



PORT HARCOURT *LAW JOURNAL*

From Learning to Wisdom



Volume 7: Number 2, February 2018

ISSN: 1595 – 1790

Published by Faculty of Law
Rivers State University, Port Harcourt, Nigeria

PORT HARCOURT LAW JOURNAL

The Port Harcourt Law Journal is a peer refereed journal published by the Faculty of Law, Rivers State University, Port-Harcourt Nigeria. It provides a forum for scholars and practitioners to reflect on diverse legal issues of national, regional and international significance and of local and regional relevance.

INTERNATIONAL EDITORIAL ADVISORY BOARD

Prof. Sheldon Leader
School of Law,
University of Essex, UK

Prof. P. Ehi Oshio
Faculty of Law
University of Benin

Prof. J. F. Fekumo
Faculty of Law
Niger Delta University,
Yenagoa

Prof. C. N. Okeke
School of Law
Golden Gate University,
USA

Prof. Wilhelm Mohligh
Institute of African Studies
University of Cologne,
Germany

Prof. Bob Watt
School of Law
Buckingham University
UK

Prof. Danwood Chirwa
Faculty of Law,
University of Cape Town
South Africa

Prof. C. M. Fombad
Department of Law
University of Botswana
Botswana

Prof. I. N. E. Woruji
Faculty of Law
University of Calabar
Calabar, Nigeria

Prof. Blessing C. Didia
Vice Chancellor,
Rivers State University,
Port Harcourt, Nigeria

Prof. A. L. Ahmadu
Faculty of Law
Usmanu Danfodio University
Sokoto

Prof. Uba Frank Nnabue
Faculty of Law
Imo State University
Owerri, Nigeria

EDITORIAL BOARD

Prof. O.V.C. Okene
Prof. N.S. Okogbule
Prof. E. E. Essien
Prof. Ine Nnadi
Prof. U. U. Chukwumaeze
Prof. N. O. Obiaraeri
Dr. C. Nwanyanwu
Dr. Z. Adangor
Dr. Sotonye Frank
Mr. Justice E. O. Agbara (Rtd)
Dr. O. W. Igwe
Dr. C. T. Emejuru
Dr. J. C. Nwobike
Dr. C. C. Wigwe

Editor-in-Chief/ Dean of Law
Member
Member
Member
Member
Member
Member
Member
Member
Member
Member
Member
Member
Secretary

PORT HARCOURT LAW JOURNAL

A Publication of Faculty of Law, Rivers State University,
Port Harcourt, Nigeria

Volume 7: Number 2, February, 2018

ISSN: 1595 - 1790

Name	Articles	Page No.
Prof. OVC Okene & G. G. Otuturu	The Enforcement of Collective Agreements in Nigeria under the Constitution (Third Alteration) Act 2010	1
O. W. Arugu & Dr. C. A. Nwanyanwu	Maritime Salvage: An Appraisal	14
Nwadei H. Nally Ph.D	Global Peace and Security: Syria Tilts and Buckles	25
Nweke Victor Njoku	Factors Affecting Workers' Welfare in Nigeria: An Appraisal	38
Ochem Charles Emeka & C.T. Emejuru	Critical Appraisal of Medical Negligence in Nigeria	53
Dr. Eseni A. Udu	Enhancing the Application of the Principle of <i>Ultra Vires</i> for Effective Corporate Management	65
Amadi Uloma	E-Meetings: The Global Trend	76
Dr Samuel C Dike & Celine Okeahialam	Energy Scenarios of Leading African Economies and Their Sustainability Index: A Proposal for Transition to a Sustainable Energy Economy.	87
Dr. Rosemary A. Danesi	Non-Standard Work Arrangements and the Right to Freedom of Association in Nigeria	101
Briggs, Awolayefori Nathan	Examination of the Legal Framework for the Fight against Corruption in Nigeria	121
Bright E. Oniha & Oniha, Osato Mabel	Criminal Jurisdiction and Procedure of Customary Courts in Nigeria	134
Dr L. O. Nwauzi & Dr (Mrs.) G. O. Akolokwu	Maintenance under the Matrimonial Causes Act: Examining the Realities and Illusions	147
Dr. Obiora Anne Amuche	Pre-Trial Detention: An Abuse of Human Rights and a Major Contributor to Prison Congestion in Nigeria - A Critical Analysis.	158

