



## The challenges of execution of Islamic criminal law in developing muslim countries: An analysis based on Islamic principles and existing legal system

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### Abstract

Islamic criminal law serves as the system related to the legal system of law and Islamic principles. Sharia is the guiding way directly associated with the teachings of the Quran and Sunnah that cannot be challenged and thus are mandatory to follow. The study aims to review Islamic Criminal Law's execution in the developing Muslim States based on its development and challenges. The paper is prepared based on secondary data such as books, articles, different national and international law reports, and acts. The criminal law of predominantly Muslim states is based on modern contemporary criminal codes. An extreme case of jurist law has been represented through a number of Muslim criminal rules, which describe Islamic criminal law to be shaped and developed by private religious experts as jurist law. Islam identifies privacy rights and sanctity, names, and correspondences of individuals on search and seizures. The study concluded that Islamic criminal law is definitely rooted in the revelations for guaranteeing dignity and appreciation of human life values.

**Keywords:** Islamic criminal law, legislative, hudud, hirabah, riddah, diyyah, qisas etc

### Introduction

As described by common law traditions or law's codification, the Islamic criminal system differs from other legal approaches based on binding judicial precedents practiced under civil law. There is neither an apprehending of binding legal precedents, not a history of law's codification in Islamic law. The Case law analysis is comparatively similar to the process of analogical deduction (Ijtihad) in Islamic law. The political, legal, and social elements of all Islamic states are embedded within the roots of Islamic criminal law and; thereby, it is the governing foundation of all Islamic nations. Precisely, Islamic law is a specifically instructive paradigm of sacred law. It is one of the most identified legal systems globally, which varies from other systems to impose its indispensable significance for rejoicing the legal phenomena available excessively.

The formation, practice, and functioning of the International Criminal Court (ICC) have been debated numerously by scholars regarding the general principal's law executed by the court in several cases. The formation and existence of international criminal justice institution were supported previously by Islamic justice institution during the Rome negotiations. On the contrary, the observations were also based on reluctance and suspiciousness to ratify the statute due to the court's selection in applying criminal law principles. Specifically, scholars have debated that there lacks a comprehensive observation to view Islamic criminal law as a non-progressive legal system or a static legal system, bound to follow principles executed through religious texts.

Western scholars' commentary has centered on Islamic criminal law on fundamental notions regardless of any explicit focus of the subject. The rationale behind such lacking is due to the lacuna in English literature on Islamic criminal law. It is arguably impossible for Islamic criminal law to be according to the Western legal system due to its foundations, which are based on Islamic states' principles. These principles pave the path to the development of a

debate between international institutions and Islamic law. Islamic law possesses several attributes that are not similar to western codes even though it remains religious. It is indeed a positive law and requires credible testimony, witnesses, and evidence.

### Comparison of criminal court systems in western and Islamic states

For each country, national court systems have been put in place to tackle such cases, with a reasonably competent professional workforce running the systems. There also existed an overwhelming need to relieve the national court system of the burden of handling international crimes, such as those of war we have witnessed in recent years. The International Criminal Court was formally established in this regard after long and even attempts and international prosecution. Several codes, treaties, and conventions finally bore fruit throughout the years when the Rome Statute's Preamble was eventually finalized and entered into force on the 1 July 2002. This International Criminal Court exists in concert with established national court systems in countries that have acknowledged the court's jurisdiction.

A deeper look into the International Criminal Court reveals several essential aspects concerning jurisdiction and structure. The court's mandate covers three main principles contained in the Preamble of the Rome Statute. These include complementarity, handling the most serious crimes of international concern and the principle of legality. The first principle maintains the court's stand on respecting it upholds on its member states' sovereignty and national integrity. It is consequently challenged by an unfortunate limitation, where most hereof the perpetrators of crimes against humanity and the State in many countries. Usually, the officials mandated with running the governments. The same people have acted against the implementation of the court's jurisdiction, or at least part of it. The other two principles complement each other in their function. They ensure that the court only handles legal matters about the

most severe crimes from its member states. To prevent the repetition of past mistakes in terms of the court's inadequacy in administering full justice, the integration of the common law, criminal law and the civil law systems is enforced into proceedings.

