

Characteristic Features of Muslim Criminal Law and The Formation of Its Legislative Basis

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Abstract

The norms of Muslim criminal law served to protect society from criminal acts while also addressing the personal, material, and physical needs of Muslims in accordance with the principles of Islam. The social relationships governed by these laws reflect the distinct characteristics of Islamic society. Within the structure of Islamic criminal law, the legal relations it regulates, and certain forms of punishments, differ significantly from the criminal law norms of other historical periods. The fundamental aim of Islamic criminal law is to preserve the sanctity of religious and moral rules in the Islamic state, to eliminate lawlessness and violence among individuals, and to ensure legal equality within society. Although Islamic criminal law does not provide an exhaustive list of punishments, the types of crimes and corresponding penalties were known. Judges (qadis) assigned penalties based on the general principles of the Islamic sect to which they belonged. Islam has long served as the foundation of our moral values and has ensured that Muslims attain a dignified place in the world. This article evaluates the role of Islam in society and highlights the importance it places on combating criminality.

Keywords: Muslim, Islam, Crime, Punishment, Faqih, Free Person, Slave, Guilt, Qur'an, Moral Norms, Sharia Courts, State

Introduction

The necessity to preserve and develop Muslim society, to protect it from criminal intent, and to safeguard individuals' property, lives, and health with confidence, led Muslim jurists (fuqaha) to develop legal norms within Islamic jurisprudence (fiqh) prescribing punishments for acts that posed a serious threat to society.

Muslim fuqaha formulated the norms of Islamic criminal law with the purpose of safeguarding the religious and moral values of Islamic society, as well as protecting the property, lives, honor, and dignity of Muslims from criminal acts. The criminal law section of fiqh, like other sections, was generally codified but not clearly separated from the religious and moral directives of Islam. Certain criminal law institutions—such as conspiracy, complicity, aggravating and mitigating circumstances—were underdeveloped. Nonetheless, fiqh recognized concepts such as intentional and unintentional crimes, remorse, ignorance of the law, and similar legal principles.

Muslim criminal law classifies crimes based on the target of harm into two major categories:

- Crimes directed against the entire Islamic community, such as apostasy, rebellion, resistance to state authority, banditry, adultery, etc.
- Crimes harming specific individuals' interests, such as murder, theft, bodily injury, insult, and so forth.

One of the most striking features of Muslim criminal law is that it differentiates between whether the perpetrator and the victim are Muslim or non-Muslim.

A second notable feature is that the state is not regarded as a subject of criminal law. The qadi court, in essence, does not act on behalf of the state but rather implements the will of God and the Muslim community. Officials such as governors and police participating in the qadi court proceedings are merely executors—not of the state's orders, but of the caliph's authority, who is considered the Prophet's successor.

A third important feature is that only Muslims who have reached the age of legal responsibility (puberty) can be subjects of criminal law. Non-believers (kafir), apostates (zindiq), slaves, and minors are not considered subjects under the law.

According to Muslim criminal law, punishment may still be administered even if the perpetrator, due to certain reasons, did not manage to carry out the crime, was apprehended beforehand, the act occurred accidentally, was committed in defense of honor and dignity, or the perpetrator did not fully comprehend the nature of their actions. However, the severity of punishment varies accordingly.

From the standpoint of liability, Sharia criminal offenses are categorized into two groups:

- Crimes requiring accountability with one's body or life.
- Crimes Punishable by Fines.

The first category includes crimes such as banditry, intentional murder, adultery, and offenses against the Islamic religion—acts that, as a rule, were punished by the death penalty. The second category comprises crimes such as accidental homicide, male adultery, various forms of bodily harm, insult, fraud, bribery, and similar offenses. Offenders in this group were generally punished with monetary [1].

As is well known, a theocratic form of governance existed both in the Arab Caliphate and later in the Ottoman Empire, which lasted into the 21st century, as well as in many Islamic societies during the Middle Ages. In such states, the dominant values were considered sacred by both God and His Messenger, Muhammad. From this perspective, any act directed against the established order or the foundations of the state was regarded as a crime against the sacred values of Islam, and thus, a religious offense. Religious crimes were, in turn, equated with crimes against the state. The penalties for such offenses were usually well-established and severe.

However, the punishment for crimes belonging to the second category often depended on the discretion of the qadis (Islamic judges). In addition to fines, they could impose other types of punishment as well.

According to Muslim criminal law, based on the nature of the crime and the conditions under which it occurred, four types of punishment could be applied:

- **Qisas** – Retaliatory punishment (inflicting the same harm as was done)
- **Diyya** – Payment of blood money to the family of the victim
- **Hadd** – Fixed punishments defined by Sharia and not subject to alteration
- **Ta'zir** – Discretionary punishments issued by the judge [2].

