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ISLAMIC CRIMINAL JUSTICE IN THE LIGHT OF THE UNITED NATIONS RULES AND GUIDELINES OF CRIMINAL JUSTICE

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ABSTRACT

Many Islamic countries have developed effective criminal justice systems that align with contemporary developments in crime prevention and criminal policy. These systems increasingly engage with global initiatives, including those led by the United Nations, aimed at improving justice frameworks. This paper examines the relationship between contemporary criminal justice and Islamic criminal justice by highlighting their shared principles and objectives. Both systems converge on fundamental goals, including the realization of justice, prevention of oppression and aggression, and the protection of essential human interests such as life, property, lineage, intellect, and religion. Within the Islamic framework, the justice system plays a central role in safeguarding these objectives. The study argues that the organization and development of criminal justice mechanisms remain within the domain of governance and juristic reasoning, allowing adaptation to changing temporal and spatial contexts while remaining consistent with the overarching principles of Islamic justice. Justice holds a central position in Muslim societies as a core religious objective and a collective responsibility. While contemporary criminal justice systems gained global prominence following the 1948 Universal Declaration of Human Rights, the pursuit of justice has long been embedded in Islamic legal tradition through the Qur'an and Sunnah, which consistently promote equity and condemn injustice. The paper recommends the integration of Islamic criminal law into legal education, the promotion of comparative and collaborative research between Islamic and Western legal scholars, and enhanced international cooperation in developing investigative methods and evidentiary standards to address emerging forms of crime, including cybercrime and AI-driven criminality.

KEYWORDS: Islamic Criminal Justice; Contemporary Justice; Sharia Law; Legal Reform; Cybercrime.

1. INTRODUCTION

1.1. *The Topic of the Research*

Islamic law does not set forth any detailed system of criminal procedure, and there is no mandate in any source of Islamic law emphasizing the existence of investigation and prosecution stages in the Islamic criminal justice system. The historical precedents do not clearly indicate that the stage of criminal investigation was among the methods of solving criminal cases. However, criminology, as a scientific study of the causation, correction, prevention of crime, and criminal justice reform, exists in the sources of Islamic law and teachings.

Thus, methods of criminal justice administration in Islamic law are a matter of politics and not of Sharia, while matters of criminology are detailed in the Sharia. Consequently, the jurists, "Ulama" and the legislative authorities are authorized to organize and maintain criminal procedural systems congruent with the circumstances of time and place, within the spirit of the general principles of Islam and in the context of contemporary requirements of justice and human rights.

The arrangements, mechanisms, and administration of the criminal justice system are purely political issues left to the discretion of the authorities. It is acceptable to divide legal jurisdiction into several offices or aggregate them into one. The only condition for one who practices law is that they should be competent and possess the legal qualifications prescribed by the Sharia.

On the other hand, understanding Islamic criminology requires comprehensive research with the original Islamic sources to highlight the causes of crime and appropriate methods of crime prevention and treatment of offenders. This paper attempts to introduce Islamic criminal justice in light of contemporary criminal justice rules and guidelines adopted by the international community.

1.2. *The Problem of the Research*

Today, many Islamic countries have developed competent criminal justice systems consistent with the inevitable changes that have taken place in the field of crime prevention and criminal policy. The globalization of the crime problem, concepts of the new world order, commitments to international crime prevention, criminal justice programs (1) and growing cyber crimes were of great impact on contemporary Islamic criminal justice systems. However, Muslim Jurists were reluctant to delve deeply into contemporary theories of criminal policies prevailing in Islamic communities, as these

principles, though they might be contradicting with Islamic teachings. Elected legislative bodies, in the form of written articles, do not codify Islamic criminal law as well as the Islamic legal system. Therefore, we may notice unfavorable contradictions between what scholars understand and what law enforcement organizations are practicing. Such a situation generates the following questions:

1. What are the basic principles and sources of Islamic criminal justice?
2. Are we in need of identifying and adopting Islamic theories for criminal justice?
3. Do we have references to prove Islamic theories of justice?
4. Does the Islamic criminal justice system apply the rules and guidelines adopted by the United Nations?

I hope that this paper may discuss and find pathways for a better understanding of Islamic criminal justice, following the rules and measures adopted by the United Nations for the realization of criminal justice.

1.3. *The Purpose and Importance of the Research*

Today, the international community is becoming more involved in the administration of criminal justice and crime prevention at the national levels due to the rapid growth of transnational criminality and its impact on human rights. Many efforts have been made by the United Nations and other regional organizations to enhance the administration of criminal justice, the treatment of offenders, and victim assistance programs. Islamic countries are contributing to making criminal justice rules and crime prevention policies adopted by the United Nations. The new emergence of the Islamic legal system in many parts of the world and the escalation of transnational crime problems necessitate integration and reconciliation among various criminal justice systems prevailing in the world. This research is an attempt to bridge the gap between the basic principles of Islamic criminal justice operations, procedures, and rules of evidence on one hand, and the basic rules and methods of contemporary criminal justice system operations and procedures known in Western countries on the other hand. Observing Islamic rules of the criminal justice system and maintaining its fundamental identity in the context of globalization may enhance the realization of justice administration and the rule of law. With due respect to the various views of Muslim jurists, this study, relying on the opinion of the majority (*Rai al-jamhour*), aims to identify:

1. Contemporary criminal justice system
2. Components of the criminal justice system and

their functions and procedures.

3. Police role and powers in the criminal justice system.

4. Rules of evidence in Islamic criminal law.

5. Admissibility of scientific evidence before Islamic criminal law courts.

6. The role and powers of judges from an Islamic law perspective.

1.4. The Importance of this Paper

The importance of this paper depends on the issue of Islamic criminal justice as a new topic gaining scholars' attention in Western countries. Therefore, the paper may help in:

1. Understanding the concepts of Islamic criminal justice

2. Defining the sources of Islamic criminal justice.

3. Introducing the functions and procedures of criminal justice

4. Comparing Islamic criminal justice and the contemporary criminal justice system

5. Highlighting the principles and rules of evidence admissible before Islamic courts

2. CHAPTER 1: CONTEMPORARY CRIMINAL JUSTICE SYSTEM

2.1. The Theory of Contemporary Criminal Justice

What is the meaning of criminal justice, and what is the criminal justice system? Where does the study of criminal justice stand within the field of criminal law knowledge? To answer such questions, I have consulted many sources. However, only very rarely have attempts been made by experts to define the term "criminal justice system" or "administration of criminal justice." Researchers of criminal justice commonly deal only with issues of criminal justice through a traditional approach that emphasizes the importance of describing the structure and operation of criminal justice agencies. In detail, they have discussed the system, the system's components, and their administration, cooperation, and coordination. Many writers identify the criminal justice system as police, prosecutor, judiciary, and corrections. They ignore the element of the community and the participation of citizens and private defense sectors. On the other hand, experts who have followed the legalistic approach have made remarkable efforts in judicial process studies.

Indeed, here, the definition of the term "criminal justice" is important because people have various perceptions of what justice is and what behavior may prejudice justice. Without a doubt, the question of

justice has been a philosophical issue since olden times. Daniel Webster, (1) has stated that:

"Justice is the chiefest interest of man on earth. But what justice is remains a matter of dispute in philosophy, ethics, and

jurisprudence. It is significant that each of the four words used most in the science of law, namely 'justice,' 'rights,' 'law,' and 'morals,' are words for ideas at the very foundation of the scheme, words upon whose meaning jurists have not been and are not now able to agree."

2.2. Definition of the Criminal Justice System

Many writers have pointed out that a criminal justice system is elusive of any clear-cut definition. In Elmer Johnson's description, a criminal justice system is a loose federation of offices and agencies through which officials of various professional identities work. (3)

A literal definition of criminal justice, suggested by Joseph J. Senna and Larry S. Siegal, reads as follows: "Criminal justice is a field of study that deals with the nature of crime in society, as well as analyzing the formal process and social agencies that have been established for crime control." (5)

Professor Atsumi Toyo, (8) an authority on Japanese and American laws of criminal procedure, has defined a criminal justice system as follows: (7)

"A criminal justice system is an apparatus used to enforce the standards of conduct necessary to protect individuals and the community. It operates by apprehending, prosecuting, convicting, sentencing, and treating those who are sentenced."