The International Criminal Court has not fallen short of criticism levied on its past actions. Claims of unfair rulings and discrimination against cases from the African continent have been made. Several studies have been published about the matter, with the governing African Union stated to have lodged complaints against the court over alleged unfair indictments on its member states. It is also worth noting that some of the States have openly refused to cooperate with the court's requests, as with the hunt for one Omar al-Bashir from Sudan. Other claims have centered on its jurisdiction over non-member States, where the Rome Statute provides extradition for fugitives of member states found in member states' territory. There is an ever-present concern regarding the fact that leaders commit most of the crimes handled by the court's legal system to exploit the loopholes that exist within the provision of their national laws and legal systems.

Further on the international front, a system of World Courts of Justice exists. As opposed to International Criminal Court, the International Court of Justice was formed as an essential arm of the United Nations. It is not a criminal court, however, compared to its counterpart. Its mandate lies with solving civil cases among its member states, which decide to bring the legal matter to court. The court comprises judges elected by the United Nations and The Security Council's General assembly, from an array of prospects selected by the Secretary-General to the United Nations. Several rules govern the selection of the judges, and several limitations have been put in place. For instance, the two bodies, The Security Council and the United Nations' general assembly conduct their election procedures for the seats independent from each other. There can only be one sitting judge from a specific country serving at the same period. Should two individuals from the same country be selected independently by each of the two bodies, the younger one is dropped.

Other minor international court systems were formed based on several agendas by the respective convening tribunals. For example, an International War Tribunal was formed as a product of unfair killings and acts of genocide that took place during the World War II. As a result, the leaders of the involved nations at the time, The United States of America, Great Britain and the Soviet Union, convened and agreed upon the inception of the tribunal. Others include the international Military Tribunal for The Far East and other military tribunals for states such as Rwanda and the former Yugoslavia.

National court systems differ from government structures. We are going to dig deeper into court systems in a federal government and a unitary state. For instance, taking the United States of America as the federal government in question, the court system revolves around a Criminal Justice system. The plan revolves around public agencies that act as components, interdependent in their function. The three are the police, the institution together with the community, and the court system. They are all under the public eye in the enforcement of the justice system.

The American court system has two primary arms, the Federal Court System and the State Court System. These

two functions entirely independent of each other, rarely jurisdiction from one overlapping into the mandate into the other, and they are dubbed the Dual Court system. The Federal Court System mandates span legal proceedings involving the Federal Government. The system has an appellate arm and a trial arm, where perpetrators are tried based on federal law. The State Court system focuses more on a trial-based court function, whose appellate jurisdiction are higher up in the hierarchy. They are the Court of Federal Claims, Court of International Trade, the Tax Court, and The Court of Appeals for Armed forces and the Court of Veterans Appeals.

A juvenile court system exists as part of the State's court system. In some states, the system has several dimensions to it acting as an independent court system complete with a functioning judicial task force, while in the majority of the states, as a part of the state courts. The mandate focuses more on helping rather than punishing a child, and in the process, rehabilitate and reform the child. Several differences exist between adult courts and juvenile courts. For instance, juvenile court proceedings are usually done in secret away from the public eye, and thus a lot of formalities can be dropped as they are viewed as harmful in some cases. In contrast to adult trials where defendants have to be tried by a jury of their peers, this aspect is wholly scrapped off in juvenile courtrooms, as supported by lack of such a constitutional right. The absence of a jury serves to reinforce the informality of proceedings.

The organization of the juvenile court system also slightly differs. As mentioned, some states have a fully functioning judicial arm of their court system, while in most states, they only exist as part of existing court structures. In other forms, jurisdiction over juvenile legal matters falls within the mandate of family courts that handle family matters. As a trial court, juvenile legal issues fall under the significant trial courts, which are part of the State Court system, and occasionally under the minor court system.

