

SELECTED THEMES IN  
ISLAMIC CRIMINAL  
JURISPRUDENCE

SAYED SIKANDAR SHAH HANEEF  
HASSAN BEN IBRAHIM HENDAQUI

Research Management Centre  
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA



# **SELECTED THEMES IN ISLAMIC CRIMINAL JURISPRUDENCE**

**Edited by**

**Sayed Sikandar Shah Haneef  
Hassan Ben Ibrahim Hendaoui**



**IIUM Press**

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

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without any prior written permission of the publisher.

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

## Table of Content

<b>1-Role of Just Retribution (<i>qisas</i>) and its Alternatives to Preserve the Higher Objectives of Shari`ah</b>	<b>8</b>
Muhammad Amanulah	
<b>2-Sex Crimes and the Preventive Measures from Islamic Perspective</b>	<b>22</b>
Azman Mohd Nor	
<b>3- A Rape Victim in Islamic Law: Protection and Compensation</b>	<b>35</b>
Ahmad Basri Ibrahim & Azman Mohd Nor	
<b>4- The Punishment of Stoning to Death for Adultery (Rajm): A Critical Analysis</b>	<b>47</b>
Mohd Afandi Awang Hamat & Azman Mohd Nor	
5- مقاصد التشريع الجنائي الإسلامي - حسن بن إبراهيم الهنداوي	<b>61</b>

## The Punishment of Stoning to Death for Adultery (Rajm): A Critical Analysis

Mohd Afandi Awang Hamat & Azman Mohd Nor

### Abstract

Stoning to death of an adulterer is regarded as the most severe punishment in human history. It has its origin in the Law of Hammurabi prior to the Old Testament and Islāmic law. However, the popular literature depicts it as part of Muslim law and for that matter demonizes Islām and its system of criminal policy. To make the matter more confusing some Muslims also squarely insist on the literal application of such laws in the contemporary setting without due consideration of the conditions for its enforcement; at times even at the expense of emphasizing other Islāmic measures of crime prevention and control. Accordingly, this paper while presenting an articulation of the juristic debate on *rajm* (stoning to death) tries to point to alternative measures to combat crimes in general and sexual offences in particular.

### The General Framework

*Hadd* literally means limit or boundary which separates and prevents one thing from intruding on another. In Islām, *hadd* means fixed punishment intended to prevent a crime, and signifies the limits of what is tolerable and what is not. *Hadd*, in this context, refers either to the crime itself or to its punishment.

Nevertheless, in the Qur'ānic context, the word *hadd* does not mean to consist of punitive and mandatory sanctions. The word *hadd* (*p.hudūd*) is used in the Qur'ān to imply a set of broad moral and legal guidelines which must be observed and upheld. But nowhere has the Qur'ān specified the manner in which they should be observed other than the emphasis, perhaps, that compassion should not impede our determination to fight crime. This must surely be observed but in the meantime, it should be merged and reconciled with the Qur'ānic directives on reformation and repentance and it is to this that we now turn.<sup>132</sup>

Islāmic law is based entirely on morality. Any moral transgression is seriously condemned by means of severe punishments. The same condition prevails under other laws including Jewish law which states law and morality go hand in hand to prevent the commission of the crime. The philosophy of protecting public morality and to safeguard it against proliferation of immoral behaviour and malpractice, is perhaps the reason for limiting the methods of proving adultery to the testimony of four adult male witnesses, who have actually witnessed the act by their naked eyes or the confession by the offender.

This moral lesson could also be achieved by giving the widest publicity to the implementation of the punishments in order to deter potential offenders. This can be understood from the rule that all punishments, especially that of adultery, should be carried out in public as ordained by the Qur'ān, "Let a party of believers witness their punishment."<sup>133</sup>

Another dimension to note is that the punishments specified as *hudūd* are not designed to be carried out literally without due consideration of their intended purposes (*maqāṣid*) for crime prevention and control. For instance, for crime of theft, the purpose is not to amputate peoples'

---

<sup>132</sup> Hashim Kamali, *Punishment in Islamic Law: An Enquiry into the Hudūd Bill of Kelantan*, (Malaysia: Ilmiah Publishers, 2000) p.52.

<sup>133</sup> Qur'ān, 24:2.