

Islamic criminal law

Its characteristics, foundations, and what distinguishes it from the criminal legal rules adopted at present

**1. Associate Professor Dr. Ziad Mohammad AlWahshat / Dean of the Faculty of Law /
Ajloun National University**

<https://orcid.org/0000-0002-8550-259X>

zyad.wahshat@anu.edu.jo

Abstract:

This study examined the principal characteristics of Islamic criminal law and the foundations upon which it was established. It also addressed the points that distinguished the rules of this law from the existing criminal legal rules. The research employed the descriptive methodology to determine the nature of the subject matter. It also employed the analytical approach to examine the elements and pillars of the study, in addition to adopting a comparative approach.

Furthermore, the study was divided into two main sections. In the first section, it explored the characteristics and foundations of Islamic criminal law. Whereas in the second section, it investigated the distinctions between the rules of Islamic criminal law and those of contemporary criminal law. The study concluded with the most significant findings and recommendations.

Keywords: Islamic Criminal Law, Islamic Sharia, Descriptive Criminal Law.

Introduction

The provisions of Islamic criminal legislation are of a general and comprehensive nature, encompassing both the ruler and the ruled. Consequently, the Islamic ruler is bound in the application of the Islamic criminal system by the prohibition of pardon or intercession in respect of ḥudūd (fixed punishments prescribed by divine law). This principle reflects the supremacy of God's command, which cannot be waived by human authority.

Moreover, a Muslim—regardless of whether he holds a position of authority or is a member of the governed community—remains constantly aware of God's oversight and of his accountability for both actions and intentions. Accordingly, awakening the conscience and safeguarding morality among members of society constitute fundamental safeguards that contribute both to the prevention of crime and to the facilitation of its prosecution.

The Islamic criminal law is founded upon a number of substantive and procedural principles. Among its most salient features are stability, certainty, and the rejection of conjectural assumptions. Its foundations are derived from the immutable sources of the Qur'an, the Sunnah of the Prophet (peace be upon him), the consensus (ijmā') of Muslim jurists, and the interpretative efforts and scholarly opinions of eminent jurists of the Islamic nation.

Research Problem

The central problem addressed in this study is to identify the principal characteristics that distinguish Islamic criminal law and to clarify the unique features that mark this legal system.

Research Significance

The significance of the study lies in its demonstration of the strength of Islamic legislation in preventing crime and enforcing the divinely prescribed sanctions explicitly in the Holy Qur'an. Such sanctions aim to protect religion and morality, while simultaneously ensuring security and stability for all members of society.

Research Hypotheses

The study seeks to answer a series of questions and hypotheses, the most important of which are:

- 1.What are the principal characteristics of Islamic criminal law?
- 2.In what ways do the rules of Islamic criminal law differ from contemporary substantive criminal law?
- 3.What are the implications of applying the principles of Islamic criminal law in present-day society, and to what extent are they suitable for implementation?

Methodology

The study utilizes a descriptive approach to explore the nature and scope of the subject under investigation, employs an analytical approach to examine its elements and underlying principles, and applies a comparative approach to highlight the similarities and differences between Islamic criminal law and contemporary criminal systems.

Key Terms

- 1.Islamic Sharia.
- 2.Islamic Criminal Law.
- 3.Positive Criminal Law.

Research Structure

The research plan is divided into two main sections:

- Chapter One:** The characteristics and foundations of Islamic criminal law.
- Chapter Two:** The distinguishing features between Islamic criminal rules and contemporary criminal rules.
- Conclusion.**

The Characteristics and Foundations of Islamic Criminal Law

It may be asserted that Islamic Sharia introduced distinctive features consistent with human nature, encompassing rules that are enforceable at all times and in all places. Indeed, Allah the Almighty legislated these provisions as the Creator of the human soul, fully aware of its inner dimensions—both the good and the evil. Moreover, He, exalted be He, established the principle of reward and punishment for the human soul.

Accordingly, this section is divided into two subsections: the first addresses the characteristics of Islamic criminal law, while the second examines its foundations.

The Characteristics of Islamic Criminal Law

The principal characteristics that distinguish Islamic criminal law may be summarized as follows:

1. Generality and the Prohibition of Pardon or Intercession in Ḥudūd

When the Qur'an prescribed punishment for certain crimes, its purpose was to safeguard both the individual and society as a whole. These punishments were established in general terms, without exception for any person, regardless of status, social position, or religious standing. Thus, the provisions of the Islamic criminal system apply equally to both the ruler and the ruled. Consequently, the ruler is bound by these provisions in their application and may not grant pardon or intercede in respect of any of the fixed punishments (*ḥudūd*) ordained by God.¹