The complexity of juvenile legal matters led to deriving three different categories of judicial cases in the said courts. There is an aspect of delinquency where a criminal law violates by a minor and would otherwise charge. Instances of theft and possession of drugs fall under this category. A second category involves Status offences, where the action done by a child is not perceived as a violation of crime if done by an adult and thus cannot be considered illegal if an adult does them. Typical examples are truancy from school and possession of alcohol against the law. The last category handles child victims. By law, children are required to be under the supervision of a parent or a legal guardian. Thus, when criminal law is violated based on the children's neglect, they appear in court but not because of their wrongdoing. In such cases, such as child abuse or child abandonment, the court mandate involves placing the child in another form of care such as social services and foster care.

Another federal government to consider is Nigeria. The judicial system comprises a Federal court and a State court. Each State, however, lacks a Supreme Court, as opposed to the United States. There, however, exists a court of appeal that can then hand over requests to the Supreme Court. A separate Sharia court of appeal is established in each State to handle legal matters about Muslim law. A Court of Resolution exists to iron out disparities arising from legalities between the Sharia Court and a State Court of Appeal.

Further down the hierarchy exists state High Courts, Magistrates' Courts and Customary Courts with decreasing jurisdiction level. Several special courts also comprise the judicial system. They include tribunals to handle offenders termed as Special Criminals that have proven difficult to prosecute in regular court proceedings, commonly due to manipulation of legal officers and juvenile courts for children. However, in cases of murder, children are tried as adults and are sent to a medium-security prison until legal age.

Taking the United Kingdom into consideration, the court system follows the laws of a unitary state. The legal jurisdictions under this State are Scotland, England and Wales, and Northern Ireland. Each jurisdiction has a complete legal system, courts and legal task force, and protocols in place when criminal laws are violated. A single supreme court handles appellate cases from each legal jurisdiction, the United Kingdom Supreme Court. The court took over the legal jurisdiction from the House of Lords. Under the United Kingdom Supreme Court, each jurisdiction exists as Judicial Committee of the Privy Council, which presides over the Court of Appeal, the High Court, The Crown Court and the County Courts.

In the United Kingdom, the judicial system is commonly referred to as the third-party power of the State. Here, the government's arm plays a crucial role in developing legislation through involvement in proposed or already passed bills, as well as creating legal precedence for future legal matters about the matters handled by the statements. A trial-based system dominates the lower ranks of courts with limited jurisdiction, but this changes as one move higher up the hierarchy, where an appellate system takes precedence.

It is worth noting that an Islamic Criminal Justice System will follow an entirely different protocol under Islamic Law. Under Islamic Jurisprudence, there exist three types of crimes that are punishable under legal proceedings. A deeper look into these forms of crimes will provide a more fruitful understanding of the Islamic States' court systems. Hudud or set penalty crimes describes crimes against the law of God. Punishments meted out in such cases are usually by God's rights, as provided by the Holy Book of the Quran. Examples include alcoholism, slander, adultery, brigandage, rejection of Islam, and theft. Qisas describes crimes committed, but not precisely derived from the Quran, but are listed therein. These crimes were born of judicial, academic and political administration. They comprise intentional or unintentional crimes against another individual, such as assault, voluntary or involuntary homicide as well as murder. For punishment, compensation, retaliation or parity of sentence is demanded. Ta'azir crimes describe offences whose punishment is not enlisted in the Quran. As such, jurisdiction arises, as defined either in the Quran, or the Sunnah, from Prophet Muhammad directives and teachings. These crimes can be lying under oath, bribery or embezzlement and rehabilitation is usually demanded as punishment.