Amadi, Elechi Captain	The Effects of Privatisation on the Job Security of the Nigerian Worker: An Appraisal	167
Amalaya Nsanawaji Jacob	Human Rights Protection in Nigeria: The Way Forward	178
Vincent Nnanyelugo Ayogu	In Defence of Human Rights: Examining the Legal Frameworks and Institutions for the Protection of Human Rights in Nigeria	192
Azubuike, Prince Ikwaladi	The Principle of Permanent Sovereignty and Rights Applicable To States: An Appraisal	202
Azuokwu Raymond Ikechukwu	The Concept of Sustainable Development: An Appraisal	210
Chukwuma A.J. Chintwo	The Challenges and the Contradictions of Internal Security in the Nigerian Federation	221
Dr. Clifford Anaele Nwanyanwu and O. W. Arugu	Judicial Protection of Personal Liberty in Nigeria: Perspectives and Challenges	231
D. U. Odigie	The Place of 'Joinder of Employee' in Personal Injury Litigation against Employers.	244
Araromi Marcus Ayodeji, Ph.D	Regulation of Gambling In Nigeria: A Need to Review the Status Quo	258
Peter Ayogu Esq.	The Establishment, Procedure, Jurisdiction and Bindingness of Decisions of the International Court Of Justice (ICJ)	275
Dr. O. A. Orifowomo & L. O. Taiwo	Separating Law and Politics: Challenges to Independence of the Judiciary in Nigeria	283
Dr Evelyn Omolara Aluta	Literature Review: An Evidential Researching Bedrock?	296
Dr. Arinze Abuah	Legal and Institutional Frameworks for the Application of the Law of the Sea in Nigeria	300
Dr. N. J. Obumneme-Okafor	The Persistent Threats of Secession in Nigeria: A National and Constitutional Question; the Legal Implications and Dismatling the Albatross	307
Okwu, Bethel Chimzie	Impact of Pollution on Global Warming: Case Study of Nigeria	320
Okori - Ipirite Ibim Bobmanuel	The Efficacy of Punishment: An Appraisal	336
EN A Okere & Soboma Odimabo-Nsijilem	The Historical Development of Competition Law in Nigeria: An Analysis	344

Omoyemen Lucia Odigie-Emmanuel	Comparative Analysis of Land Law, Policy and Development in West Africa: Recommendations for Law and Policy Reforms	351
Oniha Osato Mabel & Bright E. Oniha	Legality of Euthanasia and the Right to Die In Nigeria	358
Damfebo Kieriseiye Derri, Ph.D & Perekedou James Fawei	Determining the Exercise of Emergency Powers in Nigeria: A Comparative Examination of the 1960, 1963 And 1999 Constitutions of the Federal Republic of Nigeria	369
Philips Kingsley Nyebuchi	The Paris Deal on Climate Change and the Need to Reduce Carbon Dioxide Emission	383
Ehigie, Rita Nene	Asset Management Corporation of Nigeria (AMCON): A Critical Assessment and Recommendations for Future SPVS	397
Saloka S.E.	The Impact of Climate Change on Nigeria	406
Epelle, Sogba Queeneth	The Politics of Extradition In International Law: An Appraisal	415
Timothy, Blessing Badubulachi	Status and Enforceability of Collective Agreements in Nigeria	431
Tete, Joseph Ejiroghene	Legal Regime of Outsourcing of Jobs in the Nigerian Telecommunications Industry: Lessons from Other Jurisdictions	440
Dr Olagunju-Ibrahim, Ridwan Olawale	An Overview Of The Typologies Of Crime Under Islamic Law	453
Dr. (Mrs) B.O. Alloh	An Evaluation Of The Legal Rules Applicable To Offer and Acceptance	462

AN OVERVIEW OF THE TYPOLOGIES OF CRIME UNDER ISLAMIC LAW

by

Dr Olagunju-Ibrahim, Ridwan Olawale*

Abstract

The subject of crime in Islamic law is a seemingly wide area of law with a number of dimensions and sub-dimensions within the same theme. The approach of some writers in presenting the interwoven discussion of some detailed issues in the subject at times has the tendency of leading readers to the path of confusion and bewilderment. What stems from this is nothing but wrong understanding or lack of interest in the entire subject. Laws of Allah, the Almighty, are there to safeguard humanity and chart for them a path of peace and honour in their society. A situation where readers of some English treatises on Islamic Criminal law are not well clear on the grouping of crimes as a result of clumsy arrangement is not a good one. The aim in this paper is to attempt an overview of the various typologies of crime under Islamic law with lucidity and clear-cut dimensions for ascertainment of what belongs to where.

Introduction

Crime denotes a wrong doing or sin in Islamic law. Crime technically implies legal prohibitions imposed by Allah, the infringement of which entails punishment prescribed by Him as well. Crime is in variety and carries different scales of gravity which determines the weight of punishment at any particular time. This paper discusses the arrangement of these varying degrees of crime in the law of Allah in a seemingly simple language easy for grasp. Alongside this major pre-occupation in the write up, attention is paid to the concept, causes and origin of crime in Islamic law. The nexus between the main focus of the paper and these other issues informs this attention.

Concept of Crime (Jarimah) in the Islamic Law Perspective

The notion of crime in Islamic law refers to legal prohibitions imposed by Allah, the infringement of which entails punishment prescribed by Him as well.¹ The Arabic word for crime '*Jarimah*' has been said² to have two connotations; severance and profit. It seems that in the olden days, this word was used to convey 'profit' from a detested deed. Due to language dynamism, the word later grew to connote something wrong and sinful. It is on this note that the following Qur'anic usages are apt and apposite.

