

Extra-Judicial Killing: Rights of the Accused under the Criminal Law of Islam and Contemporary Law

Md. Shahadat Hossain*

Abstract

Extra judicial killing is an undeniable fact that has been happening in every corner of the world under various eye-catching covers given by the concerned authority of the state. This article draws a plain picture on the legal status of such universally unacceptable activity in the light of traditional theory of criminal law as well as the criminal law of Islam. This article highlighted the general process of a judicial sentence and execution thereof. What the glorious Qur'ân and Sunnah dictate in this regard has been discussed in this paper. It also attributes the rights of an accused under the contemporary legal system and Islamic Legal system.

Introduction

Presumption of innocence is the universally accepted legal maxim, which denotes the person remains blameless until his or her culpability is proven. The very purpose of the judicial administration is to disseminate or dispense justice in each and every litigation that appear before the court. Therefore, no one should be penalized twice or no one should be killed without awarding reasonable opportunities to defend oneself. Any breach of this rule will bring about miscarriage of justice and the judicial institutions will lose its credibility from the heart of the people at large. Islamic legal system also emphasizes to establish justice at all cases, even if it is injurious to one's self-interest or interest of near and dear ones. The conception of justice in Islam is much higher than the so-called distributive, remedial, formal and natural justice of manufactured law. It searches out the innermost motives of man, because he has to sit as in the presence of Allah, to whom all things, acts and motives are known.ⁱ In this article, we would like to discuss about the illegal killing by the state mechanism or others, which is inconsistent with the supreme law of the land as well as the universal rights of the accused in international human rights covenants and Islamic criminal law.

Extra-Judicial Killing

The term extrajudicial means the process, which is done, given, or affected outside the course of regular judicial proceedings.ⁱⁱ It refers to actions outside the judicial system. Though there is no legal definition of an extrajudicial killing, but if a death is caused by a law enforcement authority without following the legal rules or due judicial process, it can be considered as extrajudicial killing. Extra-judicial killings, however, are those that are not committed by the order of a judiciary or court under the laws of the land. Killings, which have been executed beyond judicial process, as a result of which right to life of the victim is denied, therefore, all reasonable

* Lecturer, Department of Law, Bangladesh Islami University

legitimate opportunities, remain inapplicable to the alleged sufferer. The term also includes illegal executions or killings by law-enforcing agencies or death in custody. It is also said that death, which are not executed by the order of the court in accordance with the laws, are designated as extra-judicial killing.ⁱⁱⁱ This is a sort of punishment by the state or some other official authority without the permission of a court or legal authority. It is further defined as a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees, which are recognized as indispensable by civilized people.^{iv} Existence of Extra-judicial punishment exposes the shortcomings of the legal machinery of the government concerned to execute sentences properly. Extrajudicial punishment is often a feature of politically repressive regimes using death squads for killing opponents for their political gains.

Judicial Process for Death Sentence

As per as awarding judicial sentence and its execution is concerned states commonly observe the judicial machinery of the state. This judicial process follows the criminal laws of the country where, the process from the institution of a criminal case to the execution of judgment are clearly prescribed. Moreover, Jurisdiction and power of the court to pronounce the sentences particularly death sentences in a criminal proceeding are also to be prescribed. In both Islamic and traditional legal system, a criminal case either is filed through a police station or direct to the magistrate or *QÉdi* by any of the party. The magistrate, normally therefore, issues a warrant of arrest to the alleged person and order for investigating the case to the concerned authority. After submitting the charge sheet, hearing the parties and their witnesses through examination and cross-examination, a magistrate awards a particular sentence. If it is a death sentence, execution of it is subject to the confirmation of the High Court Division in Bangladesh. Beyond the above-mentioned process and authority, any death caused by any individual, government or non-government agencies would be illegal, ultra-virs, gross violation of human rights and therefore, subject to judicial enquiry and adequate punishment. During the trial period, both parties have given the opportunity to counsel with their legal counselor. The accused has not been denied this right in the ordinary criminal proceedings. If this right is withdrawn unjustly and convicted accordingly a party, injustice will happen inevitably. So, the execution of sentences particularly death sentences must be in due process of the existing criminal proceedings. Extra-judicial killing, is however, by no means acceptable in any where in the civilized world, because the killing occurs beyond any judicial capacity.