Distinct differences exist between contemporary Islamic State and nontraditional Islamic states. The new Islamic States uphold Islamic Law, while their counterparts have adopted a legal system based on an amalgamation of Islamic law and European legal systems. It is worth noting that cases handled as civil cases in the American and European legal systems are considered criminal under Islamic Sharia Laws. The highest court in these lands is the Office of the

Khadi. Officers of the Court are appointed by the caliph, the government's executive arm, after passing the vetting process. Saudi Arabia is an example of a traditional Islamic state, where Koran principles are upheld as the constitution. The country is a monarch; two types of courts exist, the Sharia courts and government tribunals. Sharia courts handle civil and criminal cases, while the tribunals deal either matters about the royal decrees. A single judge handles court proceeding and will decide the direction of the case and consequently hand punishments. A few serious issues that require sentences such as stoning and the death penalty will require three judges as no single individual is allowed to make such a decision. In a bid to please influence from the West, the King of Saudi Arabia unsuccessfully attempted to introduce a High Court to the judicial system. There, however, exists a special criminal court that tries and sentences terrorists under Sharia Law.

The judicial system upheld by the People's Republic of China is entirely different from those with influence from the West. The system is based on an altogether different philosophical approach to justice that differs significantly from European, Islamic, and American philosophies. Until recently, a Ministry of Justice advocated for the separation of a judicial system from the government as an independent arm, which follows the Organic Law of the People's Court. The overall structure of the judicial system exercises authority according to the Organic Law of the People's Court, through three court systems; the Supreme People's Court, local People's Courts and special People's courts. The Supreme people's court's mandate spans the national levels, while divisional jurisdiction falls under the local people's Courts. The Supreme People's courts also handle legal affairs direct in China's three largest cities, Beijing, Shanghai and Tianjin. The Local People's Courts have three jurisdiction levels; an essential people's courts are handling jurisdiction at district and rural areas, an intermediate people's court at the municipal level and a higher people's courts at the provincial and autonomous city level. A sharp contrast to the American judicial system, where only the highest court of the land has a mandate to interpret the constitution in its proceedings exists. In the People's Republic of China, a Standing Committee of the National People's Congress (NPC) is mandated by the constitution to exercise both judicial and legislative jurisdiction in the supervision of the Supreme People's Courts, the State Council and the Supreme People's Procurator, interpretation, enacting and amendment of statutes.

#### **Development and recent cases of Islamic criminal law in the Muslim states**

The legislative state power legally relies on the domestic constitution in all Muslim nations. Furthermore, laws and regulations are enacted through the national legislature, which shows a divine legitimacy based on its policy authorities. They do not confront the core principles of Islamic Sharia. The criminal law of predominantly Muslim states is based on modern contemporary criminal codes. Saudi Arabia endorsed a new Criminal Process Law in 2001 even though it is reliably based on Islamic criminal law. Several states have intended to consist of classical Islamic criminal law, specifically in the realm of hadud crimes within the relevant legislation or current modern criminal law since the 1970s.

On the contrary, similar states' concerns have been increased due to the existence of more severe penalties in recent years. Supreme Court maintains imposing or amputation convictions infrequently in several Muslim states such as Pakistan and Nigeria, and Sudan and Iran. Extreme corporal punishments are yet carried out constantly in Saudi Arabia.

Thereby, Muslim law was enforced as a policy, which includes a system of sentences to breach the law and regulate their ways against western laws. The rulers have observed considerable achievement on the criminal law since the Ottoman Empire's development. An extreme case of jurist law has been represented through several Muslim criminal rules, which describe Islamic criminal law to be shaped and developed by private religious experts as jurist law. In particular, it should be emphasized that higher standards of proof and explicit evidence are required to apply this law as more than just an accountable doubt norm. The core problem is to comprehend the corporal and capital punishment application mechanism from the comparative assessment of Muslim states. This study will review the development and challenges of Islamic Criminal law in developing Muslim states from its inception to progression comparatively.

### 1. Egypt

The Shariah into the constitution was initially introduced by Egypt as a normative instrument for the governance, legislative and institutional framework in 1971 to improve the body under Article 2 that "the Islamic Shariah principles are the important principles of legislation. Article 2 was modified to entail the definite article in 1980 for reading that the Islamic Shariah principles are significant legislation sources. In 2011, a new constitution was passed considering the protests and turbulences that deposed Mubarak, adopting Article 2. A recent Article 219 was added, which states that available evidence and its primary and doctrinal rules and sources are included in Islamic Shariah principles by People of tradition and consensus schools. This inclusion allows two objectives. Firstly, it has that the Islamic shariah principles entail fundamental and doctrinal rules and evidence. Secondly, it restricts the role of the constitutional court to extrapolate the Islamic shariah principles to accept the four Sunni schools of jurisprudence by sentence virtues. This clause allows an association to the general and comprehensive information in the identified text, fundamental doctrines of law and jurisprudence rules, a subtle reference to juristic orthodoxy, and basic rules concerning legal methodology.

