

SELECTED THEMES IN
**ISLAMIC CRIMINAL
JURISPRUDENCE**

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SEX CRIMES AND THE PREVENTIVE MEASURES FROM ISLAMIC PERSPECTIVE

Azman Mohd Nor

Abstract

It is submitted that there is no indication that sexual desire is evil in itself or that it is necessarily fraught with evil consequences. Because of human imperfections, sex has a problematic side which makes regulation necessary. Unregulated sex threatens social order and leads to anarchy and chaos, and therefore has to be restricted to marriage. Social order and the harmony of life are threatened both by the suppression of sexuality in celibacy and by sexual acts outside marriage, be it by way of heterosexuality or homosexuality. The Islāmic contribution in this regard is aimed at regulating human sexuality in a most humane manner. This paper attempts to shed light on prohibited sexual activities by exposing the boundaries which constitute prohibited sex. Violating such restrictions is regarded as an indecent offence or crime. This paper also explores the alternative and preventive measures offered in Islām to combat these offences.

Introduction

In Islām, punishments are part of a much larger integrated whole. They can neither be properly understood, nor successfully or justifiably implemented in isolation. Some severe punishments related to sex crimes are not the main vehicle in the total framework for the enforcement of morality. The punishments are inflicted as a last resort. To prevent infringement, certain kinds of checks and controls, both internal and external must be observed (Siddiqi 1979: p.15).

The internal control is the belief in the Day of Judgment and the life in the Hereafter. It is one's belief and God-consciousness that will make him refrain from what displeases God and do what pleases Him. This internal deterrent will inhibit him to abstain from crimes in a way which cannot be achieved by legal enforcement alone.

Sexual Offences in Islām

We can divide the prohibition of sexual intercourse into two categories. The first one is classified as a major sin and is strictly prohibited based on strong evidences which provide severe penalties for committing it. This category includes *zinā* (fornication and adultery), homosexuality, lesbianism and rape. The second category refers to a lower degree of prohibition which is not considered as a major sin and is punishable with less severe punishment such as masturbation, sexual conversation and looking at the *ʿawrah* (genitals) of others.

Zinā

The offence of *zinā* in Islāmic Law can be translated as unlawful intercourse which occurs outside marriage. It should be pointed out that in Islāmic law, the term *zinā* applies to both adultery and fornication, with adultery referring to illicit intercourse committed by a person who is or has been legally married and fornication referring to illicit intercourse committed by someone who has never been legally married (El-Awa 1982: p.14).

Zinā is considered a major sin which can negate a sinner's faith according to some schools of thought. Abu Hurairah narrated: Allāh's Apostle said: "When an adulterer commits