2. The Connection of Islamic Criminal Law with Morality and the Protection of the Five Essential Interests

The provisions of Islamic Sharia have been particularly concerned with instilling the firm belief that Allah, the Almighty, constantly observes human beings, records their deeds in this worldly life, and rewards them for good actions while punishing them for evil ones. Consequently, Islamic law emphasized that a devout Muslim is always conscious of God's watchfulness and of his accountability for both actions and intentions. Accordingly, awakening the conscience and

¹Fatima al-Zahra Liratni, *Lectures on Islamic Criminal Legislation*, accessed January 2023, www.scvibd.com; and 'Abd al-Qādir 'Uda, *Islamic Criminal Legislation in Comparison with Positive Law*, vol. 1 (Beirut: Dār al-Kitāb al-'Arabī, September 20, 2021), 40ff.

preserving morality among members of society constitute highly significant matters, as they serve to prevent the commission of crime.

3. Encouragement to Repentance and Forgiveness When Able

The Noble Qur'anic verses: *"who avoid major sins and shameful deeds, and forgive when angered"*² And His saying: *"Whether you reveal or conceal a good or pardon an evil—surely Allah is Ever-Pardoning, Most Capable"*³ Urges the believer to repent and refrain from committing sins and acts that violate the Divine rulings. These verses also highlight the Creator's, Glorified and Exalted be He, power to forgive and accept the repentance of the wrongdoer.⁴ Therefore, one of the unique features and objectives of Islamic criminal law is to remind Muslims that committing an evil deed constitutes a grave violation of the ruling of the Almighty and that persistence in such an act will expose them to punishment in this world and the Hereafter. Yet, it remains that God, Glorified and Exalted be He, pardons all the sins of a repentant servant, even if they were as vast as the heavens, so long as they do not associate partners with Him.

4. Not Limiting the Crime to an Unknown Perpetrator While Emphasizing Crime Prevention

Islamic criminal law mandates a thorough investigation to identify the perpetrator of a crime, its causes, and the motives behind it, as well as the proper classification of the offense in accordance with the Qur'anic provisions prescribing punishment. The penal rulings in the Qur'an function as a deterrent themselves, discouraging a Muslim from committing such acts out of fear of the wrath of the Almighty, Glorified and Exalted be He, and the consequences He may impose both in this world and the Hereafter.

5. The Inclusion of Advanced Criminal Principles in Islamic Law

The principles established by Islamic law regarding the definition of acts and crimes are considered among the most advanced criminal concepts, which modern positive criminal codes took many years to develop and implement.⁵ More than fourteen hundred and forty-seven years ago, the Qur'an already enshrined numerous penal principles aimed at protecting the individual,

²The Clear Quran, Dr. Mustafa Khattab, Ash-Shura (42:37), available at: <https://www.islamawakened.com>.

³ The Clear Quran, Dr. Mustafa Khattab, An-Nisa' (4:149), available at: <https://www.islamawakened.com>.

⁴Dr. Laitouch Dalila, Lectures on Comparative Islamic Criminal Legislation, Mentouri University, Constantine, Algeria, 2020, p. 30 ff.

⁵ Dr. Osama Ali Mustafa Al-Fuqair Al-Ruba'ah, The Impact of the Severity of Punishment on the Classification of Crimes in Islamic Jurisprudence, published in the Jordanian Journal of Islamic Studies, Vol. 4, No. 1, 2008.

See also: Abdel Qader Odeh, The Contemporary Encyclopedia of Islamic Criminal Jurisprudence, Dar Al-Shorouk Library, Cairo, 2001, p. 30 ff.

the family, and society collectively, while also leaving ample room for God's, Glorified and Exalted be He, forgiveness when a Muslim sincerely repents for their wrongdoings.⁶

Foundations of Islamic Criminal Law

The main foundations of Islamic criminal law can be summarized as follows:

First: The Principle of Legality An individual's actions and behavior are not considered crimes under Sharia unless there is a legal provision issued by the legislative authority of the state that explicitly classifies the behavior as a crime and prescribes a punishment for it. This provision must have been enacted before the commission of the act or the occurrence of the behavior intended to be punished.⁷

In reality, neither the Noble Qur'an nor the Prophetic Sunnah contains an explicit text mandating the application of the principle of legality in the field of Islamic criminal law. However, it can be inferred from His statement: *"And We would never punish 'a people' until We have sent a messenger 'to warn them'"*⁸ And His saying: *"Your Lord would never destroy a society until He had sent to its capital a messenger, reciting Our revelations to them. Nor would We ever destroy a society unless its people persisted in wrongdoing"*.⁹ These verses indicate that punishment is contingent upon prior warning and guidance, which forms the basis for the legal principle that no one can be penalized for an act without prior specification.

Second: The Principle of Equality before the Provisions of Islamic Criminal Law. Islamic law was revealed to safeguard recognized human interests, which are worthy of being called true interests. Accordingly, the purpose of prescribing Islamic punishments is to ensure proportionality between the crime and its penalty, and that the sentence corresponds in nature to the offense committed.