Limitations under Constitutional Framework

As regards the protection and promotion of fundamental human rights, constitution is the ultimate destination, which the states of the world are usually observed. Supreme authority therefore, attributed for observing and upholding public right of peace and security from any sort of violence in the exercise of right to life and liberty, unlawful and degrading treatment in the legal process. Beside the fact, the Code of Criminal Procedure of Bangladesh formulates provisions for confirming the death sentences by the superior court.^v It was evident that in many occasions death

sentence pronounced by the inferior court have been reversed into acquittal of the alleged person by the higher court.

The Constitution of Bangladesh has guaranteed the rights of protection of law for its citizen without discrimination. It is stated that “to enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.”^{vi} Concerning the right to protection of life and personal liberty, it is provided that “No person shall be deprived of life or personal liberties save in accordance with law.”^{vii} It is further stated, “No person, who is arrested, shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.”^{viii} Furthermore, the constitution makes clear procedural direction for fair trial and punishment of the offenders. It provides that, “No person, shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or different from, that which might have been inflicted under the law in force at the time of commission of the offence. Every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law. No person shall be subject to torture or to cruel, inhuman, or degrading punishment or treatment.”^{ix} According to the above constitutional declaration, it is absolute violation of the law of the land to kill a person extra-judicially without providing any opportunity as assured in the constitution to the alleged person.

Limitations under International Laws

International human rights instrument such as Universal Declaration of Human Rights, 1948 (UDHR), International Covenant on Civil and Political Right, 1966 (ICCPR), Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 etc., declared the inviolability of the life and liberty of an individual. The focuses of the conventions are summarized herewith. Such as every person has the inherent right to life, liberty and security.^x This right shall be protected by law and no one shall be arbitrarily deprived of his life.^{xi} No one should be subjected to torture, or to cruel, inhuman or degrading treatment or punishment.^{xii} An order from a superior officer or a public authority may not be invoked as a justification of torture; therefore, each state party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.^{xiii} The Covenants are also attributed to the entitling equality before law and equal access to law without any discrimination, it is stated, “All are equal before the law and are entitled without any discrimination, to equal protection of the law.”^{xiv} The spirit of these universally accepted norms are that a state would be obliged to maintain rights of the individual particularly the rights of an accused. Under international obligation, a state is responsible for establishing on the one side, fair and impartial judicial process through which no criminal could remain unpunished, on the other side, ensuring the execution of punishment including death sentence not beyond judicial verdict

by any means. Bangladesh is a member of international community and signatory of relevant International laws therefore, internationally responsible to uphold and promote the right to life and liberty of an individual from being killed extra-judicially, as it is the fundamental principle of the constitution too that Bangladesh respects the International law and the principles enunciated in the United Nation's Charter.^{xv}

Legal Status of Killing in the Holy Qur'ân and Sunnah

Murder is the most heinous and atrocious act in Islam. Therefore, Islamic teaching is, the killing of a person unlawfully amounts to killing the humanity as a whole and the saving the life of a human being is tantamount to saving the life of entire humanity. As stated in the holy Quran;

“Whoever kills a person for other than retaliation or to spread mischief in the land-it shall be as if he had killed all mankind, and whoever saves the life of one person shall be as if he had saved the life of entire Humanity.”^{xvi}

The traditions of the prophet Sallallahu ‘Alaihi wasallm (Slm.) postulate the utmost respect to the life, liberty and property of a human being by the others. Destroying these rights are *ḥarām* or prohibited, therefore, inviolable to all other people. As the Messenger of Allah commanded in the last pilgrims at Ar'Éfah that;

“Your blood, your property and your prestige are as sacred as this city (*ḥarām* of Makkah) and this day (day of Ar'Éfah)”^{xvii}

