Jurnal Syariah, Jil. 28, Bil. 3 (2020) 383-416
Print ISSN: 0128-6730
e-ISSN: 0127-1237
Submitted Date: 3 July 2020
Accepted Date: 11 August 2020
Published Date: 31 December 2020

THE CRIME OF *ḤIRĀBAH*: APPROACH, JUSTIFICATION AND SIGNIFICANCE

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ABSTRACT

The punishment for ḥirābah as a ḥadd crime has been prescribed by the Lawmaker in the Qur'ān, in Chapter al-Mā'idah, 33. The provision stipulates four types of punishment, namely; execution, cutting off of hands and feet, crucifixion and banishment. Despite ḥirābah being a serious crime and the only ḥadd crime with four punishments, al-Mā'idah 33 is completely silent about the meaning of ḥirābah, its constituent elements, modes of crime and conditions. This has led the crime being approached either through a restrictive or a permissive manner by Muslim scholars. The objective of this paper is to study the concept of ḥirābah from both perspectives, their justifications and significant impacts on possible application of Islamic criminal law on the subject. This is carried out through careful examination of literature contributed by both classical and modern times. The findings of the study suggest that the restrictive approach considers ḥirābah to be a crime of highway robbery – grave theft – while the permissive approach does not stipulate any particular designation to the crime. Ḥirābah to the latter is of an unlimited crime. Their justifications range from textual to contextual analyzes, application of qiyās and other principles of Islamic

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jurisprudence. The significant impacts of both approaches are seen on the possible application of ḥirābah; either being a strict or a flexible form of crime, a limited or an unlimited with specified or unspecified types of punishment, involving the application of two witnesses or otherwise and the effect of repentance.

Keywords: *ḥirābah, highway robbery, restrictive approach, permissive approach, Islamic criminal law*

INTRODUCTION

Ḥirābah is a *ḥadd* crime[3] under Islamic criminal law. The crime of *ḥirābah* is envisaged by verse 33 of al-Mā'idah which reads:

إِنَّمَا جَزَٰٓؤُاْ ٱلَّذِينَ يُحَارِبُونَ ٱللَّهَ وَرَسُولَهُۥ وَيَسۡعَوۡنَ فِي ٱلۡأَرۡضِ فَسَادًا أَن يُقَتَّلُوٓاْ أَوۡ يُصَلَّبُوٓاْ أَوۡ تُقَطَّعَ أَيۡدِيهِمۡ وَأَرۡجُلُهُم مِّنۡ خِلَٰفٍ أَوۡ يُنفَوۡاْ مِنَ ٱلۡأَرۡضِۚ ذَٰلِكَ لَهُمۡ خِزۡيٞ فِي ٱلدُّنۡيَاۖ وَلَهُمۡ فِي ٱلۡأٓخِرَةِ عَذَابٌ عَظِيمٌ ٣٣

"The punishment of those who wage war against Allāh and His Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: that is their disgrace in this world, and a heavy punishment is theirs in Hereafter."

(Surah al-Mā'idah, 5: 33)

Unlike other *ḥudūd*[4] crimes, *al-Qur'ān* prescribes four punishments against the person liable for *ḥirābah*: amputation of hand and foot, execution, crucifixion and banishment. Ānas bin Mālik, a notable companion of the Messenger SAW has once made a remark that *ḥirābah* is a very serious crime under Islamic criminal law that the Messenger SAW never executed a

[3] *Ḥadd* crime is the one punishable with the prescribed and fixed punishment. The majority from Muslim jurists agree that there are seven types of *ḥudūd* crimes: *zinā*, *qaẓaf*, *shrub*, *sariqah*, *ḥirābah*, *riddah* and baghy. *Ḥadd* crime derives its authority from *al-Qur'ān* or clear authentic *ḥadīth*. 'Abd al-Qādir 'Awdah, *al-Tashrī' al-Jinā'ī al-Islāmī Muqāran bi al-Qānūn al-Waḍ'ī,* vol. 1 (Bayrūt, Lebanon: Maktabah 'Aṣriyyah, 2013), 61.

[4] Plural form for *ḥadd*.

punishment on anyone more severe than the offender of this crime.[5] As a *ḥadd* crime, *ḥirābah* does not only affect the rights of individuals and the society, but the rights of Allāh as well.

"What is then the crime of *ḥirābah*?" is the immediate question that warrants an answer. This paper will study the approaches taken by classical and modern Muslim scholars to address the concept of *ḥirābah*, their justifications and significant impacts on the application of Islamic law on the subject. The paper carefully analyzes central classical works mainly from the four major schools: Ḥanafī, Mālikī, Shāfi'ī and Ḥanbalī. It also addresses significant writings of modern Muslim scholars on the subject for the purpose of comparison with the former.

This paper is divided into three parts. The first part examines the approaches to the interpretation of *ḥirābah* taken by classical and modern scholars. The second part analyzes legal justifications for both restrictive and permissive approaches. The final part offers significant effects of these approaches to the possible application of Islamic law on *ḥirābah*.

ADDRESSING THE CRIME OF *ḤIRĀBAH*

1. Classical Scholars

a) Ḥanafī, Mālikī, Shāfi'ī, Ḥanbalī

Ḥirābah is always studied by classical jurists as a *ḥadd* crime that comes just next to the discussion on *sariqah* (theft). *Ḥirābah* is often considered as another mode of theft and termed as *sariqah al-kubrā* (Grave/Major Theft) or *qaṭ' al-ṭarīq* (Highway Robbery). Al-Kāsānī, a prominent jurist from the Ḥanafī school defines *qaṭ' al-ṭarīq* as:

> *"Attacks upon the passersby with the intent to take their property (unlawfully) by force in such a way that people are rendered unable to pass freely through the streets."* [6]

Al-Imām al-Shāfi'ī in his magnum opus defines highway robbers as:

5 Muḥammad bin Ismā'īl al-Bukhārī, *Ṣaḥīḥ Bukhārī* (Bayrūt, Lebanon: Dār Ibn Kathīr, 2002), 1442.

6 'Alā' al-Dīn Abū Bakr bin Mas'ūd al-Kāsānī, *Baḍā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i',* vol. 7 (Bayrūt, Lebanon: Dār al-Kutub al-'Ilmiyyah, 1986), 90.

> *"A group of armed people going against another in the deserts or highways and openly rob them."* [7]

Ibn Qudāmah, a leading figure from Ḥanbalī school shares a similar opinion with al-Shāfi'ī:

> *"A group of armed people going against another in the deserts and openly rob them."* [8]

The above definition of highway robbery is generally agreed by classical jurists who view *ḥirābah* as synonymous with *qaṭ' al-ṭarīq*,[9] only that some different interpretations can be seen among them when it comes to the details of the crime. Jurists from the three schools generally agree on the following six points: First, *ḥirābah* is banditry, robbery or highway robbery. Second, the constituent crimes are either: theft, murder, theft and murder or causing fear. Third, the prime objective of the perpetrator is theft while murder and fear are collateral to that purposes. Fourth, *ḥirābah* is committed openly and not in secrecy. Fifth, *ḥirābah* involves element of force. Sixth, generally, they agree that the punishments in al-Mā'idah 33 should correspond with each crime: cutting off hand and foot for theft, execution for murder, crucifixion for murder and theft and banishment for causing fear.

Mālikī jurists on the other hand present an interesting insight into the crime of *ḥirābah* when most of them do not directly associate it with highway robbery. Al-Imām Mālik reads verse 33 of al-Mā'idah in the light of previous verse 32 from the same Chapter and advances that the essence of *ḥirābah* is the commission of *fasād* (mischief). To him, *ḥirābah* is not restricted only to theft, murder or causing fear. Al-Ḥārith who was crucified by 'Abd al-Mālik bin Marwān for his false claim of prophethood is the authority for his

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7 Muḥammad bin Idrīs al-Shāfi'ī, *al-Umm,* vol. 7 (Manṣūrā, Egypt: Dār al-Wafā', 2001), 384.