The recognized interest is the genuine interest, and the interests acknowledged by Islam are directed toward the preservation of religion, life, intellect, lineage, and property. When Islamic law judges an act to be a crime, it is because it involves an assault on one or more of these established and protected interests as affirmed by the Qur'an and the Sunnah. Likewise, the punishments for crimes are prescribed to safeguard these fundamental interests. Thus, true and attainable justice in this world is realized through the implementation of Islamic punishments.

Points of Distinction Between the Rules of Islamic Criminal Law and the Rules of Contemporary Criminal Law

⁶ For further details, see: Dr. Lirtani Fatima Al-Zahra, Lectures on Islamic Legislation, p. 15 ff.

⁷ See: Dr. Laitouch Dalila, *Lectures on Comparative Islamic Criminal Legislation*, Mentouri University, Constantine, Algeria, 2020, p. 3 ff.

⁸ Mustafa Khattab, The Clear Quran, al-Isra' (17:15), 2018, available at: <https://www.islamawakened.com>.

⁹ Mustafa Khattab, The Clear Quran, al-Qasas (28:59), 2018, available at: <https://www.islamawakened.com>.

The fundamental distinction between Sharī‘a-based rules and contemporary positive legal rules lies in the fact that Sharī‘a rules are derived from divine revelation sent down by Allah Most High; legal rules are derived from human beings. It is therefore appropriate here to highlight some aspects that distinguish Sharī‘a rules from positive laws as follows:

First: Positive law is man-made, whereas Islamic Sharī‘a is from Allah Most High. This entails that positive law is subject to alteration, modification, and what may be termed “evolution,” in accordance with the developments of the community.¹⁰ Thus, law remains inherently incomplete, and it can never attain perfection so long as its maker is imperfect and incapable of fully comprehending the future, even if able to understand the past. By contrast, Islamic Sharī‘a originates from Allah—Most High—reflecting the Creator’s omnipotence, perfection, and encompassing knowledge of both the past and the future.

Second: Law is a set of temporary rules established by the community to regulate its affairs and meet its needs. It therefore lags behind the community, reflecting only its present state. Hence, these are temporary rules aligned with the immediate conditions of the community. By contrast, Islamic Sharī‘a provides permanent, divinely ordained rules for regulating the community affairs. While both law and Sharī‘a share the objective of organizing society, they differ in that the rules of Sharī‘a are eternal, immutable, and not subject to amendment.¹¹

Third: It is the community that establishes the law, coloring it with its customs and traditions. The essential purpose of law is to regulate the community’s affairs, not to guide the community. Thus, law is always behind the community, following its evolution, since it is a product of the community rather than the community being a product of the law. Conversely, Islamic Sharī‘a does not originate from the community, nor is it the outcome of its historical development or social interactions, as is the case with positive law. Instead, it comes from Allah Most High, who perfected all creation. While Sharī‘a is not the creation of the community, the community itself is the creation of Sharī‘a.

Accordingly, the ultimate purpose of Islamic Sharī‘a is to cultivate righteous individuals, a virtuous society, an ideal state, and ultimately an ideal world. For this reason, the provisions of Sharī‘a were, at the time of revelation, above the level of the world, and they remain so today. The texts of Islamic Sharī‘a are complete, free from deficiency, and in no need of amendment or modification until the Day of Judgment. Indeed, the principles and doctrines established by Islamic Sharī‘a have no parallel in the non-Islamic world to this day.¹²

It is worth noting that the rulings of Islamic Sharī‘a, in general, are of two types:

1. **A fixed type**, established by explicit evidence from the Qur’an and the Sunnah with a clear and unequivocal indication of the ruling. This type constitutes a smaller portion of

¹⁰ ‘Abd al-Qādir ‘Awdah, *Al-Tashrī‘ al-Jinā‘ī al-Islāmī Muqāraran bi-al-Qānūn al-Waḍ‘ī* [Islamic Criminal Legislation Compared with Positive Law], p. 40 ff.

See also: Aḥmad Fathī Bahnāsī, *Madkhal al-Fiqh al-Jinā‘ī al-Islāmī* [Introduction to Islamic Criminal Jurisprudence], Dār al-Shurūq li-l-Ṭibā‘a, Cairo, 1989, p. 115 ff.

¹¹ Ibid., p. 60 ff.

¹² Ibid., p. 62.

the rulings, but it is of the greatest importance, as it forms the solid foundation upon which the Sharī'a is built.