Punishment could be administered either by the victim themselves or through the Sharia court. The victim, their close relatives, or legal representative had the right to carry out qisas (retribution or vengeance). The Qur'an limits qisas to the individual offender:

"O you who have believed, prescribed for you is legal retribution for those murdered—the free for the free, the slave for the slave, the female for the female... O people of understanding, through legal retribution you will be granted life." [1].

In general, the Qur'an and Islamic law condemn murder and consider it justifiable only during jihad. Consequently, paradise is promised to those "*who restrain their anger and forgive others.*"

The remaining three types of punishment—diyya, hadd, and ta'zir—are imposed by Sharia courts. The primary purpose of such punishment is to compensate the victim for the harm suffered, restore their rights, and demonstrate to others that similar actions will also be punished. The second aim is to reform the offender. A third goal is to cleanse society of harmful elements. [3].

For a Muslim who Has Committed a Crime, Punishment also Serves as a Means of Purification from Sin

Therefore, the offender, feeling remorse for their act, may voluntarily impose a penalty upon themselves—such as paying kaffarah (expiation). According to Islamic criminal law, the victim holds exclusive rights regarding whether the offender should be punished or pardoned. The victim also has the right to choose or alter the form of punishment. Nearly all crimes committed against the individual are examined based on the complaint of the victim.

In general, Islamic law does not contain an exhaustive codified list of punishments. Just as in Western Europe, various forms of capital punishment, mutilation (e.g., amputation), flogging, and diyya (blood money) were applied in the Islamic East. However, the East also developed punishments specific to its cultural context, such as shaving the beard and mustache, spitting in the face, stoning, shaving the head and parading the offender on a donkey, and others.

One distinctive feature of Islamic criminal law is that each crime must be met with a specific and proportional punishment. For instance, if someone commits both theft and murder, the court would first order amputation of the hand, followed by execution. [4].

The criminal law section of Islamic jurisprudence (fiqh) is compiled in ten books. These works detail various socially dangerous behaviors considered criminal, including homicide and crimes against the person, and provide their corresponding legal evaluations. However, crimes against the state are not addressed extensively in these texts.

Islamic criminal law pays particular attention to the identity of the perpetrator—whether they are a free person or a slave, a Muslim or a dhimmi (non-Muslim under Muslim protection), and whether the crime was committed intentionally or due to negligence. Crimes are evaluated based on whether they occurred during peacetime or wartime.

As mentioned earlier, based on Qur'anic principles, Islamic law establishes the right to qisas (retaliation) in cases of intentional injury or death. Those who exact retaliation are not punished—in fact, they are protected by law. As the choice of punishment rests with the victim, they or their representatives may request that qisas be replaced by diyya (blood money), or they may choose to forgive the offender altogether.

According to Islamic law, in cases of negligent or accidental homicide or injury involving a free person, a slave, or a dhimmi (member of the People of the Book under Muslim protection), diyya must be paid. Qisas is not applicable in such situations. If a family member kills another family member, qisas is not enforced, but diyya is paid to the legal guardian of the deceased, if one exists. [5].

In cases where a husband kills his wife or vice versa, both qisas and diyya may be applicable. A person who commits repeated murders cannot escape punishment by offering diyya—they must be punished. Because slaves and concubines possess monetary value, a specified amount of diyya must be paid for their killing. Diyya may be paid in the form of another slave or valuable property, or the offender may provide a slave or concubine approved by the owner.

According to fiqh, even though the slave is the property of the master, the master is not permitted to mistreat them. If the master inflicts serious injury on a slave, the slave must be freed.

Islamic law emphasizes that “in retaliation, excess must be avoided, and proper limits must be observed; qisas should not escalate into blood feuds or inter-tribal warfare. It is explicitly required that qisas must not be extended to innocent relatives, family members, or especially to minors; rather, it must be implemented solely against the actual perpetrator.” [6].

According to fiqh, the diyya (blood money) for the unlawful killing of a free Muslim man is 100 camels, or its equivalent in value—such as 1,000 sheep or 1,200 dirhams

If the victim is killed during the sacred months (al-ashhur al-hurum) or within the holy city of Mecca, the amount of diyya is tripled. If the deceased is a Christian or a Jew, one-third of the amount prescribed for a Muslim must be paid; if the victim is a Zoroastrian, one-thirteenth is due. In all cases, the diyya for a woman is half of that for a man. For example, if the diyya for a Jewish man is one-third that of a Muslim (i.e., $1200 \div 3 = 400$ dirhams), then the diyya for a Jewish woman would be 200 dirhams.