To enhance our understanding, it may be sensible to discuss here some of those models, namely (1) the system model, (2) the process model, (3) the organizational model, and (4) the functional model.

2.3. Models of Criminal Justice Systems

2.3.1. The System Model

This model considers the administration of criminal justice to be a system of crime-control organizations, namely, police, courts, and correctional institutions. According to this model, the administration of criminal justice is an interrelated system of agencies beginning with arrest and concluding with the eventual release of the offender. The changes in any one part of the system affect the other parts. Thus, the advocates of this model emphasize systems planning, coordination, and cooperation between criminal justice institutions. Joseph Senna and Larry Siegel have observed that the efforts to bring criminal justice organizations together have been hampered by the multiplicity of their goals as well as by problems of agency isolation, conflict, and independence.

2.3.2. *Process Model*

Many writers perceive criminal justice not as a system but rather as a process of a series of decision-making functions. The process model emphasizes the offender and the stages through which he or she passes, beginning with arrest and ending with re-entry into society. The main characteristics of this model are:(11)

- a. Legal guilt and the presumption of innocence
- b. The conception of the criminal process as an appropriate forum for the correction of its abuses, and
- c. The insistence on the state's duty to ensure that the accused is not deprived by poverty of the capacity to effectively invoke the protections that the process must afford.

2.3.3. *The Organizational Model*

The organizational model consists of three approaches:

- a. Regulatory model, which is legalistic and based on the processes of the arrest, trial, and sentencing of the offender,
- b. Patient model, which considers the offenses in terms of personal pathology, and
- c. Community disintegration model, where criminal justice is viewed within the context of the social community.

2.3.4. *Functional Analysis Model*

Donald Newman has recently suggested a model known as "functional analysis" which would provide a method for reviewing the entire structure of the criminal process; it considers the critical functions of police, courts, and correctional personnel not singly but in union. Newman's approach seems to represent a combination of both the organizational model and the systems model.

2.4 *United Nations Rules and Guidelines of Criminal Justice*

Since its foundation, the United Nations has been active in the development and promotion of internationally recognized principles in crime prevention and criminal justice. Over the years, a considerable body of United Nations standards and norms related to crime prevention and criminal justice has emerged, covering a wide variety of issues such as juvenile justice, the treatment of offenders, international cooperation, good governance, victim protection, and violence against women. The United Nations congresses on crime prevention and criminal justice, which have been held every five years since 1955, have proved to be an invaluable source and driving force for this process.

Criminal justice systems differ from one country to

another, and their response to antisocial behaviors is not always homogeneous. However, over the years the United Nations standards and norms in crime prevention and criminal justice have provided a collective vision of how the criminal justice system should be structured. Despite their "soft-law" nature, the standards and norms have made a significant contribution to promoting more effective and fair criminal justice structures in three dimensions. Firstly, they can be utilized at the national level by fostering in-depth assessments leading to the adoption of necessary criminal justice reforms. Secondly, they can help countries develop subregional and regional strategies. Thirdly, globally and internationally, the standards and norms represent "best practices" that can be adapted by states to meet national needs.

The first edition of the Compendium of United Nations Standards and Norms

in Crime Prevention and Criminal Justice was published in 1992.

Between the first edition of the Compendium and the present one, new standards and norms have been developed, and five binding legal instruments have been negotiated and adopted by the international community. Such instruments included:

- United Nations Convention against Transnational Organized Crime
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,
- The Protocol against the Smuggling of Migrants by Land, Sea and Air
- The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components, and Ammunition
- The United Nations Convention against Corruption.

The standards and norms in crime prevention and criminal justice, developed over the last 60 years, have paved the way for the adoption of those conventions and have provided a starting point for their negotiation. Now the hope is that those legal instruments will reinforce and strengthen the value and significance of the standards and norms by eliciting the kind of system-wide cooperation that will give full weight to their further application.

Following the ratification of the Universal Declaration of the human rights by the international community in the year 1948, regional conventions and territorial legislation were issued in many countries to identify rules of criminal justice and to standardize the fair treatment of all parties involved in crime. Legislative bodies and academic organizations attentively considered the conventions

on the rights of criminally accused persons, treatment of offenders, and victims' compensation. Consequently, the progressive or democratic principles of criminal justice were embodied in the constitutions and laws of almost all countries of the free world. Such standards of fairness comprise:

- (1) The due process of arrest.
- (2) Automatic expunging of arrest records.
- (3) Freedom from unwarranted stopping and frisking.
- (4) The right of an accused person to be admitted to bail after any arrest.
- (5) The right of the accused to be informed in advance of the arrest or trial of the same nature and cause of his accusation.
- (6) The right of the people to be secure in their persons, homes, and effects against any unlawful search and seizure.
- (7) The privileges of individuals against compulsory self-incrimination.
- (8) The right of the accused to have the assistance of his own counsel.
- (9) The protection of the accused person against adverse pre-trial publicity.
- (10) The right of any accused person to a speedy and public trial.
- (11) The right to impartial judges and a jury.
- (12) The right of the accused to confront adverse witnesses.
- (13) The right of protection against double jeopardy.
- (14) Prohibition of cruel and unusual punishment for convicted persons.
- (15) The right of the defendant to appeal the judgment.
- (16) The right of the people to institute a habeas corpus action to procure release from any unlawful custody, so as to safeguard all other rights of the defendant.
- (17) The right of the inmate to be well-treated and rehabilitated.
- (18) The right of the victim to be fairly compensated.

3. CHAPTER 2. ISLAMIC CRIMINAL JUSTICE SYSTEM

3.1. *The Theory of Islamic Criminal Justice*

In Islam, the sources of justice are revelations (Qur'an) and divine wisdom, uttered in the prophet's own words or acts and promulgated as "Sunna." Within and in light of these two authoritative sources, early Muslim experts and philosophers made many interpretations and developed various theories. Among the Muslim experts who have

contributed significantly to justice studies, we must first mention Imam Nu'man Bin Sabit Abu Hanifa (Baghdad, 660-730 A.D.), Imam Ahmed bin Hanbal (Baghdad, 724-801 A.D.), Imam Malik Bin Anas (Madina, 673-759 A.D.), and Imam Mohamed Bin Idris Al-Shafie (730-784) who developed the four main legal schools of Islam known by their names. Second, we must mention Al-Kindi, Elamwardi, Ibn Taymiya, and Ibn Khaldun for their philosophical research in justice studies and practical contributions to justice administration. Although the first four experts' main concern was not solely with justice, they did lay the groundwork for their successors to elaborate on issues related to law and justice. (2)

Literally, the Arabic word for justice (ADALA) means equalization by departing from a wrong path to the right one. Thus, anything that is not upright or not in order is unjust or unfair. The meaning of justice is stated in a letter reputed to be addressed to the Caliph Abdu Al Malik (705) from Saeed Ibn Jubayr in reply to an inquiry about the meaning of justice, who wrote:

"Justice may take four forms: First, justice in making decisions in accordance with God's saying (when you judge among men, you should judge with justice – Qur'an 4:61). Secondly, justice in speech according to God's saying (when you speak, you should be equitable – Qur'an 6:153). Thirdly, justice in the pursuit of salvation in accordance with God's saying: (Protect yourselves against a day on which no person will give any satisfaction instead of another, nor will an equivalent be accepted from him – Qur'an 2:117). Fourthly, justice in the sense of attributing an equal to God in accordance with His saying (Yet the unbelievers attribute an equal to Him – Qur'an 6:1). "Justice in the sense of weight and measurement means that a certain thing is equal to another in weight or size."

