

**In the name of God, the All-Merciful, Mercy-Giving**  
**Facts about the Islamic Law "*Sharia*"**

Dr. Fathi Osman, September 2006

\* Islam is a religion based on the faith in the One God and the eternal life to come after which every human being will be accountable for all that he/she did in this world life, and the moral values emphasized in all messages of God and agreed upon by the human common sense. Islam stresses God's guidance in all His messages before Islam and calls all His followings to doing what is good which Islam is a continuation: "Verily, it is we who bestowed the Torah, where in there was guidance and light" [The Quran 5:44]" and we gave him [Jesus] the Gospel, wherein there was guidance and light, confirming the preceding Torah and as a guidance and admonition to the God-conscious. Let, them, the followers judge in accordance with what God has revealed therein" [The Quran5:46-7], "To which of you [who are following the successive message of God] have we appointed a law and practice; and if God has willed, He could surely have made you all one single community, but [He willed it otherwise] in order to test you by means of what He has given to you. Vie, then, with one another in doing good works. To God you all must return..."[The Quran 5:47-8].

\* The Islamic "*Sharia*" is merely a part of the religion which supports the moral values through law: God enjoins justice, and [going beyond justice to] magnanimity, and generosity towards [one's] kinsfolk; and He forbids all that is shameful and all that runs counter to reason, as well as aggression" [The Quran 16:90] . "*Sharia*" represents a comprehensive legal system, not only a penal law its secures the human rights and dignity in its moral and material dimensions [eg. 17:70, 24:19, 27-9...], as well as it establishes the mutual rights and obligations of the ruled and the rulers, indicating that the rulers are entrusted with authority from among the people by the people" [The Quran 4:59], and that public matters should be decided through public consultation "*Sharia*" [The Quran 42:38]. "*Sharia*" guards justice in all its dimensions, including socio-economic justice which requires that ones earnings must be through some provided matter or effort [The Quran 4:29], and states certain view spending for the poor and the needy and the society as a whole since individual earnings benefit from divine gifts and collective natural and human resources [The Quran 57:7, 70:24-25, 9:103].

\* "*Shaira*" then is not merely a penal law, and the penal law is not merely the fixed punishments for certain serious crimes against the society, the punishments which are called in Arabic "*Hudud*", a word which means "bounds that should not be transgressed" in general not only the fixed legal punishment for certain crimes: "These are the bounds set by God; do not, then, transgress them, for they who transgress the bounds set by God-it is they who are evidence" [The Quran 2: 229], " and one who transgresses the bounds set by God does indeed wrong against his/her own self" [The Quran 65:1]. These crimes with fixed punishments are: theft [The Quran 5:38], adultery [The Quran 24:2], slander [The Quran 24:4], and committing assaults against life and property "*Hiraba*" [The Quran 5:23]. Besides, "*Sharia*" states retribution "*Qisas*" as a punishment for crimes that destroys the human life or injures the human body [The Quran 2:178-9,194]. Punishments of other crimes or even similar crimes which lack any identifying and qualifying conditions for the crime is authorized to the human discretion and judgment through a fair penal legislation made by the jurists.

Thus, "*Hudud*" as a term used for limited fixed punishments for certain crimes in addition to the retribution for assaults on human life body, represent the only part of the Islamic penal law which is indicated in the Quran the Sunna of the Prophet. Other crimes and their punishments have to be provided through human legislative with all the requirements for a fair law, Further, "*Sharia*" is not restricted to penal law whether its origin is divine or human, since it covers branches of law, public - as constitutional, administrative and or criminal, or private as civil, commercial, and labor, in addition to socio-economic laws which may stand between the two categories and probably may combine the characteristics of both. "*Sharia*" in all its areas has been always developed and expanded and supplemented - not only interpreted - through different times and places - by the human legislation. The jurists have developed general legal rules "*Qawa'id*" based on the principle of the Quran and Sunna. These general rules of Islamic Justice are applied to respond to any emerging need or case, such as analogy "*Qiyas*", preference "*Istihsan*", and the consideration of significant public interests which are not indicated specifically in the Quran and Sunna "*al-masalih al-mursala*". Voluminous works in Islamic jurisprudence include pioneering juristic additions to the body of

"*Sharia*", responding to the particular needs of a given place and time as considered by a concerned jurist.

Further, as it has been previously indicated, Islam is a religion whose essence is the faith and the moral values, while "*Sharia*" is merely a legal support for the moral behavior of the individual and the society.

- Since the goal of the message of Islam and "*Sharia*" is to secure the human rights and dignity, and to ensure justice in all its dimensions: individual and collective, political and administrative and socio-economic, Islamic penal law, in its divine or human sources, has its prerequisites of education and socio economic. Justice. Moral and the legal responsibility has to be nurtured through education [The Quran 4:115] before inflicting punishments. Human rights and socio-economic justice ought to be secured for all in order to condemn someone for violating the rights of others and invading their property. Caliph Omar suspended the punishment of theft during a famine. All means for a chaste life for men and women, for individuals and the society, including facilitating marriage and providing assistance for it when this is necessary, have to be social concerns in order to make adultery really a crime. Further, procedural justice is essential for the enforcement of law. Any accusation has to be proved beyond the slightest doubt, and every person is innocent until proven guilty: "and whenever a way for quitting a defendant is their, quit him/her, for it is better for the ruler to be mistaken in quitting than to be mistaken in punishment" [ an authentic Tradition of the Prophet brought out by al-Trimidhi, al-Hakim, al-Bayhaqi, al-Sunan"]. The rights of the defendant and the defense and the justice of the court should be secured. According to "*Sharia*" if a genuine repentance of the defendant before reaching him/her can be proved his/her indictment ceased in certain cases [The Quran 5:33], and this was considered a general rule in all case by some jurists as Ibn al-Qayyim, since the moral reform of the offender is the goal of the penal law and it has been achieved without punishment, this would save public money and efforts as well as it secures the human dignity of the defendant.