*And O my people, let not any Shiqaq (discord) cause you to sin, lest you suffer a fate similar to that of the people of Nuh or of Hud or of Salih, and the people of Lut are not far off from you.*³

The second Qur'anic verse in the same context goes thus:

*O you who believe! Stand out firmly for Allah as just witnesses; and let not the enmity and hatred of others make you (sin) by avoiding justice. Be just; that is nearer to piety, and fear Allah. Verily, Allah is well acquainted with what you do*⁴

* Lecturer 1, Department of Islamic Law, Faculty of Law, University of Ilorin, Ilorin, Nigeria. E-mail Address: ridwanolagunju@gmail.com, ibrahim.or@unilorin.edu.ng, Phone number : +2348038262823

¹ Awdah A., *Criminal Law of Islam* (1st ed., Vol. 1, International Islamic Publishers, Delhi, 2000), p. 73.

² Tahir M., *Criminal Law in Islam and the Muslim World: A Comparative Perspective* (1st ed., Institute of Objective Studies, Qazi, Publishers, New Delhi, 1996), p.52.

³ Quran, Chap. 11, Verse 89.

⁴ Quran, Chap. 5, Verse 8.

It will be discerned from the two verses above that crime i.e. *Jarimah*, as used in different grammatical formats, denotes a wrongdoing or sin. This raises a platitude that the semantic origin of the word '*Jarimah*' epitomizes any detestable deed. To this extent, disobedience to God's orders and commandments is considered as a crime which is detestable in the sight of Allah.

The criminal law of Islam refers to the body of law that regulates the power of the state to inflict punishment, i.e. suffering, on erring persons in order to enforce compliance with certain rules.⁵ Such rules typically protect public interest and values which society regards as crucial, even if the immediate interest that is protected is a private one.

Attaching divinity in Islam to prohibition against criminal acts is a strong driving force⁶ towards compliance and this informs crime rate reduction in Islamic law compliant states. The above, according to Bakri,⁷ is one distinguishing feature of Islamic ideology concerning crime. Bambale's idea⁸ of the Islamic law perception of crime can also be subsumed under the phraseology herein above highlighted. All this explains why crime generally is seen as the action of non-believers⁹ or of those with weak faith. People's weakness in this context is what makes them vulnerable to criminal temptation.¹⁰

On the other hand, religiosity is seen as the source of conformity and, as a result, a protection against criminal behaviour.¹¹ Islam prohibits all minor and major offences, mischief, unlawful deeds, aggression and sins. It warns societies that to ignore these prohibitions and allow their spread among the people will make them suffer decline.¹²

With the above, it seems clear that a religiously oriented person would abstain from criminal activity and would consider it below his/her dignity or honour to commit any criminal act. When this feat is achieved, then, Islam is said to have accomplished its mission and noble goal, which is to create a peaceful society where tendency to indulge in injustice and all other forms of indecency are reduced to the barest minimum, if not brought down to zero level, among sincere Muslims.

The peaceful society as above described was never to exist before the advent of Islam with its divine legal system. How would such a decent society have been in existence hitherto when the most remarkable feature of the political life of Arabia (and by extension, the entire world) before Islam was the total absence of political organization in any form.

With the exception of Yemen in the South-West¹³, no part of the Arabian Peninsula had any government at any time. The only law of the land then was lawlessness. In the event that a crime was committed, the injured party took law in his own hands and tried to personally

⁵ Peters R., *Crime and Punishment in Islam* (1st ed., Cambridge University Press, New York, USA, 2005), p. 1.

⁶ Ibrahim S., *Al-tadayyun; 'Ilaj al-Jarimah* (Jamiat al Imam Mohammad Ibn Sa'ud Al Islamiyyah, 1993), p. 46.

⁷ Bakri M., 'The Significant Influences of Islamic Law on Decreasing Crime Rates in Saudi Arabian Society: An Attitudinal Comparative Study' (Ph.D. dissertation., United States International University, 1979), p. 109.

⁸ Bambale Y.Y., *Crimes and Punishments Under Islamic Law* (2nd ed., Malthouse Press Limited, Lagos, Nigeria, 2003), p.9

⁹ Nabil A., 'Al Tafsir al Islamy Li al Inhiraf Wa al-Suluk al-Ijrami' *Majallat Jami 'ah al Imam Muhammad Ibn Sa'ud al-Islamiyyah* No. 3, 1990, pp. 405-468.

¹⁰ Al-qadiri A., *Sabab al Jarimah* (1st ed., Dar al Mujamma' 'Li al Nashr Wa al Tawzi, '1985), p.70

¹¹ Al-Khalifah A.H.M., 'Religiosity in Islam as a Protective Mechanism Against Criminal Temptation' available at epistemology.net/psychology/493-religiosity-in-Islam-as-a-protetive-mechanism-agaisnt-criminal-temptation.html accessed on 4th December, 2013), p.6

¹² Al-Katan M., 'Effect of Religion Against Crime' in (*The Effect of Islamic Legislation on Crime Prevention in Saudi Arabia*; Proceedings of the Symposium held in Riyadh on 9-13th Oct., 1976, Rome: UNSDRI, 1980), p. 62.