### 2. Palestine

The State of Palestine was the most recent signatory to the Rome Statute from the MENA region, which approves the jurisdiction presented by the international criminal court (ICC) in June 2014 and acceded to the Rome Statute in 2015 formally. However, there is no involvement of the State of Palestine observed with the ICC. The Palestinian Legislative Council in 1997 passes and ratified by President Yasser Arafat 2002 the fundamental law of 2003 of Palestine. However, modifications were made twice in 2003 and 2005 to include a prime minister's political system and significant changes to the elections system.

Minister of Justice of the Government of Palestine investigates activities committed on the Palestine territory

under Article 12(3) in 2009 for the existing conflicts between Palestine and Israel. Palestine admitted the application for investigating any alleged crimes until the statehood of Palestine was resolved consequently.

### 3. Tunisia

North Africa agreed the Rome Statute. In contrast, no reference was made to Islamic law or the Shariah as the messages were sent by the High Representative of the European Union to the world about Tunisia's accession about the Arab Spring. Article 1 was modified after the revolution in Tunisia that Islam is the State of Tunisia's religion. Still, there is no Shariah law, repugnancy clause, and source of direction observed in the constitutions of other states that implement Islamic law. Also, there is no indication of Islamic law being a legislative source. This would allow that criminal and other Tunisia laws would probably be compliant with the Rome statute and will never experience the issues of other states that have agreed. However, the State of Tunisia's religion is established as an apparent reference in the constitution as it qualifies for inclusion in the comparative analysis. The Shariah clause might serve as a legitimate reference point for present long-standing and indigenous Islamic customs and cultures derived from the Shariah even though the clause itself does not force the Shariah's interest to enact new legislation. These cultures might not have been codified but can be afforded under Article 1 legislatively. The impact of Article 1 to pass domestic legislation and ratify international treaties is still to be comprehensively investigated.

### 4. The maldives

The Penal Code of the Maldives emerged into effect on the 16th of July 2015, providing laws and constitution based on the Shariah. A commissioned project by the UN Development Program has drafted the new Penal Code at the University of Pennsylvania under Professor Paul Robinson's supervision in 2006. The draft legislation was not approved in 2008 in the 16th Parliament, but was re-submitted to Parliament in the 17th Majlis in 2009. Its employment was delayed until April 2015 for allowing institutions for amending their by-laws and regulations to ensure they complied with the new Penal code. The code is precisely unique. It was mainly drafted for considering the standard and Shariah law principles in criminal law by common law legal traditions and the Islamic law legal traditions.

It is possibly not only a coincidence that the Maldives accepted the Rome statute on the 21st of September 2011, culminating in the new Penal code in April 2014 in the run-up to the criminal law reforms. There is no history of civil war or violent conflict in the Maldives; therefore, it is not astonishing for the country to have ignored scholarly consideration, specifically for international criminal law's objectives. The Maldives sets the Islamic criminal system as a paradigm of a successful effort between western legal backgrounds and Islamic law specialists. A penal code has been created by them that acquires aspects of both legal jurisdictions. At the same time, remain cognizant of modern notions of justice, fair trial principles, a combination of the law of evidence, and fairness in both the standard and Islamic law system.

## 5. Sudan

Sudan's criminal laws have suffered from a significant lack of reference to international and Islamic crimes and have emerged since the Darfur conflict. It has been accepted that the criminal justice system was incapable in Sudan to hold suspects accountable for such crimes from a purely technical and capacity standpoint. A military government ushered several changes in Sudan's criminal laws before the Darfur conflict. The Limestone Military Regime (1969–1985) repealed the Armed Forces Act of 1957 and instigated the Armed Forces Act of People in 1983 between November 1983 and June 1999. The repression of several war-related crimes was observed in the new Act and involved them in the Act section on punishments and crimes (Section 10).