Therefore, the literal meaning of "justice" in classical Arabic is a combination of moral and social values denoting fairness, balance, temperance, and straightforwardness. Such a conceptual meaning of divine justice has been an issue of debate among theologians, jurists, and philosophers.

Muslim experts have considered justice from the following angles:

(a) Political justice, which is the principal end of the state, is justice in accordance with the will of the sovereign. In Islam, in conformity with its public order, political justice proceeds from God imposed upon believers through the rulers. The believers have to observe the laws and rules of the ruler as far as he is in conformity with God's orders and the prophet's teachings. However, how to choose the ruler is the major issue in Islamic political justice yet to be resolved.

(b) Theological justice is justice in accordance with

the doctrines laid down by the theologians concerning God's attributes of will and essence. Though theologians were in agreement that theological justice flows from God and that God is the final judge, they disagreed on whether it is an expression of His will and power or an expression of His essence and perfection. In this respect, Muslim theologians are divided into two major schools, namely, the school of revelation and the school of reason. 8

(c) Philosophical justice is justice defined and determined by philosophers not in accordance with revelation, but through reason. Muslim philosophers consciously tried to harmonize reason with revelation. However, philosophical justice is rational justice and essentially naturalistic in character; therefore, it is eternal and unchangeable, irrespective of time and place. Al-Kindi, who was a leading Arabs' philosopher, was the first Muslim philosopher to discuss justice within the framework of both Greek and Islamic concepts.

(d) Ethical justice is justice in accordance with the highest virtues, which establish a standard of human conduct. Unlike legal justice, under which man is commanded to observe a minimum standard of duties, ethical justice exhorts man to conform to the highest possible standard of good. Muslim writers have drawn their ethical standards from Islam as well as from Greek, Persian, and other ethical sources. Abu Bakr Al-Razi, a famous Muslim philosopher, has stated that the supreme end for which man was created is not the gratification of physical pleasure but the acquisition of knowledge and the practice of justice.

(e) Legal justice is justice in accordance with the law. However, the meaning of justice has been considerably extended to imply not only legal but also other aspects. Thus, law and justice may coincide in the substance of the law, but law may or may not have justice as an objective. The aim of religion is to define and determine goals; the function of the law is to indicate the path by which God's justice is realized.

(f) Social justice is justice in accordance with the operative norms and values embodied in the law, which the public is prepared to accept by habit or for other reasons. Muslim experts within the framework of political law and public interest have examined social justice. Ibn Taymiya 9 and Najim Aldin Altawa were the pioneers in this field. Their writings laid the groundwork for other thinkers, such as Ibn Khaldun, to formulate a new theory of social justice. He fought to rehabilitate the law in order to adopt justice and to stop corruption. He stated that:

"Among some of man's evil qualities are injustice and aggression against one another. He who casts his eye upon

his neighbor's property will lay his hand upon it to take it, unless he is held back by a deterrent. Injustice is a human trait. 'If you find a good (fair) man, there must be a reason why he is not unjust.'"

Therefore, Islamic justice, as such, is much higher than all other systems of justice, Greek, Roman, or any other, because it searches the innermost motives. 'Acts of man are determined by motives' is an authenticated saying of the prophet, and we have to act at all times as if in the presence of God, who is closer to us than our jugular vein and knows even what we whisper. To render justice constitutes one of the most noble acts of devotion. Justice is the best act of devotion and one of the important duties of man after belief in the presence of God. Justice is thus the duty imposed by God, and we have to stand firm for justice, though it may be detrimental to our own interests. In many Quranic verses, believers are repeatedly commanded to observe justice and to act, speak, and think justly. ("O believers, stand out firmly for God, as witnesses to fair dealing, and let not the hatred of others toward you make you swerve to wrong and depart from justice. Be just: that is next to piety and fear of God." "Speak justly, even if a near relative is concerned; and fulfill the covenant of God").

3.2 Sources of Islamic Criminal Justice

Islamic law does not set forth any detailed system of criminal procedure, and there is no mandate in any source of Islamic law emphasizing the existence of an investigative stage in the Islamic criminal justice system. The historical precedents do not clearly indicate that the stage of criminal investigation is a method of solving criminal cases. Ibn al-Qiyam Al-Jowazia in his famous book titled "The Methods of Judgment," Al-Turuq Al-Hukmiya, has stated that there is no provision in the Sharia which prescribes that all legal matters be assigned to one particular person or office. The arrangement and administration of the criminal justice system and mechanisms are purely political issues, left to the discretion of the authorities. It is acceptable to divide legal jurisdiction into several offices or aggregate them into one. The only condition for one who practices law is that they should be competent and should possess the legal qualifications prescribed by the Sharia.

Thus, methods of the criminal justice administration in Islamic law are considered to be a matter of policy and not of sharia. Consequently, the jurists "Ulama" and the legislative powers of the Islamic countries are authorized to organize and maintain criminal procedural systems congruent with the particular circumstances of time and place,

within the spirit of the general principles of Islam. In the early Islamic era, the administration of criminal justice was distributed among several offices, such as the Khalifa "Head of the State," the office of complaints "Diwan Al-mazalim," the Amir of the region, the military commander, the chief of police "Sahib Al-Shurta," and the inspector of markets. The chief of police was concerned with serious crimes "Hudood and Quissas" while other contraventions and simple crimes were in the jurisdiction of an official known as the market inspector. However, the Islamic criminal procedural system has developed gradually to meet the requirements of the innumerable political, social, and scientific changes that have occurred in the Islamic countries and the world.

Many Islamic countries have developed competent criminal.

Justice systems are consistent with many inevitable changes that have taken place in the field of crime prevention and criminal justice. The globalization of crime problems, concepts of the new world order, and commitments in international crime prevention and criminal justice programs were of great impact on the Islamic criminal justice system.

Islamic criminal law, as well as the Islamic legal system, is not codified or enacted by normal legislative bodies in the form of articles and sections. However, the basic principles and legal rules are delineated and clarified by the following sources: (19)

Firstly: Original sources known as:

- (1) The Holy Book (Qur'an).
- (2) The Prophetic reports (Sunna).

Secondly: Complementary sources including:

- (1) The consensus of opinion (Ijma').
- (2) The analogy (Quyass).
- (3) Equity (Istihsan).
- (4) Textually unspecified interests of the people (Masalah Mursala).
- (5) Avoidance of harm (Sadd Al-Dharar).
- (6) Compatibility of the means and the ends (Istishab).
- (7) Checking what is permissible and what is prohibited.

Whereas each type of crime in Islamic law requires a certain amount of proof, the discussion of criminal investigation and evidence should not be dealt with in isolation from the objective criminal law. In Islamic law, crimes are defined and classified into three categories:

(1) Crimes punishable by fixed punishment, hereafter known as "Hudood" including:

- (a) Adultery (Zina).
- (b) Defamation or false accusation (Qadhf).
- (c) Drinking alcohol.

(d) Theft (Sariqa).

(e) Dacoity, Highway Robbery (Qat Altariq).

(f) Apostacy (Ridda).

(2) Crimes punishable by retaliation or blood money (hereafter known as "Quissas" or "Diya"), including all types of murder and injuries.

(3) Crimes punishable by discretionary punishments, hereafter known as "Taazir," including all forms of crimes, contraventions, and negative social or religious behaviors.

3.3. Islamic Criminal Justice System Components

Contemporary Islamic criminal justice system components are almost similar to those of Western countries in terms of organizational structure, quality of manpower, mechanisms, and methods of law enforcement. However, in the Islamic criminal justice system, there are other community-based institutions that participate in realizing justice. The formal components of the Islamic criminal justice system are as follows:

3.3.1. Functions of Police

Police functions are formally prescribed by legislation. These are:

- (a) Protecting life and property.
- (b) Preservation of peace.
- (c) Prevention of crime.
- (d) Detection and arrest of violators of the law.
- (e) Enforcement of laws and ordinances.
- (f) Safeguarding the rights of individuals.