¹³ Ashgar S.A., 'Arabia Before Islam' (available at URL: <http://www.al-Islam.org/restatement-history-Islam-and-Muslims-sayyid-ali-ashgar-razwy/arabia-Islam> accessed on 9th July, 2013.

administer 'justice' to the offender. This system led very frequently to acts of horrendous cruelty.

Crime involves the notions of injustice '*jawr*', wrongdoing '*zulm*', tyranny '*tughyan*' and deviation '*inhiraf*'. This is so because there is no aspect of criminality in Islam that cannot key into any of the negative notions mentioned above. From theft to wine drinking and the rest of *hudud* offences, and from *Qisas* to *Ta'zir* offences, criminality portrays injustice. The penal laws of Islam thus aim at cleansing the society from this injustice so as to pave way for fairness, balance, temperance, moderation and straightforwardness. Those, among others, are the benefits and comforting conditions which shall hold sway when crime is wiped out, and justice '*adl*' is installed. A writer, while giving the literal meaning of the word '*adl*', says:

The literal meaning of 'adl' in classical Arabic is thus a combination of moral and social values denoting fairness, balance, temperance and straightforwardness: Logically, divine justice would be a synthesis of all these values and virtues...¹⁴

Locating the true perception of Islamic law on crime is to have the conviction that the said law is in place to serve the utmost interest of man. This interest is served when all the earlier mentioned vices such as tyranny, injustice, deviation etc are wiped out. Once these are wiped out of any given society, then it is beyond contention that such a society is free from crime and criminality. This is the ultimate goal of *Shariah* on all issues, and especially on crime. It is subsumed under the phrase '*Maqasid as-Shariah*' i.e. the objectives of Islamic law.¹⁵

Causes of Crime

Crime is an unbecoming attitude of man which Allah detests and places some sanctions against. Though Allah creates mankind to shun vices and follow the right path,¹⁶ certain influences on man have always come in to entice him towards indulgence in crime. This fact is a regular occurrence in man and thus needs to be delved into for study and discernment of useful suggestions on how best the vices can be checked.

Egoism or self-centeredness is a major role player as a driving factor towards criminality. Man's love for himself is an excessive one. He is, more often than not, prompted to satisfy his heart desires at whatever cost. This often brings him to trample upon other people's rights either by encroaching upon their belongings without justification, or otherwise dealing with them (other people) in a way that is injurious to their body, person or dignity, among others. This is crime in a nutshell. Pointing to man's egoism or selfishness as one of the reasons for his involvement in criminality, an Arabic writer submits as follows:

Every society is required to conform to some guidelines and principles which are put together to regulate man's relationship interse and to guarantee their rights in order to avoid crisis. But egocentricity and self-seeking are inherent in man. His soul is characterized by certain instincts and negative inner urge which are in need of reconditioning and refinement. If this is done, man's possible transgression on another would have been checkmated.¹⁷

The point above explained, can conveniently be subsumed into what Siddiqui calls¹⁸ inner urge and incentive of crime among the causes of crime in Islam. This apart, covetousness

¹⁴ Hanif H., *Islamic Concept of Crime and Justice* (1st ed., Vol. 1, Sarup & Sons, New Delhi, 1999), p.8

¹⁵ Nyazee I.A.K., *Theories of Islamic Law. The Methodology of Ijtihad* (1st ed., Adam Publishers and Distributors, New Delhi, India, 1996), pp. 235-241.

¹⁶ McLaughlin E., Muncie, J. and Hughes G., *Criminological Perspectives* p.1

¹⁷ Al-Qatan M., p. 11

¹⁸ Siddiqui M.I., *The Penal Law of Islam* (Adam Publishers & Distributors, New Delhi, India, 2010)pp. 5 - 6

or greed is equally another reason which spurs indulgence in crime and other vices. Man by nature appears dissatisfied with whatever situation he finds himself in. No matter the quantum of riches at his disposal, he is always identified by an impulse deep down his mind urging him to scramble for increase¹⁹. To achieve this willy-nilly, man is often pushed to the wall. He minds not stealing properties of others to actualize his inordinate aspirations. A worse scenario is when he happens to injure, wound, maim or even kill the rightful owner in order to pave way, without disturbance, for the carrying out of his criminal act.

Origin of Crime under Shariah

A point of concurrence among Muslim scholars and historians on the origin of crime in the Islamic perspective figures out Prophet Adam, May Allah be pleased with him, as the first man to get involved in criminality. Following this historical account as narrated in the glorious *Qur'an*,²⁰ one understands with ease that the earliest human crime was committed conspiratorially by Adam, the first man, and his wife, Hawwau, the first woman.