2. **A flexible type**, which has been derived through the efforts of jurists by way of interpretation and deduction from the Qur'an and Sunnah, or in the absence of explicit texts, through methods such as analogy (qiyās), consideration of public interest (maṣlaḥa), juristic preference (istiḥsān), recognition of custom ('urf), or presumption of continuity (istiṣḥāb). This type represents the majority of Sharī'a rulings and constitutes the field of Islamic jurisprudence (fiqh) and the scholarly work of Muslim jurists.¹³

Conclusion

This study examined the key features and foundations that distinguish Islamic criminal law from the criminal rules. It arrived at several findings and recommendations, the most notable of which are summarized below.

First: Findings

1. Islamic criminal rules are distinguished from positive (man-made) laws by their perfection and immutability. This is in contrast to positive laws, which are subject to change through amendment, addition, or deletion in response to the needs and demands of the society in which they are enacted.
2. Islamic criminal rules are also characterized by their superiority; their principles and foundations are always above the level of the community. They encompass doctrines and theories that safeguard this elevated status regardless of how advanced the community becomes.

Second: Recommendations

1. This study recommends a return to the Islamic legal sources found in the Qur'an and the Sunnah of the Prophet (peace be upon him). Reliance on these sources is in the interest of both the Muslim individual and society, as they are divine rules suitable for application at all times and places. Accordingly, there is a need to amend current positive laws so that they conform to the Islamic criminal law, which is divine in origin and not man-made.
2. It is recommended to raise awareness among individuals and society regarding adherence to the principles and values enjoined by Almighty Allah in the Qur'an and the Sunnah, even in cases where they are not explicitly codified in written laws.

Reference list

AḥmadFathīBahnasī. *Madkhal al-Fiqh al-Jinā'ī al-Islāmī* [Introduction to Islamic Criminal Jurisprudence]. Cairo: Dār al-Shurūq li-l-Ṭibā'a, 1989.

¹³ḤasanQāsimī, *Al-Sharī'a al-Islāmiyyawa-al-Qānūn al-Waḍ'ī: DirāsahMuqāranah* [Islamic Sharī'a and Positive Law: A Comparative Study], Manār al-Islām li-l-Abḥāthwa-al-Dirāsāt, 22 August 2023, available at: <https://manarislami.net>.

Amīr ‘Abd al-‘Azīz. *Al-Fiqh al-Jinā’ī al-Islām* [Criminal Jurisprudence in Islam]. Nablus: MaktabatDār al-Salām li-l-Ṭibā‘awa-al-Nashrwa-al-Tarjamah.

DalīlahLītūsh. *Muḥāḍarātft al-Tashrī‘ al-Jinā’ī al-Islāmī al-Muqāran* [Lectures in Comparative Islamic Criminal Legislation]. Constantine, Algeria: University of Mentouri, 2020.

Fatimah al-Zahrā’ Līratnī. *Muḥāḍarātft al-Tashrī‘ al-Islāmī* [Lectures in Islamic Legislation]. Retrieved January 2023 from: www.scvibd.com.

ḤasanQāsimī. *Al-Sharī‘a al-Islāmiyyawa-al-Qānūn al-Waḍ‘ī: DirāsahMuqāranah* [Islamic Sharī‘a and Positive Law: A Comparative Study]. *Manār al-Islām li-l-Abḥāthwa-al-Dirāsāt*, 22 August 2023. Available at: <https://manarislami.net>.

Mustafa Khattab. *The Clear Quran*, An-Nisa’ (4:149). 2018. Available at: <https://www.islamawakened.com>.

Mustafa Khattab. *The Clear Quran*, Al-Isra’ (17:15). 2018. Available at: <https://www.islamawakened.com>.

Mustafa Khattab. *The Clear Quran*, Al-Qasas (28:59). 2018. Available at: <https://www.islamawakened.com>.

Mustafa Khattab. *The Clear Quran*, Ash-Shura (42:37). 2018. Available at: <https://www.islamawakened.com>.

Usāmah ‘AlīMuṣṭafā al-Faqīr al-Rabā‘bah. “Athar Jasāmat al-‘UqūbahftTaqṣīm al-Jarā’imft al-Fiqh al-Islāmī” [The Effect of Penalty Severity in the Classification of Crimes in Islamic Jurisprudence]. *Jordanian Journal of Islamic Studies*, 4(1), 2008.

‘Abd al-Qādir ‘Awdah. *Al-Mawsū‘ah al-‘Aṣriyyahft al-Fiqh al-Jinā’ī al-Islāmī* [The Contemporary Encyclopedia of Islamic Criminal Jurisprudence]. Cairo: MaktabatDār al-Shurūq, 2001.

‘Abd al-Qādir ‘Awdah. *Al-Tashrī‘ al-Jinā’ī al-IslāmīMuqāranan bi-al-Qānūn al-Waḍ‘ī* [Islamic Criminal Legislation Compared with Positive Law]. Beirut: Dār al-Kitāb al-‘Arabī, 20 September 2021.