LEX LOCALIS-JOURNAL OF LOCAL SELF-GOVERNMENT
ISSN:1581-5374 E-ISSN:1855-363X
VOL. 23, NO. S6(2025)

THE CONCEPT OF CRIMINALIZATION BETWEEN CRIMINAL JURISPRUDENCE AND NAHJ AL-BALAGHA: THE LETTER OF IMAM ALI (PEACE BE UPON HIM) TO AL-HARITH AL-HAMADANI AS A MODEL

Ahmed Y. Alasadi[1]

[1]College of Nursing, University of Al-Ameed, Karbala PO Box 198, Iraq

ahmedyaa@alameed.edu.iq[1]

Abstract
The will of God has decreed that humans live in societies rather than individually. These human gatherings necessitate the existence of principles and rules to regulate relationships among individuals. Human intellect and insight have guided the establishment of laws and regulations to ensure societal stability and protect the weak from the dominance of the strong. Furthermore, divine laws revealed by God through prophets and messengers to His servants have created numerous principles to organize relationships within different societies.
Criminalization is a fundamental aspect of legal systems worldwide. It plays a crucial role in shaping societal norms and defining acceptable behavior to protect public order, individual rights, and the stability and safety of society. Determining actions or behaviors that are considered harmful to individuals, society, or the state and formally classifying these actions as crimes under the law is a significant element in maintaining societal stability. However, the concept of criminalization is not static; it evolves according to changes in time and place.
There remains a common factor among actions that the human conscience rejects and that are entirely incompatible with innate human nature. These actions are foundational to societal standards, as articulated by the Commander of the Faithful, Imam Ali (peace be upon him), in part of his letter to Al-Harith Al-Hamadani:
"Beware of every deed that its doer would approve for himself but dislike for the generality of Muslims. Beware of every deed that is done secretly but one is ashamed of in public. Beware of every deed which, if its doer is questioned about it, he would deny or excuse himself for it."[1]
The concept of criminalization has evolved in various national and international legal systems. Yet, it remains rooted in actions that harm individuals or society while considering the effects of the committed act.
The idea of criminalization is subject either to the principle of harm caused by the criminalized act, the prevailing moral standards of society, or the care and supervision imposed by the general authority to ensure the safety of individuals themselves.
To shed light on this part of the book by the master of eloquence, Imam Ali (peace be upon him), as a foundation for the concept of criminalization, our study is divided into two topics:
The first topic explores the concept of criminalization by defining it, tracing its developmental stages, and highlighting its dimensions at the international level.
The second topic examines the criteria outlined in the letter of the Commander of the Faithful (peace be upon him) to Al-Harith Al-Hamadani. This includes discussing the idea of violating
individual rights, societal harm, the standard of secrecy versus publicity of actions, and the consequences and implications of such actions.

Introduction

The concept of criminalization is regarded as one of the essential pillars of the criminal legal system. As it aims to organize and regulate the behavior of individuals within the society. It also aims to ensure that all the values and principles that safeguard security and justice are well respected. This concept is built upon legal and philosophical rules and ideas that have evolved over time, from primitive societies, where punishment was merely an expression of revenge, to

[1] Letter No. 69 from the letters of the Commander of the Faithful (peace be upon him) mentioned in Nahj al-Balagha.

the modern legal systems that are based on objective principles which seek to achieve the important balance between protecting the society and preserving the freedoms of the individuals. Criminalizing certain acts is one of the most critical tasks that must be carried out by the authorities, therefore, this task must be based on right and realistic philosophical and moral basis, in addition, authorities must establish a set of procedures that ensure the objective application of this task. However, differences in cultures and general moral values from one society to another may hinder the establishment of universal standards.

We firmly believe that whatever is issued by the Commander of the Faithful, peace be upon him, in speech, deed, or approval, constitutes a Sunnah that must be followed and represents one of the sources of Islamic legislation. Therefore, it is obligatory to adhere to the standards he laid down in his letter to al-Harith al-Hamdani and to rely on them in formulating a comprehensive theory of criminalization.

In this research, we will address the concept of criminalization from both linguistic and terminological perspectives and trace its historical development across different civilizations such as ancient Iraq, Egypt, and Rome. We will also compare it with modern theories of criminalization, including the harm theory, the offense theory, and the legal moralism theory. Moreover, the paper highlights the standards established by Imam Ali (peace be upon him) as a foundation for criminalization in his letter to al-Harith al-Hamdani, attempting to connect them with contemporary legal theories…. And God is the Grantor of success.

Section One
The Concept of Criminalization
First Branch
Definition of Criminalization: Linguistically and Terminologically
First: Linguistically

Criminalization (tajrīm) is defined as "a verbal noun derived from jarama, meaning to transgress; and jaram also means sin. Its plural is ajrām or jurūm. The verb jarama yajrumu jaraman and its derivatives such as ijtarama and ajrama refer to the act of committing a crime, hence mujrim (criminal) and jarīm (culpable). The expression tajarama 'alā fulān means to falsely claim that someone has committed a sin he did not commit."[2]

Second: Terminologically

The phenomenon of criminalization is somewhat ancient. The English Parliament, for example, used to issue decrees criminalizing and condemning specific individuals without prior trial or judicial procedures. Once such a decree was issued against a person, it led to his execution, the forfeiture of all his rights, and his being deemed "corrupt in blood." This law was legislated to serve as a means of eliminating political opponents through execution.[3]

[2] Ibn Manzur, Lisan al-Arab, Dar al-Ma'arif, Cairo, Egypt, no publication year, p. 91.

[3] Harith al-Faruqi, Legal Dictionary, 3rd ed., Beirut, Lebanon, p. 62.

As for the Iraqi Penal Code, it stipulates that: "No act or omission shall be punishable except by virtue of a law that expressly criminalizes it at the time it is committed. No penalties or precautionary measures may be imposed unless prescribed by law."[4]

In legal jurisprudence, criminalization refers to: "The establishment of penal protection for certain specific interests within social matters that concern both society and the individual, preventing harm to society through the neglect or destruction — whether total or partial — of those interests, or through the threat of their violation. This is because behavior that disrupts social life produces both general and particular harm. Society preserves certain valuable rules and ideas that regulate social order, and some of these are incorporated by criminal policy into criminal law."[5]

From the Iraqi legal definition of an act, a crime may be derived as: "Any act that the law deems criminal, whether positive (an action) or negative (an omission), unless otherwise provided by law."[6]

Thus, any act that is considered a crime results from interpreting the legal text in such a way that it falls within the scope of punishable actions. This interpretation enables the judge to extract its elements and components from the surrounding circumstances and evidences, thereby interpreting the penal text in a manner that encompasses the act under trial and qualifies it as a crime.

In Islamic jurisprudence, however, a crime (jarīmah) is viewed as "a sin or transgression, or anything evil a person commits." It is defined as "any act prohibited by Islamic law, whether committed against a person, property, or otherwise." Al-Māwardī defined it as the legal prohibitions for which God Almighty has prescribed a ḥadd (which is a fixed punishment) or taʿzīr (which is a discretionary punishment)." On the other hand, a prohibition may consist of either committing a forbidden act or neglecting a commanded one.[7]

Second Branch

The Development of the Concept of Criminalization

Primitive societies were familiar with the notion of crime, as they simply considered that any act that caused pain was deemed punishable. In that era, punishment took the form of revenge, arising from the victim or his relatives' desire to retaliate against the offender. Sometimes, this retaliation escalated into small-scale wars between the families of the victim and the offender.