3.3.2. Functions of the Prosecution

- (a) Investigation.
- (b) Charging.
- (c) Representing the state in criminal trials and present evidence as a public advocate.
- (d) Representing the government in civil actions to which the government is a party.
- (e) Providing legal advice to governmental organs.
- (f) On-the-job training of law enforcement personnel.

3.3.3. Functions of the Criminal Courts

- (a) Provision of justice.
- (b) Adjudication of defendants charged with criminal offenses.
- (c) Sentencing those convicted.
- (d) Investigation on behalf of the public prosecutor.

3.3.4. Functions of Correctional Institutions

- (a) Retribution or punishment of the offender for the crime he has committed.
- (b) Deterrence, which is either special (aimed at a particular offender) or more general.
- (c) Incapacitation.

- (d) Rehabilitation.
- (e) Restitution.
- (f) Reintegration or re-socialization.

The informal components are known as:

1. Organization for enjoining Al-Ma'ruf and forbidding al-Munkar.
2. Diwan Al-Mazalim.
3. Diwan Al-Zakat.
4. The Mosque.
5. Other volunteer groups.

3.4. *The Islamic Criminal Justice Process*

Influenced by the inherited basic principles and guidelines of Islamic criminal law, many Islamic countries have adopted modern criminal justice systems following the models developed in Western countries. Tremendous efforts were made to upgrade the standards of criminal justice personnel and improve the legal processes as well as the operational methods. Experts and governmental organizations from various Islamic countries have contributed to developing and formulating the United Nations standards and guidelines, as well as international instruments of criminal justice. Although it may be noted that the United Nations standards and guidelines are not yet included in the legislation of criminal justice in many Islamic countries, the positive impact of such standards and guidelines on the mechanism of the criminal justice system is remarkable.

Today, there are three distinct criminal procedural systems that may be known throughout the world, namely:

(a) The accusatorial system, which considers criminal action to be a common dispute between two equal parties, and their case is directly presented to the judge, who should balance the claims of the litigants.

(b) The inquisitorial system, where the criminal case proceeds through a pre-trial stage of investigation by judicial police bodies.

(c) The mixed system, which combines the aspects of both the accusatorial and the inquisitorial systems.

The criminal procedural systems known in Islamic countries are almost identified as a mixed system model. Unlike the accusatorial and inquisitorial systems, the Islamic procedural system following the mixed model has introduced the principle of "Siyasat Al-Sharia." According to this principle, it is the duty of the political authorities to establish a criminal justice system that serves the public interest. Thus, although the procedural system is not a matter of Sharia, it is governed by the general principles of Sharia. Therefore, the criminal justice systems of the Islamic countries consist of the following

components: (20)

- (a) The Police.
- (b) The public prosecutor.
- (c) The criminal courts.
- (d) The correctional institutions or penal institutions.
- (d) The Victims.

The police, being the most traditionally organized force in the Islamic countries, play the main role in the criminal procedure. Usually, police officers detect crimes, gather evidence, make arrests and searches, conduct investigations, and maintain forensic science laboratories and fingerprint bureaus. Police activities in the criminal justice system in many Islamic countries may extend beyond the stage of criminal investigation. Police may bring charges against the accused persons and conduct prosecutions before criminal courts. Moreover, the police are in charge of the penal institutions and juvenile justice in many Islamic countries.

However, greater involvement of the public prosecutor at the stage of the investigation is an indication of maintaining human rights, particularly during the collection of scientific evidence by the police or any other security organization. In addition to the newly emerging role of the public prosecutor in the Islamic criminal justice system, it is noteworthy to point out the role of the victim in Islamic criminal procedure as another considerable indication of justice and equity. The victim, as a witness or as an individual claiming compensation and revenge, is given due consideration throughout the investigation, trial, and execution of judgments. Finally, there is no doubt that the role of the judge remains the most vital in the Islamic criminal procedure. Methods of collecting evidence, its admissibility, and the assessment of every related fact is left to the absolute satisfaction and certitude of the judge, "Yaggin Al-Ghadi"

3.5. *Procedures Governing Criminal Investigations*

Islamic criminal procedure shall initiate with a complaint from the injured person, his legal representative, relatives, or any other person who believes that an offense has been committed. It is the duty of the public officials to lodge accusations in cases of crimes committed within their jurisdictions. Practically, such initiation of criminal procedure takes place through a verbal or written report given to a police officer, public prosecutor, security officer, or judge in charge of the jurisdiction where the crime has been committed. The police, in a special form known as the first information report, register the above-mentioned report, information, or complaints.

Thereafter, the case is entered into a judicial book kept at every police station known as the "Register of Crime Reports." Following the registration of the information, the police commence the following investigative activities:

- (a) Arrest of the accused person or persons if they are known.
- (b) Visit the scene of the crime and collect evidence.
- (c) Interrogate witnesses and accused persons.
- (d) Conduct searches of places and persons.

If, during such investigative activities, it appears to the police officer or the public that such investigation discloses reasonable grounds of suspicion against any person of having committed an offense, and that a trial should begin, he shall submit the case diary to the public prosecutor or magistrate competent to take cognizance of the crime.

Compared with the contemporary justice system, the stages of criminal procedure in Islamic countries are very brief. In the Islamic criminal procedure, it is not essential to go through elaborate stages of investigation, booking, formal complaint, initial appearance, preliminary hearing, arraignment, etc., as known in the Western model of criminal procedure. The arrest of the accused person should not take place unless there are reasonable grounds or sufficient evidence to establish a criminal case against him. False or wrongful accusation of another person is a serious crime (Qadhf).²¹

3.6 The Rules of Evidence in Islamic Criminal Justice

Whereas each type of crime in Islamic law requires a certain amount of proof, the discussion of criminal investigation and evidence should not be dealt with in isolation from the objective criminal law. In Islamic law, crimes are defined and classified into three categories:

(1) Crimes punishable by fixed punishment, hereafter known as "Hudood" including:

- (a) Adultery (Zina).
- (b) Defamation or false accusation (Qadhf).
- (c) Drinking alcohol.
- (d) Theft (Sariqa).
- (e) Dacoity, Highway Robbery (Qat Altariq).
- (f) Apostasy (Ridda).

(2) Crimes punishable by retaliation or blood money (hereafter known as "Quissas" or "Diya"). including all types of murder and injuries.

(3) Crimes punishable by discretionary punishments, hereafter known as "Taazir," including all forms of crimes, contraventions, and negative social or religious behaviors.

Evidence in Islamic criminal law is distinguished by the following characteristics:

1. Certain crimes known as "Hudood" require a specific amount of evidence, well prescribed by the Qur'an and Sunna. If such prescribed quality of evidence is not available, "Hudood" penalty should not be inflicted upon the accused person. However, the judge may, instead of the "Hudood" penalty, convict the accused person of a less serious offense and sentence him with any other penalty prescribed by the judge, according to his knowledge and discretionary powers.

2. Crime "Quissas" including all types of culpable homicide and injuries, may be altered if the victim pardons the offender. The evidence required by Sharia to prove guilt in "Quissas" crimes is also prescribed by "Quran" as testimony and confession. However, the scientific evidence here is indispensable to assess the degree of injury or identifying cause of death (e.g. scientific evidence may be essential to prove that the deceased person was or was not already dead, when the confessing accused attacked and stabbed him with the intention of murder).

3. Taazir Crimes are not provided explicitly in "Quran" or "Sunna", but they cover all acts of disobedience to "God's" commandment and social misconduct. Taazir crimes represent all crimes currently identified by western penal codes. Several Taazir crimes are not identified by disciplines and regulations "Anzima" in a form of definitions, sections or articles providing penalties and methods of detection and proof. Therefore, scientific evidence is accepted by the criminal courts as a direct, circumstantial evidence to prove guilty, or acquittal in Taazir crimes without exemption.