The particular atrocity referred to above took place within the confines of the paradise garden where they both lived as the first couple ever known. The duo committed the offence in defiance to Allah's earlier express instructions to them not to eat from a particular fruit within their abode in the paradise garden. Consequent upon their transgression (eating from the forbidden fruit), they were asked to vacate the unique abode and they thus descended on the earth for habitation. One of the *Qur'anic* portions relevant to this account runs thus:

And O Adam! Dwell you and your wife in paradise and eat thereof as you both wish, but approach not this tree otherwise you both will be of the unjust and wrong-doers. Then Satan whispered suggestions to them both in order to uncover that which was hidden from them of their private parts (before), he said: Your lord did not forbid you this tree save that you should become angels or become of the immortals. And he, Satan, swore by Allah to them both saying; verily, I am one of the sincere well-wishers for you both. So he misled them with deception. Then when they tasted of the tree, that which was hidden from them of their shame (private parts) became manifest to them and they began to cover themselves with the leaves of paradise (in order to cover their shame). And their lord called out to them saying: Did I not forbid you that three and tell you: verily, Satan is an open enemy unto you? They said: Our lord! We have wronged ourselves. If you forgive us not, and bestow not upon us your mercy, we shall certainly be of the losers. Allah said: Get down, one of you is an enemy to the other (i.e. Adam, Hawwau and Satans. One earth will be a dwelling place for you and an enjoyment for a time. He said: Therein you shall live and therein you shall die, and from it you shall be brought out (i.e. resurrected).²¹

After the first²² crime, what followed was the murder²³ of Habil²⁴ by his brother, Qabil²⁵. This, being a reprehensible act, was frowned at seriously by Allah in the *Qur'an*²⁶. The two

¹⁹ Quran, Chap. 102, Verses 1 – 2.

²⁰ Quran Chap. 7, Verses 19-25 and Chap. 2, Verses 35-38, among others.

²¹ Quran Chap. 7, verses 19 – 25

²² It needs be said here that dereliction of duty (discerned from Quran, Chap. 7 verses 11 – 12) though a civil offence, had taken place ahead of the crime of stealing, two reasons feature to paint the crime of stealing as the first ever known crime. First, our focus is on crime, and dereliction of duty is a civil offence, not crime. The second reason relates to the identity of the deviant in the case of dereliction of duty. It was an angel (Iblis) not human being, whose history of first indulgence in crime is being considered here.

²³ Quran, Chap. 5, Verses 27 – 30 contains a detailed account of this

²⁴ Commonly called Abel by the Christians

²⁵ Commonly called Cain by the Christians

²⁶ Quran, Chap. 5, Verses 30 – 32

offences referred to above (stealing and murder) together with rape and possible others in the same category, have all "been regarded as grave offences from earliest times"²⁷.

As it has been seen, Adam broke out of the divine compact requiring him to refrain from eating the forbidden fruit. This is a pointer to ethical decline²⁸ on his side at the period. The same thing can be said of Qabil who gruesomely murdered his own brother (Habil) for trivial reason of lust and uncultured obsession for womanhood.²⁹

Ethical decline had been with man right from the scratch. It is the bedrock upon which the deviance of falsity is hinged. Crime is the offshoot of ethical decline wherever same is observed. This therefore explains the continuous perpetration of crime by all manners of human offences mentioned above as having taken place in the earliest time. Other modern offences too are being frequently committed. Occurrences of all these are witnessed almost on daily basis.

For instance, the Roman Dutch Law came to be developed later and same punishes a wide range of crimes believed to be in vogue in the area. Among these are: crimes against the state (including high treason and sedition), various sexual crimes and crimes against the family, crimes against the public welfare, crimes against a person (including crimes against life, bodily integrity, dignity and reputation, freedom of movement), fraud in its widest sense (stellionatus and crimen falsi) and related crimes, bribery, defeating or obstructing the course of the administration of justice, perjury (periurium) and forgery.

From that time on, there has been regularity of indulgence in one form of crime or another. Obsession for wealth accumulation by one at the expense of others³⁰ became a more manifest trait in man. The controversial Qarun in the ancient time, whom Al-Ilori refers to³¹ as the first ever capitalist descort, was identified with this trait, and Prophet Musa³² was sent down by Allah to caution him and check his excesses.³³ Though the messenger of Allah (Musa) tried his best, materialism, greed and uncultured quest for money were already entrenched as offshoots of Qarun's capitalism and egoism. All these are among the traces of ethical decline.

Crime has been on ever since, but it became an object of scientific enquiry in its own right in the early nineteenth century. In important respects, a concept of 'crime' only came to replace a concept of 'sin' when a burgeoning legal apparatus, designed to protect property and the interests of the nation-state, evolved out of the social, economic and cultural transformations of the industrial revolution. As concern over the problem of 'crime' intensified, crime also became the object of more systematic observance and measurement. Analysis of its extent and causes was first made possible through the publication of national criminal statistics in France in 1820s.³⁴

On the capitalistic attitudes of Qarun and some other people of like minds at his time, one can, as earlier indicated, refer to the unscrupulous attitudes (ethical decline) as a precursor

²⁷ Chukkol, K.S., *The Law of Crimes in Nigeria* (ABU Press Limited, Zaria-Nigeria, 2010), p.5

²⁸ Ethical decline as it relates to the environment induced causes of crime shall be delved into while considering etiology of crime.