8 'Abd Allāh bin Aḥmad bin Maḥmūd bin Qudāmah, *al-Mughnī,* vol. 10 (Bayrūt, Lebanon: Dār al-Kitāb al-'Arabī, 1983), 302.

9 It is to be acknowledged here that there are some minority opinion among Ḥanafī school such as the one held by Abū Yūsuf who does not see ḥirābah as equivalent to highway robbery. However, they do not represent the mainstream opinion among the members of the school. Refer Muḥammad Abū Zahrah, *al-Jarīmah wa al-'Uqūbah fī al-Fiqh al-Islāmī,* vol. 2 (Qāhirah: Dār al-Fikr al-'Arabī, 1998), 132.

proposition.[10] Al-Qarrāfī confirms that *ḥirābah* is the commission of *fasād* itself[11] and al-Dussūqī elaborates that *ḥirābah* has to be understood through the circumstances it is committed. He stresses that the gist of the crime is the inability of the victim to call for his aid. *Ḥirābah* in this instance relates to the power and control the authority has and not necessarily include the use of force as long as the perpetrator achieves his malicious intent. To Mālikī jurists, house breaking, rape, use of intoxicant materials and deceitful acts to lure an immature or a person of incapable mind may, under certain circumstances, constitute *ḥirābah*. Thus, the selection of the punishment is at the discretion of the judge and his wisdom to confer any sentence commensurate with the crime, deter future offence and in the best interest of all. Except when death is involved, the authority has no alternative but to confer death sentence on the accused person.[12]

The discussion on highway robbery among classical scholars is then focused on several issues: 1) elements of crime and its conditions, 2) constituent crimes, 3) punishments, 4) evidences and 5) repentance under verse 34 of al-Mā'idah. Commonly, the elements of crime discussed by classical scholars include the following: 1) offender, 2) victim, 3) property, 4) objective, 5) manner, 6) weapon and 7) place of the crime. There are vast differences of opinion and interpretation among the jurists from four schools regarding the above subjects which this paper deems it unnecessary to republish them here.

b) The Muslim Exegetists

The law on *ḥirābah* which has its foundation from verse 33 of al-Mā'idah has drawn the attention of many exegetists of *al-Qur'ān*. Al-Ṭabarī, Ibn Kathīr, al-Qurṭubī, al-Māwardī, al-Baghawī and Ibn Ḥibbān are among those exegetists who have taken the opportunity to approach the crime of *ḥirābah* in their own

10 Mālik bin Ānas, *al-Mudawwanah al-Kubrā,* vol. 4 (Bayrūt, Lebanon: Dār al-Kutub al-'Ilmiyyah, 1994), 552-556; Khalīl bin Isḥāq al-Jundī, *Mukhtaṣar Khalīl* (Bayrūt, Lebanon: Dār al-Fikr, 1981), 290-291; al-Dardīr Aḥmad bin Muḥammad bin Aḥmad, *Aqrab al-Masālik li al-Muwaṭṭa' Mālik* (Kano, Nigeria: Maktabah Ayyūb, 2000), 142.

11 Aḥmad bin Idrīs al-Qarrāfī, *al-Ẓakhīrah,* vol. 12 (Bayrūt, Lebanon: Dār al-Gharb al-Islāmī, 1994), 125-130.

12 Ibn Rushd al-Qurṭubī, *Bidāyah al-Mujtahid wa al-Nihāyah al-Muqtaṣid* (Oman, Jordan: Bayt al-Afkār al-Dawliyyah, 2007), 987-991; Muḥammad 'Arfah al-Dussūqī, *Ḥāshiyah al-Dussūqī 'ala al-Sharḥ al-Kabīr* (Miṣr: Dār Iḥyā' al-Kutub al-'Arabiyyah, 2001), 348-353.

manner. Unlike the jurists from four schools, the exegetists address the issue from a relatively broader angle of analysis.

Verse 33 of al-Mā'idah is not read in isolation by al-Ṭabarī. He brings the previous verse 32 of al-Mā'idah into the context and proposes that the term '*fasād*' in al-Mā'idah 33 shall be understood to include the meaning of '*fasād*' in the previous verse.[13] The punishments in al-Mā'idah 33 hence are equally applicable to both verses. *fasād* is perceived as a concept referring to the general crime which includes causing fear on the believers, obstructing their way, robbing their property unlawfully and outrage on their chastity and dignity – the meaning of *ḥirābah* in al-Mā'idah 33.[14] In agreement with al-Ṭabarī, Ibn Kathīr adds that al-Mā'idah 33 bears two significant concepts of crime with *fasād* being the general term. Highway robbery is one among various meanings of *fasād*.[15] Taking into consideration different interpretations by Sa'īd bin Musayyab, 'Ikrimah, Hasan Baṣrī, Ibn 'Abbās, Abū Qilābah and Ānas bin Mālik, the crime of *fasād* as observed by Ibn Kathīr covers acts of: 1) theft, 2) robbery, 3) murder, 4) apostasy, 5) polytheism, 5) causing terror, 6) *zinā* and 7) money manipulation. Overall, Ibn Kathīr asserts that *ḥirābah* conforms to the acts committed by the criminals in the case of 'Uraniyyūn that include: theft, murder, apostasy, *zinā*, causing terror and waging war against Allāh and His Messenger.[16]

Al-Qurṭubī is similar in his pattern of observation with al-Ṭabarī and Ibn Kathīr. He does not apply a single jacket to the crime of *ḥirābah*. He agrees with al-Ṭabarī and Ibn Kathīr that *ḥirābah* is the commission of crime with the intent of going against Allāh and His Messenger.[17] He quoted Ibn al-Munẓir as saying that the general nature of al-Mā'idah 33 cannot exclude any particular crime without clear proof. He then advances that the choice of punishment in the verse reflects an indefinite category of crime that may fall under *ḥirābah*.[18] However, Ibn Ḥibbān disagrees with such a broad interpretation of the crime under al-Mā'idah 33. He argues that not all forms of *fasād* are punishable with death penalty. The meaning of *fasād* as such shall be restricted to a particular

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[13] Muḥammad bin Jarīr al-Ṭabarī, *Tafsīr al-Ṭabarī,* vol. 3 (Bayrūt: Mu'assasah al-Risālah, 1994), 78.

[14] Al-Ṭabarī, *Tafsīr*, 78-79.

[15] Ismā'īl bin 'Umar, Ibn Kathīr, *Tafsīr al-Qur'ān al-'Aẓīm,* vol. 3 (Bayrūt, Lebanon: Dār al-Kutub al-'Ilmiyyah, 1998), 85.

[16] Ibn Kathīr, *Tasfīr*, 85-91.

[17] Muḥammad bin Aḥmad al-Qurṭubī, *al-Jāmi' li-Aḥkām al-Qur'ān,* vol. 6 (Riyāḍ: Dār 'Ālam al-Kutub, 2003), 150.

[18] Al-Qurṭubī, *al-Jāmi'*, 151-152.

designation[19] and *ḥirābah* is best understood as *qaṭ‘ al-ṭarīq* – a crime of highway robbery in the language of the jurists.

Al-Māwardī and al-Baghāwī meanwhile look at *ḥirābah* as a crime the forms of which are determined by the cause of revelation of al-Mā’idah 33. They suggest that the crimes in the case of ‘Uraniyyūn are *ḥirābah*. They are robbery, murder, theft, *zinā*, mutilation and waging war against Allāh and His Messenger.[20] The last terminology is, however, not properly discussed by them.

In short, all of them agree that *ḥirābah* at least conforms to *qaṭ‘ al-ṭarīq* or highway robbery while some of them offer a broader interpretation to the crime of *ḥirābah* in al-Mā’idah 33. The influence of the classical jurists from the four schools is evident in the works of the exegetists where most of them have discussed *ḥirābah* the way the crime is understood and explained by the jurists.