### Procedural Islamic criminal law

Islam identifies privacy rights and sanctity, names, and correspondences of individuals on search and seizures. Based on the public interest to protect public order and social security, the officers might investigate the individual's properties, communications, and house. Under Islamic evidentiary rules, judges and characters' credentials are critical and strict upon physical evidence or trustworthy witnesses' testimony and to confirm that the defendant receives an impartial and fair trial. A male or a female qadi must possess acknowledged wisdom, intelligence, and *adala*. Scholars have emphasized that a just judge cannot give unjust law under classical Islamic law.

Procedural guarantees are left to the discretion of a ruler who is in charge of preserving public welfare as these are neither in the Qur'an nor the Sunnah, but it is yet guided by several Islamic norms. A leader should err in favor of pardon compared to in favor of punishment if the leader errs. Also, criminal evidence must fulfil the conclusiveness requirement until the execution of sentence and its illustration must not be delayed as the core emphasis for the criminal conviction as a general rule.

Pre-trial detention mode and release on financial bail is usually not recognized in Islam in the same vein. Therefore, scholars confirmed that there should be no detention for the defendant before the trial since an indictment of punishment is not adequate for justifying the confinement detention of an accused as this interferes with the freedom of movement of an individual, which is reported by Islamic norms. The complaints minister executes this, and the use of beatings, inhuman treatment, or torture is forbidden by the Qur'an for extracting as sin ignores the dignity of an accused on the pre-trial interrogation. All Muslims might be excluded from legal confessions achieved under coercion based on Islamic norms. The right of both the criminal and the plaintiff is identified under the Islamic criminal justice system to illustrate evidence at trial and the sentence's execution upon conviction. This assures freedom of a person of religion, knowledge, expression, right to self-preservation, and thought based on the Islamic theory of protected interests. It encourages the significance to receive the help of others in protecting interests. Islam identifies the privacy right and sanctity, names, and correspondences of an individual on search and seizure. The investigative officers might search the individual, properties, communications, and house if relevant based on the public interest for preserving public order and social security. The evidentiary norms protect the integrity of the Islamic criminal process that affirms that penalties and criminal convictions are implemented in cases

of a specific punishment. The presentations of evidence are permitted by Islamic law, which is regarded to have a substantial extent of direct reliability.

### The concept of Sharia

Sharia is termed as the prescribed way of leading one's life that is entirely dependent upon Islam's set rules. For other commentators, Islam has never been a religion based on law imposed on Islamic society. The concept of Islamic law is similar to that of jurist law as it is not based on the combination of case law and the legislative authorities. Instead, it is the expanded form of the sacred text, that is, Quran. Several Islamic states are now termed as non-progressive, since no development has been recorded in implementing the criminal law that is by the country's legal system. For various Islamic states, Western and Eastern civilizations are seen as ignorant towards the Islamic perspective of politics, religion and cultural aspects. This labelled them as biased, unethical, and deprived of essential Islamic values.

### 1. Islamic criminal law and its implementation in the Muslim states

Organization of the Islamic Conference (OIC) stands as the second-largest inter-governmental organization that claims to protect the Muslims' rights and works as a single voice in this regard. OIC comprises 57 state members, among which most of them are Sunni while others, including Iraq, Lebanon, Azerbaijan, and Iran, are based on the majority of the Shia population. For most Arab states, excluding Syria and Lebanon, Islam and its guiding principles are termed as the source of Islamic law. Pakistan, Iran, Sudan, and Libya stand among states that eliminated Sharia's implication in criminal law. The incident took place between the nineteenth and twentieth centuries and restored during the past few years. In various states of Nigeria that was a part of Muslim domination, Western criminal law was replaced by criminal codes set by Sharia.