²⁹ Qurtubi M.I., *Tafsir al-Qurtubi al-Jami' Li-Ahkam al-Qur'an* (1st ed. Vol. 5, Dar-at-Taqwah publications, Cairo, 2008), pp. 105 – 106.

³⁰ As alluded to in the Glorious Quran in Chap. 89, Verse 20

³¹ Al-Ilori A.A., *Huquq al-Insan Bayna Adyan as-Samai wa Qawanin az-Zaman* (2nd ed., Islamic Dawn Publication House, Lagos – Nigeria, 2009), pp.26-27.

³² After Musa, other prophets of Allah who were sent down for the same mission include Issa who preached complete spirituality, and Muhammad (S.A.W), who adopted a middle course approach on the issue.

³³ Quran, Chap. 28, Verses 76 – 83

³⁴ McLaughlin E., Muncie, J. and Hughes G., *Criminological Perspectives* (2nd ed., Sage Publications Ltd., London, 2003), p.1

to the so-called white collar crimes or economic and financial crimes as they are known presently in Nigeria and virtually other jurisdictions.³⁵

Typologies of Crime under Shariah

In the classical textbooks of Fiqh, criminal law is not regarded as a single unified branch of the law. It is rather discussed in three separate chapters as follows:

- (1) Provisions regarding offences against persons, i.e. Homicide (Qatl) and Wounding (Jurh), subdivided into:
 - (a) those regarding retaliation (Qisas) and
 - (b) those regarding financial compensation (Diyah)
2. Provisions regarding offences mentioned in the Qur'an and constituting violations of the claims of Allah (Huquq Allah) with fixed mandatory punishments (Hadd offences) under this category are seven in number. They are:
 - (i) Zina-unlawful sexual intercourse
 - (ii) Qadhf - false accusation of unlawful sexual intercourse
 - (iii) Sarqah - Theft
 - (iv) Shurb al - Khamr-Alcohol Consumption
 - (v) Riddah-Apostasy
 - (vi) Baghy - Insurrection or Rebellion or Treason
 - (vii) Hirabah - Highway Robbery

As for categories (1) (a) and (2) above, fiqh books are replete with their discussions in such a painstaking detail that they may be regarded as constituting Islamic Criminal Law in its strict sense. Category (3) is a residual but comprehensive one under which the authorities are given wide-range powers. They may punish those who have committed offences mentioned under (1) and (2) but could not be convicted on procedural grounds (e.g. pardon by the heirs of a victim of manslaughter, or evidence that does not satisfy the strict requirement). Those who have perpetrated acts similar to these offences but do not fall under their strict definitions can also be punished under *Ta'zir*.

The provisions regarding blood money (diyah) in category (1) (b) above belong to the field of private law, since they deal not with punishment but with financial remedy arising from a specific type of Tort (i.e. homicide and wounding. Blood money in cases of homicide and wounding is a financial compensation for damages suffered by the heirs of the victim (in cases of homicide) and for the victim himself (in cases of bodily harm). That this is no punishment strictly speaking is clear from the fact that in many situations, it is not the perpetrator who is liable for the blood price, but his 'solidarity group' ('*aqilah*'), usually his agnatic male relatives.³⁶

Dwelling a bit more on *hadd*, the singular form of *hudud*, it is submitted that the term can be used to refer, among others, to prevention (*man'u*) or a line of demarcation (*Fasil*).³⁷ Furthermore, the term '*hadd*' can be used to point to the limit close to which one is not expected to go. By this usage, the intent of Allah is at the prohibited offences which one should not move close to. On this, Allah says:

... these are the limits (set) by Allah, so approach them not...³⁸

³⁵ Such as Sri Lanka, Australia, Turkey, Dubai, Jordan, United Kingdom and the Caribbean to mention few.

³⁶ Peters R., *Crime and Punishment in Islam* (1st ed., Cambridge University Press, New York, USA, 2005), pp.7-8

³⁷ Al-Munjid Fi al-Lughah Wal a'lam, (40th ed., Dar al-Mashriq Sarl Publishers, Bei-rut-Lebamon, 2003), p. 120.

