HARMONISATION OF THE SHARĪ‘AH AND CIVIL LAWS (PERSPECTIVE AND PRACTICE)

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THE SHARI'AH'S PROTECTION OF THE RIGHT TO THE PERSON VIS-À-VIS THE WESTERN LAW OF TORTS

Syed Ahmad S A Alsagoff

1. Introduction

The Shari'ah pioneered the protection of a person's right to his person, property (including wealth) and reputation. The Qur'an and the sayings of the Prophet (s.a.w.) clearly protect the sanctity of life, property and honour of every individual, Muslims and non-Muslims.

The Shari'ah provides two kinds of remedy: civil and criminal. The object of the civil remedy is to uphold the individual rights of the victim by checking the wrong done or by compensating him, while the criminal remedy uphold the right of society by punishing the wrongdoer. The remedy of compensating the victim by way of damages (dhaman) for the wrong done is the primary aim of the Shari'ah.

The Shari'ah remedies these violations by various means, popularly called 'torts' in western legal terminology. The remedies under the Shari'ah are not the creations of the human minds. They are divine guidance for the benefit of all human beings.

The Muslim jurists have discussed these 'torts' under several chapters or kitabs in the celebrated hadith collections.

The general principles of the Shari'ah protect the sanctity of life, property and honour of every individual. There are similarities and