

ETHICS OF PUNISHMENT EXECUTION AGAINST OFFENDERS IN ISLAMIC CRIMINAL LAWS

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ABSTRACT

Islam is a religion that cultivates human affection and emphasizes the welfare of human beings, which includes offenders. Punishments such as stoning to death, qisas (retaliation) in cases of murder, qisas of limbs, whipping, imprisonment and exile have been exercised by the government within prescribed ethical standards in Islam. Misunderstanding among certain quarters has led to unfounded negative perceptions towards the Islamic ethical standards in meting out its prescribed punishment. Hence, this article aims to identify the ethical standards outlined in Islamic criminal law regarding penalties against its offenders. The methodology used in this paper is document analysis by conducting a detailed study of the books of fiqh, books of tafsir (commentaries), hadith, books written by the contemporary fuqaha (fiqh scholars). As a result, the researchers found that among the important ethical standards outlined in the execution of punishment against offenders are to defer the punishment if the offender is ill, providing the basic necessities to the offender in prison, not abusing the offenders, protecting and covering the aurah of offenders and deferring penalties for pregnant and nursing offenders.

Keywords: Ethics, Offender, Islamic Criminal Law, *Qisas*, Stoning, Whipping.

INTRODUCTION

The religion of Islam that was revealed to Prophet Muhammad (peace and blessings be upon him or hereinafter written as p.b.u.h.) came with certain rules or laws as a complete set of guidance to His *ummah* to achieve *al-falah*, which is to be successful in this world as well as in the hereafter. The Islamic criminal law or also known as *Fiqh al-Jinayat* serves as guidance for the Muslim regarding the permissible and prohibited actions vis-a-vis their Muslim brethren as well as with the non-Muslims counterparts. It also explains the types of crimes and its subsequent punishments meted out against the offenders based on the arguments in the Quran, *hadith* and *ijmak*. Islam as a religion of mercy is highly concerned with the ethical standards in executing the punishments. Even though the offenders have proven to be guilty in acting out against clear prohibitions in Islam, their overall dignity as a human being needs to be well preserved (Sulayman, 1969).

METHODOLOGY

The methodology used in this paper is the analysis of the documents. The data was collected by conducting a detailed study of the books of fiqh muktabar, books of tafsir and hadiths and books written by the contemporary fuqaha (Zaydan, 2006). We analysed the data by inductive and deductive methods. We then coded the data into specific themes as described below.

Definition and Scope of Islamic Criminal Law

The word “*jinayat*” is derived from Arabic word of (جنى - يجنى - جناية) which means to commit an evil act. The *fuqaha* (Islamic jurists) defines criminality as a harm committed against a person’s body that may be subject to *qisas* or fines (Daud, 2017; Al-Khin et al., 2005). Generally, there are four categories of crimes in Islam that is classified based on their types of punishment:

Crime charged with *qisas*

Qisas means similar, retaliatory punishment against the murderer for his/her voluntary manslaughter, deliberately injuring the limbs until the bone (*al-muwaddihah*) and deliberately amputating other human limbs (al-Jaziri, 1990).

Crime charged with *diyat*

Diyat is a financial compensation to be paid by the offender for committing crimes which resulted to either loss of life or otherwise (Ismail, 1998). The offenders who committed this sentence are those who committed intentional manslaughter but have been forgiven by the victim’s heirs. The original punishment, which is *qisas*, which will then be converted to the *diyat* (a financial compensation that equals to the value of 100 camels). *Diyat* can also be charged for intentional or unintentional manslaughter, killing of a fetus, killing of scribes and/or Zoroastrians (people of Majūsī). In addition, *diyat* can also be charged against those who committed crimes which led to injury and disabling a person’s bodily functions (Daud, 2017).

Crime charged with *hudud*

Hudud is a fixed punishment set by Allah (subhanahu wata’ala, herein written as s.w.t). And was not forgiven by the heirs or victim. There are eight types of offenses imposed in *hudud* namely adultery, accusation of adultery, stealing, drinking intoxicants, *hirabah*, apostasy, *bughah* (an act of rebellion against a just authority) and not performing the prayers (al-Khin, 2005).

Crime charged with *ta'zir*

This fourth category is a punishment for offenses that are not categorized in all of the above three categories. *Ta'zir* defined by the *fuqaha* as a punishment that is not determined by Shari'ah (Islamic law). It is executed based on the views of the authority but it must not be equal to the *hudud* punishment (al-Zuhaily, 2009).

In Islamic criminal law, the penalties for the above four categories must be implemented ethically. Among the ethics of the penalties executions outlined by the Shari'ah are:

Whipping, hand amputation and limbs amputation is suspended if the offender is in a state of illness.

The first ethics in executing penalties against offenders is to defer the punishments of whipping, hand amputation, and amputation of limbs if the offender is either ill or is not in a good state of health. However, for penalties that will affect the loss of life, the Islamic criminal law will not allow for such suspension. This is due to the fact that its original objective is death. Therefore, the health condition of the offender will not be taken into account if the offender is sentenced to death such as punishment of *qisas* for deliberate manslaughter or stoning for adultery (Al-Zuhri, 2005; Al-Khin, 2005).

For the crimes that do not involve the loss of life, the Shari'ah stipulates that penalty execution of all offenders have to be suspended until they are fully recovered. The sentence can also be reduced should the judge (with the help of medical professionals) reached to a decision that the health condition of the offender will not get any better. For example, the original sentence of whipping for adulterers of "*ghair muhsan*" is 100 times. However, it can be reduced to whipping by using a bunch of dates with 100 twigs. The whipping material can also be substituted with either shoes or clothes (al-Khin, 2005).