Society's reaction was not always directed toward living beings but could also target animals or even inanimate objects — a sign of the limited cognitive development of such communities. The tribal leader or chieftain possessed absolute authority, including the power over life and death. The members of the tribe accepted this authority due to his social status or the belief that it pleased the gods, as the leader was considered the gods' representative on earth. During that period, there was no balance between crime and punishment; individuals submitted to

[4] See: Article (1) of the Iraqi Penal Code No. (111) of 1969.

[5] Fatima al-Sibai, Criminal Policy, Sidi Muhammad University, Algeria, 2008, p. 14.

[6] See: Article (19) of the Iraqi Penal Code No. (111) of 1969.

[7] Shihab al-Murashi, Retribution in the Light of the Qur'an and the Sunnah, Library of Ayatollah al-Uzma al-Marashi al-Najafi, Holy Qom, Vol. 1, p. 39.

punishment as they did to religious obligations.[8] This reality is reflected in the codes of "Ur-Nammu" and "Eshnunna", which are considered the early shapes of legal thinking.[9]

The provisions found in ancient Iraqi legislation, particularly in the Code of Ur-Nammu,[10] which regarded as one of the oldest discovered laws, demonstrate a lack of proportionality between the criminal act and its punishment. Article (15) of that code, in particular, deals with cases of assaulting other individuals: one who cuts off another's foot must compensate the victim with ten (Shekels), while cutting off a limb requires a higher compensation of one (Mina) of silver.

As for the Eshnunna Code, the article (24) stated that death is the penalty for murders but this article adopted the principle of financial compensation for non-lethal injuries. For example, if a man bites another or cuts off his nose, he must pay one Mina of silver in compensation; if he breaks a tooth, ear, or foot, the fine is half a mina, as indicated in Articles (42–43–45) of the code.[11]

It is clear that punishments in the Eshnunna Code combined retribution and compensation, but that code clearly lacked proportionality and equality, as penalties were inconsistent and inadequately matched to the severity of the offense.

However, the progressive nature of humanity drove the idea of criminalization to continual development. This truth becomes evident when tracing the evolution of legal systems throughout history. Although ancient societies had laws governing them, archaeological discoveries have revealed only fragments of such codes. Some of these codes were carved on tablets or written in obscure languages, while the sacred scriptures of divine religions contained important legal codes. [12]

1. The Babylonian Law:

[8] Dr. Jalal Tharwat, The Criminal Phenomenon, University Culture Foundation, Egypt, 1982, p. 7.

[9] The laws of Sumer represent the historical precursor to the Code of Hammurabi. Despite their simplicity and primitiveness compared to later legislations, they were less severe. Southern Iraq, the land of Sumer, is considered the cradle of the earliest legal codes. The great historian Will Durant attested to this by stating: "The fertile delta of the rivers flowing through Mesopotamia witnessed the first scenes of the historical drama of human civilization." See: Will Durant, The Story of Civilization, trans. Cultural Administration of the Arab League, Dar al-Jeel, 1988, Vol. 2, p. 28, and Vol. 7, p. 188.

[10] These ancient Iraqi laws predated by many centuries the earliest known laws of other world civilizations. Greek law dates back only to the 6th century B.C., the Roman Twelve Tables appeared in 450 B.C., and the Corpus Juris Civilis of Justinian was issued between 527–565 A.D. For further details, note also that the Ur-Nammu Code preceded Hammurabi's by about three centuries, making it roughly two centuries older. For more, see: Dr. Hashim al-Hafiz, History of Law, Dar al-Hurriya for Printing, Baghdad, 1980, p. 41; Dr. Fawzi Rashid, Ancient Iraqi Laws, Dar al-Shu'un al-Thaqafiyya al-'Amma, Baghdad, 1987, p. 54; and Dr. Amer Suleiman, Law in Ancient Iraq: A Historical and Comparative Legal Study, 2nd ed., Dar al-Shu'un al-Thaqafiyya al-'Amma, Baghdad, 1987, p. 195.

[11] The term Mina refers to a unit of exchange used during that period. See: Dr. Muhammad Abdul Qadir Muhammad, The Semites in Ancient Times, Dar al-Nahda al-Arabiyya, Beirut, 1968, p. 103; and Dr. Abdul Majeed Omar al-Hafnawi, History of Legal and Social Systems, 1973, no printing house mentioned, p. 260.

[12] Muhammad Ali Abdul-Ridha Aflouk, "The Legal Basis for Administrative Sanctions," Journal of Law Message, Vol. 7, No. 3, Karbala, Iraq, 2015, p. 2.

It is impossible to discuss the laws of ancient Babylon without mentioning the Code of Hammurabi, as this code is considered the cornerstone of any legal study of ancient Iraq[13]. The Code of Hammurabi is the only code that was preserved in its original form in addition to being the most complete ancient law discovered to date.

The Code of Hammurabi set out numerous actions representing early examples of criminalization that can be comparable in principle, though not in sophistication, to the modern legal systems. For instance, Article (1) states: "If a man accuses another of murder but cannot prove it, the accuser shall be put to death."

Additionally, articles (3) and (4) deal with false testimony, and prescribes different punishments depending on the kind of harm that was caused. If it concerns property, the false witness is executed; if it pertains merely to grain or silver, compensation is imposed for the resulting damage.[14]

As for Articles (196–199), they stipulate that: "If a man causes the loss of the eye of an "Awīlum", his eye shall be removed; but if he causes the loss of the eye of a "Mushkēnum", he shall pay one mina of silver; and if he causes the loss of the eye of a "wardum", he shall pay half a mina of silver."[15]

We found that the Code of Hammurabi presented an early example of proportionality between crime and punishment, similar to what is recognized in modern legal systems. However, it cannot be said that this code has reached the level of development or philosophical sophistication that is found in contemporary legal systems. This idea appeared only incidentally within the ancient text and it is not possible to generalize its ruling over the entire code, rather, it should be interpreted in light of the civilizational stage of the era in which it was produced. It is noticeable that ancient Iraqi laws did not contain general principles or rules that can match the crimes that were listed in them, instead, the legal articles was expressing particular cases or hypotheses as can be noted in the Code of Hammurabi. Moreover, the law distinguished between offenders' punishments depending on the victim's social class and the punishment varied according to whether the victim belonged to the class of free men, commoners, or slaves particularly in determining compensation.

---

[13] The Code of Hammurabi, the famous Babylonian king, discovered in 1901–1902 in the city of Susa and dated to 1694 B.C., contained legal provisions that reflect a sophisticated and justice-oriented system. The stele included 282 legal articles regulating the judiciary, public offices, and penalties for crimes. See: Dr. Omar Mamdouh Mustafa, Origins of the History of Law, 1st ed., no printing house mentioned, 1961, p. 5; and Dr. Horst Klengel, Hammurabi: King of Babylon and His Era, trans. Dr. Ghazi Sharif, Dar al-Shu'un al-Thaqafiyya al-'Amma, Baghdad, 1987, p. 141.

[14] Saidi Slim, Law and Personal Status in Iraq and Egypt: A Comparative Historical Study, Mentouri University, Algeria, 2010, p. 33 ff.

[15] Awīlum: refers to the upper class of freemen or nobles. Mushkenum: refers to individuals of restricted freedom from the general population. Wardum: refers to the class of slaves.