### Substantive Islamic criminal law

The structural framework conserves the legal relationships among people and protecting their considerations from being criticized by another. The most essential principles underlie are to indicate the association between the person and the State in the Sharia. Three principles should be focused: the non-retroactivity principle of criminal laws, the principle of individuality of the criminal liability, and the legal principle. The cornerstone of personal security refers to that the offender himself is the mere individual who can be indicted of a particular crime, and no one shall prevent punishment regardless of blood associations or friendship to the victim. It becomes an essential principle of uniformity of criminal liability in Islamic criminal justice.

An individual must be convicted based on this norm which has contributed to a forbidden act. On the contrary, individuals cannot be accused of crimes for events permitted when committed to avert power abuse. Therefore, the principle of non-retroactivity of criminal laws is identified through Islamic criminal law as a core principle of its criminal justice system. This shows that there is only one eventual and retroactive effect in the criminal laws. One of the leading legal principles under the Islamic penal model is equality. Individuals are equal before the law and can be considered uniformly without economic or religious status.

Thereby, both punishment and crimes are applied uniformly and to criminal proceedings, too. The equality norm is not transgressed when there is a prevalence of rehabilitation, and correction is observed when punishments are individualized, particularly for ta'azir offences. This guarantees that the judge will not misinterpret the discretion as it represents the proportionality of sentences regulation.

### 1. Hudud criminal acts

A total of seven fixed (Hudud) criminal offences, among which two are debatable, and five of these acts emphasize the Islamic schools on their punishment. Theft (Saraqah) is the acquisition of property (possessions) of another whose value is similar to the prescribed amount (nisab), which is settled at ten dirhams. The property must be acquired from custody (guardianship) of another in a personal approach, and the robber must achieve the possession of comprehensive properties. This is because the property being under guard or in a place of protection is acquired through this custody condition since it prevails the property, society, fear, suspicion, and apprehension. Hand's amputation is observed under the first and second acts of burglary, whereas feet's amputation is considered under the third and fourth crimes are penalized.

The theft of several items is not subjected to the Hudud penalty and, therefore, is punished by Ta'azir. Hudud crimes include religious icons and texts, valuable property, immovable musical instruments used for idle amusements, and things not considered as property, such as children. On the other hand, Ta'azir crimes include misappropriation of public or private funds, property by pretences, and private funds by an individual who nearly achieved legitimate ownership. The defendant in an open-court session requires four male eyewitnesses or four confessions on four separate events for the offence of Zina as it involves adultery and fornication. During the Prophet time, married individuals committing Zina were punished by death pitting after the woman has confessed three or four times, which is not stated in the Qu'ran. An individual who misleadingly accuses a Muslim of Zina is criminally penalised for defamation (qazf). It includes doubting the legitimacy of a child of a woman in case of pregnancy and; therefore, the lodging of Zina is reserved.

### 2. Hiraba

Amputation is also the case of highway robbery (Hiraba), and execution hinders legitimate commercial events and constructs fear among travelers in some cases. An impenitent is decapitated who takes property with his feet and hands amputated, followed by a body's display in a crucifixion form. A bandit might be forgiven who intentionally surrenders and reforms for this crime and, therefore, will be punished merely for the other offences he might have assaulted, theft, or committed. Also, drinking wine/intoxicating beverages (khamr) is punishable by flogging, although the number of lashes is argued by Muslim scholars. The analogy to drugs protracts the proscription on alcohol based on the fact that there is a similar consequence of medicines on human mind as khamr and; therefore, they develop the similar public risk that drives to the former forbidden.

### 3. Ridda

According to some scholars, a member voluntarily denies the Islamic belief, which is termed apostasy (Ridda) and is

punishable by death penalty. The Muslim concept of freedom of religion is contradicted by such punishment, as said by the Prophet;

No compulsion in religion.

Where Qur'an said;

For your religion and for me my religion.

Also, the deliberate attempted overthrow and influential overthrow leader (imam) is rebellion (bagi) is represented in the contemporary legal approach as a coup d'etat. The protesters' demands are considered an obligation by the leader who is required to call upon the revolutionaries to conclude their revolt if the demands lack merits (irrational). Under hudud, rebels are punished who are murdered and subjected to ta'azir who are arrested or surrendered, whereas objectors are executed who are captured.