4. In Islamic criminal procedure, normally, burden of proof lies upon the plaintiff whether an individual or a public authority, but, when no substantial evidence is procurable from the side of the plaintiff or complainant, the defendant should be asked to take a solemn oath that he has not committed the alleged crime; and accordingly he may be acquitted. In a prophetic report: "If people are allowed their way of having their claims, they will claim the lives and properties of others, therefore, the defendant may take oath that he has not committed the crime for which he has been charged".

5. A person who gives evidence before a court should be mature adult, sane, objective in his testimony and not involved or interested in the criminal case in issue.

6. Muslim jurists unanimously agree that the evidence given

by a non-believer against a Muslim should not be accepted, unless the trial is taking place in a non-Muslim country.

7. Circumstantial evidence is well-known in Islamic Criminal Law, and it is left to the free discretion of the judge, as well as his intellectual alertness, sense of observation, and judgment.

"If it is that his shirt is rent from the front, then her tale is true, and he is a liar; but if it is that his shirt is torn from the back, then she is the liar, and he is telling truth" (*Sura 12, verses 26-27*).

8. No doubt that Qur'anic and prophetic parables, as well as the legislations and legal judgments of Muslim predecessors, remain principal paragons and guidelines for criminal courts and judges to determine procedures and methods of proof.

Being governed and guided by the above-mentioned rules of evidence and procedures, evidence in the Islamic criminal justice system may be classified into seven types:

1. Testimony (Shahada)
2. Confession (iqrarr)
3. Circumstantial evidence (Qarina)
4. Oath by 50 persons (Al-Qassama)
5. Oath of the defendant (Yameen)
6. Scientific evidence
7. Judge's personal observations (Illmu Al-Qadi)

Each of the above-mentioned types of evidence has its own features and rules of admissibility detailed in the following pages:

(1) Testimony

Islamic criminology emphasizes the individual's inner characteristics related to the strength of his religious spirituality, belief, and faith in God. If the individual's faith is weak, he may normally become selfish, shameless, unjust, and deviant. Islam strives by various means to preclude circumstances that may lead to crime, sinful acts, and unfairness. Due to such deep-rooted concepts, it is prospective that individuals are:

- (a) Aware of the rights of the other individual.
- (b) Obligated to maintain peace, security, and justice for others.
- (c) Have an inner feeling that God knows and sees every deed.
- (d) Giving evidence or testimony before a criminal court is a spiritual obligation for any individual.

O ye who believe! Stand out firmly for Allah as witnesses to fair dealing; let not the hatred of others make you aware of wrong and depart from justice. Be just; that is next to piety, and fear Allah. For Allah is well acquainted with all that you do.

(e) Mindful that concealing evidence, giving false testimony, or confessing to a crime he has not committed is prohibited by God.

We shall hide not the evidence before Allah; if we do, then behold! The sin will be upon us. (*Sura 6, verses 44*)

(f) Aware that individuals are encouraged to give evidence and disclose facts for the sake of justice.

A testimony in Sharia is defined as a verbal and oral report of what the witness has seen or heard about facts related to the alleged crime if a competent witness makes such a report before a court of justice. Giving evidence by testimony is one of the principal Islamic obligations imposed upon individuals, not only as a means of proof, but it is also one of the religious objectives of Islam. Many Qur'anic verses have emphasized the necessity of testimony. In light of such Qur'anic verses, basic features and rules of testimony may be outlined as follows:

Ye who believe! When ye deal with each other in transactions involving future obligations for a fixed period of time, reduce this to writing. Let a scribe write down faithfully as between the parties; let not the scribe refuse to write as Allah has taught him. And get two witnesses out of your own men; and if there are not two men, then a man and two women, such as ye choose for witnesses, so that if one of them errs, the other can remind her. The witnesses should not refuse when they are called on (for evidence). (Sura 3 verse 282)

Firstly: Conditions related to the witness

Jurists unanimously agree that an adult, male, sane, and just (Aadil), should give admissible testimony, and a Muslim (in the case of an accused Muslim in an Islamic country), provided that he is not involved in or interested in the alleged crime. However, jurists have controversial opinions on testimony given by a deaf, mute, blind youth or a female witness. Even though most of the jurists tend to consider the testimony of such witnesses whenever they can convey their knowledge to the satisfaction of the judge or the court, in several minor crimes, "Taazir."

Secondly: Conditions related to the testimony

It is agreed that the testimony should be introduced formally by its specific verb "I testify" "Ashhadu", because this verb, which is taken from the original Qur'anic source, has a great impact on the equitability of the individual who is spelling out his knowledge before a court of justice. Moreover, it is agreed that the contents of the testimony should be confirmative to the facts surrounding the alleged crime. On the other hand, there are two conditions related to the contents of the testimony known as "Shart Al-Asala" and "Shart Adem Al-Taquadum." "Shart Al-Asala" means that the testimony should be given directly by the original person who has the information and not as hearsay or on behalf of another. "Shart Adem Al-Taquadum" means that the contents of the testimony should be given before the judge or court of justice immediately and within a reasonable period.

The majority of Muslim jurists necessitate "Shart Al-Asala" and "Shart Adem Al-Taquadum" for a testimony if the alleged crime is related to one of the rights of God, such as "Hudood" crimes. However, both conditions of "Asala" and "Adem Al-Taquadum" may not be in issue if the alleged crime is related to one of the rights of the people. That is to say, if the alleged crime is related to property or "Taazir" hearsay evidence may be admissible and there may be no conditions of time limitation required.

Thirdly: Conditions related to female witnesses

Sharia decrees that women's testimony is admissible in civil property cases, provided that there is more than one female witness and supported by competent male testimony. In criminal cases, testimony given by a female witness is admissible only to prove facts related to female affairs that are not accessible to males, such as pregnancy and delivery. However, only female testimony can never prove guilt in cases of "Hudood" or "Quissas". Many jurists are of the opinion that scientific evidence prepared by a female expert is admissible, as well as that of a male expert.

(2) Confession (Iqurrar)

Confession (Iqurrar) made by an accused person against himself is accepted in Islamic Criminal Law to prove guilt in some crimes, provided that:

- (a) The accused person is criminally responsible.
 - (b) The confession is not made under any sort of threat or inducement.
 - (c) Confession is voluntary by a sane adult and made under his own free will.
- In addition to the above-mentioned provisions, confession requires further conditions in the following cases:
- a) In crimes of "Hudood" or "Quissas" confession should be:
 - i) Direct, obvious, and explicit.
 - ii) Given before the court of justice.
 - b) In crimes of adultery, confession should be:
 - i) Given in detail, showing the fact of the sexual intercourse known as penetration "Ealaj."
 - ii) Made four times repeatedly before different court sessions.
 - iii) Sexual intercourse was physically and practically possible for the two parties.
 - iv) The confession was not denied by either of the two parties involved in adultery.
 - c) In the case of theft, the offender should make his confession twice before the court, provided that the victim is claiming restoration of his stolen property.
 - d) In the case of drinking alcohol, the accused should confess twice before the court, while the

existence of an alcoholic smell surrounds the accused. (22)

(3) Circumstantial Evidence

Circumstantial evidence "Qarina" was illustrated in "Qur'an" by the story of Zulaikha who had attempted sexual assault on Prophet Joseph (23). Scorning Zulaikha's love, Joseph tried to escape, but, she tugged at his garment and torned a piece of the garment. Zulaikha accused Joseph as the one who attempted the sexual assault. However, Joseph's garment which was torn at the back side was considered as a circumstantial evidence to prove Joseph's acquittal. This example reveals the importance and legality of circumstantial evidence as a subsidiary means of proof, extricated by judges who have acute sense of observation, knowledge and experience.