2. Ancient Egyptian Law

There is very little information about the civilization of the people who lived in Egypt before the era of the nobility. Afterward, no evidence has been found indicating the existence of a written legal code in Egypt until the Twenty-Fourth Dynasty. Nevertheless, some scholars believe that the ancient Egyptians did possess a system of criminal law, although archaeological discoveries have not yet revealed it.

Thus, very little knowledge about legal systems in ancient Egypt, compared to other ancient civilizations, has survived to our days, and our understanding of them relies primarily on surviving documents and inscriptions. The available evidence indicates that ancient Egyptian law had surpassed the primitive stage and had reached a level comparable to early Greek law or the early medieval laws of Europe.

Naturally, there must have been royal decrees and proclamations expressing the rulers' will in specific cases and situations, as well as long-established customary norms. However, to this day, there is no proof that ancient Egypt possessed a comprehensive legal code comparable to the detailed and publicly declared Babylonian laws, which served as a symbol of justice among the people.

The kings of Egypt were regarded as companions of the gods — sometimes as the companions of the sun god Ra, and at other times as the judges of the dead in the person of Osiris. Thus, the law was considered the will of the gods, and the king fashioned the law as one tailors garments — to make it just. Yet the punishments were often inhumane.

Therefore, the concept of criminalization among the ancient Egyptians was directly linked to their religious beliefs. Any act that violated the sanctity of the temple or the beliefs upheld by the temple was deemed criminal and deserving of punishment. Hence, it was a dynamic and shifting notion, not a fixed one — moving wherever the religious and political interests of the priests and the king directed it.

Among the few extant legal documents that were recognized by historians is the Decree of King Horemheb (1330 B.C.), by which he sought to reform abuses and restore order to the country. The prevailing theme of the decree is that soldiers and officials were abusing their authority, in order to enrich themselves unlawfully at the expense of ordinary citizens. Although its stated purpose was to protect the common people from oppression and plunder, the decree does not reflect concern for general social welfare as it was clear that the decress' focus was primarily on safeguarding state revenues by protecting the sources of taxation.[16]

3. Roman Law[17]

In ancient Rome, in 451 B.C., a law of great importance in world legal history was issued — the Law of the Twelve Tables. This code compiled and confirmed the prevailing customary legal rules of the time. It contained provisions defining a number of crimes, some of which prescribed

[16] Dr. Mustafa Ahmad Ibrahim Nasr, "Civil Rights Established in Pharaonic Egyptian Laws: (Justice – Equality – Freedom of Contract – Right to Litigation and Its Integrity)," Journal of the Faculty of Sharia and Law, Tifhena al-Ashraf – Dakahlia, Vol. 18, No. 4, Egypt, 2016, p. 2069 ff.

[17] Dr. Omar Mamdouh Mustafa, Roman Law, Part I, 2nd ed., Al-Basir Press, Alexandria, Egypt, 1954, p. 6.

punishment based on retribution and others that treated the act as a public offense, where punishment was applied irrespective of private choice.

The Twelve Tables prescribed the death penalty for crimes such as sorcery, removing boundary markers, destroying crops, and offenses directly threatening the state wither internally and externally and these included treason, desertion from military service, and attacks on religion.

After the Twelve Tables, several other laws were enacted. Among them were the Praetorian Reforms, which amended certain provisions of the Tables, such as those related to assault. The Praetor expanded the definition of this crime to include acts of slander and insult and introduced penalties for certain immoral acts, such as sexual assault.

Later, during the final years of the Republic (80 B.C.), the Cornelia law was enacted. This law classified certain types of assault, such as beating, wounding, and violating the sanctity of homes as public crimes punishable by corporal punishment. In the later era, the crime of damaging another's property was broadened to include all forms of destruction, not merely breaking, cutting, or burning. In addition, new Praetorian offenses emerged, prompted by the development of economic life and evolving legal thinking.[18]

4. Ancient Greek Law

Greek law adopted the principle of objective liability for the crime without giving consideration to the mental state or intention of the offender. Thus, a person was held responsible for his/her actions regardless of whether the harm was caused knowingly or through negligence.[19]

This principle is clearly reflected in the two most famous Athenian legal codes which are "Solon" and "Dracon". These laws were characterized by their strong religious nature and by their extreme harshness and lack of proportionality between the committed crime and its punishment, for example, theft was punishable by death, as it was considered an offense against the divine authority of the king, even idleness in work was punishable by the deprivation of rights if committed by a citizen, and the death if committed by a non-citizen.[20]

Hence, it can be concluded that Greek law did not recognize a balance between criminalization and punishment, though it did reveal early signs of such balance in the emerging legal thought of the period.

6. Islamic Law[21]

Islam does not view all crimes in the same manner. Some offenses are considered to primarily involve the right of God while others primarily involve the right of the individual. The precise interpretation of "the right of God" refers to matters affecting society as a whole, where the

[18] Dr. Muhammad Abdul Hamid Abdul Majeed al-Alawi, "The Importance of Roman Law and Its Stages of Development," Tihama Journal, No. 10, University of Hodeidah, Yemen, 2016, p. 143.

[19] Dr. Muhammad Abdul Latif Abdul Aal, Material Crimes and the Nature of Resulting Responsibility, previously cited source, p. 17 ff.

[20] Will Durant, The Story of Civilization, Vol. 7, previously cited source, p. 27; Dr. Edward Ghali Abu al-Dahab, History of Legal Systems, National Library, Libya, 1976, p. 199.

[21] Dr. Yusuf al-Qaradawi, Introduction to the Study of Islamic Law, Al-Risala Foundation, Beirut, 1993, p. 29.

personal injury is intertwined with the public social dimension. Crimes involving the predominant right of God are known as ḥudūd crimes,those for which punishments have been fixed by divine law. Qiṣāṣ (retribution) is not considered a ḥadd because it concerns the individual's right, and taʿzīr is not a ḥadd because it is not fixed by the Lawgiver.

The ruler has no authority to pardon ḥudūd crimes, nor may the judge replace them with other penalties. The ḥudūd offenses include theft, adultery, false accusation (qadhf), drinking alcohol, and highway robbery, the last of which encompasses several crimes: rebellion against public authority, open criminality, conspiracy, murder, plunder, and sexual assault. Islam also established the law of qiṣāṣ in cases of homicide.[22]

Although qiṣāṣ concerns the victim's right, it also contains an aspect of God's right, as it preserves public order and justice.

Throughout the above discussion about the history of the notion of crime in ancient and modern legal systems, it is clear that the theorists of jurisprudence law are western theorists, for example, the works of early philosophers and writers like Jan Jack Russo, Montesano, and Voltair. The ideas and opinions of these philosophers urged the Italian theorist Cesare Beccaria to write his book "On Crimes and Punishments" in 1764, this book is considered the foundation of the traditional school in defining crimes and their punishments. [23]

Then the Positivist School emerged in Italy, based on the views of (Lombroso), (Ferri), and (Garofalo) and between this school and the previous one appeared other intermediate schools, such as the Social Defense Movement.

However, Islamic law "Shari'a" has its own effective methods and means for preserving the Islamic society and purifying it from crime according to Islamic criminal law. The philosophy of criminalization in Islamic Shari'a aims to protect legitimate interests, foremost among which are the five necessities[24]: religion, life, progeny, property, and intellect. The preservation of these necessities is the ultimate purpose of divine law in human creation.[25]

Crimes in Islamic law are prohibited acts forbidden by Allah the Almighty, and they are divided into three categories: Hudud (fixed punishments), Qisas (retribution), and Ta'zir (discretionary punishments). Hudud crimes: The term hudud (singular: hadd) linguistically means "prevention." It is said "haddahu," meaning "he prevented him." The hadd between two properties prevents their intermixing. In Shari'a terminology, hadd refers to a predetermined punishment prescribed

[22] Surat al-Baqarah, verse (178).