Providing basic necessities to the offender throughout the imprisonment

A man or woman who was sentenced to death has the right to request for a drink right before the punishment is meted out. However, the provision of foods is not allowed as it takes a longer period for it to be digested (al-Khin, 2005).

If an offender is sentenced to imprisonment, they have to be provided with the basic necessities such as foods and drinks, clothing, beds and access to medical treatment. Roslili et al. (2015) argue that an imprisoned offender has basic five rights. One of them is the right of survival.

Do not violate the offender during penalty execution

The *fuqaha* (Islamic jurists) edicts that it is imperative to avoid stoning on the face of the offender while executing the punishment. This is in line with the Messenger's orders in several *ahadiths*. In addition, the distance between the people who throws stones with the offender must not to be too far or too close. The wisdom behind this ruling is for the offender not to be

excessively hurt because this punishment should merely serves as a lesson and not intended as capital punishment (al-Khin, 2005).

For *qisas* charged on the murderer, the authority has the ability to execute the equivalent punishment against the murderer as what he/she had committed on the victim and it must not exceed that limitation. For example, if the offender had shot the victim on his/her head, and as a *qisas* punishment, that offender should not be punished by throwing a big stone on his head, but he/she must be punished in the same way, which is by shooting on his/her head. This is consistent with the verse in the Quran (Al-Isra: 33) which reminds the authority not to step too far out of line in executing the punishment. Equivalency is the most important aspect in *qisas* execution (Daud, 2017).

Protecting the *aurah* of offender during punishment execution

While whipping the female offender, the executioner has to ensure that the *aurah* of the offender is well preserved. Undressing or revealing their *aurah* is simply not tolerable in Islam (Al-Zuhaily, 2009). It has been explained in an *athar* delivered by Ibn Mas'ud r.a.: "*It would not happen to the Muslim ummah (in the case of the punishment execution against adultery offender), to put the offender in a supine state and pull him/her hard, undress, tying both hands and shackles*".

Whereas for the cases of stoning punishment against female offender, a hole will be dug up to the offender's chest level. The offender will then enter the hole so that their *aurah* will be protected and covered from the public while the punishment is executed (Al-Khin, 2005).

The punishment has to be suspended if the offender is pregnant

In the context of death punishment for female offender, the punishment has to be suspended until she gave birth to the infant (al-Khin, 2005). Al-Jaziri (1990) stated that death punishment against pregnant offender should be suspended until the postnatal bleeding has stopped. This is because, Islam protects the life of fetus as he or she should not be punished due to the crime committed by his/her mother. Qudamah (2006) also explains that it is *wajib* (compulsory) to suspend the *qisas* punishment against pregnant offender and this matter widely agreed upon by the venerated jurists and there is no *khilaf* (disagreement) whatsoever pertaining this issue.

Nevertheless, throughout the pregnancy up until the delivery including the end of postnatal bleeding; the female offender must be imprisoned (Al-Jaziri, 1990). They should be treated well by the authority and is free to withdraw their guilty confession if their offense was convicted by a confession (Mehat, 1991). They should be given the basic necessities and access to medical treatments as to what have been provided to the other prisoners. Women offenders are not only have given the right to suspend the punishment of stoning and *qisas* due to murdering, they are also given the right to suspend the *qisas* of limbs (Qudamah, 2006), *hudud* and *ta'zir* such as whipping. This is because; *qisas* of limbs during pregnancy could sorely affect the fetus' development (Qudamah, 2006).

The punishment has to be suspended if the female offender is a breast feeder

A mother with an infant is highly recommended to breastfeed their child up to the age of two years old. For mothers who are not able to breastfeed, they are advised to hire other women to breastfeed their child as stated in the Quran (Al-Baqarah: 233). The advantages of breast milk have been widely proven through various peer-reviewed researches. It is the best form of food for infants especially to those below 6 months old. The earliest form of breast milk produced is yellowish in color, which is called as colostrum. It contains high antibody and act as the first form of immunization for the baby. Al-Zuhri (2005) states that the punishment against pregnant offenders must be suspended until they have completed with their breastfeeding of their child with this 'early milk' form. The authors believe that this specifically refers to the colostrum.

In line with the above explanation, one of the ethical standards in punishment execution is to suspend the *qisas* punishment against offenders who are still breastfeeding their infant child (Al-Khin, 2005; Al-Jaziri, 1990). It is because, those babies are solely depending on their mother's breast milk and other types of milk might not be suitable for them. In this specific context, the authority has the right to suspend the punishment until the end of breastfeeding period, the maximum of which is two years. This is because the death punishment in Islamic criminal law aims to punish the offender without harming or affecting other parties including the offender's children.

CONCLUSION

The Islamic criminal law as prescribed in various sources of Shari'ah is to uphold justice and preserve the rights of human beings as well as the rights of Allah. The penalties to be imposed against offender aims to serve as a lesson to themselves as well as to the others. Allah s.w.t. the Most Merciful is not cruel to His servants even though they have violated His commandments. Penalties implemented in Islamic criminal law will always take into account the welfare of the offenders and not negate their rights as a human being. The punishment must also be executed ethically based on the arguments of the Qur'an, the hadith and the *ijma'*. Among the ethics in the execution of punishment in Islamic criminal law is to defer the punishment if the offender is ill, provides the basic necessities to the offenders in prison, does not violate the modesty of the offenders, and to defer the punishment against pregnant and/or nursing offenders.

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This article was originally published in a Special Issue 1, entitled: "[Islamic Law, Politics and Ethics](#)", Edited by Prof. Ashgar Ali Bin Ali Mohamed, Dr. Abdul Haseeb Ansari & Dr. Qazi Muhammad Adnan Hye.