

## LAW AND MORALITY IN MALAYSIA: SELECTED ISSUES

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### ABSTRACT

This paper is about the co-existence of law and morality in the Malaysian legal provisions especially in civil laws. Though morality is a fundamental element in Islamic law, morality does exist in most of the civil laws in Malaysia. The paper is divided into two parts. Part one discusses the concept of morality in the Malaysian legal framework, especially in the Federal Constitution of Malaysia. The position of Morality in Islam as enunciated in the Qur'an and traditions of Prophet Muhammad (SAW) are highlighted to show that morality is the pillar of any Islamic laws in Malaysia or perhaps, in any parts of the world. The second part discusses some selected cases or laws in civil and Islamic laws in Malaysia where morality exist in those laws and to identify what kind of morality that needs to be protected. It is important to emphasize that the future of law, the future of Asia including Malaysia depends on how morality has been incorporated in the codified laws passed by the legislative bodies in Muslim countries. This is a qualitative research based upon data collected from primary sources such as al Quran and al Sunnah for the first part of the paper. Whereas the second part is based on laws in Malaysia, reference are made to some existing laws in Malaysia.

**Keywords:** *Law, Morality, Shariah, Islamic Law, Malaysia*

### INTRODUCTION

Law and Morality in Islam cannot be separated. In Islam, to constitute a law, it must contain morality as prescribed in Shari'ah. Morality is considered a part of faith in Allah (SWT). Thus, any law created by the authorities must be in line with Shari'ah. The nature of any law that the authority wishes to create must be consistent with the principles of divine revelations, the *maqasid al shari'ah* and the general principles as practised by the Prophet (SAW). Sometimes the law that the authorities intend to create is of shari'ah origin however the administration and the application of law are not right, then the law is not right as well since it lacks ethical values as far as the application is concerned. Likewise, a new law is drafted that is not directly derived from Shari'ah but its objective and principle are in line with Shari'ah principles and moral in nature, then the law created is Islamic.

## **Morality in Shari'ah**

Morality in Shari'ah is a fundamental aspect that shapes the legal framework, guiding not only the actions of individuals but also the societal norms and legal judgments. Shari'ah integrates moral principles deeply rooted in Islamic teachings with legal mandates, ensuring that ethical considerations are central to the application of law.

In Shari'ah, acts and faith are related. The extent of one's act to worship Allah is determined by the strength of his *iman* to Allah. The stronger one's *iman* to Allah, the sincerer his acts of worship and good deeds to Allah and ummah respectively.

The Qur'an verse 68:4 reads: "And indeed, you are of a great moral character." This verse is addressed to Prophet Muhammad (SAW) as the Messenger of Allah (SWT) whose duty is to convey the divine revelations to the Arabs in Makkah and Madinah. The verse demonstrates that the Prophet (SAW), when dealing with other people, was of the exemplary conduct to others. His words, acts and any kind of gesture is a form of sunnah and exemplary conduct that one should try his best to emulate and imitate.

Morality is associated with one's *aqidah* and *iman* to Allah (SWT). How solid your *iman* is, depends on the extent and excellence your morality to others such as to your parents. This can be seen in the following Qur'anic verse 23-24:

*And your God has decreed that you not worship except Him and to parents, good treatment. Whether one or both of them reach old age(while) with you, say not to them (so much as) "ufff" and do not repel them but speak to them a noble word. And lower to them the wing of humility out of mercy and say 'My lord, have mercy upon them (parents) as they brought me up (when I was) small'.*

The verse is a command of Allah (SWT) to worship Him, the one and the only god that we can worship. This is about our *aqidah* to Allah (SWT). Next the command of Allah (SWT) is the duty to treat parents with the best treatment, to say pleasant words and to make do'a to Allah (SWT) to shower His mercy on them as they raised us with love and care when we were small. Morality of an individual is highly demanding by the parents, society and the nation as whole. ( Assaf, Umbreen & Attaullah,2018)

Morality is not limited to our parents but also to others especially in the context of dealing with other people such as in the case of business transaction (*muamalah*). It is required for every Muslim to deal in any transaction justly.

