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Edited by
Abdul Ghafur Hamid
@ Khin Maung Sein

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Abdul Ghafur Hamid @ Khin Maung Sein

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Chapter Twenty One

Islamic Criminal Law and Human Rights

Ramizah Wan Muhammad

21.1 INTRODUCTION

Currently, human rights is one of the important issues that affects certain aspects of modern international law, the constitution and any other laws, be it common law or Islamic law. The so called protection of human rights has become a powerful tool especially as a result of wide promotion by the United Nations (UN) and the Organisation of Islamic Conference (OIC). Human rights principles gained impetus in the years after World War II with provisions in the United Nations Charter in 1945, The United Nation's Declaration of Human Rights in 1948 and the Universal Islamic Declaration of Human Rights in 1981. In other words, the contemporary discourse on the importance of human rights began after World War II. However, in Islam, the migration of Prophet Muhammad SAW to Madinah and the promulgation of the First Written Constitution over 1,430 years ago marked the proclamation of human rights of mankind, be they Muslims or non-Muslims. Despite this, the popular image of Islam and the Islamic criminal law is usually characterised by stoning to death, lashes, cutting off limbs and capital punishment. Many would think that those punishments, sanctioned by divine revelations, are brutal and against the fundamental rights of an individual. The tragic incident of 9/11 has further contributed to the negative portrayal of Islam and Muslims. However, one needs to affirm with strong belief (*iman*) that the laws of Allah are sacred and divine, and that there is no room for unfairness. Nevertheless, when these laws are drafted, codified, administered and enforced, they represent human efforts which are susceptible to mistakes. Islamic law enactments, Acts and any other codified Islamic laws are no exceptions. These flaws and mistakes must be looked upon with an objective view and not with hostile intentions.

21.2 SHARI'AH, FIQH AND HUMAN RIGHTS

Islamic law originated from two major sources: divine revelation (*wahyu*) and human reason (*aql*). The dual entity of Islamic law is reflected