For bodily injuries, the amounts are similarly calculated:

- Injury to the face or head requires one-twentieth of the full diyya (i.e., 5 camels).
- The severing of one ear requires one-third of the diyya.
- The loss of both ears equates to half the diyya, and so on. After paying diyya, the offender is also required to offer kaffarah (expiation) to seek forgiveness from God for their sin. Diyya is imposed for unlawful acts; however, disciplinary actions such as a master striking a slave or a teacher punishing a student are not considered unlawful if done with the intent of correction.

Diyya must be paid directly to the victim, their legal heirs, or—if none are alive—to the Bayt al-Mal (the Islamic public treasury), in accordance with Islamic inheritance laws.

In Islamic society, one of the gravest criminal offenses is immorality and prostitution. The Qur'an condemns such acts harshly and even permits the death penalty under certain circumstances. A woman may be punished if proven guilty of adultery or prostitution through the testimony of four trustworthy Muslim men or, equivalently, one man and two women, as required by Islamic evidentiary standards. If guilt is established, the woman may receive various punishments—including death—or she may be pardoned by the claimant.

If a woman guilty of adultery or prostitution is killed and her guilt is subsequently proven in court, the killer is exempt from punishment. His act is deemed a defense of honor and dignity. However, if her guilt is not convincingly established and jealousy appears to be the motive, then the killer is punished under general criminal law [4].

Islamic jurisprudence lacks a standardized punishment system for prostitution. A wide range of punishments may be imposed, including stoning. The only clear rule is that an unmarried woman found guilty of adultery must be exiled for one year. Even if the act of adultery is not proven in court, the parties involved are still obligated to offer kaffarah. A woman found guilty may be exiled for a year, while a man may receive 100 lashes. In some cases, both parties may receive 100 lashes. This is extensively covered in the Qur'an, Surah An-Nur, verses 2–23. Additionally, anyone who falsely accuses someone of adultery without providing the required evidence is to be punished with 80 lashes.

According to fiqh, a person who has been flogged for adultery three times is to be executed upon committing the offense a fourth time.

Under Muslim criminal law, apostasy (irtidad)—the act of renouncing Islam—is regarded as one of the most dangerous crimes within the Islamic community. Although Islam encourages peaceful coexistence with non-Muslims, including polytheists and fire-worshipers, any form of turning away from Islam by a Muslim is viewed as a direct threat to the ideological foundations and internal integrity of the Islamic society. Hence, apostasy is punishable by death.

However, before issuing such a sentence, it is mandatory to clearly establish:

- The individual's prior status as a Muslim,
- The nature and motive of their apostasy,
- And irrefutable evidence or a confession.

This is a complex process, as apostasy cannot be punished without conclusive proof. Mentally ill individuals, minors, or those who did not embrace Islam with sincere conviction cannot be held accountable for apostasy. [7]

According to Islamic Jurisprudence (Fiqh)

In Islamic jurisprudence, a person who slanders another or insults their dignity and personal honor is considered a criminal. Spitting in someone's face or mocking them is also classified as an insult. If such actions are proven, the offender is subject to corporal punishment: a free person receives 80 lashes, while a slave receives 40 lashes.

Historically, one of the earliest forms of crime is theft. Theft has existed since ancient times and is universally condemned across societies, including Islamic ones. The Qur'an imposes severe penalties for theft. According to fiqh, the act of secretly taking and misappropriating property equivalent to at least one-fourth of a dinar of pure gold or an item of equal value from its rightful owner constitutes theft and is a criminal offense. Theft involving items of lesser value is not subject to criminal prosecution but may result in corporal punishment. The theft of unlawful items or animals such as dogs is not considered a crime. The religious affiliation, gender, or race of the thief—whether Muslim or Christian—does not affect the classification of the act. However, taking property unintentionally or by mistake is not considered theft. For example, if someone mistakenly takes another's shoes from a mosque, it is not deemed theft, as intent to misappropriate is a key element of the offense[8].

Under Islamic criminal law, theft is punishable by a range of penalties, primarily the amputation of limbs. A thief who is punished in this manner four times and commits a fifth offense is subject to the death penalty. However, the victim has the right to forgive the offender. If it is found in court that the thief committed the act due to dire poverty, the judge (qadi) may reduce the punishment at their discretion.

In fiqh, highway robbery (hirabah) is treated as a crime similar to theft. If the robber commits violence, injures, or kills the victim, they face additional punishments for those acts as well.