[23] Cesare Beccaria, On Crimes and Punishments, trans. Dr. Yaqub Muhammad Hayati, Kuwait, 1985, p. 32.

[24] Dr. Muhammad Ali Abdul-Ridha al-Aflouk, Imad Fadil Rikab, and Ghazi Hannoun Khalaf, "The Moral Foundations of the Philosophy of Criminalization and Punishment in Islamic Law," College of Law, University of Basra, 2011, p. 73. Published online at: thiqaruni.org/The%20Law%20Journal/Vol1-No3-2011/3.doc.

[25] Dr. Bari'a Qudsi, "The Death Penalty in Positive Laws and Divine Religions," Damascus University Journal for Legal Studies, Vol. 19, No. 2, 2003, p. 17.

as a right of Allah. Therefore, ta'zir is not among hudud because its punishment is not fixed, and qisas is not considered a hadd because it is a right of individuals, not of Allah.

The hadd punishment is fixed: the judge has no right to increase, decrease, or replace it; nor does the ruler have the authority to pardon either the crime or the punishment, as such offenses affect the fabric of society and lead to moral decay and social corruption. Jurists often use the term hadd to refer to both the crime and the punishment, as in hadd al-zina (the crime of adultery).[26]

As for Qisas (retribution) and Diyah (blood money), the judge has no discretion in determining the punishment, nor does the ruler have the right to pardon it. The right to pardon belongs solely to the victim or their guardian. If the victim or their guardian pardons the offender, qisas is waived and replaced by diyah if the pardon is conditioned upon compensation; if the pardon is unconditional, both qisas and diyah are waived.[27]

Regarding Ta'zir crimes, which are less severe than the previous two categories, the judge enjoys full discretion in choosing the appropriate punishment from among various alternatives. He may consider the circumstances of both the crime and the offender; if he finds that the circumstances warrant punishment, he imposes a suitable penalty.[28]

Hence, the noble Islamic Shari'a has established the full foundations of criminalization and punishment, calling for the protection of society by imposing appropriate penalties upon offenders and working toward their reformation.

Section Two

The Concept of Criminalization in Imam Ali's (peace be upon him) Letter to al-Harith al-Hamdani

The book Nahj al-Balagha comprises a collection of sermons, letters, and wise sayings. Among Imam Ali's (peace be upon him) letters is his epistle to al-Harith al-Hamdani, which includes a passage outlining a set of standards that can be regarded as the foundation of the concept of criminalization within society.

The Commander of the Faithful (peace be upon him) says: "Beware of every act whose doer approves it for himself but disapproves it for the generality of Muslims; beware of every deed that one performs in secret but is ashamed of in public; and beware of every act which, if its doer were asked about it, he would deny it or excuse himself for it." Modern theories have emphasized the characteristics of the particular actions that were described in this letter, as will be clarified in the following two subsections:

Subsection One

The Concept of Criminalization in Criminal Jurisprudence

[26] Dr. Muhammad Abu Hassan, Provisions of Crime and Punishment in Islamic Law – A Comparative Study, Al-Manar Library, Zarqa, Jordan, 1987, p. 169; and Dr. Ahmad Fathi Bahansi, Criminal Policy in Islamic Law, Dar al-Shorouk, Cairo, 1983, p. 239.

[27] Dr. Muhammad Abu Hassan, previously cited source, p. 170 ff.

[28] Dr. Abdul Qadir Audah, Islamic Criminal Legislation Compared to Positive Law, Vol. 1, Al-Madani Press, Cairo, 1963, p. 612 ff.

Several theories have been proposed to explain the basis for criminalizing acts. This section will highlight some of these theories and demonstrate that the essence of their underlying ideas can be found in Imam Ali's (peace be upon him) letter to al-Harith al-Hamdani.
These theories are as follows:
First: The Harm Principle (Theory of Harm): The pioneer of this theory is the British philosopher John Stuart Mill, and it became known as the Mill Principle or the Harm Principle. Within this framework, Mill classified harmful acts into two categories: The first category encompasses acts whose harm is limited to the perpetrator himself, such as atheism, idleness, or smoking. These acts may annoy others but cause no material harm to anyone other than the doer. On the other hand, the second category encompasses acts that cause observable harm to others, such as speech inciting hatred and discord in society, or obscene gestures that inflict psychological or social harm—acts now categorized as bullying or harassment.[29]
Mill asserted that the first type of act does not justify societal intervention to restrain the actor or restrict his freedom, even if his behavior contradicts social norms or traditions. The second type, however, should be restricted through legal rules that punish its commission—but without encroaching upon the individual's right to think freely or choose his way of life.[30]
Nevertheless, granting absolute freedom to acts that harm only the perpetrator may effectively permit behaviors currently regarded as crimes or moral vices. Human nature rejects the self-destruction that occurs when one loses reason through intoxication or drug use. Although such actions may not directly harm others, under Mill's principle they would not qualify as crimes punishable by law.
A simple reading of Imam Ali's letter reveals that the acts he warned against were to be avoided not because of any harm to others, but because of their inherent moral corruption. Thus, the concept set forth by the Commander of the Faithful (peace be upon him) is broader—it aims to refine individual behavior to achieve voluntary compliance with the principles of true Islamic Shari'a.
Critics of the harm principle argue that the concept of "harm" can be vague or disputed. Physical harm is evident, but psychological or moral harm varies with individuals, times, and places. Moreover, some harms affect the entire community such as climate change or economic crises.[31]
Second: The Offense Principle (Theory of Offense): Contrary to the harm principle, philosopher Joel Feinberg, founder of this theory, contends that certain acts may be criminalized even if they cause no harm to others whatsoever. He maintains that some acts are punishable because they offend the moral sensibilities of the public, producing a psychological experience of repulsion shared by most members of society. The law, Feinberg argues, can justifiably

[29] Wendy Donner, Richard Fumerton, John Stuart Mill, trans. Najib al-Hassadi, National Center for Translation, 1st ed., Cairo, 2011, p. 16.
[30] John Stuart Mill, Utilitarianism, trans. Souad Shahrali Harrar, Center for Arab Unity Studies, 1st ed., Beirut, 2012, p. 35.
[31] Muhammad Sabila, Nuh al-Haramzi, Encyclopedia of Basic Concepts in the Humanities and Philosophy, Al-Mutawassit Publications, Baghdad, 2017, p. 412.

intervene when a sufficient number of people feel deeply offended, provided certain conditions are met.[32]

This theory differs from the harm principle in that it adopts a subjective criterion on which the focus is on the emotional and psychological factors that vary from person to person, whereas the harm principle follows an objective standard of direct harm to interests. For example, breaking someone's arm clearly disables their ability to function, making the harm measurable.

On the contrary, humiliating behavior does not necessarily reduce a person's opportunities or frustrate their goals as it may cause distress to the victim without negatively affecting their personal interests. Humiliation is therefore more experiential than prospective in nature — that is, the offense suffered by the victim should not persist after the humiliating behavior ceases, although it may persist indeed in some cases. Nonetheless, instances of humiliation in themselves are not considered harm according to John Stuart Mill's conception, since they do not necessarily entail any future loss of opportunities for the victim. In other words, humiliation does not obstruct our interests nor does it usually diminish our ability to enjoy a good life or pursue valuable goals. Certainly, there are exceptions to this assumption, but such exceptions are treated as special cases rather than as defining features of humiliating behavior.[33]

It is noteworthy that the offense principle supports the criminalization of wrongful acts that lack harmful consequences. However, under the harm principle, it is also possible to criminalize certain actions without the need to prove that the act itself is directly harmful, since there are various ways in which wrongful conduct can lead to harm.