For a murder caused intentionally by a person avoiding the due process of law, there would be no recompense except the hell punishment for forever. As the Almighty All'Éh revealed that;

“If a person kills a believer intentionally, his recompense is Hell, to abide therein (for ever), and the wrath and the curse of All'Éh are upon him, and a great punishment is prepared for him.”^{xviii}

In this connection, the prophet (pbuh) declared that a person is at liberty to enjoy the religious affairs until he commits a murder illegally, if he does so he will be thrown into custody and suspend his liberty. As he says;

Narrated Ibn Umar, Allah's Messenger said, “A faithful believer remains at liberty regarding his religion unless he kills somebody unlawfully.”^{xix}

Again, the holy Qur'ân prohibits the shedding of blood without legal process that is directed in the Shari'ah. As the Qur'ân commands;

“And kill not the life which All'Éh has made sacred, save in the course of justice. Thus he has commended you, in order that you may discern.”^{xx}

In Another place, it is stated that, no person should be killed without just cause that is due process of law or it may be in accordance with the verdict of the court and order for exercising the right to retaliation in the modest way. It is commanded;

“And slay not the life which Allah has forbidden except for just cause. And whoever is killed wrongfully, we have given his heir the authority (to demand QisÉs). But let him not exceed the limits in the matter of taking life. Verily he is helped.”^{xxi}

Islam expresses its paramount standards concerning the dignity of a human being and establishes an effective legal system where the rights of the litigants are well protected and there is no scope to punish any body without any lawful justification. The prophet of Islam in his traditions teaches us the concern matter in the following ward;

Narrated by 'Abdullah: The prophet said, "The first cases to be decided among the people (on the Day of Resurrection) will be those of blood-shed.”^{xxii}

Narrated by 'Abdullah: The prophet said, "No human being is killed unjustly, but a part of responsibility for the crime is laid on the first son of Adam who invented the tradition of killing (murdering) on the earth. (It is said that he was Qabil).^{xxiii}

Narrated by 'Abdullah bin 'Umar: that, One of the evil deeds with bad consequence from which there is no escape for the one who is involved in it, is to kill someone unlawfully.^{xxiv}

Narrated by Anas Ibn Malik (RA) that the prophet (Slm.), said, the biggest of Al-KabÉir are (1). to join others as partners in worship with Allah, (2). to murder a human being, (3). to be undutiful to one's parents (4). and to make false statement or said “to give false witness.”^{xxv}

Narrated by 'Abdullah: that Allah's Apostle said, “The blood of a Muslim who confesses that none has the right to be worshipped but Allah and that I am His Apostle, cannot be shed except in three cases: In QisÉs for murder, a married person who commits illegal sexual intercourse and the one who reverts from Islam (apostate) and leaves the Muslims community.”^{xxvi}

It is further narrated by Ibn Abbas (RA) that the Prophet said, “the most hated person to Allah are three: (1) A person who deviates from the right conduct, i.e., an evil doer in the Haram (2) a person who wants that the traditions of the pre-Islamic period of ignorance should remain in Islam; and (3) a person who seeks to shed somebody's blood without any right.”^{xxvii}

Scrutinizing the above-mentioned verses from the holy QurÉn and the glorious traditions of the Prophet (pbuh) we make a clear conclusion that in Islamic legal system there is no scope for any one to kill any person beyond any lawful cause asserted by the Shari'ah and it is abhorrent of the act of murdering illegally. Any one if, however, does so he will be responsible for severe punishment that is death sentence, moreover this sentence must be in the way of retaliation or QisÉs.

Judicial Directions in Islamic Legal System

The foundation of Islamic legal system is the very text of the verses of the Qur'ân and the Sunnah of the Prophet (SIm.) which postulate the paramount ideal of justice for the humanity. The Messenger of AllÉh himself and his eminent successors that is the four rightly guided Caliphs also experienced of the model at that time which was known as golden age. The society was free from injustice because, they followed the Allah's commandment and the advice of His Messenger, that all human beings are equal before the law and have equal right to have legal protection of law, which was established fully with careful hand considering the fear of Allah and the day of resurrection in their mind. Therefore, it was rare to be found that any person was tortured or killed without any legal grounds at that time. From the glorious Qur'ân and the Sunnah of the prophet some of the basic directions in this regard have been discussed as follows.

