

CRIME AND PUNISHMENT IN ISLAMIC LEGAL THOUGHT: A CONTEMPORARY ANALYTICAL PERSPECTIVE

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The proclamation of independence in many Muslim-majority societies triggered renewed scholarly interest in classical Islamic legal heritage. Within this intellectual revival, the study of Islamic criminal law has gained particular importance, especially in discussions concerning human rights, justice, and social order. Understanding the concept of crime in Islamic jurisprudence requires examining not only legal definitions but also the moral and theological foundations upon which they rest.

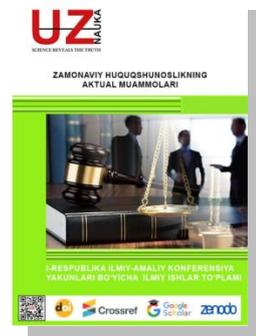
The Meaning of Crime in Islamic Jurisprudence

The Arabic term *jināyah* (crime) linguistically denotes the commission of a prohibited act. In Islamic legal terminology, it refers to actions that violate divine injunctions and harm either individual rights or the collective order of society. Classical jurists defined crime as conduct explicitly forbidden by Sharia and subject to prescribed punishment.

In the seminal Hanafi legal manual **Al-Hidayah**, authored by **Burhan al-Din al-Marghinani**, crime is described as an unlawful act directed against a person or property. This definition reflects the dual concern of Islamic law: safeguarding both individual interests and communal stability.

The Foundations of Criminal Liability

Islamic criminal law is grounded in the protection of two principal categories of rights:



3. Taʼzīr Crimes

These encompass acts that harm public or private interests but lack fixed punishments in primary sources. Judges exercise discretion in determining suitable penalties, which may range from admonition to imprisonment.

Positive and Negative Offenses

Islamic jurists also distinguish between:

- **Positive crimes** – Acts committed in violation of prohibition (e.g., theft or homicide).
- **Negative crimes** – Failures to perform obligatory duties (e.g., withholding testimony or neglecting mandatory charity).

In some cases, repeated minor misconduct may constitute a punishable offense even if a single occurrence would not.

Conditions of Criminal Responsibility

Criminal liability in Islamic law requires that the offender:

- Be of sound mind
- Have reached legal maturity
- Act with awareness and volition

According to the Hanafi school, legal majority is generally recognized at fifteen years of age. Individuals lacking mental capacity are exempt from criminal punishment. Only living natural persons can bear criminal responsibility; corporate or abstract entities do not qualify as subjects of criminal liability under classical doctrine.

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distinction between public and private rights, rigid and discretionary penalties, as well as moral and legal accountability.

In contemporary legal discourse, revisiting these classical doctrines offers valuable comparative insights for discussions on justice, proportionality, and the protection of fundamental human interests.