Therefore, the harm principle can sometimes be applied to cases of offense. In fact, the humiliating behavior can sometime imply harm in more than one way but this does not mean that all forms of humiliating conduct fall within the scope of the harm principle, but many of the more serious forms of humiliation do. A behavior that appears merely offensive at first glance may result in physical or psychological harm comparable to that caused by physical assault. For example, when victims of racism suffer from psychological breakdowns or high blood pressure as a result, the harm arises from the offense or humiliation itself. Likewise, humiliation can amount to defamation if it affects a person's social or professional status.[34]

There are some cases where public indecency, like naked exposure in public, can provoke anxiety or shock among onlookers and cause constituting psychological harm and this is precisely the principle expressed by Imam Ali (peace be upon him) in his statement: "Beware of every act that one does in secret but is ashamed of in public." In this statement, Imam Ali (peace be upon him) distinguished between conduct in private and the same act in public view.

Thus, there is a clear overlap between the harm and offense principles, as some offensive behaviors may cause harm justifying their criminalization. Yet both theories base criminalization

[32] A. P. Simester & Andrew von Hirsch, Rethinking the Offense Principle, Published online by Cambridge University Press, 2002, p. 2.

[33] Cf. Simester and Sullivan, Criminal Law: Theory and Doctrine (2000), p. 507.

[34] Schwartz, Morals Offenses and the Model Penal Code, 63 Columbia Law Review (1963), p. 669.

solely on the resulting harm or offense, neglecting the criminal potential within the offender's mind or its role in intensifying punishment. For this reason, modern criminal law has endorsed preventive measures—precautionary actions aimed at preventing crime. Contemporary criminal jurisprudence increasingly emphasizes social defense mechanisms, a concept that will be elaborated upon in the third point of this subsection.

Third: The Theory of Social Defense: The expression "social defense" is, in fact, not a new term in the science of criminal law. It is an old concept advocated by many philosophers and jurists who regarded the entire penal system as a means of defending society. Likewise, among the proponents of the social contract theory, it was viewed as a mechanism for protecting society as well.[35]

The fundamental features of the Social Defense Movement were established by its founder Filippo Gramatica, who formulated his ideas in a way that completely diverged from traditional criminal policy and its various branches.His theory is built upon two main foundations: The first is the denial of the State's right to punish, and the second is recognition of the offender's right to rehabilitation by the State. Consequently, the State bears a corresponding obligation to reform every socially deviant individual. Gramatica attacked the notion that the State possesses the right to punish offenders; rather, he argued that the State has a duty to re-educate and rehabilitate them, transforming them into upright individuals capable of fulfilling their natural roles within social life.[36]

He also launched a strong critique against the central concepts of the traditional penal system, particularly its terminology, such as crime, criminal responsibility, criminal, and punishment, and introduced new terms consistent with the assumptions of his theory, both substantively and procedurally.[37]

Thus, he replaced the notion of crime with the notion of social behavior, the idea of criminal responsibility with anti-social responsibility, the word criminal with asocial person, and the word punishment with measures of social defense.

Accordingly, responsibility under this theory is not criminal but social, based on the asocial quality or act committed by the individual. The corresponding sanction is a social measure imposed after a thorough scientific study of the offender's personality, the causes, and the motives that led to the commission of the act, followed by the adoption of an individualized measure suited to the offender's personality which is a concept that falls under individualization of punishment.[38]

---

[35] Abdul Fattah Mustafa al-Sayfi, Criminal Sanction – A Historical, Philosophical, and Jurisprudential Study, Dar al-Nahda al-Arabiyya, Beirut, 1972, pp. 91–92.

[36] Sayyid Yassin, The Social Defense Movement and Contemporary Arab Society, Vol. 60, No. 335, 1969, Al-Ahram Press, Cairo, p. 141.

[37] Sayyid Yassin, The Social Defense Movement Between Universality and Locality, Contemporary Egypt Journal, Vol. 63, No. 348, April 1972, Al-Ahram Press, Cairo, p. 135.

[38] Marc Ancel, La défense sociale nouvelle, Paris, 1954, p. 315.

The application of this theory encompasses a wide range of societal interests, including national security, public safety, economic stability, and the preservation of cultural values. Examples of laws inspired by this theory include anti-terrorism laws, public health and safety regulations, and laws governing protests and mass strikes.Although this theory aims to preserve public order and ensure societal stability by addressing threats before they escalate into serious disturbances, and while it emphasizes collective risks to protect not only individuals but also entire communities and social systems, it nonetheless opens the door to excessive expansion and misuse of interpretation — potentially leading to restrictions on rights and freedoms, particularly those of minorities, under the pretext of maintaining public order or suppressing political dissent. Furthermore, the ambiguity surrounding what constitutes a threat to society remains one of the major criticisms directed at this theory.

From this, we may conclude that relying on this theory as a basis for criminalization carries significant risks, such as overreach and abuse of power. Therefore, policymakers must apply this theory prudently, ensuring that all measures are proportionate, transparent, and respectful of individual liberties.

Fourth: The Theory of Legal Moralism: This is one of the fundamental theories used to justify criminalization based on the preservation of public morality. According to this theory, the State may criminalize certain acts not because they cause direct harm, but because they are deemed immoral or ethically objectionable according to prevailing cultural and social standards. This theory calls for the use of law to criminalize immoral conduct, even in the absence of tangible harm to others, with the aim of preserving the moral cohesion of society and promoting public virtue. One of the most prominent proponents of this theory is Lord Patrick Devlin, who argued that the erosion of public morality threatens the stability of society, and that the law must intervene to prevent such decay.[39]

This theory rests on the idea that morality is the basis of any law, and that moral values are the real rules that govern the society, and if these moral values degraded the whole social order will collapse. Morality, in this view, is not a private matter but a collective concern because protecting morality equates to safeguarding the social fabric. Consequently, this approach leads to the criminalization of certain acts that might otherwise be permissible under previous theories such as adultery, gambling, alcohol consumption, and blasphemy against religious symbols as these acts are deemed contrary to public morality. However, moral standards differ from one society to another: what may be acceptable in one culture might be condemned and criminalized in another. Even within the same society, moral perceptions evolve over time. Therefore, this theory cannot serve as the sole basis for criminalization; rather, it should be integrated with other theories to establish a comprehensive legislative system that ensures societal stability.

