is no punishment mentioned in the Qur'an. What the Qur'an mentions concerning *riddah* on different occasions is the assurance that the *murtadd* (one who commits *riddah* or apostasy) will be punished in the hereafter.<sup>24</sup> It is the Sunnah which prescribes death as a *hadd* punishment for such a crime.

Thus, the majority of jurists such as the Hanafis, Malikis, Shafi'is and Hanbalis classify the death penalty for the crime of *riddah* as a *hadd* punishment.<sup>25</sup> Nevertheless, it should be pointed out that there are jurists who rather consider its punishment as *ta'zir* than *hadd*. Ibrahim al-Nakha'i and Sufyan al-Thawri,

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<sup>21</sup> *Ibid.* p. 64.

<sup>22</sup> 'AWDAH. *Al-Tashri' al-Jina'i al-Islami muqaranan bi al-Qanun al-Wad'i*. vol. 2, p.505.

<sup>23</sup> RAHMAN, S.A. *Punishment of Apostasy in Islam*. 2<sup>nd</sup> Edition. Lahore, Pakistan: Institute of Islamic Culture, 1978, p. 9. See also AL-ZUHAYLI, Wahbah. *Al-Fiqh al-Islami wa adillatuh*. 4<sup>th</sup> Edition. Damascus: Dar al-Fikr, 1992, vol.7, p. 5576.

<sup>24</sup> EL-AWA. *Punishment in Islamic Law*. p. 50.

<sup>25</sup> DOI, 'Abd Rahman I. *Shari'ah: The Islamic Law*. Kuala Lumpur: A.S. Noordeen, 1984, p. 266.

who are among the followers of the Prophet's s.a.w. companions, held the view that the *murtadd* should be invited back to Islam and should never be sentenced to death.<sup>26</sup>

### **HADD AL-HIRABAH (ARMED ROBBERY)**

The term *hirabah* is also known as *al-sariqah al-kubrá* (great theft) and refers in legal writings to highway robbery or armed robbery. This is because this crime seems to be similar to the crime of *sariqah* in the sense of taking someone else's property. The distinction between both crimes is secrecy; it is called *sariqah* when the crime is secret, but it is called *hirabah* when it is committed openly and by force.<sup>27</sup> These may be important elements when the crime is described.

The laws concerning the crime of *hirabah* are based on the Qur'anic verse: "The recompense of those who wage war against Allah and His Messenger, and go about in the land making mischief is only that they shall be slain, or crucified, or their hands and their feet be cut off on opposite sides, or they be banished from the land. Such shall be their humiliation in this world, and in the Hereafter theirs shall be a mighty torment."<sup>28</sup>

Due to the word 'or' (aw) in this verse, the jurists are divided about the punishments for highway robbery. The Hanafi, Shafi'i and Hanbali schools held the view that the punishments are based on a basic proportionality which is established between the crime and the punishment (*tartib*). Therefore, they maintained that if a highway robber kills, he must be killed; if he usurps property and kills, he is to be killed and crucified<sup>29</sup>; if he usurps property alone, he is to have his limbs amputated on opposite sides; and if he terrorizes but does not kill and does not usurp property, he is to be exiled or banished. The Maliki school, however, held the view that these punishments are according to the discretion of the ruler (*takhyir*) to apply whichever he sees fit in parallel with the welfare of people and rejecting corruption. For example, even if a highway

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<sup>26</sup> *Ibid.*

<sup>27</sup> 'AWDAH. *Al-Tashri' al-Jina'i al-Islami muqaranan bi al-Qanun al-Wad'i*. vol. 2, p. 638.

<sup>28</sup> Surat al-Ma'idah, 5: 33.

<sup>29</sup> Abu Hanifah and Zufar held a slightly different view on this matter. According to them, if the highway robber usurps property and kills, two options are given to the ruler. The first one is that the highway robber is to have his limbs amputated on opposite sides, then he must be killed or crucified. The second one is he must be killed or crucified without amputation.

robber does nothing more than terrorize people, but does not kill or usurp property, he may still be killed, have his limbs amputated or be crucified.<sup>30</sup>

## **QISAS (RETALIATION)**

The term *qisas* means retaliation. In Islamic law, *qisas* discourse refers to the punishments for homicide, the infliction of injury and murdering of an unborn child.<sup>31</sup>