2. Modern Scholars

The approach taken by classical jurists has significantly influenced modern scholars including ‘Abd al-Qādir ‘Awdah, a contemporary Muslim jurist. ‘Awdah approaches the crime of *ḥirābah* in a rather neutral manner. He presents the arguments from all four schools as well as other significant schools such as Zāhiriyyah in his works. Nevertheless, ‘Awdah and many other modern scholars are simply being descriptive of the past discourse while several others choose to take one side of the argument after due deliberation of all points. ‘Abd al-Qādir ‘Awdah has addressed *ḥirābah* at length in his work. Although he seems to prefer the Mālikī interpretation of the crime and does not directly associate *ḥirābah* with *qaṭ‘ al-ṭarīq* or *sariqah al-kubrā*, a thorough analysis of his work suggests otherwise. He studies *ḥirābah* in the four modes of crime as done by classical jurists and does not include other acts.[21] He studies all conditions attached to *ḥirābah*, but still within the parameters previously set by the classical jurists. While he agrees that Mālikī school offers a wider scope of interpretation to *ḥirābah*, he does not take the opportunity to elucidate and extend further the concept of *ḥirābah* to other forms of crime. He, in this

19 Muḥammad bin Yūsuf, Ibn Ḥibbān, *Tafsīr al-Baḥr al-Muḥīṭ,* vol. 3 (Bayrūt, Lebanon: Dār Iḥyā’ Turāth ‘Arabī, 2002), 652.

20 ‘Alī bin Muḥammad al-Māwardī, *Tafsīr al-Māwardī,* vol. 3 (Bayrūt, Lebanon: Dār al-Kutub al-‘Ilmiyyah, 1987), 32-33; Ḥusayn bin Mas‘ūd al-Baghawī, *Ma‘ālim al-Tanzīl* (Bayrūt, Lebanon: Dār Ibn Ḥazm, 2002), 372-375.

21 ‘Awdah, *al-Tashrī‘,* vol. 2, 481-483.

instance, has not set the boundary for *ḥirābah* and non-*ḥirābah* crimes. He has also left the criteria of crimes other than *ḥirābah*-linked robbery unresolved.

The same approach taken by ‘Awdah has been followed by many other scholars including Wahbah al-Zuḥaylī,[22] Fatḥī Bahnasī,[23] Aḥmad Ibrahim,[24] Said Ibrahim,[25] Paizah Ismail[26] and Salīm el-‘Awa.[27] They describe the terminology, elements of crime, the conditions, liability of crime, punishments and pardon in cases of *ḥirābah*, but all have been restricted to limited forms of crime, most of the time as robbery, armed robbery or highway robbery. Such a restrictive approach has later been followed by recent authors like Ḥouri,[28] al-‘Umarī and al-‘Ānī,[29] al-Jabourī,[30] al-Sharnabāṣī,[31] Muḥammad[32] and Tahir and Khan.[33] All maintained that *ḥirābah* is highway robbery or some other limited acts approved by classical jurists.

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22 Wahbah al-Zuḥaylī*, al-Fiqh al-Islāmī wa-Adillatuh*, vol. 6 (Damascus, Syria: Dār al-Fikr, 1985), 128.

23 Aḥmad Fatḥī Bahnasī, *al-‘Uqūbah fi-al-Fiqh al-Islāmī: Dirāsah Fiqhiyyah Mutaḥarrirah* (Qāhirah: Maktabah Dār al-‘Arūbah, 1971).

24 Ahmad Ibrahim, ‘Suitability of the Islamic Punishments in Malaysia,’ *IIUM Law Journal,* vol. 3/1 (1993): 1.

25 Sa‘id Ibrahim, *Qanun Jinayah Syar’iyyah dan Sistem Kehakiman dalam Perundangan Islam Berdasarkan Quran dan Hadith* (Kuala Lumpur: Darul Ma’rifah, 1996), 1057.

26 Paizah Ismail*, Undang-Undang Jenayah Islam* (Selangor: Dewan Pustaka Islam, 1996), 228-236.

27 Mohamed S. El-Awa, *Punishment in Islamic Law: A Comparative Study* (Plainfield: American Trust Publication, 2000), 7-9.

28 ‘Umar Muḥy al-Dīn Ḥourī, *al-Jarīmah: Asbābuhā - Mukāfaḥatuhā* (Damascus, Syria: Dār al-Fikr, 2003), 381.

29 ‘Īsā al-‘Umarī and Muḥammad Shallāl al-‘Ānī, *Fiqh al-‘Uqūbāt fī al-Sharī‘ah al-Islāmiyyah* (Amman, Jordan: Dār al-Masīrah, 2003).

30 ‘Abd Allāh Muḥammad al-Jabourī, *Dirāsāt fi-al-Fiqh al-Jinā’ī al-Islāmī* (United Arab Emirates: Dār al-Qalam, 2006), 121.

31 Ramaḍān ‘Alī al-Sayyid al-Sharnabāṣī, *al-‘Uqūbah fī al-Sharī‘ah al-Islāmiyyah wa-al-Qawanīn al-Waḍ‘iyyah: Dirāsah Muqāranah* (Alexandria: Dār al-Maṭbū‘āt al-Jāmi‘ah, 2010), 205.

32 Muḥammad Muḥammad ‘Abd al-Ḥakīm, ‘Ḥadd al-Ḥirābah bayna al-Naẓariyyah wa-al-Taṭbīq: Dirāsah Fiqhiyyah Muqāranah’, *Majallah al-Buḥuth wa-al-Dirāsāt al-Shar‘iyyah*, vol. 5 (2012): 255-282.

33 Muhammad Tahir & Abazahir Khan, ‘Penalty Provisions of Banditry between Present and Past: A Comparative Study,’ *Ekta Islamika*, 2, no. 2 (2014): 101-107.

In the meantime, the crime of *ḥirābah* has also been revisited by other modern Muslim scholars from time to time. *Ḥirābah* is researched not only to understand the classical approach to the crime, but also in an endeavor to respond to the demand of time and situation. Rāshīd Riḍā in Tafsīr al-Manār carefully discusses *ḥirābah* in al-Mā'idah 33 and comes up with the idea that '*ḥirābah*' and '*fasād*' together constitute a single crime. Both *ḥirābah* and *fasād* must be conjointly read to understand the crime as such[34] and not studied independently. Looking at different verses from *al-Qur'ān* carrying the words '*ḥirābah*' and '*fasād*' he stresses that the essence of *ḥirābah* is the serious opposition towards the Shariah of Allāh. Hence, a crime when being publicly[35] committed with the intent of going against the Shariah of Allāh, such a crime is correctly termed as *ḥirābah*. *Ḥirābah* may come in the form of robbery, murder and *zinā* as suggested by classical jurists or even any mischief on earth. Rāshid Riḍā submits that Caliph Abū Bakr was right to take military action against those people who refused to offer zakāt during his time since that was, to him, a crime that comes under the category of *ḥirābah*. *Ḥirābah* may take various forms, in different places and at different times. Finally, Riḍā concludes that *ḥirābah* is a crime that affects the security of people, their property and dignity. *Ḥirābah* is committed publicly by a group of people possessing relatively significant strength with the intent to disobey and go against the Shariah of Allāh.[36]

Al-Mawdūdī, Sayyid Quṭb and Abū Zahrah seem to agree with the approach taken by Rashīd Riḍā. Al-Mawdūdī states that *ḥirābah* in al-Mā'idah is the waging of war against the righteous order established by the Islamic State.[37] Abū Zahrah also states that the meaning of '*fasād*' in the provision is a crime against the general system and security of the State. It is the Shariah system, as suggested by Riḍā.[38] Sayyid Quṭb adds that *ḥirābah* is "going against the Muslim Ruler who rules in accordance with Shariah." It is a crime the

[34] Muḥammad Rashīd Riḍā, *Tafsīr al-Qur'ān al-Ḥakīm* 2nd ed. (Qāhirah: Dār al-Manār, 1947), 357.

[35] Riḍā remarks that there is significant difference between a crime committed in public and a crime committed in secrecy. He is of the opinion that a crime committed in secrecy is punished with other *ḥadd* punishment, not *ḥirābah*. The demarcating line between the two is when the offender, while committing the crime, intends to diminish the *Sharī'ah* of Allāh out of his course.