(4) Al-Qassama

Al-Qassam is a unique method of proof accepted only in Quissas (murder) cases, where no other evidence is available. In Al-Qassama, fifty solemn oaths are taken by the claimants or the defendants. The Judge asks fifty of the defendants or the residents of the area where murder took place to swear that they didn't commit the crime. If the defendant reject Al-Qassama the judge may ask the same from the claimants. If the number of those who taking oath is less than (50) some of them should repeat. Following Al-Qassama "Diya" blood money is paid to the claimants from the public funds (23).

(5) Oath of Defendant

As a general principle, it is the responsibility of the claimant to produce substantial evidence to prove his allegation. However, if the defendant denies the allegation, he is obliged to take a solemn oath rejecting the claimant's charge. Oath in Islam as a broad concept has a great impact on judgements and decision making, because, oath reflects the spiritual feelings of the individual as well as his faith and strength of belief. Therefore, Islam-unlike modern laws gives such privilege to both the claimant and defendant as a matter of equity.

(6) Scientific Evidence

Scientific evidence is the opinions and written reports produced by experts and scientists (Ahal al-Zikir). Scientific evidence is being utilized in many Islamic countries, particularly at the stage of the police investigations leading to substantial evidence. Tentatively, it should be noted that, whenever the conviction of any accused person is based upon a scientific evidence, then, the punishment imposed should be "Taazir" punishment and not "Hudood".

Majority of jurists consider the scientific evidence as a circumstantial evidence.

(7) Judge's personal observations and knowledge (Illmu Al-Qadi)

The judge may utilize his own observations and knowledge for inference of facts and conclusions leading to conviction of the accused in case of offences related with people's rights (Taazir).⁽²⁴⁾ However, the judge is not authorized to use his own testimony to convict an accused person in the crimes of "Hudood".

3.7. Admissibility of Scientific Evidence before Islamic Courts

Islam is a religion of sciences and knowledge. It recognizes sciences and respects the scientists "Ulama" as leaders of their nations. Innumerable scientific facts, which are in "Qur'an" since the 7th Century, are now being identified and adopted by modern sciences and technologies as innovations. Therefore, Muslim jurists agree upon the inevitable role of science and technology in all aspects of life to maintain interests of humankind; if it does not infringe the basic principles and objectives of sharia. Scientific and technological methods were most recommended in the field of criminal justice administration as one of the principal objectives of Islam.

In Islamic Law, judges are asked to examine and scrutinize all facts related to the crime or allegation pending trial. Doing such examinations judges are authorized to look for scientific and technological means in order to reactivate and assess various views. In Islam, judges are urged to call competent experts and scientists "Ulama" to give evidence related to their exclusive jurisdiction and professional "Ahal al-Zikir."

"And before thee also the apostles we sent were but men, to whom we granted inspiration: If ye realize this not, as of those who possess the message" (Sura16, verse 43).

With growing awareness of the validity of scientific evidence in

Islamic countries, techniques of fingerprinting, blood grouping, hair analysis, voice examination, polygraph testing, and DNA, as well as other techniques of forensic science and medicine, are now successful methods for solving crime problems. However, it is still difficult to put forward the ambitious objectives of eliminating criminality and realizing criminal justice. In fact, the difficulties currently facing the implementation of scientific methods for solving crimes are not a unique problem of Islamic countries; it is more debatable even in Western nations, due to either:

(a) Mistrusting the abilities of the professionals who conduct detection and investigation; or

(b) Misunderstanding the contemporary crime problem and the seriousness of evading justice.

In light of the above-mentioned distinction between crimes of "Hudood," "Quissas" and "Taazir," and concerned with the views of "Ulama" on the free and limited methods of proof, scientific evidence may be classified into the following categories, showing the legality and admissibility of each category:

Firstly: Evidence acquired secretly without the knowledge of the accused person, such as interception of communication. Here, there is no doubt that Islam gives due respect to the privacy of individuals. Several Sharia sources have clearly restricted entry to the premises of others or listening to their communication.

"O ye who believe! Avoid suspicion as much (As possible): For suspicion in some cases is a sin: And spy not on each other, behind their backs, would any of you like to eat The flesh of his dead brother? Nay ye would Abhor it. But fear God. (Sura 49, verse 12).

- O ye who believe! Enter not houses other than your own until ye have asked permission and saluted those in them; that is best for you, in order that you may heed (what is seemly) If you find no one, enter not until permission is given to you. If ye are asked to go back, go back. (Sura 24, verses 27, 28).

- It is virtuous if ye enter your houses from the back; it is virtuous if ye fear God. Enter houses through the proper doors and fear God: That ye may prosper. (Sura 2, verse 189).

Therefore, the collection of evidence secretly by any means of illegal entry, bugging, electronic surveillance, or any kind of interception is prohibited in Islamic Law. Such detective or investigative activities are classified as acts of spreading mischief in the community and may amount to criminal behavior. However, if the people are facing serious crimes (organized crimes, terrorism, illegal trading in drugs, etc.) or any other imminent danger that may not be solved without utilizing scientific means, shall we still ignore scientific evidence?

Governed by Sharia rules, the answer may be one of the following options:

(1) Scientific evidence may be utilized if the crime problem can be solved and the interests of the people maintained, as well as the avoidance of spreading mischief.

(2) If it is not possible to realize both objectives of solving the crime problem and avoiding mischief, Muslim jurists agreed that:

(a) If the interests of the people are greater than the damages of mischief, the first should be taken and the latter ignored.

(b) If the spread of mischief is greater than the

interests of the people, the first should be avoided, sacrificing the people's interests.

(c) If both mischief spreading and maintenance of interest are equal, then it is recommended to ignore one of the activities or both.

Secondly: Evidence obtained openly with the knowledge of the accused person, including:

(1) Intimate samples of blood, semen or any other tissue fluid, urine, saliva or pubic hair or swab taken from the person's body orifice, fingerprints and photographs etc.

(2) Non-intimate samples, such as hair other than pubic hair, samples taken from nail or under the nail, teeth impression, part of person's body other than a body orifice.

Bearing in mind the public interest and considering the right of the accused person in the context of the general principles of Shari'a, Muslim jurists agree upon the utilization of scientific evidence acquired from the accused person to detect and investigate all forms of crimes.

Such evidence may be used to:

(a) Generate other admissible evidence (testimony or confession) in "Hudood" and "Quissas" cases.

(b) To create and strengthen judge's satisfaction in all criminal cases.

(c) Prove guilty in Taazir crimes in corroboration with other circumstantial evidence.

The above-mentioned utilization of the scientific evidence is recommended by Muslim jurists upon the following conditions:

(1) The samples must not be taken without the consent or appropriate consent or judicial authorization.

(2) The accused should be informed with the fact of the sample taking.

(3) Samples should be taken by specialized expert or medical practitioner.

(4) Taking of the samples should not be a probable cause of danger to the health or safety of the accused person.¹⁶

(5) There must be a reasonable ground for suspecting the person from whom the sample is to be taken.

(6) There is a need to solve the criminal case for the sake of the general public interest.

Thirdly: Evidence collected from the scene of the crime includes fingerprints, tool marks, paint flakes, forged documents, or any other related physical evidence. Such materials may be examined by forensic science laboratory experts and compared with samples taken from the accused or previously registered information to facilitate identification and verification of facts related to the crime. In this category, fingerprints are the most reliable and

authenticated because the fact that no two fingerprints are identical was revealed in Qur'an.

Does man think we cannot assemble his bones? Nay, we are able to put together in perfect order The very tips of his fingers (Sura 29, Verse 3)g

Scientific reports made by forensic science laboratory experts are accepted by sharia court to prove guilty in serious "Taazir" crimes.

Fourthly: Evidence or statement taken from the accused person or a witness through scientific means such as, Lie Detector (Polygraph), Narco-Analysis (Truth-Serum), Suggestive hypnosis or Auto-hypnosis are not admissible as evidence before Islamic Criminal Courts. Because, such statement whether it is a testimony of a witness or a confession of an accused doesn't comply with the requirements of either. Muslim jurists consider such evidence as a statement given involuntarily and without a free will of a person.