The Holy Qur'ân stated that, "O you who believe! Stand out firmly for justice, as witness of Allah; even though it be against yourselves or your parents, or your kin, be he rich or poor, Allah is a Better protector to both (than you) are. So follow not the lusts (of your hearts), lest you avoid justice; and if you distort your witness or refuse to give it, verily, Allah is Ever Well-Acquainted with what you do".^{xxviii}

It is further stated that. "...Therefore, judge among them by what Allah has revealed, and follow not their vain desires, diverging away from the truth that has come to you. To each among you We have prescribed a law and a clear way.."^{xxix}

Above verses from the Qur'ân have made a specific guideline for the judicial administration that the judiciary is arranged by the learned people of high moral status who did not exercise their vain desire in discharging judicial function and hesitate to pronounce the sentence even if it went against himself and also kept in mind the fear of the final Day of Judgment. In association with the *Qur'anic* verse, the traditions of the prophet (SIm.) also made instructions for the impartial and unbiased judicial structure. Some of the traditions of the prophet have been given bellow.

Abu Hurairah reported from the prophet (SIm.) who said: who seeks to be a judge among the Muslims until he gets it, and then whose justice prevails over his injustice, there is paradise for him; and whoever's injustice prevails over his justice, there is fire for him.^{xxx}

It is also stated that, Abu Bakar reported that: the Messenger of AllÉh said "no judgment should be pronounced between two disputant when he (the judge) is annoyed".^{xxxi}

Narrated from Buraidah: The Prophet (SIm.) said: judges are of three types, one class will go to paradise and two classes will go to the Hell. The judge who understand the truth and pronounces the judgment accordingly (will go to *Jannat*), the judge who understands the truth and does injustice in the judgment, and the judge who adjudicate among the people without knowledge both will go to the *Jahannam* or Hell.^{xxxii}

Eventually, after the discussion of the above directions it is apparent that the ensuring justice is the prime aim of the Islamic judicial system, therefore, no scope to punish, torture or kill any one without due process of law established by the *Qur'ân* and the practice of the prophet (SIm.,).

Universal Rights of the Accused in Both Judicial Processes

The term 'accuse' or 'accused' refers to somebody who have done a wrong like saying that a person accused of a crime.^{xxxiii} Further, the term 'the accused' means the person who is on trial in a court that is a person after committing a wrong appeared before the court of law for adjudication.^{xxxiv} In Islamic law the term '*muttahaam*' is used to mean 'the accused', which derives from the root *t-h-m*, meaning, "to taint or decay" in the case of spoiled milk or meat.^{xxxv} The word '*tuhmah*' or '*tuhÊmah*', means "doubt" and "uncertainty". The initial "t" is the substitute for the letter 'wÊw', because the root of the word is *w-h-m*, which connotes suspicion or misgiving. The Arabs used to say, "The man gives rise to suspicion when someone gave other people reason to suspect himself or herself or his or her actions."^{xxxvi} In legal terminology, the word can be traced to several *Hidiths* like as;

'Narrated by AbË Hurayrah, who said: the prophet, AllÊh may bless him and grant him peace, sent someone to call out in the market place that the testimony of a party to a dispute, like that one who is suspect, is not admissible. When the prophet was asked what he meant by one who was suspected, he replied: "One concerning whose religion you have misgivings".^{xxxvii}

An accused, however, in the above discussion, is a person under suspicion for his wrongful actions whether or not he is in the process of trial before the court and it is stated that 'the testimony of one concerning whom you have misgiving is not acceptable.'^{xxxviii} However, for the accused, certain rights are recognized that have been expressed in the criminal jurisprudence as well as in the direct provisions of laws, in compliance with the universal equitable doctrine of equality before law and equal protection of law as a human being. Among those rights a few have been discussed bellow;