[36] Riḍā, *Tafsīr*, 357-359, 362, 366.

[37] Sayyid Abū al-A'lā al-Mawdūdī, *Tafhīm al-Qur'ān,* vol. 2 (United Kingdom: The Islamic Foundation, 1989), 156.

[38] Muḥammad Abū Zahrah, *al-Jarīmah wa-al-'Uqūbah fi-al-Fiqh al-Islāmī,* vol. 2 (Qāhirah: Dār al-Fikr al-'Arabī, 1998), 136.

commission of which is said to be against Allāh and His Messenger to indicate the seriousness of the crime.[39] *Ḥirābah* is committed by a group of people who aim at challenging the authority of the Ruler, terrorize the citizens of the Islamic State, and encroach upon their lives, properties and dignities.[40] Abū Zahrah observes that *ḥirābah* is committed by a group of people possessing relatively strong might and means.[41] He also mentions that *ḥirābah* involves three levels of criminal responsibility: 1) the commission of crime itself, 2) the criminal cooperation by the group members to achieve their objective and 3) going against the authority openly.[42] Al-Mawdūdī points that *ḥirābah* may be committed in a limited scale such as murder, robbery and destruction; and in a large scale i.e. the attempt to overthrow the Order and to establish other unrighteous order in place.[43] Sayyid Quṭb finally remarks that *ḥirābah* is a crime against the Muslim Ruler, Muslim community and Muslim State,[44] and not limited to any designated form of crime.

In this regard, all Riḍā, al-Mawdūdī, Quṭb and Abū Zahrah apply the approach taken earlier by Mālikī and submit that *ḥirābah* is not limited to highway robbery. At the same time, they move further to suggest that *ḥirābah* is true to crimes committed with the intention to defeat the Shariah of Allāh, the security of state, the lives, properties and dignities of the people.[45] The punishments in al-Mā'idah 33 as such, is not prescribed for any designated crime. Selection of punishment must take into account all circumstances, seriousness and gravity of crime, the conditions of the offender and the authority as well as the objectives of punishment.[46]

3. The Restrictive and Permissive Approaches

To summarize the discussion in this part, the survey on the opinions of classical and modern Muslim scholars has shed the light that crime of *ḥirābah* has been

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39 Sayyid Quṭb, *Fi-Zilāl al-Qur'ān,* vol. 2 (Qāhirah: Dār al-Shurūq, 2003), 878.

40 Quṭb, *Fi-Zilāl*.

41 Abū Zahrah, *al-Jarīmah*, vol. 2, 79-80.

42 Abū Zahrah, *al-Jarīmah*, vol. 1, 79.

43 Al-Mawdūdī, *Tafhīm*, 157.

44 Quṭb, *Fi-Zilāl*, 879.

45 Refer also a recent work by Maḥmūd Aḥmad Ṭāhā, *Ḥadd al-Ḥirābah fi-al-Fiqh al-Islāmī wa-Atharuhu fi-Istiqrār al-Mujtama'* (Egypt: Dār al-Fikr wa-al-Qānūn), 33.

46 Riḍā, *Tafsīr*, 362-363; Maudūdī, *Tafhīm*, 157; Quṭb*, Fi-Zilāl*, 880; Abū Zahrah, *al-Jarīmah*, vol. 2, 81.

addressed either through restrictive or permissive approaches. The majority from classical scholars adopt restrictive approach and conclude that *ḥirābah* is highway robbery or any act committed by the criminals in the case of ʻUraniyyūn. This approach has later been promoted by remarkable number of modern Muslim scholars including a famous contemporary jurist, ʻAbd al-Qādir ʻAwdah. On the other hand, the permissive approach which was pioneered by Mālikī school gains quite popular acceptance among leading modern figures such as Al-Mawdūdī, Sayyid Quṭb and Rashid Riḍā. The approach taken by Mālikī and the subsequent followers permits *ḥirābah* to be applicable to other than highway robbery. The mode of crime is indefinite and keep growing from one time to another with terrorism as a recent international crime is also treated as a form of *ḥirābah* that is punishable with *ḥadd* penalities under al-Mā'idah 33. The permissive approach also does not set specific conditions on the offender of crime, victim, place, manner and the method the crime is committed. In most cases, they build their premises upon other complete forms of crime and decide whether such a crime is true to *ḥirābah* or otherwise. In the following part, the paper will embark into a thorough analysis on the justifications provided by both sides to support their arguments.

JUSTIFICATION

There are a number of reasons scholars who adopt restrictive approach believe that the crime of *ḥirābah* is highway robbery and not other forms of crime. The same goes to the conditions set on each requirement of *ḥirābah* such as the place of crime. There must be certain criteria that are met before an act may be declared as an act of *ḥirābah*. On the other hand, the permissive approach argues that *ḥirābah* is not only restricted to highway robbery, but true to other crimes as well. They set a rather flexible concept and conditions to *ḥirābah*. Generally speaking, the justification from both sides are all built upon the principles of Islamic jurisprudence.

1. The Case for Restrictive Approach

a) Cause of Revelation – The Case of ʻUraniyyūn

There are three or four possible causes of revelation to al-Mā'idah 33 as explained by Muslim jurists, the most famous being the case of ʻUraniyyūn (people from ʻUraynah). The case concerns a group of eight people from ʻUkl or ʻUraynah who came to seek medical advice from the Messenger SAW due

to the pleurisy[47] that infected them at the time. The Messenger SAW advised them to leave Madīnah with a shepherd and a drove of milk camels. They were told to drink from the urine and milk of the camels. The moment they recovered from their illness, the men turned apostate, murdered the shepherd, robbed the camels and terrorized people. They were later caught and brought before the Messenger SAW. Their hands and feet were cut off and their eyes were gauged. The Messenger SAW then ordered them to be banished to the land of Ḥurrah. They asked for water, but were denied until their last breath.[48] The verse 33 of al-Mā'idah then was revealed to the Messenger SAW.

The classical jurist from Ḥanafī, Shāfi'ī and Aḥmad[49] often associate the above case with the crime of *ḥirābah* in al-Mā'idah 33. They suggest that what had been committed by 'Uraniyyūn was a case of highway robbery. The people were actually a group of armed robbers who robbed the camels and murdered the shepherd in cold blood. The incident took place at a distance far from Madīnah and other town areas. Since the case was the cause of revelation of al-Mā'idah 33, reference must be made to the elements of crime being committed in the case or in other words *ḥirābah* is to confirm with the case of 'Uraniyyūn.[50] On this account, many of them submit that the primary objective of *ḥirābah* is robbery and the modes of crime is limited to robbery, murder and causing terror.[51]

b) Lexical Interpretation

A critical phrase in al-Mā'idah 33 is *yuḥāribūna Allāh wa-Rasūlahu wa-yas'auna fi-al-arḍi* <u>*fasādan*</u>. *Ḥirābah* against Allāh and His Messenger is interpreted as a crime of serious nature under Islamic criminal law.[52] The wayfarers are said to have none to rely on except Allāh as their Protector, but the criminals breach this trust and attack the innocent helpless people. Thus,

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47 A kind of fever.

48 See further in Muḥammad bin Ismā'īl al-Bukhārī, *Saḥīḥ al-Bukhārī* (Bayrūt, Lebanon: Dār Ibn Kathīr, 2002), 366, 734, 1029, 1706; Muslim bin al-Ḥajjāj, *Ṣaḥīḥ Muslim* (Riyāḍ: Dār Ṭayyibah, 2006), 794, 795; Sulaymān bin Ash'ath Abū Dāwud, *Sunan Abī Dāwud* (Riyāḍ, Saudi Arabia: Bayt al-Afkār al-Dawliyyah, 1998), 477; Muḥammad bin 'Īsā al-Tirmidhī, *Sunan al-Tirmidhī* (Bayrūt, Lebanon: Dār al-Fikr, 2005), 34, 552; Abū Ḥātim Ibn Ḥibbān, *Saḥīḥ Ibn Ḥibbān* (Bayrūt, Lebanon: Dār al-Ma'rifah, 2004), 1208-1209.

