

University center Abdelhafid Boussouf- Mila

Faculty of law & political sciences

Department of Law

Lecture three: Islamic Criminal Law



Addressed To Master 2 criminal Law Students-Semester 1

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Introduction to Islamic Criminal Law (مقدمة في التشريع الجنائي الإسلامي)

Islamic criminal law is an integral part of Shari'a, which is the body of Islamic law governing all aspects of a Muslim's life. It deals with criminal offenses and prescribes punishments for those offenses. The legal sources for Islamic criminal law are:

The Qur'an (القرآن): The holy book of Islam, which provides fundamental guidelines and directives regarding criminal behavior.

The Hadith (الحديث): The sayings and practices of Prophet Muhammad, which provide detailed guidance on how to interpret and apply the law.

Ijma' (الإجماع): The consensus of Islamic scholars on legal matters.

Qiyas (القياس): Analogical reasoning used by scholars to address new issues not explicitly covered by the Qur'an or Hadith.

Islamic criminal law is concerned with protecting both individual rights and the welfare of society. It aims to maintain public order, justice, and morality within the community.

Key Principles of Islamic Criminal Law (المبادئ الأساسية للتشريع الجنائي الإسلامي)

Hudud (الحدود): These are the fixed punishments for serious offenses that are considered to be crimes against God and society. They are mentioned explicitly in the Qur'an and Hadith. Common offenses under Hudud include:

Zina (adultery or fornication): Punishable by flogging or stoning, depending on the circumstances.

Theft: Punishable by amputation of the hand for repeat offenders.

Apostasy: Leaving Islam, which can be punishable by death in some interpretations.

Drinking Alcohol: Punishable by flogging in some schools of thought.

Banditry (Hirabah): Terrorizing the community or engaging in violent robbery, with penalties ranging from execution to amputation of limbs.

Qisas (القصاص): Qisas refers to the principle of retribution, where the punishment corresponds directly to the crime committed. This is typically applied in cases of murder or bodily injury. For example:

Murder: The family of the victim has the right to demand the death penalty for the murderer or forgive the perpetrator in exchange for blood money (diyah).

Bodily Injury: If someone causes physical harm, they may be required to pay compensation (blood money or diyah) or face the same injury, depending on the nature of the crime.

Tazir (التعزير): Tazir refers to discretionary punishments for crimes where the punishment is not fixed by the Qur'an or Hadith. These crimes are less serious and are often offenses against public order, such as bribery, corruption, and violations of civil rights. The punishment for Tazir is determined by the ruler or court, and can range from imprisonment to fines or corporal punishment.

Discretionary Authority (السلطة التقديرية): Islamic criminal law gives judges the authority to interpret the law and impose punishments according to the nature of the crime and the circumstances of the defendant. This is particularly important in Tazir cases, where punishments can vary based on the judge's discretion.

Comparison with Modern Criminal Systems (المقارنة مع الأنظمة الجنائية الحديثة)

Sources of Law (مصادر القانون)

Islamic Criminal Law: The primary sources are religious texts (the Qur'an and Hadith), and secondary sources (Ijma' and Qiyas). These sources provide a fixed framework for criminal law, emphasizing moral and religious principles.

Modern Criminal Law: Secular legal systems, such as those found in the United States, Europe, and many other countries, derive their criminal laws from constitutions, statutory codes, and judicial precedents. These legal systems often emphasize individual rights, due process, and the separation of powers, with less emphasis on religious or moral teachings.

Punishments (العقوبات)

Islamic Criminal Law: In the case of Hudud offenses, punishments are considered divinely mandated and severe. However, there is a strong emphasis on repentance and forgiveness. For example, a person convicted of zina can avoid punishment if they repent before being sentenced.

Modern Criminal Law: Punishments in secular legal systems are often based on the severity of the crime, the likelihood of rehabilitation, and the concept of deterrence. In some secular systems, the death penalty is abolished or rarely used, while Islamic criminal law applies it in specific cases.

Evidence and Proof (الأدلة)

Islamic Criminal Law: The burden of proof in Islamic law is very high, especially for Hudud crimes. In cases like zina, the testimony of four male witnesses or a confession by the perpetrator is required. For theft, there must be clear evidence that the person stole under specific conditions.

Modern Criminal Law: In secular systems, the rules of evidence may be more flexible. In many countries, a person is considered innocent until proven guilty, and evidence can include witness testimony, physical evidence, and expert testimony.

The Role of Judges (دور القضاة)

Islamic Criminal Law: Judges (Qadis) in Islamic criminal law play a critical role in interpreting and applying the law. They are tasked with ensuring justice based on the principles of Shari'a.

Modern Criminal Law: Judges in secular systems focus on applying the law based on statutory codes and precedents. They generally follow a more procedural approach, with less reliance on religious or moral considerations.

Terminology

Islamic Criminal Law - القانون الجنائي الإسلامي

Sharia - الشريعة

Hudud - الحدود

Qisas - القصاص

Tazir - التعزير

Diyah - الدية

Apostasy - الردة

Zina - الزنا

Theft - السرقة

Murder - القتل

Whipping - الجلد

Stoning - الرجم

Money Laundering - غسيل الأموال

Retribution - القصاص

Forgiveness - العفو

Criminal Justice - العدالة الجنائية

Retributive Justice - العدالة الانتقامية

Punishment - العقوبة

Testimony - الشهادة

Confession - الاعتراف