## **HOMICIDE**

Homicide is classified into categories, which vary from one school to another. The majority of them, including the Shafi'i and Hanbali schools, divide homicide into three categories<sup>32</sup>, namely:

1. Deliberate murder. In this a weapon is used intentionally which generally proves to be a lethal one and causes death to the victim.
2. Accidental or murder by mistake. In this, the weapon thus used happens to be indeed a lethal one but the real intention was not to kill anyone. For instance, a shooting which was originally aimed at a deer missed the intended target and struck a human being.
3. Quasi-deliberate. In this, the intention of hitting a person was indeed involved but the instrument used was such as does not usually cause death, such as a scourge, a baton, a stone, etc.<sup>33</sup>

The provisions of homicide are laid down by the Qur'an and the Sunnah. The Qur'an, however, only mentions the first and second categories. This is why some jurists, including the Maliki school, recognize only deliberate or

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<sup>30</sup> 'AWDAH. *Al-Tashri' al-Jina'i al-Islami muqaranan bi al-Qanun al-Wad'i*. Vol. 2, pp. 647. AL-MAWARDI. *Al-Ahkam al-Sultaniyyah. The Laws of Islamic Governance*. pp. 93. EL-FADL. *Rebellion and Violence in Islamic law*. pp. 56-57.

<sup>31</sup> AL-ZUHAYLI. *Al-Fiqh al-Islami wa adillatuh*. vol.7, pp. 5611.

<sup>32</sup> The Hanafi school held the view that homicide is divided into 5 categories, namely: deliberate, quasi-deliberate, accidental, equivalent to accidental and indirect. The Maliki school, however, held the view that homicide is divided into 2 types: deliberate and accidental. See 'AWDAH. *Al-Tashri' al-Jina'i al-Islami muqaranan bi al-Qanun al-Wad'i*. vol. 2, pp.7-9.

<sup>33</sup> AL-ZUHAYLI. *Al-Fiqh al-Islami wa adillatuh*. vol.7, pp. 5613. 'AWDAH. *Al-Tashri' al-Jina'i al-Islami muqaranan bi al-Qanun al-Wad'i*. vol. 2, pp. 7-9.

accidental killing. According to the Qur'anic verses, the punishment for deliberate murder is death.<sup>34</sup>

With reference to the law concerning murder by mistake, Allah Almighty says, "It is not for a believer to kill a believer saves by mischance; and he who kills a believer by mischance, on him is the setting free of a believing slave and blood money to be delivered to his family except that they forgo...."<sup>35</sup>

In any case, it is possible to sum up that in cases of deliberate homicide; the punishment is *qisas*, which means taking of the culprit's life because of the life he has taken. However, *qisas* may be ruled out if the victim's nearest relatives do not demand it. The relatives may then choose one of three options, namely:

- a. the payment of *diyah* (Blood money)
- b. pardoning or forgiving the killer
- c. making a settlement on more or less the equivalent of *diyah*.<sup>36</sup>

Whenever they insist upon the payment of *diyah*, it is to be in the value of one hundred camels, and the same *diyah* is due in all cases of quasi-deliberate homicide and murder by mistake as neither incurs *qisas*. Accordingly, *diyah* is the only punishment in cases of quasi-deliberate homicide and murder by mistake, as *qisas* is relevant to neither, and at the same time it may be a substitute punishment in cases of deliberate homicide if the relatives of the victim do not demand *qisas*.

## THE INFLICTION OF INJURY

Whenever a person causes physical harm to another, the injured has the right of retaliation. All jurists however, agree that *diyah* may replace *qisas* when it is not possible to inflict it or when a peaceful agreement is achieved.<sup>37</sup> The value of *diyah* for injuries and wounds is mentioned by the Prophet (s.a.w) in his letter to 'Amr bin Hazm when he was appointed to represent the Prophet (s.a.w) in *al-Yaman*.<sup>38</sup>

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<sup>34</sup> Surat al-Baqarah, 2: 178.

<sup>35</sup> Surat al-Nisa', 4: 92.

<sup>36</sup> AL-ASQALANI. *Bulugh Al-Maram Attainment of the Objective according to Evidence of the Ordinances. (With Brief Notes from the Book Subul-us-Salam written by Muhammad bin Ismail As-Sanani)*. pp.417.

<sup>37</sup> AL-ZUHAYLI. *Al-Fiqh al-Islami wa adillatuh*. vol.7, pp. 5738.