In fact, scientific evidence is being utilized in many Islamic countries, particularly at the stage of the police investigations leading to substantial evidence. Almost, Islamic countries are continuously developing forensic science laboratories equipped with the latest technologies including, automated fingerprints identification and comparison processes, Gas chromatograph, Laser spectrometer and D.N.A. analysis to improve the benefits from scientific evidence. A survey on sharia courts' judgments in Arab countries has revealed that scientific evidence has been notably accepted to prove guilt in Taazir crimes and penal law crimes. The Kingdom of Saudi Arabia, as a leading Islamic country, is an example in this case, as detailed in the following judgments:

- Riyadh High Court Judgment No. 69/1, 18/10/1403H "Theft".

- Riyadh High Court Judgment No. 151/10, 26/4/1409H "Adultery."]

- Riyadh High Court Judgment No. 368/7/2, 2/9/1410H "Adultery."

- Riyadh High Court Judgment No. 59/4, 26/2/1413H "Drinking Alcohol."

- Riyadh High Court Judgment No. 114/2, 26/10/1413H "Theft."

Tentatively, it should be noted that whenever the conviction of any accused person is based upon scientific evidence, the punishment imposed should be "Taazir" punishment and not "Hudood."

Sharia has provided the following safeguards guaranteeing protection of human rights during criminal investigation:

1. Every person is entitled to call upon the assistance of a lawyer (known as "Wakeel Al-Khusuma").

2. The right to speak freely or remain silent during

interrogations.

3. Right to privacy:

Ye who believe! Enter not houses other than Your own, until ye have Asked permission and saluted Those in them: that is Best for you, in order that may heed (what is seemly) (Sura24, Verses 28)

4. Right to initial presumption of innocence.

5. Right of interpreting any doubt in favor of the accused.

3.8 The Role of Judges in Islamic Justice System

According to the Islamic Law judges are free in defining the offences committed and sanctions; provided that the offence alleged to have been committed is not a Hadd or Quissas. Such sanctions are commonly known as Ta'zir. Ta'zir punishments range from a simple reprimand to any term of imprisonment, and from flogging to the capital punishment. Ta'zir punishment may include fines, seizure of property and confiscation of any substances related to any crime, contravention or immoral act. Ta'zir may be either the original punishment for crimes which have no fixed punishment or it may be an additional punishment for crimes of Hudood and Quissas. In this context, there is no restriction on the judge's authority to choose the punishment of Ta'zir he considers suitable for the accused person. However, the Judge must do his best to choose the proper punishment in each case by means of conscientious reasoning (Ijtihad) within what is expressed in the Qur'an and the Prophetic reports (Sunna), and guided by the other authenticated sources of Islamic criminal law legislation. The Qur'an and the Prophetic reports contain innumerable statements restricting or prohibiting several types of human activities classified as sins or transgressions against Islamic social system.

Examples of such statements may be helpful to clarify the judge's discretionary powers:

1) Usury:

Quran prohibits usury (Al-Riba) by the following verses:

a) *O ye who believe! Fear Allah, and give up What remains of your demand for usury, if ye are Indeed believers. (Sura 3, verse 278)*

b) *If ye do it not, take notice of war from Allah and His Messenger: But if ye repent Ye shall have Your capital sums: Deal not unjustly, And ye shall not Be dealt with unjustly'. (Sura 3, Verse 275)*

c) *But those who repeat (The offence) are Companions of the Fire: they will Abide therein (for ever). (Sura 3, Verse 275)*

Therefore, usury is a prohibited activity and any one who engages in such an act deserves

punishment. However, Quran or Sunna does not determine such punishment. Judges have the right to select appropriate punishment that fits the accused person as well as the prohibited behavior, and in the light of the evidence provided and the circumstances of the case.

2) Breach of trust:

Quran states:

a) *O ye that believe! Betray not the trust of Allah and the Messenger, nor misappropriate knowingly things entrusted to you. (Chapter 9, Verse 27)*

b) *All doth command you to render back your trusts to those to whom they are due: And when ye judge between people, that ye judge with justice: Verily, how excellent is the teaching which He giveth you! For Allah is He Who hears and sees all things. (Chapter 5, Verse 58)*

The above-mentioned two verses indicate that to deliver back trusts, and disobedience of such commands by a Muslim is a serious sin. The judge should evaluate the volume of the seriousness of the sin by the verse (b) which prohibits, firstly, betrayal of God; secondly, betrayal of the Messenger; and thirdly, betrayal of trust.

3) Bribery:

As a dishonest means of gain, the Quran has prohibited bribery by the following verse:

And do not eat up

Your property among yourselves

For vanities, nor use it

As bait for the judges,

With intent that ye may

Eat up wrongfully and knowingly

A little of (other) people's property. (Suar 2, Verse 188)

The above Quranic verse defines bribery as a sinful behavior. Any person who offers a bribe, accepts a bribe or facilitates bribery causes illegal loss of property as well as causing illegal gain of property or rights by another. The volume of illegal loss of property and damages caused by bribery is considered in determining the Ta'zir punishment by the judge.

From the above-mentioned examples, there are extensive discretionary powers at the judge's disposal in all civil and criminal cases except Hudood crimes. Such discretionary powers are not only procedural but also wide enough to cover legislative fields where the judge may define the offenses and acts of transgression as well as determine punishment. Western experts may deny the wide scope of discretionary powers given to the judge in Islamic law due to its contradiction with the universally accepted constitutional principles. The argument of Muslim experts for this view is that Islam has its universally accepted principles embodied in the Quran (25). In fact, the discretionary

powers of the judge are governed by the ends of Sharia, which are the protection of religion, life, mind, lineage, and property, as well as the realization of justice and the maintenance of public interests. According to Ibn Al-Qayyim, all acts of the judges and rulers are legitimate as far as those acts are to establish justice and prevent injustice (26). Islamic law of evidence is very clearly laid down in several Islamic references, especially in "Hidaaya" and "Durr Al Mukhtaar." It is the duty of witnesses to bear testimony, and concealment of evidence is a sin.

In cases likely to result in corporal punishment, witnesses are at liberty either to give or withhold their testimony as they believe because, in such cases, they are distracted between two laudable actions: namely, the establishment of the punishment and the preservation of the criminal's character. Concealment of an offense of others is, moreover, preferable because the Holy Prophet (peace and blessings of Allah be upon him) said to a person who had borne testimony, "Verily, it would have been better for you if you had concealed it."

The evidence required in a case of adultery is that of four men, as has been ordained in the Holy Quran, and the testimony of a woman in such a case is not admitted. Prophet Mohammed (peace and blessings of Allah be upon him), as the first judge in Islam, and with his judicial role in the first Islamic community, is known as the best model of judges. During Prophets Time and his two immediate successors, it was an invariable rule to exclude the evidence of women in all cases because the testimony of women involves a degree of doubt. It was merely a substitute for evidence only where the testimony of men cannot be admitted.

The evidence required in other criminal cases is that of two men, according to the text of the Holy Quran; and the testimony of women is not admitted. In all other cases, the evidence required is that of men, or of one man and two women, whether the case relates to property or to other rights, such as marriage, divorce, agency, or the like. According to Imam al-Shafi, the evidence of one man and two women is not enough, except in property cases.

In all rights, whether of property or otherwise, the probity of the witness and the use of the word "ashhadu" (I bear witness) is absolutely requisite, even in the case of the evidence of women. If, therefore, a witness should say, "I know" or "know with certainty" without making use of the word "ashhadu," in that case, his evidence cannot be admitted. With respect to the probity of the witness, it is indispensable.

If the defendant throws a reproach on the witnesses, it is incumbent on the Qadi to institute an

inquiry into their character because, in the same manner as it is probable that a Muslim abstains from falsehood as being a thing prohibited in the religion he professes, so also is it probable that a Muslim will not unjustly reproach another. It is not lawful for a person to give evidence on such matters as he has not actually seen personally. The testimony of a person that has been punished for false accusation (qadhf) is inadmissible.