The Qur'an 4:29 reads: "O you who believe, do not consume one another's wealth unjustly but only (in lawful) business by mutual consent. And do not kill yourselves ( or one another) indeed Allah is to you ever merciful.

The above verse focuses on the relationship with others that must be based on mutual consent and lawful manner by observing the agreed terms and conditions as agreed between both parties. Morality is not limited to behaviour but also include holding strong moral principles such as honesty dan transparency.

In a hadith it is reported that the Prophet (SAW) used to say that He was sent to perfect good character. In another *hadith*, the Prophet (SAW) said that the best amongst you is the one whose character is best.

## **Law in Islam**

The term Islamic law can be referred to by the word *fiqh* and the law or *qanun al al Islami* which means the law which is Islamic. Sometimes the term is used interchangeably with the word *shari'ah*. Islamic law can also be referred to the law itself. The word *fiqh* can be defined as the understanding of the *fuqaha* (jurists) based on the Qur'an and Sunnah, the divine revelations. *Fiqh* is based on the juristic efforts in finding out the ruling of any particular act whether the act is valid or not valid. Sometimes it also refers whether the act is obligatory or not to obligatory to be performed.

The objectives of Islamic law is not limited to protect the five or more of Maqasid al Shari'ah; Religion, life, intellect, lineage, honour and property. The objectives of Islamic law is not only for the protection of the above but specifically to do the following aspects:

- a. To educate the individual
- b. To uphold justice
- c. To provide *maslahah* and to repel harm in the community

To educate the individual means to inform any individual with what is right and what is wrong. To educate also means to nurture a person to be a better person so that he could grow following the right path, as prescribed by Shari'ah, To a certain extent, to educate the individual means to "punish" a criminal with an appropriate punishment so that the punishment could reform him to be a better person in future upon receiving the punishment.

To uphold justice means to ensure fairness, equality and impartiality in the application of substantive and procedural law to every individual, living in an Islamic state. Justice in Islam happens when it is derived from the principles of Islamic judiciary. Among the principles of Islamic judiciary are the following:

- a. A judge is required to listen to both disputed parties before giving judgment
- b. Every decision must be based upon the evidence
- c. A judge and any relevant parties involved in the court is required to observe to the ethical principles while in the court
- d. A judge in a Syariah court must hold adequate understanding and knowledge on substantive and procedural law as well as capable to exercise his judicial creativity when needed

To provide *Maslahah* means the law is meant to provide benefits and welfare to the people regardless of their religions. The nature of the laws is to promote actions and decisions that benefit the society as a whole. This is aligned with the five essential values in *maqasid al shari'ah*. In implementing Islamic law, the objective is to provide *maslahah* and to repel harm for all people who live in Dar al Islam. Shari'ah sent by Allah (SWT) through Prophet Muhammad (SAW) is a *rahmah* for all mankind.

### **Which laws are Islamic?**

The simple way to describe the laws which are Islamic is to say any laws that promote justice, benefits, align with Maqasid al shari'ah and mercy to all human beings. This is Islamic law. It is not accurate to limit Islamic law as laws which are originated from Shari'ah; al Quran and al sunnah. Instead, Islamic law can be an act that is not originated from Shari'ah directly, however, the principles of the act is align with shari'ah such as principle of morality and mercy to all.

Basically, to constitute any laws to become Islamic, five principles must be adhered to; They are as follows:

- a. Equality before the law
- b. Justice
- c. Protection against persecution
- d. *Maqasid al Shari'ah*
- e. Morality, *hikmah* and *Rahmah* (Ramizah W Muhammad,2019)

There are some laws in some parts of the world which are not of Shari'ah origin but the principles are actually aligned with the above principles. The above principles are part of the faith of a muslim as commanded by Shariah. The pillars of Islamic legal system are based on Shariah, morality and spirituality. ( Antiga Pashayeva,2022))

### **Law and Morality in Malaysia**

The existence of a parallel legal system consisting of Civil and Islamic law in Malaysia shows the uniqueness and complexity of the administration of justice. Nevertheless, this used to become confusing among the society to view that these two laws totally stand in its own sphere without any interrelation particularly in regards to wisdom and morality between them. It is undeniable that most of the society viewed that for any law to be Islamic, it must indeed be based upon divine revelation and this is why they perceived Civil law being applied in Malaysia is not Islamic. In regards to this matter, the authors aim to correct this misunderstanding by emphasising that as long as the civil law enacted does promote justice, in compliance to Maqasid al-shari'ah and contain moral value, those laws can be said as Islamic. To enlighten this, the authors will discuss several selected provisions from different types of civil laws which include both substantive and procedural law from criminal law, family law, environmental law, health law and media law.