The right to defense

Right to defense is the right that has been accepted in all legal systems in the world. An accused has the right to defend himself or herself against any accusation by proving that the evidence cited is invalid or presenting contradictory evidence. Therefore, self-defense is not only the right of the accused to use or disregard as he or she pleases, but it is also the right and the duty of society as a whole. Society must ensure that the innocents are not convicted and that the criminals can not escape punishment. On these grounds, the *Shari'ah* guarantees the rights of defense and prohibits its denial under any circumstances and for any reason.^{xxxix} It is related that 'Umar ibn 'Abd al-ÓzÊz said to one of his judges: "when a disputant comes to you with an eye put out, do not be quick to rule in his favor. Who knows, may be the other party to the dispute will come with

both eyes put out.”^{xli} In the present world, this right has been guaranteed in the provisions of both national and international laws.^{xli}

The right to counsel with the lawyer

Right to have equal protection of law means both the parties to a proceeding have the right to defend themselves with the counsel of their lawyer as because they were unable to understand the legal scope to prove the case, or discharge or acquittal from the allegation. This right has been guaranteed in the constitution as well as in the International laws.^{xlii} The books that deal with the Islamic procedural law (*ahkÉm al-qadÉ*) and the behavior of judges (*adÉb al-qÉdÉ*) do not mention these issues. In early period the court session were held in public and in the presence of the legal scholars and experts whose presence represented a true and responsible legal advisory board that actively assisted the judge in dispensing justice, there was never any need for professional counsel.^{xliii} *ImÉm AbÉ HanÉfah*, however, ruled that a person, who appoints another to represent his or her before the court of law, would be responsible for whatever ruling is passed. The principle is that any method that will lead to a just settlement may be considered legally valid.^{xliv} Nevertheless, there is no means to remove the right of being heard of the accused by the court at any manner whatsoever.

The right to have security from torture

The right to have security from torture, degrading treatment or punishment has been given prime significance in the national and international laws,^{xlv} because the torture (whatever be the name) is justified by the contemporary law enforcement agencies that the torture is the best tool for discovering the truth. However, the experience is that whoever confesses in the torture compartment but subsequently totally denies the confession before the judge and the law itself declared that the statement made under duress is not admissible as evidence.^{xlvi} According to Islamic criminal justice system, the accused shall not be tortured or pressured to confess as the prominent scholar *Ibn Hazam* writes: ‘therefore, it is unlawful to subject someone to tribulation, either by blows, imprisonment, or threats. There is nothing to legitimize such treatment in the *QurÉn*, or the established *Sunnah*, or *IjmÉ*, and nothing may be said to be the religion unless it comes from one of these sources. On the contrary, AllÉh prohibited this and caused His Messenger to say: “Verily, your blood, your wealth, your reputation, and your skins are sacred to you” so when Allah made both the body and the reputation sacred, he prohibited the physical and verbal abuse of a Muslim, except when it is required by the prescribed injunction of the *QurÉn* and the *Sunnah*.’^{xlvii} Requirement means, execution of the punishment of the Court only nothing else.

The right to have adequate food and medical care

This is another right, which is commonly denied by the concerned authority. Right to food and medical care is an inalienable right to every human being, which is guaranteed under the cover of right to life and liberty.^{xlviii} This is an undeniable issue irrespective of the status of the person that

is an accused or a free person. The accused, in particular, have to be given adequate food and medical care during the whole period of custody. In the Islamic legal system, there is no option to remove such rights from an accused person. The accused have to be given high moral education, accommodation and modest manner that would be a milestone for restarting of his new life in the society as a free and fresh person is the ultimate objective of penal policy of Islam.