<sup>38</sup> Narrated by al-Nasa'i in his *Sunan*, book of *al-Qasamah*, number of the *hadith*: 4770.

In cases of injuries for which there is no fixed amount of *diyyah* mentioned in the Sunnah, the victim is entitled to compensation known as *Hukumat al-'adl*. This is an amount of money to be determined by the judge assisted by the experts and paid to the victim for the loss suffered.<sup>39</sup>

## MURDERING AN UNBORN CHILD OR ABORTION

Basically, the law concerning murdering an unborn child can be divided into two categories as follows:

- a. If the fetus is killed before birth inside the womb or comes out stillborn at the time of parturition, the compensation thus incurred shall be an amount equal to the price of a male or female slave.<sup>40</sup>
- b. If an infant is killed after birth, the compensation payable shall be the price of a hundred camels. This is the view of the Hanafi, Hanbali and the more proper opinion of the Shafi'i schools. In the view of the Maliki school, however, *qisas* is incurred in cases where an action most likely causes the death of the infant like beating the stomach or back. Otherwise, *diyyah* of the price of a hundred camels shall be payable.<sup>41</sup>

## TA'ZIR (DISCRETIONARY PUNISHMENT)

*Ta'zir* is defined as "discretionary punishment to be imposed for transgression against Allah or against an individual for which neither fixed punishment nor penance (*kaffarah*) is applied".<sup>42</sup>

In light of the above discussion, it is appropriate to conclude that the classification of punishment in Islamic law is based on the rights of Allah and the rights of individual. *Hudud* is classified under the rights of Allah, whereas *qisas* and *ta'zir* are classified under the rights of individual. In this sense, al-Kasani, a Hanafites jurist stipulates that: "All the *hudud* punishments are pure rights belonging to Allah because they are promulgated for the protection of the whole society against crimes which affect its well being. They are, therefore,

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<sup>39</sup> AL-ZUHAYLI. *Al-Fiqh al-Islami wa adillatuh*. vol.7, pp. 5758.

<sup>40</sup> Narrated by al-Bukhari in his *Sahih*, book of *al-Diyyat*, number of the *hadith*: 6399.

<sup>41</sup> AL-ZUHAYLI. *Al-Fiqh al-Islami wa adillatuh*. vol.7, pp. 5775

<sup>42</sup> EL-AWA. *Punishment in Islamic Law*. p. 97. See also 'AWDAH. *Al-Tashri' al-Jina'i al-Islami muqaranan bi al-Qanun al-Wad'i*. vol. 1, pp.126-127.

determined as the rights of Allah to ensure enforcement. No human intervention is allowed to forgive them or minimize them in any way.”<sup>43</sup>

A quite similar statement is made by another Hanafites jurist, known as Ibn ‘Abidin, regarding this issue. He says: “The cause of describing the *hudud* as rights belonging to Allah is because they are promulgated for the protection of the whole society (even though the victim may be an individual) such as the protection of lineage, property, mind, honour and the reputation of others”.<sup>44</sup>

In light of these statements given by al-Kasani and Ibn ‘Abidin, it is possible to say that the main reason why *hudud* is classified under the right of Allah is to guarantee the welfare of society, its stability and the attainment of a rule of law in accordance with the protection of the ultimate principles or purposes of the Islamic law. These are what have been called the *Maqasid al-Shari’ah*. They are interests preserved and protected by Islamic law, namely: religion, life, lineage, property and intellect.<sup>45</sup>

Furthermore, the classification in Islamic criminal law of the right of Allah and the right of the individual makes a great difference in practice. The differences are:

- a) After apprehension and conviction, the punishment for an offence against the right of Allah, such as *hudud* crimes, cannot be commuted or pardoned either by the judge, the political authority or the victim of the crime.<sup>46</sup> It is related in the books of al-Bukhari and Muslim on the authority of ‘A’ishah that the Quraysh tribe was very much concerned with the case of the woman of Bani Makhzum who had stolen something. Some of them asked: “Who may speak in her favour to the Messenger of Allah?” Others said: “Who would dare do this but Usamah ibn Zayd?” Usamah then went to the Messenger of Allah and implored him not to cut off her hand because she belonged to a noble family, and her family would be dishonoured in consequence. The Prophet (s.a.w) replied: “O Usamah, how dare you intercede to suspend a penalty imposed by Allah? The children of Israel were destroyed because when the most noble of

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<sup>43</sup> AL-KASANI. *Bada’i’ al-Sana’i’*. vol. 7, pp.56.