In this part of the study, we have examined a set of theories adopted in various countries as the basis for criminalization of acts, highlighting their shortcomings and noting that modern criminal jurisprudence has largely moved away from most of them. It now tends to adopt an integrated approach, combining both the criminal propensity of individuals and the harmful consequences of prohibited acts, while also taking into account the prevailing moral standards of the

[39] Nicola Lacey, Patrick Devlin's The Enforcement of Morals Revisited: Absolutism and Ambivalence, LSE Law, Society and Economy Working Papers 1/2022, London School of Economics and Political Science, p. 3.

community to determine appropriate punishments. Since issues of criminalization and the assessment of the gravity of acts depend on numerous variables, which include time, place, level of social awareness, moral and customary norms, and the influence of religious principles on individual behavior, legal thought must continually adapt, seeking a new foundation for criminalization that aligns with these changing conditions.
All of theories that were discussed above can be comparatively studied in the following table that discusses the strengths and weaknesses of each theory as follows:

Theory	Concept	Strengths	Weaknesses
Harm Theory	Preventing harm to others	Protects individual freedoms; objective criterion	Disagreement over defining "harm"; neglects the offender's criminal disposition
Offense Theory	Preventing offense to others	Relies on subjective perception	Cultural variation and personal differences make application difficult
Social Defense Theory	Maintaining societal stability	Ensures public order and system stability	Risk of suppressing minorities or violating rights under pretext of order
Legal Moralism	Promoting morality and translating it into legal obligations	Protects societal values and traditions	Danger of over-interpretation; moral standards vary across societies.

Section Two
The Concept of Criminalizing Acts according to Imam Ali (peace be upon him)
In Imam Ali's (peace be upon him) letter to al-Harith al-Hamdani, a series of explicit warnings are mentioned concerning certain actions that lead to negative consequences. We shall focus on his saying: "Beware of every act that a person approves for himself but dislikes for the generality of Muslims; and beware of every act done in secret that one would be ashamed of if done openly; and beware of every act which, if its doer were asked about it, he would deny or excuse himself from it." The intended meaning here is to be cautious of actions that conflict with the public interest. The reason is that a rational person should possess a sense of social responsibility, which rests upon every individual and it is the duty to safeguard the welfare of society.[40] Below, we will, to the best of our ability, clarify the value of this blessed text as a foundation for the idea of criminalization within the field of criminal jurisprudence, as follows:
First: "Beware of every act done in secret that one would be ashamed of if done openly": The distinction between the secrecy and openness of actions is an essential basis in legal systems

[40] Muhammad Jawad Mughniya, In the Shadow of Nahj al-Balagha: An Attempt at a New Understanding, Vol. 4, 3rd ed., Beirut, 1979, p. 180.

for determining which acts should be criminalized. While secret acts often relate to protecting individual privacy, public acts are usually criminalized when they negatively affect society.
However, the challenge remains in balancing the protection of societal values with respect for personal freedoms, taking into account cultural differences and changing moral standards.
Some acts are performed secretly or within private settings involving only those directly engaged in them such as certain behaviors committed at home or in secluded environments away from public view. Other acts, however, occur publicly or in open spaces where others can witness or be affected by them, such as behaviors performed in streets or public places that threaten public morality or order.
Most crimes are committed secretly because society rejects deviant behavior that results in criminal outcomes. The criminal knows that such conduct exposes him to legal punishment, social disdain, and various material and moral consequences.[41] Crimes such as bribery, theft, embezzlement, and forgery are mostly committed in secrecy. Nevertheless, some individuals commit criminal acts publicly, which subjects them to a distinct type of criminal treatment. These are known as flagrant (or "caught-in-the-act") crimes, these are crimes observed at the moment of their commission or immediately afterward when the offender is pursued by the victim, witnesses, or the public, or found shortly after the incident carrying tools, weapons, or items indicating his involvement.[42]
Accordingly, most criminal laws consider a "flagrant crime" an exception, setting forth special procedural rules for it within criminal procedure laws. The general rule, however, is that crimes are committed in secrecy, away from public view. Still, there are offenses that can only occur publicly such as indecent acts, offenses against public decency, and defamation crimes.
In conclusion, secrecy during the commission of a criminal act is the dominant feature of most crimes, especially cybercrimes, where offenders use pseudonyms on social media to commit violations under false identities. Thus, the criterion of secrecy and publicity in deviant acts is an important standard in criminal jurisprudence, relied upon in numerous rulings — such as arrest procedures, sentence aggravation, and the criminalization of acts. Therefore, the principle established by my master and leader, the Commander of the Faithful (peace be upon him), is one of the cornerstones adopted by modern criminal jurisprudence.
Second: "Beware of every act that a person approves for himself but dislikes for the generality of Muslims": Imam Ali's statement here emphasizes the necessity of applying legal rules universally and not granting privileges or exemptions to certain individuals or groups. In legal jurisprudence, this principle is known as the generality of legal rules. Legal norms are characterized by their general application to all those subject to them and no one is entitled to exclusive advantages, and their effects apply equally to all who fall under their scope. The

[41] Abdul Rahman al-Issawi, Psychology and Criminal Investigation, Dar al-Fikr al-Jami'i, Alexandria, Egypt, 2005, p. 53.

[42] Article (1/b) of the Iraqi Code of Criminal Procedure No. 23 of 1971 (as amended). Similarly, Article (30) of the Egyptian Code of Criminal Procedure, Article (28) of both the Jordanian and Syrian Codes, and Article (29) of the Lebanese Code adopt the same approach.

purpose of this generality is to uphold the principle of equality before the law and prevent bias for or against any person.[43] Thus, the rule applies uniformly to all similar situations in a concept that connects directly with the idea of justice and moral integrity within law.

This feature also serves as a crucial safeguard for citizens' rights and freedoms, protecting them from the tyranny of rulers. It ensures that legal rules apply to rulers just as they do to ordinary people. Rulers must conduct themselves in accordance with established laws, which places both rulers and subjects under the authority of the law. This in turn grants legitimacy to governing authority.[44]

The obligation of rulers to abide by the law is a key objective, especially in Islamic jurisprudence, as repeatedly emphasized by the Commander of the Faithful (peace be upon him) throughout his life.[45]

Moreover, practical necessity requires the establishment of common rules binding on everyone; it is impossible to create individual rules tailored to each person's circumstances. Thus, general rules must be set to regulate social relations and achieve stability and justice.[46]

This passage from the letter of our Imam Ali (peace be upon him) can be interpreted as that public interest must take precedence over private interest, as personal interests may sometimes conflict with societal or "higher" interests. Since both cannot prevail simultaneously, it becomes necessary to give priority to the greater good. Reason and logic dictate that the most beneficial and broadly impactful interest should be preferred. Hence, the well-known jurisprudential principle was established: the public interest takes precedence over the private interest.[47]

Within the context of criminalizing acts, the criterion of applying criminal law equally to all is crucial. For instance, the crime of discrimination, recognized in many countries though not

[43] Aja al-Jilali, Introduction to Legal Sciences: Theory of Law, Al-Khaldouniyya Press, Algeria, p. 91.

[44] Habib Ibrahim al-Khalili, Introduction to Legal Sciences: The General Theory of Law, University Publications Office, Algeria, p. 22.

[45] In the same context, the Lebanese Christian philosopher and poet George Jordac authored a six-volume work entitled Ali, the Voice of Human Justice. Many other writings also address the justice of Imam Ali (peace be upon him).

[46] Farida Muhammadi, Introduction to Legal Sciences: Theory of Law, National Institution for Graphic Arts, Algeria, 2002, p. 16.

[47] For further reference, see: Yamen Muhammad Taher and Aref Muhammad al-Janahi, "The Rule of Public Interest Prevailing Over Private Interest: A Foundational Study and Contemporary Applied Models," Omdurman Islamic University Journal, Vol. 19, No. 2, Sudan, 2023, p. 243.

explicitly codified in Iraq's penal laws, falls squarely under the principle set forth by Imam Ali (peace be upon him) in this passage. [48]

This principle also applies in many procedural and judicial rules. For example, a judge may not rule based on personal knowledge obtained outside the courtroom. [49] Instead, the rules of evidence must be applied, even if the judge witnessed the act personally. Numerous other applications of this principle exist within legal systems.