³⁸ In Quran, Chap. 2, Verse 187

Technically, however, the word 'hadd' is used in Islamic law to denote divinely prescribed punishments to safeguard Allah's right.³⁹ These divine punishments in Islam are those prescribed in the Qur'an to be inflicted on culprits in cases of seven *hudud* offences already mentioned. It is envisaged that by awareness and infliction of these punishments in warranting circumstances, other members of the community and even the same offender(s) already punished are going to be deterred from commission of similar acts in future. When they are so deterred, they become prevented from moving near the offences and hence, the literal meaning of the word 'hadd' i.e. prevention. It is when people in the society are so prevented from crime that Allah's design of peace and justice for the society is accomplished.⁴⁰ This is the rationale behind the prophetic insistence in one of his narrations that the need to take revenge from a transgressor is paramount whenever he so transgresses (by committing any of the *hudud* offences). That prophetic saying goes thus:

... Aishah, may Allah be pleased with her said. Prophet Muhammad (SAW) was fond of choosing the simpler out of any two options he was given, especially when the simpler option did not incriminate him, otherwise, he kept far distance from the two given options. I swear by the name of Allah, the prophet never took revenge on account of any personal issue of his except when rights/claims of Allah are trampled upon, then, he took steps to revenge for Allah⁴¹

On the other hand, the term 'Qisas' literally stems from 'qassa' in Arabic language. This means to follow or pursue a vestigial trace of something. *Qassu*, which denotes the above, can also come in the morphological form of *qasas*. This usage appears in the glorious Qur'an where it refers to 'retracing footsteps'. It goes thus:

He (Musa) said: 'that is what we have been seeking'. So they went back retracing their footsteps.⁴²

As for the juristic meaning of the term 'qisas', it denotes 'paying back a doer with the like of his deed'.⁴³ This would, for instance, mean that a murderer who kills another person intentionally shall also be killed in like manner. Conversely, where a person has injured another by wounding him (*jurh*) in the body, the doer shall also be inflicted with like wound on his body.

It should be noted here that in place of taking to vengeance on the body of the doer, the injured (victim) or his relatives, where death has occasioned in consequence, may decide to accept payment of the wergild (*diyah*) of the death occasioned or injury inflicted.

From the prologue above, one understands with ease that *qisas* in the law of Allah can be segmented into two. The first is *Qisas fi al-qatlal*, meaning retribution where people have been killed without justification. Here, if it can be established that one has killed another without just cause, it becomes obligatory on the ruler in an Islamic state to follow or pursue the murderer's tract or footsteps by ordering for his execution by killing under the doctrine of *qisas*.⁴⁴ However, the only factor which can operate to impede the murderer's killing in the

³⁹ Ismail M.B., *Al-Fiqh al - Wadih Min al-Kitab Was -Sunnah 'Ala al-Madhahib al -Arba'ah*, p.191.

⁴⁰ Abu 'Aziz S.Y., *Al-Fiqh al-Muyassar Wa adillatuhu Min al-Kitab Was- Sunnah* (1st ed., Vol. 1, Dar al-Tawfiqqiyah Li at - Turath Publications, 2009), p.355.

⁴¹ Al-'asqalani A.H., *Fath al-Bary, Sharh Sahih al-Bukhari* (New ed., Vol. 12, No. 6786, Dar al - Bayan al-Arabi, Cairo, Egypt, ND), p.98.

⁴² Quran, Chap. 18, Verse 64

⁴³ Ismail M.B., p. 295

⁴⁴ Abu 'aziz S.Y., p. 369.

circumstance is the choice of the victim's relative(s) to forgo the capital punishment and substitute same with request for blood money or wergild (diyah).

On the above, it is even possible that the victim's relatives will forgo the two by overlooking the murderer's dastardly act in expectation of Allah's tremendous reward for the good gesture. On the total overlooking of the murderer's inhuman act, the Qur'anic verse below is apposite.

O you who believe! Al-Qisas (the law of equality in punishment) is prescribed for you in case of murder. The free for the free, the slave for the slave and the female for the female. But if the killer is forgiven by the brother (or the relatives etc) then adhering to it with fairness and payment of the blood money to the heir should be made in fairness. This is an alleviation and a mercy from your Lord. So after this, whoever transgresses the limits (i.e. kill the killer after taking the blood-money), he shall have a painful torment)⁴⁵.

In support of the above Qur'anic verse, the saying of the prophet (SAW) which is herein below quoted, is of high relevance. The same Prophetic saying is apposite on the various amounts of wergild payable where onslaught is committed either on a person's soul or any of his bodily parts. The said hadith was narrated by Abubakr bn Muhammad bn Amr bn Hazm, on his father's authority from his grandfather. It goes thus:

The prophet (S.A.W) wrote to the people of Yemen - the narrator narrated the hadith - and it contains the following: if anyone kills a believer unjustly - a deliberate killing - retaliation (qawad) is then due unless the relatives of the victim are pleased (with some other settlement). It also contains that the diyah (blood money) for a life (being taken) is a hundred camels; that full blood money (100 camels) must be paid in each of the following; the complete cutting off of a nose, the two eyes, the tongue, the two lips, the penis, the two testicles and the backbone (i.e. sulbu), that for one foot, half the diyah must be paid, for a wound in the head (which reaches the brain) a third of the blood money, for a thrust which penetrates the body a third of the blood money, for a wound which causes the broken bones to come out-fifteen camels, for each finger and toe-ten camels, for a tooth-five camels, and for a wound which lays bare the bone-five camels; that a man may be killed in retaliation for a woman; and that those who have gold should pay a thousand Dinar'. Reported by Abu Da'ud - in his book 'Marasil', An-Nisai, Ibn Khuzaimah, Ibn Al-Jarud, Ibn Hibban and Ahmad. However, they disagreed regarding its authenticity⁴⁶.