Testimony in favor of a son or grandson, or in favor of a father or grandfather, is not admissible because the Holy Prophet (peace and blessings of Allah be upon him) has so ordained. Besides, as there is a kind of communion of benefits between these degrees of kindred, it follows that their testimony in matters relative to each other is, to some degree, a testimony in favor of themselves and is, therefore, liable to suspicion. Also, the Prophet (peace and blessings of Allah be upon him) said: "We are not to credit (in civil cases) the evidence of a wife concerning her husband, or of a husband concerning his wife, or of a hirer concerning his hireling." The testimony of a convicted person in a major crime is not admissible because, in consequence of such crime, he is unjust. The testimony of a person who receives usury is inadmissible, and so, also, of one who plays for a stake at dice or chess.

The evidence of a person who openly inveighs against the Companions of the Prophet (peace and blessings of Allah be upon him) and their disciples is not admissible because of his apparent lack of integrity. It is otherwise, however, when a person conceals his sentiments in regard to them, because in such a case the lack of integrity is not apparent.

The Imam Abu Hannifa is of the opinion that a false witness must be stigmatized but not chastised with blows. The two disciples are of the opinion that he must be scourged and confined; this is also the opinion of Imam al-Shafi'i. If witnesses retract their testimony prior to the Qadi passing any decree, it becomes void; if, on the contrary, the Qadi passes a decree and the witnesses afterwards retract their testimony, the decree is not thereby rendered void. The retraction of evidence is not valid unless it is made in the presence of the Qadi. As one of the methods of realizing justice and fairness, Islam has condemned giving false testimony. Muslims are commanded to bear witness to the truth, as shown by the following Qur'anic verses:

*O ye who believe,
stand out firmly for justice, as witnesses to Allah, even
as against yourselves or your parents. (Sura 5, Verse 135)
Those who witness no falsehood and, if they pass by
futility, pass by it with honorable (avoidance) (Sura 18,
Verse 72)*

It should be noted here that the First International Conference on Protection of Human Rights in the Islamic Justice System, held in Siracusa, 28-31, May 1979 and attended by 55 jurists from Islamic countries, as well as America, France, Italy, Belgium, Yugoslavia, and Switzerland, was satisfied with the principles of the Islamic criminal justice system. The conference unanimously issued six resolutions, one of which was the following:(27)

The basic human rights embodied in the principles of Islamic Criminal Law include the following rights of the criminally accused, inter alia:

1. The right to freedom from arbitrary arrest, detention, torture, or physical annihilation.
2. The right to be presumed innocent.
3. The application of the principles of legality, which call for the right of the accused to be tried for crimes specified in the sharia.
4. The right to appear before an appropriate tribunal previously established by law.
5. The right to a public trial.
6. The right not to be compelled to testify against oneself.
7. The right to present evidence and to call defense witnesses.
8. The right to counsel.
9. The right to a decision on the merits, based upon legally admissible evidence.
10. The right to have the decision in the case rendered in public.
11. The right to benefit from the spirit of mercy and the goals of rehabilitation and re-socialization.
12. The right of appeal.

Considering the above-mentioned principles and rules, and recalling the standard rules and guidelines of criminal justice adopted by the United Nations, we may conclude that the Islamic criminal justice system has adopted the following principles:

- (a) Crime prevention is the duty of all citizens without exception.
- (b) No act is an offense, and no punishment shall be inflicted unless it is prescribed by a law in force.
- (c) The accused is presumed innocent until his guilt is proved, and he has the right to a fair investigation and trial.
- (d) The accused person shall not be assaulted in his body or property, and he shall not be compelled to testify against himself and shall not take oath except in offenses other than "Hudood."
- (e) Witnesses should not be subject to any injury or illegal treatment.
- (f) The public prosecutor is the guardian of any victim who has no guardian.

(g) Any private loss caused by crime is subject of compensation.

(h) All parts should be treated kindly during the investigations, and arrests should not take place unless they are necessary.

(i) In any crime involving private rights, the criminal case may be settled by forgiveness, compounding, or reconciliation.

4. RESULTS AND RECOMMENDATIONS

4.1. Results of the Research

In the Islamic countries and among the Muslim people, justice is a major issue because it is one of the objectives of their religion. It is the responsibility of every individual to maintain justice and fairness in every aspect of his daily life. Contemporary standards of criminal justice, which emerged only 50 years ago following the ratification of the Human Rights Declaration in 1948, were originally observed and maintained by Islam fourteen centuries ago. Islamic legislation tends to maintain the interests of humanity, lead humankind towards righteousness, and protect it from evil and sins. Muslims practiced equity in all social, economic, and political aspects in the early history of the Islamic state. The Islamic Sharia was a forerunner in seeking justice as one of its important goals. Both the Quran and the Sunnah repeatedly demand justice and condemn injustice, providing the former with reward and the latter with punishment.

There is no mandate in any source of Islamic law establishing the existence of a criminal justice system. Thus, the methods of criminal justice administration were a matter of "Siyasa" and not of "Sharia." In the Islamic state, criminal investigations were conducted by the courts during the trial. However, cases that were treated by governors, market inspectors, and police chiefs were always subject to investigation prior to the trial. Considering the principles and rules governing contemporary criminal justice system, and recalling the standard rules and guidelines of criminal justice adopted by the United Nations, we may conclude that the Islamic criminal justice system has adopted the following principles:

- (a) Crime prevention is the duty of all citizens without exception.
- (b) No act is an offense, and no punishment shall be inflicted unless it is prescribed by a law in force.
- (c) The accused is innocent until his guilt is proved, and he has the right to a fair investigation and trial.
- (d) The accused person is protected in his body and property, and he shall not be compelled to testify against himself and shall not take the oath except in offenses other than "Hudood."

(e) Witnesses should not be subject to any injury or illegal treatment.

(f) Public prosecutors are the guardian of any victim who has no guardian.

(g) Any private loss caused by crime is subject to compensation.

(h) Persons involved in a criminal case should be treated kindly during the investigations, and arrest should not take place unless it is necessary.

(i) In any crime involving private rights, the criminal case may be settled by forgiveness, compounding, or reconciliation.

The majority of "Ulama" confine the legal methods of proof to testimony "Shahada" and confession "Iqurrar" as identified by "Qur'an" and "Sunna." However, there are several jurists from the Hambaly sect who advocate the method of free proof in "Hudood" and "Quissas" crimes to maintain the rights of the victims, achieve deterrence, and realize justice in cases where the complainant fails to provide evidence as prescribed by the fixed method of proof.

Therefore, the administration of criminal justice from an Islamic Law perspective is maintaining peace, realizing social justice, and impartial treatment of individuals, particularly those who get involved in criminality as offenders, delinquents, victims, or witnesses. Criminal justice system may be

identified as a formal and informal machinery for solving crime problems. The machinery is formal in that it employs legal procedures to punish or treat an offender for the sin he has committed. It is informal in that it takes care of children and adults through the social mechanisms of the family, the schools, Islamic teachings, and strengthening traditional values.

4.2. Recommendations

The world is changing at a rapid pace both politically and socially; therefore, professions in the criminal justice system require well-educated personnel to meet the needs of solving global and multicultural crime problems. In this context, this paper suggests the following recommendations:

(1) Islamic Criminal Law and the Islamic Criminal Justice should be included in the educational syllabus of law faculties and schools of criminal justice.

(2) Joint and comparative research should be conducted by experts from Islamic countries and Western nations to bridge the gap between different legal systems known in the world.

(3) International cooperation is urgent to develop global methods of investigation and techniques of evidence for the realization of criminal justice.

(4) International convention on the exchange of evidence and criminal court proceedings may be vital for the treatment of transactional crime problems.

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