Presumption of innocence

Presumption of innocence is the vital right of the accused because he possesses some sort of dignity and honour as a human being and never ever he wants to lose it. The notion refers to the principle that an accused remains innocent until his guilt is proved and also the wisdom of the common law that it were better that a hundred guilty persons be acquitted than one innocent person be wrongly convicted. The ideas that have now become part of universal human rights were anticipated by Islam from a much earlier time. The Prophet of Islam, however, has made instructions “prevent punishment in case of doubt. Release the accused if possible, for it is better that the ruler be wrong in forgiving than wrong in punishing.”^{xlix} It is strictly prohibited to declare a person guilty until it is proved. Islamic criminal law consequently throws the onus of proof heavily upon the prosecution and in the absence of such proof, the accused must be acquitted.¹ Therefore, it is apparent that the presumption of innocence is accepted in all legal system in which Islam is the introducer and model.

Concluding Remarks

At the end of the long discussion, we may draw a conclusion that an accused has to be given capital punishment not beyond the judicial capacity. No one should be penalized or killed in particular, unjustly or extra judicially. Extra judicial killing, however, goes across the world in various fabricated covers that must come to an end and such illegal killing of the targeted people must stop. The modern states of 21st century is more responsible for protection and promotion of human rights, keeping and maintaining the national and international peace and security, and is therefore, obliged to protect its citizen from any sort of violation particularly killing of the people outside the due process of law. Islamic legal system, however, does not allow to impose any penalty without judicial decision. It warns the people not only for the punishment of his criminal activities in the world but also the punishment of the final Day of Judgment. As a result, a Muslim criminals think twice before entering into any offence because he knows that he would be accountable to the traditional court as well as the court of the Almighty. Spiritual motivation, as stated above, is totally absent in the general legal system, therefore, crime rates are increasing day by day. Amalgamation of the above spirit of law with contemporary legal system would be the best check and balance preventing extra-judicial killing and such other punishments.

Endnotes

- ⁱ Qadri, Anwar Ahmed, *Justice In Historical Islam*, Sh. Muhammad Ashraf, Lahor, ed. 1st, 1968, Lahor, p. 1
- ⁱⁱ West's Encyclopedia of American law, ed. 2nd, 2008.
- ⁱⁱⁱ Extra-judicial killings some issues by Barrister Harun Ur Rashid, The daily Star, June 18, 2005
- ^{iv} Sinaltrainal Vs. Coca-Cola Co., 578 F., 3d 1252 (11th Cir. Fla. 2009) (<http://definitions.uslegal.com>)
- ^v Section, 31, 374-379, The Code of Criminal Procedure, 1898.
- ^{vi} Article, 31, The Constitution of the People's Republic of Bangladesh, (As modified up to 31st may, 2000), Law Justice and Parliamentary Affairs, Peoples Republic of Bangladesh,
- ^{vii} Article, 32 *ibid*.
- ^{viii} Article, 33 (1)
- ^{ix} Article, 35 (1), (3), (5)
- ^x Article, 3, Universal Declaration of Human Rights (UDHR) 1948.
- ^{xi} Article, 6, International Covenant on Civil and Political Rights, (ICCPR) 1966.
- ^{xii} Article, 5 of UDHR, Art. 7 of ICCPR.
- ^{xiii} Article, 2 (1) (3), Convention against Torture and other cruel, Inhuman or Degrading Treatment or Punishment, 1985.
- ^{xiv} Article, 7 of UDHR.
- ^{xv} Article, 25 (1) The Constitution of the People's Republic of Bangladesh, (As modified up to 31st may, 2000), Law Justice and Parliamentary Affairs, Peoples Republic of Bangladesh,
- ^{xvi} AL-Qur'Ēn, Al-MĒidah, 5:32
- ^{xvii} Hanbal, Imam Ahmad Ibn, *Al-Musnad*, Vol. III, p. 138
- ^{xviii} AL-Qur'Ēn, An-NisĒ, 4:93
- ^{xix} SahĒh Al-BukhĒrĒ, Vol. 9. Book. 83, hadĒth No. 2
- ^{xx} AL-Qur'Ēn, Al-AnĒm, 6:151
- ^{xxi} AL-Qur'Ēn, Al-IsrĒ, 17:33
- ^{xxii} SahĒh Al-BukhĒrĒ, Volume 9, Book 83, Hadith No 4
- ^{xxiii} SahĒh Al-BukhĒrĒ, Volume 9, Book 83, Hadith No 6
- ^{xxiv} SahĒh Al-BukhĒrĒ, Volume 9, Book 83, Hadith No 3
- ^{xxv} SahĒh Al-BukhĒrĒ, Volume 9, Book 83, Hadith No 10
- ^{xxvi} SahĒh Al-BukhĒrĒ, Volume 9, Book 83, Hadith No 17
- ^{xxvii} SahĒh Al-BukhĒrĒ, Volume 9, Book 83, Hadith No 21
- ^{xxviii} AL-Qur'Ēn, An-Nisa, 4:135
- ^{xxix} AL-Qur'Ēn, Al-MaĒdah, 5:48
- ^{xxx} AbĒ DĒwĒd.
- ^{xxxi} SahĒh Al-BukhĒrĒ, Volume 9, Book 89, Hadith No 272
- ^{xxxii} AbĒ DĒwĒd and Ibn Mazah
- ^{xxxiii} Oxford Learner's Pocket Dictionary with illustrations, Oxford University Press, Walton Street, Oxford OX2 6DP, 1992, p. 4
- ^{xxxiv} Cambridge Advance Learner's Dictionary, Cambridge University Press, New York, 1995, ed. 3, p. 11.
- ^{xxxv} Al-Alwani, Shaykh Taha Jabir, *Issues in Contemporary Islamic Thought*, The International Institute of Islamic Thought, 1426 AH/2005 CE., p. 202.
- ^{xxxvi} Al-MisbĒh, 107, 129; See "T-H-M" in al-zabĒdĒ, *TĒj al-'ArĒs*.