<sup>44</sup> IBN ‘ABIDIN, Muhammad Amin. *Hashiyat Radd al-Mukhtar ‘ala al-Durr al-Mukhtar Ibn ‘Abidin*. 2<sup>nd</sup> Edition. Beirut: Dar al-Fikr, 1386H, vol.4, pp.3.

<sup>45</sup> See HAJI HASSAN. *Studies on the Principles and Theory of Maqasid al-shari’ah (The Principles and Aims of Islamic Laws) in the Sunni Schools with Special Reference to Their Applications to Malaysian Law*. pp.26-30.

<sup>46</sup> NYAZEE. *Theories of Islamic Law*. pp. 119.

them stole, they forgave him; and when the weak or humble amongst them stole, they executed the penalty on him. By Whom in Whose hand is the life of Muhammad, if Fatimah, the daughter of Muhammad steals, I would cut off her hand.”<sup>47</sup>

This story has great significance: the most important families of the Quraysh Tribe were two: Bani Makhzum and Bani ‘Abd Manaf. When this woman deserved to have her hand cut off because she had been a thief, the Prophet s.a.w. did not forgive her although she belonged to one of two greatest families of the tribe and in spite of the fact that Usamah ibn Zayd, who was very dear to the Prophet (s.a.w) interceded in her favour. Furthermore, the Prophet (s.a.w) became angry and blamed Usamah ibn Zayd for having intervened in a matter in which intervention is forbidden by Allah, that is, intervention with a view to suspending a penalty imposed by Allah.

In the *Muwatta’*, Malik ibn Anas has related that a number of men took hold of a thief and were going with him to the third Caliph Uthman ibn ‘Affan. Al- Zubayr ibn al-‘Awwam met them and tried to intercede in his favour. The men said: “When we take him to Uthman, you may then make your intercession in the presence of the Caliph”. Al-Zubayr said: “No, if the cases requiring such penalties are brought before the ruler, no intercession may be offered, otherwise may Allah damn the intercessor and the man who accepts intercession.”<sup>48</sup>

Conversely, the punishments for an offence against the right of an individual can be commuted and pardoned either before conviction or after it. Here appears the uniqueness of *qisas* in which the victim or his family has the options of insisting upon the punishment, accepting monetary recompense, or forgiving the offender, which can even avert capital punishment. This leaves the door open to compassion and forgiveness.<sup>49</sup>

- b) Doubt (*shubhah*) in the right of Allah has the effect of waiving *hudud* and *qisas* punishments, but it does not have the same effect in *ta’zir*.<sup>50</sup> The Prophet (s.a.w) said: “Avert the *hudud* punishments from the Muslims as

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<sup>47</sup> Narrated by Al-Bukhari in his *Sahih*, book of *al-Hudud*, number of *hadith*: 6290. Narrated by Muslim in his *Sahih*, book of *al-Hudud*, number of *hadith*: 3196.

<sup>48</sup> Narrated by Malik bin Anas in his *Muwatta’*, book of *al-Hudud*, number of *hadith*: 1317.

<sup>49</sup> DOI. *Shari’ah: The Islamic Law*. pp. 221

<sup>50</sup> NYAZEE. *Theories of Islamic Law*. pp. 119.



much as you can. If you find any way out for a person, let him go. That is because it is better for the judge to err in forgiveness rather than to err in punishment".<sup>51</sup> What is meant by doubt here is doubt in the mind of the judge as to whether the crime has been proved beyond doubt or a doubt in the mind of the accused at the time of the commission of the act on the basis of conflicting opinions about the provision or because of a particular set of facts. For example, in the case of theft (*sariqah*), when someone steals the public property (*bayt al-mal*), or a father takes away a son's property or a wife takes her husband's property. In these cases, there is doubtful ownership (*shubhat al-milk*) because their acts occurred under the impression that they were part owner of the stolen property. Therefore, they cannot be punished by the *hadd* punishment and only *ta'zir* will apply.<sup>52</sup>

