

SELECTED THEMES IN
ISLAMIC CRIMINAL
JURISPRUDENCE

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IIUM Press

Published by:
IIUM Press
International Islamic University Malaysia
First Edition, 2011
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Perpustakaan Negara Malaysia

Cataloguing-in-Publication Data

Selected Themes in Islamic Criminal Jurisprudence

Bibliography p.
Includes Index
ISBN

ISBN: 978-967-0225-80-7

Member of Majlis Penerbitan Ilmiah Malaysia – MAPIM
(Malaysian Scholarly Publishing Council)

Printed by :

IIUM PRINTING SDN. BHD.

No. 1, Jalan Industri Batu Caves 1/3
Taman Perindustrian Batu Caves
Batu Caves Centre Point
68100 Batu Caves
Selangor Darul Ehsan

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ROLE OF JUST RETRIBUTION (*QIṢĀṢ*) AND ITS ALTERNATIVES TO PRESERVE HIGHER OBJECTIVES OF *SHARĪ'AH*

Muhammad Amanullah

Abstract

Unlawful intentional homicide (*qatl 'amad*) is a major sin punishable by just retribution. Islāmic criminal justice system prescribes a number of alternatives of *qiṣās* such as forgiveness (*'afw*), blood money (*diyyah*), settlement (*sulh*), etc. *Qiṣās* and these alternatives primarily contribute to preserve the objective of protecting life. They also partially contribute to protect other objectives, such as honour (*'ird*) and to some extent, religion (*dīn*). The basic objective of this research paper is to highlight how *qiṣās*, *'afw* and *diyyah* contribute to protect objectives of *Sharī'ah*. In order to achieve this objective, the researcher analytically discusses related verses of the *Qur'ān*, *aḥādīth* of the Prophet (p.b.u.h.) and opinions of scholars in the field. This research is divided into an introduction, role of *qiṣās* to preserve objectives of *Sharī'ah*, role of *'afw* to preserve objectives of *Sharī'ah*, role of *diyyah* to preserve objectives of *Sharī'ah*, a comparison between these three aspects, and a conclusion.

Introduction

Maqāsid al- Sharī'ah are the objectives and purposes that Allāh (S. W. T.) intends to be achieved for public interest in every place and time through prescribing the rulings of the *Sharī'ah*.¹ Among these objectives is *ḍarūriyyāt*, i.e., aspect without which tremendous disorder would occur among members of a society. According to classical jurists, these *ḍarūriyyāt* are protection of religion, life, progeny, property, intellect and honour.² Among the bad deeds that contribute to the loss of human lives is unlawful intentional homicide (*qatl 'amad*),³ which is considered as the gravest sin after polytheism (*shirk*).⁴ The basic sanction against this kind of

¹This definition is a combination of the definitions of three scholars. They are Aḥmad al-Raysūnī, Muḥammad al-Zuhaylī and 'Abd al-Raḥmān Ibrahīm al-Kīlanī. See Aḥmad al-Raysūnī, *Nazariyyāt al-Maqāsid 'inda al-Imām al-Shāḥibī*, (Rabat: Dār al-Amān li al-Nashr wa al-Tawzī', 1991), 7; Muḥammad al-Zuhaylī, *Maqāsid al-Sharī'ah* (Damascus: Dār al-Maktabī, 1998), 6; 'Abd al-Raḥmān Ibrahīm al-Kīlanī, *Qawa'id al-Maqāsid 'inda al-Imām al-Shāḥibī 'Ardan wa Dirāsatan wa Tahlīlan* (Amman: Al-Ma'had al-'Ālamī li al-Fikr al-Islāmī, 2000), 47.

²In order to keep the size of this introduction shorter, I have not discussed the difference of opinions of scholars regarding the number of these higher objectives of the *Sharī'ah*.

³According to Muslim jurists, intentional homicide is killing someone with a weapon such as sword, knife, spear, bullet, etc. or with something that works as a weapon such as a sharp piece of wood, a big stone, fire, etc. See Wahbah al-Zuhaylī, *Al-Fiqh al-Islāmī wa Adillatuh*, revised 4th ed. (Damascus: Dār al-Fikr. 1987), 7: 5617.

⁴In a *ḥadīth* narrated by 'Abd Allāh ibn Mas'ūd, a man asked, "O Messenger of Allāh, what is the gravest sin in the sight of Allāh?" The Prophet replied, "To call a counterpart of Allāh who created you..." The man again asked, "Then what?" The Messenger replied, "Killing of your son fearing that he will eat with you..." The narrator confirms that supporting this statement of the Prophet (p.b.u.h.), a verse of the *Qur'ān* (about the attributes of believers) was revealed by Allāh, saying, "And those who do not call any other god beside Allāh and do not kill that person, killing of whom Allāh has forbidden except if it is lawful" (25:68). (Bukhārī and Muslim). See Wali al-Dīn Muḥammad ibn 'Abd Allāh al-Khatīb al-Tabrīzī, *Mishkāt al-Maṣābih* (Lahore: Maktaba'i Mustafā'i, n.d.), pp. 16-17. In order to consider this killing as a major sin, it should reflect injustice, i.e., the life of someone is to be taken away without any legal reason. If someone is intentionally killed for a legal reason such as adultery, or murder, this killing is not considered as a sin. Rather, it is a duty that has to be performed. Likewise, if someone commits homicide with means other than what is mentioned under footnote no. 1, the killing is not considered as an intentional homicide, albeit it is still considered a sin. This type of killing is deemed to be semi-intentional homicide (*qatl shibh 'amd*). In addition, killing by mistake (*qatl khaṭā*) is also not considered as an intentional homicide. Human life is sacred. Nobody has the right to destroy the life of a fellow human being without a legal reason. Killing someone without a valid reason leads to interference in the work of Allāh swt., who has the sole right to