^{xxxvii} Shaybah, Ibn AbĒ, *Al-Musannaf*, 8:321, Al-Bayhaqi, *Al-Sunan al-KubrĒ*, 10:201; Al-TirmidhĒ, *Al-Sunan*, Hadith No.2299; Al-Khassaf, *Adab al-QĒdĒ*, 2:112,1:229.

^{xxxviii} Shaybah, Ibn AbĒ, *Al-Musannaf*, 8:321,

^{xxxix} Al-Alwani, Shaybani Taha Jabir, *issues in Contemporary Islamic Thought*, The International Institute of Islamic Thought, 1426 AH/2005 CE., p.212

^{xl} *ibid.* 213

^{xli} Article.11 (1) of Universal Declaration of Human Rights, 1948

^{xlii} Article, 27, 31, The Constitution of the People's Republic of Bangladesh, See also Article, 8, 11 of the Universal declaration of Human rights, 1948.

^{xliii} Al-Alwani, Shaybani Taha Jabir, *issues in Contemporary Islamic Thought*, The International Institute of Islamic Thought, 1426 AH/2005 CE., p.213

^{xliv} *ibid.* p.213

^{xlvi} Article, 33, The Constitution of the People's Republic of Bangladesh, See also Article, 3, 5 of (UDHR), 1948. Article. 7, 9 of (ICCPR), 1966.

^{xlvi} Section. Code of Criminal Procedure, 1908

^{xlvii} Ibn Hazam, *Al-MuhalĒ*, 11:141

^{xlviii} Article, 32, of The Constitution of the People's Republic of Bangladesh, See also Article, 3, of (UDHR), 1948. Article. 6, 10, of (ICCPR), 1966.

^{xlix} Bassiouni, M .C, (ed. and trans.) *The Islamic Criminal Justice System* (New York, Oceana Publications, 1982, p. 67

¹ Weeramantry, C., G., *Islamic Jurisprudence an International Perspective*, Macmillan, London & St. Martin's Press, New York, 1988, ed.2nd, The Other Press, 607 Muiara Majestic Jalan Othman 46000 Petaling Jaya Malaysia., 2001, p.78.