### 4. Diyyah and qisas offenses

A criminal act, which is punishable by a similar or substantially same act in retaliation for risk inflicted, is Qisas. It has been observed that it is considered against folks to be the gravest crime. Also, Qisas classifies into crimes against the body and the individual. The criminal is pardoned or compensated by the victim's family if he or she is executed. Several kinds of homicide are identified under Islamic law as wilful or premeditated homicide is a lethal instrument or weapon. The offender is subjected to retaliation, damages, and a loss of any inheritance rights from the victim if remitted.

### Categories of crime found in Islamic law

Criminal activities or offences are discussed in detail within Islamic law, depending upon the criteria associated with the manner and methods employed in punishing. It is further associated with the consequences that are about the forbidden acts. Among such crimes, the main category includes Hudud, which refers to the crime committed by the community in the form of set punishments as prescribed in the Quran and Sunnah. The association between crime and punishment is determined by the liberty judge the case based on the collected evidence and the extent of accusation. Badar illustrated seven most common categories of hudud crimes including; theft (sariqa), transgression (baghi), illegal sexual relationship (zina), apostasy (ridda), highway robbery (hiraba), in taking alcohol (shorb-al-khamr), and slander (qadhif).

The next category involves qisas and diyya criminal activities. Qisas is the penalty set for murder or inflicting injury. In cases where the culprit causes inflicting injuries, qisas believes on the equal reflection of the injury that is caused to one's victim. Sharia in such cases has provided the right of counter attack or revenge to victim or his/her family. In other cases, retaliation can be prevented by the consent of both the parties. Qisas and diya are further categorized into two major types, namely, battery and homicides. The crimes are considered as private offenses and are thus treated in similar manner. The final category in this part is called ta'azir crimes that are treated and punished depending upon the will of judge (qadi) and are not quantified in Quran or Sunnah. Any such act that may violate the interest of set beliefs of the society falls in the category of ta'azir. This provides important status to public regulations in setting penalties regarding any indecent conduct. However, the decisions must be based upon the inspiration and ideology provided by Sharia. One of such

acts that is not defined in Quran and Sunnah is human trafficking. Since it violates individual rights of security, therefore, penalties must be based upon the guiding principles.

### Conclusion

Since the foundation of Islam, it should be noted that there is a collective conception and an individual conception of rights and duties. The third generation is interpreted as a shared common responsibility of the individuals and society by legal scholars and political scientists. The study aims to conclude that Islamic criminal law is definitely rooted in the revelations for guaranteeing dignity and appreciation of human life values.

Over many centuries, Islamic law has developed into a complex, highly developed, and a subtle reality. On the contrary, such a complexity does not make Islamic law unknowable. The differences between the schools and jurists of Islamic jurisprudence illustrate several manifestations of the same heavenly will and are emerged as diversity throughout unity. Islamic law has its sources like any other, which has its guiding aspects that interpret the nature of its evidence. It uses a number of underlying objectives and equivalently implements the use of legal maxims for underpinning the structure of its legal theory.

Al-Imam Al-Ghazali, one of the most well-recognized Islamic academics assure the right of personal security in an Islamic criminal law and; therefore, established the "Five Essentials", which have become the core principle for scholars for determining whether the public interest is endorsed by an idea or a solution. Thereby, the five important things are guaranteed by Islam to all individuals and forbid unjustified violation of them by the State. These involve protecting property, protecting lineage, protecting intellect and posterity, protecting religion, and protecting lives. In addition, Islamic criminal law shows the structural framework for a community in order to preserve the legal associations among individuals and protect the considerations of an individual from being attacked by another. It potentially protects the peace and security of an individual when an individual is accused of its crime by demonstrating the association between the State and individuals. In this way, the principle of legality, non-retroactivity of criminal laws, and individuality of punishment are the most important principles laid down in Shariah.

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