49 See for instance in al-Shāfi'ī, *al-Umm*, 1246.

50 Ibn Kathīr, *Tafsīr*, 85-87.

51 Ibn Qudāmah, *al-Mughnī,* 302.

52 Ibn 'Ābidīn, *Radd*, 136.

they are declared as an enemy of Allāh.[53] Since the advocate of restrictive approach have established earlier that *ḥirābah* is a crime of robbery, *ḥirābah* is also termed as *sariqah al-kubrā* or great theft. *Sariqah* or theft is in fact, a serious crime under Islamic criminal law punishable with *ḥadd* crime. Theft is said to constitute a breach against the right of individual victim and the right of Allāh at the same time, as with any case of *ḥadd* crime. However, *ḥirābah* or robbery is thought to constitute much more damage since it does not only adversely affect the individual victim, but the society as a whole. Terror, the least consequential effect a crime of highway robbery causes onto the mind of the people indicates how serious the crime is. The term *fasād fi-al-arḍi* is interpreted to confirm with meaning of highway robbery in this regard.[54] It shows the severe effect the crime has on earth – on the people as a whole community. *Ḥirābah* and *fasād* as such are *sariqah al-kubrā*, the grave theft.

c) Analogical Reasoning

Qiyās or analogical reasoning has been applied by classical jurists to justify conditions to the elements of highway robbery. The amount of money robbed is set to meet the standard of theft in analogical way, only that Ḥanafī double the amount from simple theft.[55] The perpetrator is a Muslim[56] or a ẓimmī by analogy to other *ḥadd* crime.[57] In cases where some of the criminal advance towards the victims and rob them and some others simply assist the commission of crime, all of them are equally liable for *ḥadd* punishment by analogy to crime of *sariqah*.[58] Again, the method of execution and amputation of hand are decided by analogy to *sariqah*. These and several other instances suggest that when analogical reasoning is applied by classical jurists to set the conditions of crime, *ḥirābah* will consequently be restricted to crimes being referred to in their studies. Certain conditions of *ḥirābah* are identical to that of *sariqah*. The room for application to other crimes is limited, requires another different set of analysis.

53 Al-Sarakhsī, *al-Mabsūṭ*, 201; Māwardī, *al-Iqnā‘*, 173.

54 Ibn Ḥibbān, *Tafsīr*, 652.

55 Al-Shāfi‘ī, *al-Umm*, 1246; al-Zuḥaylī, *Fiqh,* 133.

56 Al-Shāfi‘ī, *al-Umm*, 1247.

57 Al-Sarakhsī, *al-Mabsūṭ,* 195.

58 Al-Shāfi‘ī, *al-Umm*, 1247; al-Shīrāzī, *al-Muhaẓẓab,* 452; Ḥajjāwī, *al-Iqnā‘,* 288.

d) Common Case and Occurrence of the Time

This is another twin principle applied by classical jurist to decide the conditions for *ḥirābah*. In the past days, criminals terrorized people on their ways mainly to rob them. Pecuniary benefit is set as the main and most common objective of *ḥirābah*.[59] Jurists from Ḥanafī school who argue that only man is liable for *ḥirābah* consider woman as softhearted and physically weak in ordinary case.[60] Woman as such, is exempted from punishment of *ḥirābah* and is only liable for ta'zīr. Al-Imām Abū Ḥanīfah himself considered *ḥirābah* as a crime committed out of town areas, at a distance of safar. His reasoning is that people during his time were armed with swords when they were walking in the town. It is difficult or near impossible for the criminals to carry out their mission. Houses in town areas were also connected with one another which makes assistance in a split second should anyone was in trouble.[61] These conditions are said to defeat the criteria of *ḥirābah*. Individual criminal and unarmed individuals to some jurists, are not liable for ḥaḍḍ since they do not satisfy the requirement of robbers who most of the time terrorize people, use their weapons to hurt the victims.[62] A single individual cannot terrorize a caravan and unarmed group are unlikely to commit robbery. They are easily subdued by the victim and that makes their attempt discounted as *ḥirābah*, a crime of violence.[63] In short, by looking at the ordinary case and occurrence of the time, some classical jurists have indirectly confine *ḥirābah* to limited crime with prescribed criteria.

e) Principle of Equity

The principle of equity is mainly used to determine the punishment for each crime. Based on verse 40 of al-Shūrā, "*The recompense for an injury is an injury equal thereto*…," classical jurists state that it is acceptable to punish the offender based on degree and seriousness of crime being committed.[64] Execution for murder, execution and/or crucifixion for murder and robbery, amputation of hand and foot for robbery and banishment for terror.[65] This

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59 Ibn 'Ābidīn, *Radd,* 188; al-Shīrāzī, *al-Muhaẓẓab,* 448.

60 Al-Kāsānī, *Baḍā'i'*, 91; al-Sarakhsī, *al-Mabsūṭ,* 197; Ibn 'Ābidīn, *Radd,* 189-190.

61 Al-Kāsānī, *Baḍā'i'*, 92; al-Sarakhsī, *al-Mabsūṭ*, 201.

62 Ibn Qudāmah, *al-Mughnī,* 303-4; al-Mardawī, *al-Inṣāf*, 291; 'Awdah, *al-Tashrī',* 639.

63 Al-Sarakhsī, *al-Mabsūṭ,* 195; al-Sharbīnī, *Mughnī*, 498-499.

64 Al-Kāsānī, *Baḍā'i'*, 93.

65 Ibn 'Ābidīn, *Radd*, 185; al-Shāfi'ī, *al-Umm*, 1246; Ibn Qudāmah, *al-Mughnī,* 304, 312-313.

principle is also applied by Ḥanafī jurists who double the amount of money taken from the victim taking into consideration two limbs being cut off for the punishment of *ḥirābah* compared to only amputation of hand for *sariqah*.[66] The principle of equity applied here suggests that the punishments of *ḥirābah* are predetermined for each type of crime. While they have set each punishment for each crime, the jurists have also restricted other forms of crime to be considered as *ḥirābah* and be punished with the punishment under al-Mā'idah 33.

2. The Case for Permissive Approach

a) General Nature of al-Mā'idah 33

The proponents for permissive approach build their strongest argument on the general nature of al-Mā'idah 33 whereby the verse does not stipulate any definition of crime, element, condition or anything else prescribed by the other group except a set of four punishment for a crime termed as "*ḥirābah*". With regard to the case of 'Uraniyyūn, there are also assertions that other cases may be the cause of revelation to the verse.[67] Besides, the acts committed by 'Uraniyyūn are not only robbery, murder and causing terror. Their acts include apostasy, mutilation of the shepherd and rape (based on some narrations).[68] In all cases, the permissive jurists hold that the maxim *al-'ibrah bi-'umūm al-lafẓ, lā bi-khuṣūṣ al-sabab* or the generality of the text that counts, not specific cause.[69] Therefore, our survey on Mālikī approach reveals that a rather flexible condition of crime has been set for *ḥirābah* such as the status of the offender; all Muslim, *dhimmī*, Christian and slave are equally liable for *ḥirābah* punishments.[70] When this is the case, all the definition, elements, conditions and other attributes of crime are left open for interpretation and not restricted to any designated crime as long as there is no solid evidence to prove otherwise.[71]

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66 Al-Sarakhsī, *al-Mabsūṭ,* 200; al-Mardawī, *al-Inṣāf,* 298.