Third: "Beware of every act which, if its doer were asked about it, he would deny or excuse himself from it": Denial of committing reprehensible acts is a common human trait. Allah, the Almighty, told us in His Holy Book to beware of every act which, if its doer were asked about it, he would deny or excuse himself from it.**[50]**

It is also narrated from Imam al-Baqir (peace be upon him) that "By Allah, none is saved from sin except the one who confesses it."[51]

And from Imam Ali (peace be upon him): "Confession is an excuse, but denial is persistence."[52]

Denying a wrongful act implies the offender's refusal to bear responsibility and his attempt to escape the punishment prescribed for his action. The phenomenon of impunity (which means to escape punishment) has now become a global concern, prompting the establishment of a special unit within the UN High Commissioner for Human Rights to monitor states' reports on combating impunity.[53]

However, in our present age, the core problem often lies not in denying the act itself, but in denying its intent or justifying it under false pretexts. For instance, Israel continuously denies committing massacres in Palestine and Lebanon, claiming acts of "self-defense." Similarly, authoritarian regimes — the so-called "modern dictatorships" — deny suppressing liberation movements, labeling them as "terrorists." Even international organizations tasked with monitoring human rights often overlook the suffering of oppressed peoples, focusing instead on secondary issues. Thus, the true issue lies in denying the purpose or moral nature of the act, rebranding it as a justifiable or lawful action, even when it clearly constitutes a crime.

---

[48] For more information on countries that have recognized the crime of discrimination, see: Raad Tu'ma, The Substantive Provisions of the Crime of Racial Discrimination, Master's Thesis, College of Law, Al-Nahrain University, 2017, pp. 89–91.

[49] Article (8) of the Iraqi Evidence Law No. 107 of 1979 (amended).

[50] Surat al-Tawbah, verse (102).

[51] Muhammad ibn Ya'qub al-Kulayni, Al-Kafi, Vol. 2, p. 426.

[52] Al-Rayshahri, Mizan al-Hikmah, Vol. 3, p. 1860.

[53] Howard Varney and Katarzyna Zdunczyk, Intensifying the Fight Against Impunity, Research Report, International Center for Transitional Justice, 2022, p. 2.

From all the above, it becomes evident that the criteria presented in Imam Ali's (peace be upon him) letter to al-Harith al-Hamdani reflect the pure human nature upon which God has created mankind. They possess both objective and psychological dimensions, making them a viable foundation for the concept of criminalization in society. Indeed, broadening the interpretation of these criteria could also extend their application to legal entities such as public authorities, national movements, and international organizations.

Conclusion

After completing this research, we have reached a set of conclusions and recommendations that can be summarized as follows:

Conclusions:

1. Criminalization began as a means of revenge in primitive societies but later evolved into a tool for achieving justice and organizing social relations.
2. Ancient laws such as the Code of Hammurabi and the Roman Law Tablets laid the early foundations for the principle of proportionality between crime and punishment; however, they lacked the justice achieved by divine laws.
3. Many theories have been developed as the basis for the concept of criminalization, but these theories contain several weaknesses, which have been clarified and analyzed in this study.
4. Imam Ali (peace be upon him) established comprehensive criteria for the concept of criminalization based on sound human nature. These include avoiding actions that are rejected, shameful, or that prioritize personal interest over the interest of society. Such criteria carry psychological, social, and legal dimensions that make them a flexible foundation for criminalizing acts.

Recommendations:

1. Laws of criminalization must be based on a delicate balance between protecting individual freedoms and ensuring social stability. Criminal legislation should be flexible and considerate of social, economic, and cultural developments to guarantee its effectiveness and sustainability.
2. There is an obvious need for expanding the comparative legal studies in order to identify the similarities and the differences between modern theories and the criteria derived from the Islamic law.
3. The concept of criminalization should not be viewed just as a legal tool that is used to punish offenders, but rather as a comprehensive system aimed at achieving justice and protecting society from deviations that threaten its cohesion. By combining the human legal heritage with moral standards, it is possible to build a more just and effective legal system.
4. There is a crucial necessity to shed light on the legal heritage of the Imams of Ahl al-Bayt (peace be upon them), since Islamic law is considered a primary source of legislation, as stated in the Iraqi Constitution of 2005.

References

- The Holy Qur'an
- Nahj al-Balagha (Selections from the Sayings of the Commander of the Faithful, peace be upon him), compiled by Al-Sharif al-Radi, edited by Sayyid Hashim al-Milani, Al-A'lami Publishing Foundation, Beirut, 2021.

First: Books

Ibn Manzur, Lisan al-Arab, Dar al-Ma'arif, Cairo, Egypt, n.d.

Cesare Beccaria, On Crimes and Punishments, trans. Dr. Yaqub Muhammad Hayati, Kuwait, 1985.
John Stuart Mill, Utilitarianism, trans. Souad Shahrali Harrar, Center for Arab Unity Studies, 1st ed., Beirut, 2012.
Harith al-Faruqi, Legal Dictionary, 3rd ed., Beirut, Lebanon.
Habib Ibrahim al-Khalili, Introduction to Legal Sciences: The General Theory of Law, University Publications Office, Algeria.
Dr. Ahmad Fathi Bahansi, Criminal Policy in Islamic Law, Dar al-Shorouk, Cairo, 1983.
Dr. Jalal Tharwat, The Criminal Phenomenon, University Culture Foundation, Egypt, 1982.
Dr. Amer Suleiman, Law in Ancient Iraq: A Historical and Comparative Legal Study, 2nd ed., Dar al-Shu'un al-Thaqafiyya al-'Amma, Baghdad, 1987.
Dr. Abdul Qadir Audah, Islamic Criminal Legislation Compared to Positive Law, Vol. 1, Al-Madani Press, Cairo, 1963.
Dr. Abdul Majeed Omar al-Hafnawi, History of Legal and Social Systems, 1973.
Dr. Omar Mamdouh Mustafa, Roman Law, Part I, 2nd ed., Al-Basir Press, Alexandria, Egypt, 1954.
Dr. Fawzi Rashid, Ancient Iraqi Laws, Dar al-Shu'un al-Thaqafiyya al-'Amma, Baghdad, 1987.
Dr. Muhammad Abdul Qadir Muhammad, The Semites in Ancient Times, Dar al-Nahda al-Arabiyya, Beirut, 1968.
Dr. Hashim al-Hafiz, History of Law, Dar al-Hurriya for Printing, Baghdad, 1980.
Dr. Horst Klengel, Hammurabi: King of Babylon and His Era, trans. Dr. Ghazi Sharif, Dar al-Shu'un al-Thaqafiyya al-'Amma, Baghdad, 1987.
Dr. Yusuf al-Qaradawi, Introduction to the Study of Islamic Law, Al-Risala Foundation, Beirut, 1993.
Saidi Slim, Law and Personal Status in Iraq and Egypt: A Comparative Historical Study, Mentouri University, Algeria, 2010.
Shihab al-Murashi, Retribution in the Light of the Qur'an and the Sunnah, Library of Ayatollah al-Uzma al-Marashi al-Najafi, Qom, Vol. 1.
Abdul Rahman al-Issawi, Psychology and Criminal Investigation, Dar al-Fikr al-Jami'i, Alexandria, Egypt, 2005.
Abdul Fattah Mustafa al-Sayfi, Criminal Sanction – A Historical, Philosophical, and Jurisprudential Study, Dar al-Nahda al-Arabiyya, Beirut, 1972.
Aja al-Jilali, Introduction to Legal Sciences: Theory of Law, Al-Khaldouniyya Press, Algeria.
Fatima al-Sibai, Criminal Policy, Sidi Muhammad University, Algeria, 2008.
Farida Muhammadi, Introduction to Legal Sciences: Theory of Law, National Institution for Graphic Arts, Algeria, 2002.
Al-Shourbaji, I., Jabbari, A., Rizwan, S., Mehanawi, M., Mansur, P., & Abdalraheem, M. (2025). An Improved Ant Colony Optimization to Uncover Customer Characteristics for Churn Prediction. *Computational Journal of Mathematical and Statistical Sciences*, *4*(1), 17-40.
V, Sheela. (2025). ENHANCING ACADEMIC TRUST AND ACCOUNTABILITY: A SCALABLE BLOCKCHAIN SYSTEM FOR CREDENTIAL VERIFICATION FOR EDUCATION. International Journal of Applied Mathematics. 38. 803-819. 10.12732/ijam.v38i7s.516.