First and foremost, this paper would like to discover moral value existed in several criminal procedures stipulated in the Criminal Procedure Code ("CPC"). The first one pertains to the prohibition of execution of the death penalty upon pregnant women. Malaysia is one of the 56 countries that remains a staunch retentionist of the death penalty. It is vital to point out that the right to life is among the fundamental rights guaranteed under Article 5(1) of the Federal Constitution but it is subject to exceptions. The Malaysian courts, while interpreting the right to life under Article 5 of the Federal Constitution rule that death penalty is constitutional, provided that it is recognised by the law (Shamrahayu A. Aziz,2015). This means the execution of the penalty is valid if the procedure related to prosecution and conviction are complied with. At this juncture, it can be observed that the Federal Constitution upheld the concept of justice and preservation of life by setting up strict parameters before one's life can be taken away upon conviction. There are certain groups being excused from

being sentenced with the death penalty, namely women who are pregnant at the time of sentencing, minors and unsound persons. Section 275 of the CPC reads :

*Where a woman convicted of an offence punishable with death is alleged to be pregnant, or where the Court before whom a woman is so convicted thinks fit, the Court shall direct one or more medical practitioners to be sworn to examine that woman in some private place and to enquire whether she is pregnant or not, and if upon the report of any of them it appears that she is pregnant the sentence to be passed upon her shall be a sentence of imprisonment for life instead of sentence of death.*

The same principle of protecting the life of an unborn child is also adopted world-wide. For example, Article 6(5) of the International Covenant on Civil and Political Rights (“ICCPR”) stipulated that “*Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women*”. To view this provision in the eyes of Islamic law, it is interesting to note that the postponement of the death penalty towards pregnant women had occurred during the Prophethood era. Reference can be made to a hadith, whereby, a woman of Ghamid came to the Prophet PBUH and said: I have committed fornication. He said: Go back. She returned, and on the next day she came to him again, and said: Perhaps you want to send me back as you did to Ma’iz b. Malik. I swear by Allah, I am pregnant. He said to her: Go back. She then returned and came to him the next day. He said to her: Go back until you give birth to a child. She then returned. When she gave birth to a child, she brought the child to him, and said: Here it is! I have given birth to it. He said: Go back, and suckle him until you wean him. When she had weaned him, she brought him (the boy) to him with something in his hand which he was eating. The boy was then given to a certain man of the Muslims and he (the Prophet) commanded regarding her (Sunan Abu Daud).

It can be said that hadith above illustrates that Islam does promote mercy and forgiveness. Despite punishing the woman immediately upon her confession, the Prophet did ask her to return and wait until she gave birth to the child and the child to be put under guardian. In the case of adultery, it is only the man and woman who committed sin towards Allah and no blame should be put onto the unborn child since it does not inherit any sin committed by the parents. In a hadith reported by Abu Hurairah, the Prophet said “*Every child is born on Islam, but his parents make him a Jew and a Christian, just as a beast is born whole.*” (Sunan Abu Daud) It is evident that protecting the lives of unborn children is the main justification for exempting pregnant women from the death penalty under both civil and Islamic law. Therefore, even if it is not directly inspired by divine sources, this type of criminal procedure does advance the achievement of Maqasid al-shari’ah, which is the preservation of life.