67 Refer tafsīr al-Ṭabarī and Ibn Kathīr on the subject.

68 Al-Māwardī, *Tafsīr*, 33; Riḍā, *Tafsīr,* 354.

69 Riḍā, *Tafsīr*, 357-359.

70 Mālik, *al-Mudawwanah*, 553.

71 Refer the discussion in al-Qurṭubī, *Tafsīr,* 151.

b) Lexical Interpretation

The phrase *yuḥāribūna Allāh wa Rasūlahu wa yas'auna fi al-arḍi fasādan* is also understood by permissive scholars as having significant connotation than a simple highway robbery. *Fasād* has been broadly interpreted as a crime having significant effects against individuals, society, state and the entire system Shariah.[72] Such a crime is said to constitute war against Allāh and His Messenger.[73] Other than *fasād* being given unique interpretation, *fasād* is also considered as the essential element of *ḥirābah*, the serious destructive effect of the crime.[74] *Fasād* is not only explained as highway robbery, but also any crime that affects the life, mind, property, dignity, economy, security and the Shariah of Allāh. *Fasād* in this regard is analyzed at both micro and macro levels. The crime of *ḥirābah* is concluded as a crime having the effect as such and not only limited to highway robbery.

c) Seriousness of Crime, the Principles of *Maṣlaḥaḥ* and *Sadd al-Dharī'ah*

Classical jurists from Mālikī school argue that the punishment in al-Mā'idah 33 is not specified for any particular crime. They understand conjunction "or" in the verse as an alternative of punishment[75] and not an indication of sequential as understood by the majority during their time. They submit that four punishments are alternative of punishment available for a judge.[76] The authority is to decide any or the combination of punishments based on the serious nature of the crime, the effects it has against individual, society and the state.[77] The authority must also take into account the interests (*maṣlaḥaḥ*) of all concerned parties including the criminals before him. The punishment must also serve as a deterrent (*sadd al-dharī'ah*) to other future criminals.[78] When this is the standard set for the punishment, the Mālikī school and other modern scholars who adopt their approach have indirectly permit the crime of *ḥirābah* to be interpreted not only as highway robbery, but other crimes as well.

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72 Abū Zahrah, *al-Jarīmah,* vol. 2, 79-81.

73 Riḍā, *Tafsīr,* 357-8; Abū Zahrah, *al-Jarīmah,* vol. 2, 126.

74 Mālik, *al-Mudawwanah,* 553; Abū Zahrah, *al-Jarīmah*, vol. 2, 139; Ahmad Ibrahim, 'Suitability of the Islamic Punishments in Malaysia,' 6; Riḍā, *Tafsīr,* 357.

75 Al-Dussūqī, *Hāshiyah*, 349.

76 Mālik, *al-Mudawwanah,* 556-557; al-Dussūqī, *Hāshiyah,* 350; al-Qurṭubī, *Tafsīr,* 152.

77 Mawdūdī, *Tafhīm*, 157; Riḍā, *Tafsīr,* 362-363.

78 Al-Dussūqī, *Hāshiyah*, 350.

d) Practical Situation

As opposed to the restrictive approach that most of the time looks at the past practices to set the conditions and requirements of crime, the permissive approach looks at the existing practical situation. *Ḥirābah* is seen as a general and an adaptive concept of crime.[79] The Lawgiver has revealed the verse on *ḥirābah* in a general nature so that its application will be comprehensive and adaptive to all sorts of crime that may not be present during a certain period of time and place.[80] The form of crime is irrelevant as long as it causes similar or greater destruction against the individual, society, state or the Shariah.[81] In this regard, all crimes with the same effect may be considered for *ḥirābah*, provided that the necessary conditions are fulfilled.

e) Principle of Priorities

The Mālikī and subsequent scholars who follow his approach apply the principle of priorities when analogy is made to the case of highway robbery. Highway robbery is extended to rape, drug trafficking, money laundering, espionage, piracy, terrorism and other criminal acts looking at the consequential effect it has against individuals, society and state. They contend that when highway robbery is treated as *ḥirābah* for the loss of property suffered by certain group of individuals, rape is also to be treated the same. The dignity of a woman is treated as having much more value than other material objects and being proven to have almost similar psychological effect (or even greater) suffered by the victim.[82] Drug trafficking has been investigated to cause more damage and harm against the victim. It does not only target the direct victim, but the family, community, and the entire system people live in.[83] The same principle is applied to terrorism. While robbers target certain group of individuals, everybody may be the random target of terrorists. The physical, psychological and real effect terrorism has against individual, society and the state are much more severe and serious than highway robbery.[84] These and other modern

79 Quṭb, *Fi-Zilāl,* 879-880.

80 Riḍā, *Tafsīr,* 362.

81 Norfadhilah Mohamad Ali, 'Piratical Activities in the Malacca Strait: The UNCLOS, Malaysian Legal Framework and the Islamic Point of View,' cl.

82 Khalīl, *Mukhtaṣar*, 290-291; al-Dussūqī, *Hāshiyah,* 348-349

83 Nik Rahim Nik Wajis, 'The Crime of Hirabah in Islamic Law' (Ph.D Thesis, Glasgow Caledonian University, Scotland, 1996), 228.

84 Nik Rahim Nik Wajis, 'The Crime of Hirabah in Islamic Law,' 227; Abū Zahrah, *al-Jarīmah,* vol. 2, 133.

crimes that cause more damage to the society are measured the same way by the proponents of permissive approach. The logic is that when highway robbery deserves such and such punishment, other more serious crimes must deserve at least the same, if not greater.

SIGNIFICANCE

The adherence to either restrictive or permissive approach carries significant consequences on the principles and application of the law on *ḥirābah* itself. In the following paragraphs, we will first examine major differences brought by both sides to the attributes of the crime, theoretically and following that, we will analyze how this has actually been taken to practice by selected countries around the world.

1. Theoretical

a) Strict or Flexible Concept of *Ḥirābah*

The immediate result from applying restrictive approach is a strict concept of *ḥirābah*. There are only four modes of crime. There are a number of conditions attached to all elements of crime including the criminal, victim, objective, weapon used, place of crime and the manner in which the crime is being committed. *Ḥirābah* may not be applicable to all criminals and all cases for reasons we have previously addressed in the first part of this paper. Among them are: *Ḥirābah* is not applicable against non-Muslim criminal following the opinion of al-Shāfi'ī. It is also not applicable in cases where crimes are committed within the city center following Abū Ḥanīfah's opinion. The concept of *ḥirābah* is restricted to four modes of crime with strict requirements.

On the other hand, *ḥirābah* may also be a flexible concept of crime following the permissive approach. Modes of crime are not limited to only four and the requirements are also set in a rather flexible manner. Most of the time, *ḥirābah* is regarded as a crime built upon other complete form of crime. *Ḥirābah* serves as a second degree of crime with a more serious punishment. The example is terrorism. In cases where terrorism involves the element of mass murder by a suicide attack, murder itself is undoubtedly a crime under Islamic criminal law, mass murder is another and suicide is yet another set of criminal act. However, altogether they make up a second degree of crime rightly termed as *ḥirābah*. By virtue of a flexible concept of crime adopted by

the proponents of permissive approach, terrorism at the same time has been proven in a number of studies conducted by modern scholars to have met the requirements of *ḥirābah*. *Ḥirābah* is given a flexible meaning in this regard.

b) Limited or Unlimited Modes of Crime with Specified or Unspecified Set of Punishment

The restrictive approach suggests that *ḥirābah* is limited to four modes of crime: 1) robbery, 2) murder, 3) robbery and murder and 4) causing terror. *Ḥirābah* is distinguished from other crimes through elements of force and violence shown by the criminal against the helpless victims. Such serious crime is said to be the waging of war against Allāh and His Messenger. Going by the same approach, the punishments in al-Mā'idah should correspond with the said four modes of crime, 1) cutting off of hands and feet for robbery, 2) execution for murder, 3) execution and/or crucifixion for murder and robbery and 4) banishment for causing terror.[85]

Following the permissive approach, *ḥirābah* is not restricted to only four modes of crime. *Ḥirābah* is a crime having detrimental effect and serious destruction against individuals, community and the state. *Ḥirābah* is *fasād* or a crime committed with the intent of going against the Shariah of Allāh. *Ḥirābah* does not have any specific designation, but true to unlimited modes of crime. The punishments in al-Mā'idah 33 are not prescribed for any particular crime, but a set of punishments for crime of *ḥirābah*. Selection of punishment depends upon seriousness and gravity of crime as well as other factors. The punishment must take in consideration the maṣlaḥah of all concerned parties and serve as a deterrent mechanism for the like crimes.

c) Evidence

Generally speaking, both sides agree that two witnesses having fulfilled all essential requirements under Islamic criminal law may testify for the crime of *ḥirābah*. The difference can be seen on which crime the witnesses may testify. In the case of *zinā*, when the crime is charged as *ḥirābah* instead of ordinary *ḥadd zinā* under Islamic criminal law, two witnesses will satisfy this requirement instead of normal four adults. The requirement of witness for *ḥirābah* is the same as the requirement for *sariqah* by virtue of *qiyās* (analogical reasoning).[86]

85 Slight variation exists among the jurists on the punishment for the four modes of crime.

86 'Awdah, *al-Tashrī'*, vol. 2, 487.