Another act considered a criminal offense in Islamic jurisprudence is intoxication (shurb al-khamr). A free person found to have consumed alcohol is punished with 40 lashes, while a slave receives 20 lashes. Those who entice others to drink or deceive minors into drinking are also subject to punishment. However, if someone drinks alcohol unintentionally or does so to avoid dying from dehydration, they are not punished. Self-inflicted punishment, or repentance through personal discipline, is also acknowledged in certain cases. [9].

Victim's Rights and Islamic Family Law

In Islamic criminal law, the victim has the right to determine the type of punishment or to grant pardon. The victim may also request diyyah (blood money) as compensation.

Islamic family law, which remained in force up until the era of the Hulagu invasions, continued to regulate personal status matters during that period. Within Islamic jurisprudence, marriage is elevated to the level of a religious obligation, and a significant portion of family law has taken on the characteristics of customary law. It is noteworthy that some elements of this traditional legal framework continue to manifest in present-day Azerbaijan. Practices such as having a Muslim cleric perform a religious marriage ceremony (kabin) after official civil registration, child marriages involving underage girls, and polygamy are all contemporary reflections of this customary Islamic legal heritage [10].

According to Islamic family law, Muslims are prohibited from looking at individuals who are considered religiously unlawful (non-mahram) for them. For women, mahram men include their husband, son, brother, father, and father-in-law; all other men are considered non-mahram. Every Muslim in need of marriage is encouraged to marry. Certain individuals are prohibited as spouses, including a father's wife, maternal aunts, paternal aunts, and stepdaughters brought into the marriage by the wife. Marrying a woman who is already legally married is both sinful and criminal.

Each Muslim man is permitted to marry up to four wives, but it is strictly forbidden to marry two sisters at the same time. A Muslim who marries a non-Muslim woman is religiously obligated to invite her to embrace Islam. Upon marriage, the man is required to give a mahr (marital gift or dowry) to the woman. Items that are considered haram (forbidden) cannot serve as the mahr. When marrying a previously married woman, it is permissible, with her consent, to forgo the

mahr. If the divorce is initiated by the husband, the mahr is not returned to him [1].

Further Aspects of Islamic Family and Criminal Law

Although every Muslim man has the right to have a wife (or multiple wives), he must possess both the financial and physical means to support them, and he must treat all his wives equally, without discrimination based on youth or physical beauty. If a bride is a virgin, the marriage must be approved by her father; if the father is absent, then by her paternal uncle or maternal uncle.

Islamic law declares men to be the guardians and protectors of women and, in return, demands obedience and loyalty from women. A valid marriage contract requires the presence of two devout Muslim witnesses. Forced marriages are strictly prohibited for both men and women [11].

A Muslim man is permitted to marry a woman from the People of the Book—namely Christians and Jews. However, a Muslim woman is not granted this right. If a Muslim woman marries a *murtad* (apostate) or a non-believer (*kafir*), she is also considered an apostate. Although a female slave is considered the property of her Muslim owner, sexual relations with her are prohibited unless conducted through a lawful Islamic marriage. If the slave woman gives birth, she must be granted freedom. Pregnant female slaves cannot be sold. If the child is born to a free man, it is considered free; if born to a slave, it is considered a slave [10].

In Islamic law, mute and deaf individuals are not allowed to marry, whereas blind individuals may marry, provided their spouse is healthy.

Among Shi'a Muslims, the concept of temporary marriage (*sigheh*) is considered a later fabrication with no original basis in early Islamic jurisprudence.

In the Ilkhanid state, justice courts (*adalat mahkemeleri*) played a significant role in the legal system. Up until the early 14th century, two parallel judicial systems existed in the Ilkhanid Empire. Crimes committed by Mongol nobility, princes, or military personnel were adjudicated by *Yasa* courts based on the codified legal tradition of Genghis Khan. Crimes and civil disputes involving the Muslim population, on the other hand, were handled in *qadi* courts, based on Islamic sharia law.

Interference by *yarghu* (Mongol) courts in the jurisdiction of sharia courts was legally prohibited. The composition of the *yarghu* court—including the chief judge (*yarghuchi*) and its members—was determined by the sovereign. These judges were typically selected from among the elite

nomadic Mongol military aristocracy. In certain cases, the ruler himself could act as the yarghuchi. These courts were located solely in the capital and handled only the most serious legal matters. In such instances, the participation of the ruler was often required. These courts served the interests of the ruling class and were known for imposing harsh penalties [11].

Within the administrative divisions (tumen) of the Hulagu state, legal matters concerning Mongols were dealt with by amirs or officials under the authority of the amir.

Thus, in Islamic criminal law, all acts deemed forbidden are subject to both moral condemnation and penal sanctions. The fundamental principle of Islamic penal law is that an individual is considered sinful before God for committing such acts and, at the same time, is liable to earthly punishment according to established legal procedures [1,12].

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