On the second case of Qisas (*Qisas fi al-Juruh*) i.e. retribution where injuries are inflicted on the body of a person, where this is established either by confession (*Iqrar*) or testimony (*bayyinah*), the tortfeasor is made by the ruler in the state to be paid back in the same vein. The same consequence shall also greet the tortfeasor's acts where he cuts any of the parts of the victims body. Like the explanation rendered in the first group of *qisas*, issues of wergild payment instead of retribution and total forgiveness (where either of the two is chosen) are also applicable to this second group of *qisas*. The relevant Qur'anic verse on the above goes thus:⁴⁷

And we ordained therein for them: 'life for life, eye for eye, nose for nose, ear for ear, tooth for tooth and wounds equals for equal'. But if anyone remits the retaliation by way of charity, it shall be for him an expiation. And whosoever does not judge by that which Allah Has revealed, such are the polytheists and wrongdoers of a lesser degree.

⁴⁵ Qur'an, Chap. 2, Verse 178.

⁴⁶ As-Sani'ni M.I., *Bulugh al-Maram Min Adillah al-ahkam* (2nd ed., No. 1009, Darussalam Publishers and Distributors, Riyad, Saudi-Arabia, 2002), pp. 378-379.

⁴⁷ Quran, Chap. 5, Verse 45

Generally, jurists have developed a style of segmenting retribution (*qisas*) into two, and the two are called *qisas fin-nafs* and *qisas fi maa dunan nafs*. These mean: retribution where life is involved and the other one where there is no involvement of life. The first classification is called *qisas fi al-qatlaa* while the second is *qisas fi al-Juruh wa qat' al a'dhai*.

The next thing to be discussed tersely is *Ta'zir*. Following the path adopted while discussing both *hadd* and *qisas*, it can be said that *Ta'zir*, in Arabic language, implies a discretionary punishment by a judge in Islamic state for a person who commits an offence, not being *Hadd* nor *Qisas*, so as to prevent, hinder, withhold or forbid and turn such an offender away or back from the offence⁴⁸. *Ta'zir* may as well connote rebuking or disparaging someone. This meaning radiates when someone belittle another whose has committed an offence, so that the later can refrain from the offence⁴⁹.

Technically, *Ta'zir* refers to slight discretionary punishment by constituted authority (such as the Imam or judge) where the offence committed is not one of *hadd* crimes and is not one where penance is acceptable.⁵⁰ This definition brings to fore the need to state that offences are of three types when considering their worldly punishment. The first of the three is offences under *hadd* where penance (*Kaffarah*) is not acceptable.⁵¹ This set of offences, the examples of which are; *Zina*, theft, alcohol consumption etc, has been treated earlier. The second set of offences approves of *Kaffarah* i.e. penance as the only punishment. Example of this is sexual intercourse in the day light of *Ramadan*⁵² As for the third set of offences, neither *hadd* nor *Kaffarah* punishment is applicable to it. The offences here are only punishable under *Ta'zir*.⁵³ An example of these offences is theft of an object below the value of *Nisab*.

Conclusion

In the grouping of crimes in this paper, the approach of the classical textbooks of *Fiqh*, which favours three segmentations, has been followed. These are *Qisas*, *Hudud*, and *Ta'zir* offences. *Qisas* has been succinctly explained as that branch of offences regarding human person i.e. homicide (*qatl*) and wound infliction on human body (*Jurh*) for either of the two subdivisions of *Qisas*. The punishment has also been explained to come in form of retaliation (*qawad*) in the exactitude of the affront done or an alternative corresponding financial compensation (*diyah*). What determines the particular consequence in this context is the standpoint of the victim or his relatives (where he is deceased on account of the attack on him).

For offences under *Hudud* group, these have been mentioned and discussed as well. They are seven in number. *Ta'zir* is the last category of offences as treated in the majority of *Fiqh* books and in this work of ours. *Ta'zir* offences have been described as a residual but comprehensive branch of offences under which lawfully constituted authorities are given wide-range powers to punish using their discretion. This situation, as already analyzed in the body of the work, occurs where the offences committed are outside the confines of *Qisas* and *Hudud* offences. This is the summary of what the treats.

⁴⁸ Lane E.W., *Arabic-English Lexicon* (Williams and Norgate, London, 1863), p.2034

⁴⁹ Ismail M.B., *Ibid*

⁵⁰ *Ibid*

⁵¹ *Ibid*

⁵² *Ibid*

⁵³ *Ibid*