- c) There are difficulties of inflicting punishments which are the right of Allah, that is, the *hudud*. For example, in the testimony in cases of *zina*, the evidence required is the oral testimony of four adult male Muslims who have seen the actual act of sexual intercourse and female testimony is not accepted in these cases or in the case of any *hadd* offence. The witnesses must be able to state where and when the offence took place, and must be able to identify the parties to the act. Moreover, punishment for *qadhif* is inflicted on the above witnesses if there are fewer than four of them. Accordingly, if four people witnessed the act but only three of them are prepared to give testimony before the court, they can be convicted of the offence of *qadhif* and punished accordingly, regardless of the reason which prevented the fourth from giving his testimony.<sup>53</sup>

Some may say that *hudud* punishments look barbarous, very severe and inhumane. Therefore, the application of *hudud* punishments in a modern society is backward and uncivilized. But, as already mentioned, it is very difficult, if not impossible, to inflict these punishments. Any single doubt regarding the crime or the offender and any unfulfilled requirement can avert a *hadd* punishment and accordingly it will be replaced by a *ta'zir* punishment. Thus, the severity of these punishments actually is more likely to act as a warning in order to prevent people from committing such offences rather than actually punishing them. In this sense, Islamic criminal law can facilitate the planning of a safe city by providing a safe environment where people are afraid enough to

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<sup>51</sup> Narrated by al-Bukhari in his *Sahih*, book of *al-Hudud*, number of the *hadith*: 1344.

<sup>52</sup> DOI. *Shari'ah: The Islamic Law*. pp.257.

<sup>53</sup> NYAZEE. *Theories of Islamic Law*. pp. 121.

commit offences because of the severity-look of the punishments, moreover, when the execution of the punishment is done in front of the public.

Despite many strategies and measures done in preventing crimes as mentioned above, they are not efficient enough if they are not accompanied by efficient law. Thus, this paper suggests that an efficient law must be codified to facilitate the building of a safe city. This can be done by Islamisation of current Malaysian criminal laws. This is because it is not wise to codify Islamic criminal law separately from the current Malaysian criminal laws. Rather, it is better to codify Islamic criminal law in this country by the inner Islamisation of current Malaysian criminal laws themselves, especially the Penal Code. People would not find it hard to accept this approach because they are already familiar with current civil laws such as the Penal Code. This indeed could be done by amending the penalty, in particular the maximum penalty. For example, the maximum penalty for theft in the Penal Code is seven years imprisonment. Thus, to Islamize the Penal Code, the maximum penalty for such a crime would be upgraded to the cutting off of part of a limb.

However, it is very difficult, if not impossible, to inflict this verdict. Any single doubt regarding the crime or the offender and any unfulfilled requirement can avert this verdict, and accordingly it will be downgraded to *ta'zir* punishment i.e. imprisonment which may extend to seven years. After all, it should be noted here that the maximum penalty in Malaysian Criminal law is not inflicted rashly, nor is the *hadd*.

## CONCLUSION

Lessons learnt from the Islamic criminal law that can be adapted in planning practice are the planning of a safe city in accordance with the level of seriousness of the crime as revealed in the *hudud* category of crimes. The crimes under *hudud* must be paid serious attention in preventing them from happening in concurrent with crimes categorized under *qisas*. In educating the public, execution of punishment in front of the public is among the ways to create awareness. Other than that, the categorization of crimes according to the rights of Allah and rights of public may create a sense of responsibility and a caring society because any wrongdoings are against those rights and shall be punished. By adhering to all these principles and approaches, it is hoped that the safe city can be established where the public is not only equipped with physical elements of safety but also spiritual elements by the realization of Islamic criminal law. In this regard, the safe city in Islam is a city which embeds all the Islamic teachings of safety in its planning and practice. Looking at current conditions, tremendous efforts have been put towards the planning of

a safe city, but only in terms of physical provision, and little on spiritual aspects. However, the current definition of a safe city is not contradictory to the Islamic definition, it just needs a further extension of the spiritual dimension as propagated in the Islamic criminal law i.e. *fiqh al-jinayat*.