Nevertheless, this is only true following the permissive approach where *zinā* is also considered as a possible form of *ḥirābah*.

d) Repentance

The crime of *ḥirābah* in al-Mā'idah 33 has to be read together with the following verse 34 on the special defense. Verse 34 provides that:

إِلَّا ٱلَّذِينَ تَابُواْ مِن قَبۡلِ أَن تَقۡدِرُواْ عَلَيۡهِمۡۖ فَٱعۡلَمُوٓاْ أَنَّ ٱللَّهَ غَفُورٞ رَّحِيمٞ ٣٤

> *"Except for those who return [repenting] before you apprehend them. And know that Allah is Forgiving and Merciful."*
>
> (Surah al-Mā'idah, 5: 34)

Upon fulfilling certain requirements such as criminal self-surrender before being arrested by the authority, repentance may serve as a special defense for *ḥirābah*. Following the restrictive approach, only the four modes of crime are eligible for the special defense. However, according to permissive approach who does not set any barrier for the category of crime, drinking alcohol, *zinā* and apostasy as other *ḥadd* crimes may fall rightly under the purview of al-Mā'idah: 34 and as such charges may be dropped under *ḥirābah* provision. In fact, al-Imām Mālik did not only let *ḥirābah* unspecified, he was quoted in *al-Mudawwanah* as saying that not only other *ḥadd* crimes affected, but *qiṣāṣ* of *jirāḥ* (causing hurt) as well:

> *"What is your opinion if they repented before being arrested – but they have caused terror, taken the property and caused hurt to the people?" Al-Imām Mālik replied: "Everything is dropped from them except if they have caused death then their matters are in the hand of the victim's walī (family members), and if they have taken property, that has to be compensated. I asked (again): "Likewise are causing hurts?" He replied: "Yes."* [87]

The same goes to other crimes associated with *ḥirābah* following the permissive approach – it may, having fulfilled all the conditions set for repentance, being considered for pardon by the authority.

[87] Mālik, *al-Mudawwanah*, 554.

2. Practical

There are a number of Muslim countries that have codified criminal law of Islām into a single document and have included *ḥirābah* as one of the crimes punishable according to Sharī`ah. Table 1 illustrates how *ḥirābah* is defined by each country's laws and whether they assign any specified acts for the crime.

Table 1: *Ḥirābah* as Codified in Different Countries/States

Country/ State	Law	*Ḥirābah*	Mode of Crime	Punishment
Kelantan, Malaysia (Majority: Shāfi'ī)	Syariah Criminal Code (II) (1993) 2015	A person or a group of persons who confiscate the property of another with violence or wrongful restrain or making threat is said to commit *hirabah.*	1. Murder and robbery 2. Murder alone 3. Causing injury and robbery 4. Robbery alone 5. Threat alone	1. Death followed by crucifixion 2. Death alone 3. Amputation of right hand and left foot and diyat or arsy 4. Amputation alone 5. Imprisonment up to 5 years *Each punishment assigned for each crime
Terengganu, Malaysia (Majority: Shāfi'ī)	Shariah Criminal Offence (Hudud And Qisas) Tereng-ganu Enactment 1423H/2002M	*Hirabah* is an act of taking another person's property by force or threat of the use of force done by a persons or a group of person armed with weapon or any instrument capable of being used as weapon.	1. Murder and robbery 2. Murder alone 3. Causing injury and robbery 4. Robbery alone 5. Threat alone	1. Death followed by crucifixion 2. Death alone 3. Amputation of right hand and left foot and diyat or arsy 4. Amputation alone 5. Imprisonment until repentance *Each punishment assigned for each crime

Country/ State	Law	*Ḥirābah*	Mode of Crime	Punishment
Brunei (Majority: Shāfi‘ī)	Syariah Penal Code Order, 2013	"Hirabah" means an act of taking another person's property by force or threat of the use of force done by a person or a group of persons armed with any weapon or instrument capable of being used as weapon.	1. *Qatl* (murder) 2. Taking property amounting to or exceeding nisab 3. Causing hurt 4. Attempt to commit hirabah	1. Death for qatl 2. Amputation of right hand from wrist and left foot from ankle for taking property 3. Qisas or arsy for causing hurt 4. Imprisonment up to 30 years and whipping up to 40 strokes (evidence not by ikrar or syahadah and when amputation cannot be imposed under s. 64) 5. Imprisonment up to 15 years and whipping up to 30 strokes for attempt
Yemen (Majority: Shāfi‘ī)	Republican Decree for Law No 12 for the Year 1994 Concerning Crimes and Penalties	(Banditry): Whoever subjects people to any form of force, whatsoever, for any illegal purpose on a public road, desert or structure, at sea or on an airplane; thus scares them and frightens them for their lives or property or honor, whether the victim is an individual or a group whether by compulsion or by declaration shall be construed as shall be considered as being hostile.	1. Threat alone 2. Taking of movable property 3. Causing death 4. Taking of property and causing death	1. Imprisonment up to 5 years 2. Amputation of right hand from wrist and left foot from ankle 3. Execution 4. Execution and crucifixion *Each punishment assigned for each crime

Country/ State	Law	*Ḥirābah*	Mode of Crime	Punishment
Sudan (Northern) (Majority: Mālikī)	Criminal Act 1991	Whoever threatens the public or troubles the security of the roads by menaces intending to commit an offence against human body, honour or property, provided the act is committed:- (a) Out of town, in land, sea or air or in town where help is difficult to get. (b) By use of arms or any instrument capable of causing harm or threat to cause such harm is said to commit Haraba.	1. Murder or rape 2. Causing bodily hurt or taking property amounting to theft nisab 3. Any other crime than the above two	1. Death **or** death followed by crucifixion 2. Amputation of right hand and left foot 3. Imprisonment up to 7 years *Each punishment assigned for each crime
Afghanistan (Majority: Ḥanafī)	Penal Code 1976	Any person who takes position on a public route or such other places for the purpose of gaining possession of goods by means of overpowering with a weapon or an object similar to a weapon and commits one of the following acts shall be considered a robber: a. Extortion of wayfarer. b. Acquiring other person's goods by threat or coercion. c. Murder d. Murder and acquisition of other person's goods	1. Causing terror 2. Acquiring other person's goods by threat or coercion. 3. Murder alone 4. Robbery and other crimes	1. Medium imprisonment of more than 3 years, but not more than five years for causing terror 2. Imprisonment of not less than five years but not more than fifteen years for taking of property 3. Death for murder 4. Punishment for robbery and for that crime as provided by the Code

Country/ State	Law	*Ḥirābah*	Mode of Crime	Punishment
Pakistan (Majority: Ḥanafī)	The Offences Against Property (Enforcement of Hudood) Ordinance (VI of 1979)	When any one or more persons, whether equipped with arms or not, make show of force for the purpose of taking away the property of another and attack him or cause wrongful restraint or put him in fear of death or hurt such person or persons, are said to commit 'haraabah'.	1. Show of force 2. Causing hurt 3. Taking away of the property amounting or exceeding nisab 4. Murder	1. Imprisonment until penitent, at least 3 years 2. 3 years imprisonment and any punishment for that hurt 3. Amputation of right hand from wrist and left foot from ankle 4. Death as *hadd*

For countries/states with majority Shāfi'ī followers - Kelantan, Terengganu, Brunei and Yemen, all of them except Yemen maintain "*ḥirābah*" as the name of the crime. Yemen classifies it as a crime of "banditry" under Art. 306 and the "bandits" are punished under Art. 307 of the same statute. All Kelantan, Terengganu and Brunei provide an almost identical definition for the crime and *ḥirābah* is always associated with "taking of property" or in other words, robbery. Yemen, however, extends the definition a bit further by stressing on three other attributes of the crime. First, it may be committed for any illegal purpose. Second, it may be directed against victim's life, property or honour. Third, it is committed in public places. It can be seen from here that the definition offered by Kelantan, Terengganu and Brunei actually conforms with *ḥirābah* as founded by Al-Imām al-Shāfi'ī in his al-Umm,[88] but Yemen at the same has assigned other attributes for the crime while maintaining that it is a crime of banditry and committed in public areas.