The second criminal procedure to be discussed is pertaining to the importance of a judge to maintain impartiality in hearing a case before him. The relevant provision that can be referred to is Section 439 of the CPC which states “*No Magistrate shall, except with the permission of the High Court to which an appeal lies from his Court, try any case to or in which he is a party or personally interested.*” Article 5 of the Federal Constitution guarantee of equality before the law was actually illustrated by this provision. As a result, everyone is subject to the law, including the judges. Misconduct committed by a judge will substantially affect public trust and confidence towards the administration of justice in the country. A good example to show the practicality of Section 439 of the CPC is the case of *Public Prosecutor v Mohd Ghazali bin Ibrahim*, in which there exist family ties between the accused and the presiding magistrate who

heard the case. The accused has been charged for two traffic offences but later discharged by the presiding magistrate. This in fact contravenes Section 439 of the CPC since the act of the Magistrate shows that he has acted biased in that case due to his interest with the accused. It can be said that the rationale of this provision is to ensure the integrity of the presiding judge and fair trial towards the accused, which is similar to what has been emphasised under Islam.

There is a hadith by the Prophet PBUH that highlights the integrity of a judge and consequences if there is a breach of that integrity which reads, *“Judges are of three types, two of whom will be in Hell and one will be in Paradise. The man who knows the truth and rules in accordance with it, will be in Paradise. The man who passes judgment on the people in ignorance will be in Hell”* (Sunan Ibnu Majah.) Today, if a judge is allowed to decide on the basis of his personal knowledge it can give rise to countless problems (Shaukat Hayat, 2012). Thus, it can be summed up that Section 439 of the CPC does uphold moral values as promoted in Islam. In adab al qadi it is also mentioned that a presiding judge is not allowed to hear any cases in the disputed parties are his relatives or his enemies (Aidit Ghazali (ed), 1993).

Another moral value that can be identified in Malaysian civil law is pertaining to the duty of the public to report any crime that has been committed or was known by them to the authority. For instance, Section 13 of the CPC provides that members of the public who are aware about commission or the information of any person to commit offences listed in the said provision shall immediately give such information to the authority. This kind of duty also can be observed under Section 19 of the Sexual Offences Against Children Act 2017 which stated that, *“Notwithstanding section 13 of the Criminal Procedure Code [Act 593], any person who fails to give information of the commission of or the intention of any other person to commit any offence under this Act, or any offence specified in the Schedule where the victim is a child, to the officer in charge of the nearest police station, commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit”*.

Based on these two selected provisions, it can be seen that it is the general duty of a person who observes an offence being committed to report it and the failure to do so is an offence that is subjected to punishment. This is in fact in accordance with a well-known hadith from the Prophet PBUH which reads, *“Whosoever of you sees an evil, let him change it with his hand; and if he is not able to do so, then [let him change it] with his tongue; and if he is not able to do so, then with his heart and that is the weakest of faith”* ( Hadith al Nawawi) It can be interpreted here that the phrase *“change it with his tongue”* refers to lodging a report to the authority. Thus, these kinds of civil law in fact contain Islamic moral values and spirit.

Apart from that, this paper also discovers moral value pertaining to hygiene and healthcare, which both are highly emphasised in Islam. The Prophet PBUH once said in his hadith that *“Cleanliness is half of faith and al-Hamdu Lillah (all praise and gratitude is for Allah alone) fills the scale, and Subhan Allah (Glory be to Allah) and al-Hamdu Lillah fill up what is between the heavens and the earth,...”*. The significance of this hadith can be observed in many aspects of our daily lives especially in regards to food safety. Unsafe food has been a human health problem since history was first recorded, and many food safety problems encountered today are not new (2020, Sahil Kamboj) . The government of Malaysia has taken various steps in order to curb this issue, in which among them include mandatory typhoid vaccine injection to the food handlers. This can be seen under Regulation 31(1) of the Food Hygiene Regulations 2009, in which the failure to comply amounts to an offence as stated under subsection (3) of the said provision. At this juncture, it is interesting to have a look on the Food Hygiene Regulations 2009 as a whole, whereby a lot of vital rules pertaining to food

handling are being highlighted such as location of the premise water supply, pest control, toilet room, personal hygiene of food handler and etc. It can be concluded that this type of law in fact upholding the value of cleanliness as promoted in Islam as well as in line with the Maqasid al-shari'ah relating to preservation of life.