## REFERENCES:

- 'Awdah, Abd al-Qadir, 1993. *Al-Tashri' al-Jina'i al-Islami muqaranan bi al-Qanun al-Wad'i*. 12<sup>th</sup> Edition. Beirut: Muassasat al-Risalah.
- Al-Asqalani, 1996. *Bulugh Al-Maram Attainment of the Objective according to Evidence of the Ordinances. (With Brief Notes from the Book Subul-us-Salam written by Muhammad bin Ismail As-Sanani)*. Riyadh: Dar-us-Salam Publications.
- Al-Kasani, 'Ali al-Din, 1982. *Bada'i' al-Sana'i'*. 2<sup>nd</sup> Edition. Beirut: Dar al-Kitab al-'Arabi.
- Al-Mawardi, Abu Hasan 'Ali ibn Muhammad ibn Habib. *Al-Ahkam al-Sultaniyyah. The Laws of Islamic Governance*. (Translated by Asadullah Yate). London: Ta-Ha Publishers Ltd.
- Al-Zuhayli, Wahbah, 1992. *Al-Fiqh al-Islami wa adillatuh*. 4<sup>th</sup> Edition. Damascus: Dar al-Fikr.
- Azila Ahmad Sarkawi & Alias Abdullah, 2007. *Islam and Urban Planning*. Kuala Lumpur: Scholar Press
- Benjamin Hasbie, Dato', 2007. Towards the safe city, World Habitat Day, July 13, 2007.
- Cowie, A P. (ed.), 1989. *Oxford Advanced Learner's Dictionary*. 4<sup>th</sup> Edition. Oxford: Oxford University Press.
- DOI, 'Abdr Raïman I, 1984. *Shari'ah: The Islamic Law*. Kuala Lumpur: A.S. Noordeen.
- El-Awa, Mohamed S., 1993. *Punishment in Islamic Law*. Indianapolis: American Trust Publications.
- El-Fadl, Khaled Abou, 2001. *Rebellion and Violence in Islamic law*. Cambridge: Cambridge University Press.
- Haji Hassan, Mohamed Fadzli, 2002. Studies on the Principles and Theory of Maqasid al-shari'ah (The Principles and Aims of Islamic Laws) in the Sunni Schools with Special Reference to Their Applications to Malaysian Law. Unpublished Ph.D. Thesis, University of Birmingham.
- Ibn 'Abidin, Muhammad Amin, 1386. *Hashiyat Radd al-Mukhtar 'alá al-Durr al-Mukhtar Ibn 'Abidin*. 2<sup>nd</sup> Edition. Beirut: Dar al-Fikr.
- Ibn Hazmi, Abu Muhammad 'Ali bin Ahmad bin Sa'id bin Hazm al-Zahiri. *Al-Muhallá bi al-Athar*. Beirut: Dar al-Afaq al-Jadidah, n.d.

- Ibn Manzur, Abu al-Fadl Jamal al-Din Muhammad ibn Mukrim, 1990. *Lisan al-'Arab*. Beirut: Dar Sadir.
- Ibn Qudamat Al-Maqdisi, Abu Muhammad 'Abdullah bin Ahmad, 1405. *Al-Mughni*. Beirut: Dar al-Fikr.
- Nor Eeda Haji Ali, 2007. Pembangunan komuniti di dalam pelaksanaan konsep bandar selamat, *Prosiding seminar kebangsaan rupa bandar Malaysia*, Universiti Teknologi MARA Perak, 28 – 29 November 2007.
- Norliza Hashim, 2006. Inisiatif pencegahan jenayah melalui rekabentuk bandar, *Seminar Kebangsaan Pengurusan Bandar*, 4 – 5 September 2006.
- Nyazee, Imran Ahsan Khan, 1994. *Theories of Islamic Law: The Methodology of IjthEd*. Islamabad: The International Institute of Islamic Thought.
- JPBDSM, 2004. Program Bandar Selamat, *Ilustrasi 23 langkah pencegahan jenayah*, Jabatan Perancangan Bandar dan Desa Semenanjung Malaysia, Kementerian Perumahan dan Kerajaan Tempatan.
- Rahman, S.A., 1978. *Punishment of Apostasy in Islam*. 2<sup>nd</sup> Edition. Lahore, Pakistan: Institute of Islamic Culture.
- Sidahmad, Muhammad 'Ata al-Sid, 1995. *Islamic Criminal Law: The Hudud*. Petaling Jaya: Muhammad 'Ata al-Sid sid Ahmad.
- Wizarat al-Awqaf wa al-Shu'un al-Islamiyyah, 1989. *Al-Mawsu'at al-Fiqhiyyah*. 2<sup>nd</sup> Edition. Kuwait: Tiba'at dhat al-Salasil.

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