Nimma, D., Aarif, M., Pokhriyal, S., Murugan, R., Rao, V. S., & Bala, B. K. (2024, December). Artificial Intelligence Strategies for Optimizing Native Advertising with Deep Learning. In *2024 International Conference on Artificial Intelligence and Quantum Computation-Based Sensor Application (ICAIQSA)* (pp. 1-6). IEEE.

AlShourbaji, I., Helian, N., Sun, Y., & Alhameed, M. (2021). Customer churn prediction in telecom sector: A survey and way a head. *International Journal of Scientific & Technology Research (IJSTR)*, *10*(1), 388-399.

Sheela D V, and Chitra Ravi . "A Review on Secure Blockchain Integrated System for Technology Oriented Education Structure: Advantages and Issues." International Research Journal on Advanced Science Hub 05.05S May (2023): 190–195. http://dx.doi.org/10.47392/irjash.2023.S025

Dash, C., Ansari, M. S. A., Kaur, C., El-Ebiary, Y. A. B., Algani, Y. M. A., & Bala, B. K. (2025, March). Cloud computing visualization for resources allocation in distribution systems. In *AIP Conference Proceedings* (Vol. 3137, No. 1). AIP Publishing.

Patel, Ahmed & Alshourbaji, Ibrahim & Al-Janabi, Samaher. (2014). Enhance Business Promotion for Enterprises with Mashup Technology. Middle East Journal of Scientific Research. 22. 291-299.

D. V. Sheela and R. Chitra, "Securing Online Quiz Management through Blockchain Technology and Three-Tier Cryptography with Hash-based Authentication," *2023 7th International Conference on I-SMAC (IoT in Social, Mobile, Analytics and Cloud) (I-SMAC)*, Kirtipur, Nepal, 2023, pp. 135-144, doi: 10.1109/I-SMAC58438.2023.10290272.

Al-khateeb, Maher & Hassan, Mohammad & Alshourbaji, Ibrahim & Aliero, Muhammad. (2021). Intelligent Data Analysis approaches for Knowledge Discovery: Survey and challenges. İlköğretim Online. 20. 1782-1792. 10.17051/ilkonline.2021.05.196.

S. D. V and A. K. T. A, "Blockchain Integration for Enhanced Document Security and Access Control," *2025 6th International Conference on Data Intelligence and Cognitive Informatics (ICDICI)*, Tirunelveli, India, 2025, pp. 609-614, doi: 10.1109/ICDICI66477.2025.11135382.

Elkady, G., Sayed, A., Priya, S., Nagarjuna, B., Haralayya, B., & Aarif, M. (2024). An Empirical Investigation into the Role of Industry 4.0 Tools in Realizing Sustainable Development Goals with Reference to Fast Moving Consumer Foods Industry. In *Advanced Technologies for Realizing Sustainable Development Goals: 5G, AI, Big Data, Blockchain, and Industry 4.0 Application* (pp. 193-203). Bentham Science Publishers.

Al-Shourbaji, I., Alhameed, M., Katrawi, A., Jeribi, F., Alim, S. (2022). A Comparative Study for Predicting Burned Areas of a Forest Fire Using Soft Computing Techniques. In: Kumar, A., Senatore, S., Gunjan, V.K. (eds) ICDSMLA 2020. Lecture Notes in Electrical Engineering, vol 783. Springer, Singapore. https://doi.org/10.1007/978-981-16-3690-5_22

Kaur, C., Al Ansari, M. S., Rana, N., Haralayya, B., Rajkumari, Y., & Gayathri, K. C. (2024). A Study Analyzing the Major Determinants of Implementing Internet of Things (IoT) Tools in Delivering Better Healthcare Services Using Regression Analysis. In *Advanced Technologies for Realizing Sustainable Development Goals: 5G, AI, Big Data, Blockchain, and Industry 4.0 Application* (pp. 270-282). Bentham Science Publishers.

Muhammad Jawad Mughniya, In the Shadow of Nahj al-Balagha: An Attempt at a New Understanding, Vol. 4, 3rd ed., Beirut, 1979.

Muhammad Sabila & Nuh al-Haramzi, Encyclopedia of Basic Concepts in the Humanities and Philosophy, Al-Mutawassit Publications, Baghdad, 2017.
Will Durant, The Story of Civilization, trans. Cultural Administration of the Arab League, Dar al-Jeel, 1988.
Wendy Donner & Richard Fumerton, John Stuart Mill, trans. Najib al-Hassadi, National Center for Translation, 1st ed., Cairo, 2011.

Second: Published Research Papers

Muhammad Ali Abdul-Ridha Aflouk, "The Legal Basis for Administrative Sanctions," Journal of Law Message, Vol. 7, No. 3, Karbala, Iraq, 2015.
Dr. Mustafa Ahmad Ibrahim Nasr, "Civil Rights in Pharaonic Egyptian Law: (Justice – Equality – Freedom of Contract – Right to Litigation and Its Integrity)," Journal of the Faculty of Sharia and Law, Tifhena al-Ashraf, Dakahlia, Vol. 18, No. 4, Egypt, 2016.
Dr. Muhammad Abdul Hamid Abdul Majeed al-Alawi, "The Importance of Roman Law and Its Stages of Development," Tihama Journal, No. 10, University of Hodeidah, Yemen, 2016.
Dr. Muhammad Ali Abdul-Ridha al-Aflouk, Imad Fadil Rikab, and Ghazi Hannoun Khalaf, "The Moral Foundations of the Philosophy of Criminalization and Punishment in Islamic Law," College of Law, University of Basra, 2011.
Howard Varney & Katarzyna Zdunczyk, Intensifying the Fight Against Impunity, Research Report issued by the International Center for Transitional Justice, 2022.

Third: Foreign References:

A. P. Simester , Andrew von Hirsch, RETHINKING THE OFFENSE PRINCIPLE,Published online by Cambridge University Press, 2002.
Cf. Simester and Sullivan, CRIMINAL LAW: THEORY AND DOCTRINE (2000).
Schwartz, Morals Offenses and the Model Penal Code, 63 COLUM. L. REV. (1963).
Marc Ancel : La defence social nouvelle K paris K 1954.
Nicola Lacey, Patrick Devlin's The Enforcement of Morals Revisited: Absolutism and Ambivalence, LSE Law, Society and Economy Working Papers 1/2022 London School of Economics and Political Science.