Another moral value that is promoted by the civil law in Malaysia is in relation to the control of fake news. Undoubtedly, the exponential growth of social media platforms raises the risk of fake news spreading throughout the society. According to a study carried out by Global Risk Journalism Hub, a research network on issues surrounding global journalism and the communication of global risks, Malaysia is ranked third (77 percent) among countries in South Asia in terms of fake news circulation, behind Thailand (82 percent) and the Philippines (88 percent) (2023, Siti Nazwa Abdul Rahman) This in fact will cause public unrest and anxiety when receiving information, which are not sure about its authenticity. Currently, those detained for disseminating fake news in written and oral form can be prosecuted under Section 505(b) of the Penal Code while those caught circulating fake news online face action under Section 233(1)(a) of the Communications and Multimedia Act 1998. These laws can be said to promote and emphasise on the significance of verification (*tabayyun*) in Islam. The command to practise *tabayyun* before disseminating any news received is mentioned in verse 6 of Surah al-Hujurat which is translated as “*O believers, if an evildoer brings you any news, verify it so you do not harm people unknowingly, becoming regretful for what you have done.*” By verifying the news, it prevents people from mindlessly propagating and just accepting information from unreliable sources. Thus, by punishing those who circulating fake news can be said to manifest the spirit of *tabayyun*.

## CONCLUSION

In analysing the relationship between law and morality, it is found that Islamic law integrates moral principles with legal mandates. In Islam, law must be in conformity with the principles of Shari'ah, and cannot be separated from morality that is very much attached to faith (*iman*) in Islam. The Qur'an and Hadith emphasize on the importance of moral conduct. The Prophet (SAW) was a model of great moral character. Laws are considered Islamic if they promote justice, and embody moral and ethical principles. Malaysia operates Civil and Islamic law. Civil laws in Malaysia, if they promote justice, protect life, and uphold moral values, can also be considered Islamic.

In conclusion, Islamic law is not confined to laws derived solely from Qur'an and sunnah. Any law that promotes justice, equality, maqasid al-shari'ah, and moral values can be considered Islamic as well.

## AUTHOR CONTRIBUTIONS

Ramizah Wan Muhammad; Introduction, Morality in Shariah, Law in Islam, Which laws are Islamic? And Conclusion

Muhammad Firdaus A. Mokhlis: Law and Morality in Malaysia.

## CONFLICTS OF INTEREST

The manuscript has not been published elsewhere and is not under consideration by other journals. All authors have approved the review, agree with its submission and declare no conflict of interest on the manuscript.

## REFERENCES

### Legislation

Criminal Procedure Code  
Communications and Multimedia Act 1998  
Food Hygiene Regulations 2009  
Penal Code  
Sexual Offences Against Children Act 2017

### Case law

*Public Prosecutor v Mohd Ghazali bin Ibrahim* [1995] 2 CLJ 838

### Books

Aidit Ghazali ed. (1993) *Islam & Justice*. IKIM. Kuala Lumpur

### Journal article

Abdul Aziz, Shamrahayu. "The Continuing Debate on Death Penalty: An Exposition of International, Malaysian and the Shari'ah Perspective." *IJUM Law Journal* 23, no. 1 (May 15, 2015). <https://doi.org/10.31436/iiumlj.v23i1.156>.

Anteya Pashayeva. (2022). "Religion & Law: The Ration of Law and Morality in Islam" *International Journal of Islamic Thought*. Vol.22. p.26

Hayat, Shaukat. "The Decision by a Judge on the Basis of His Personal Knowledge." *IJUM Law Journal* 19, no. 2 (June 23, 2012). <https://doi.org/10.31436/iiumlj.v19i2.10>.

Kamboj, Sahil, Neeraj Gupta, Julie D Bandral, Garima Gandotra, and Nadira Anjum. "Food Safety and Hygiene: A Review." *International Journal of Chemical Studies* 8, no. 2 (March 1, 2020): 358–68. <https://doi.org/10.22271/chemi.2020.v8.i2f.8794>.

Ramizah Wan Muhammad. What Makes Law Islamic? :A Preliminary Study of the Islamicity of Laws In Malaysia. *IJUM Law Journal*. Vol.27. No.1. p.214

### Newspaper

Abdul Rahman, Siti Nazwa. "Hukuman Penyebar Berita Palsu Wajar Lebih Berat." *BERNAMA*, May 2023. <https://hawana.my/hawana2022/news.php?id=2190343>.