Regarding modes of the crime and punishments, Kelantan and Terengganu share the same provision with five specified acts and five different punishments assigned for each crime. In Brunei, causing terror or threat of *ḥirābah* is probably classified under attempt to commit the crime and punishable with imprisonment up to 15 years and whipping up to 30 strokes compared to Kelantan and Terengganu with imprisonment alone for the threat. In Yemen, the 1994 law omits causing injury from the list of crime punishable by the provision for banditry. All in all, the laws in these countries/states are apparently indifferent than classical Shāfi`ī school of thought that restricts the

[88] Al-Shāfi'ī, *al-Umm*, 1246.

interpretation of al-Mā'idah 33 to only specified acts and at the same time, assigns the prescribed punishments for the said criminal acts.

Northern Sudan is the house for majority Mālikī followers.[89] Sudanese Criminal Act 1991 as amended in 2009 stipulates that *ḥirābah* is a public crime committed with the intent to harm victim's body, honour or property. Robbery and use of weapon are not the conditions to the crime. *Ḥirābah* may occur in town when the victim is overpowered or unable to call for his assistance, an essence of the crime stressed by classical Mālikī scholars. On the constituent crimes, the law basically provides four identified acts – murder, rape, taking of property and causing bodily hurt, but section 168(1)(c) of the Act does not exclude any other acts from the list. This is something the law leaves it to the judiciary to decide.

Concerning the punishment for the crime, what is obvious is that for cases of murder and rape, the authority is given the discretion to choose between whether to impose death sentence alone *or* to combine death with crucifixion onto the doer of the crimes. Second, the law makes no difference between causing bodily hurt and taking property where both are punished with the same penalty, amputation of hand and foot. Finally, the law only provides for imprisonment with maximum seven years for any act other than the prescribed ones. Death and amputation are not an option for other crimes and so is crucifixion. Therefore, looking at Sudanese Criminal Act 1991, it is obvious that the legislature in the country has considered the opinion of al-Imām Mālik in this regard, taken it to their own context and chosen the most appropriate settings for the crime.[90] With this, they have permitted any act to be considered as *ḥirābah*.

In both Afghanistan's Penal Code 1976 and Pakistan's Hudood Ordinance 1979, *ḥirābah* is associated with robbery. The main objective of the crime is

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89 Encyclopedia Britannica, 'North Sudanese Culture', https://culturalatlas.sbs.com.au/north-sudanese-culture/north-sudanese-culture-religion, accessed on 24 September 2020.

90 It is worth mentioning here that Sudan is currently undergoing major political and legal changes to the extent that the ruling party has promised to abolish death penalty and public flogging for certain crimes. Whether this will affect the provision on *ḥirābah* in the future, that is something nobody could tell for the time being. Refer Mohammed Amin, 'Sudan Repeals Death Sentence for Apostasy', https://www.aa.com.tr/en/middle-east/sudan-repeals-death-sentence-for-apostasy/1907476#:~:text=KHARTOUM%2C%20Sudan,apostasy%20was%20stoning%20to%20death and https://www.loc.gov/law/foreign-news/article/sudan-new-law-amending-penal-code-takes-effect/, accessed on 24 September 2020.

unlawful acquisition of the property of another with slight variation in the definition and the constituent acts for the crime. Ordinance 1979 provides four specified acts for *ḥirābah* and four prescribed punishments for each crime. All of them are identical to Kelantan, Terengganu, Brunei and Yemen except on the following two points: First, crucifixion is omitted by the Ordinance in all cases. Second, in cases where murder is involved, the punishment shall be death sentence and that will take precedence over *qiṣāṣ* if the case is established as *ḥirābah*. In Afghanistan, causing injury is not considered as one of the constituent crimes, but Penal Code 1976 at the same time allows other acts to constitute *ḥirābah* on the condition that it must be coupled with robbery. The Code also mentions that for *ḥirābah* where robbery was committed together with other act, the punishment shall be the punishment for the robbery and for that other act as stipulated by the statute. In this regard, both Penal Code 1976 and Hudood Ordinance 1979 can actually be said to have been formulated based on Ḥanafī school with slight modification to suit each country's needs.

In addition to the above discussion on codified laws for *ḥirābah*, we have another country that does not formulate the law on the subject in a single document – Saudi Arabia. Saudi Arabia is a bit unique in the sense that although the majority of the people in the country are adherent to Ḥanbalī school, their legal system is somehow diversified and not confined to Ḥanbalī. Although the country does not codify a single document for criminal acts, the legislature and the judiciary in the country often actively and quickly respond to any current issue and prepare the law as the situation arises. The law on *ḥirābah* has been developed and modified over time by the Saudi government. Al-`Umairī mentions that the Saudi law does not confine *ḥirābah* to any specified act as long as the act fulfills the conditions set for the crime of *ḥirābah*. The judges are also given wide discretion for the selection of punishment for each crime committed in different situation.[91] Sadly, however, many of the documents are unavailable in its original forms and thus omitted in this paper.

In short, it can be seen from the discussion above that both the permissive and restrictive approaches carry significant influence on countries when it comes to the codification and application of the law of *ḥirābah*. The country with majority followers of any madhhab tend to choose the madhhab of the majority such as Brunei and Pakistan that opted for Shāfi`ī and Ḥanafī opinions. With the exception of Sudan, the laws from all other countries analysed basically restrict crime of *ḥirābah* to specified acts and set certain

[91] Muḥammad bin ʻAbd Allāh al-ʻUmayrī, *Musqiṭāṭ Ḥadd al-Ḥirābah wa-Taṭbīqātuha fi al-Mamlakah al-ʻArabiyyah al-Saʻūdiyyah* (Riyāḍ, Makkah: Nayef Academy, 1999).

conditions for the crime. Punishments are also pre-determined for each crime. Presumably, this condition closes the door for other crimes to come under al-Mā'idah 33, leaves the hands of the judges tied to the set of punishments termed as "*ḥudūd*" or the prescribed laws once an accused has been proven his guilt, but at the same time sets a clear cut rule for *ḥirābah*. It is also worth mentioning here that the countries that have opted for restrictive approach have also provided provisions for other crimes. The big difference is those crimes are not classified as *ḥadd* crimes and thus any special conditions for *ḥudūd* are not attached to them.

ḤIRĀBAH: THE EMERGING TREND

A survey on the study of *ḥirābah* suggests that there is increasing trend to present *ḥirābah* from permissive approach rather than restrictive approach. Wajis contends that robbery is not the only essential element of *ḥirābah*.[92] He analyzes all elements in *ḥirābah* and concludes that rape, terrorism, smuggling and drug trafficking, under certain circumstances are true to *ḥirābah* and accordingly punished as provided under al-Mā'idah 33.[93] His formula is based on the concept of '*fasād*' which he interprets as the effects and destructions a particular act may constitute against individual, society, property and state as a whole. The formula also confirms with classical scholars from Mālikī school who regarded rape as a mode of *ḥirābah* due to the serious damage it constitutes against the victim.

The work contributed by Wajis has significantly influenced Shabbir who again takes rape, terrorism, smuggling and drug trafficking into close examination. Interestingly, his conclusion proves nothing but affirms the result published by Wajis earlier on.[94] Taking almost similar formula with Wajis, Aṭram who also examines the concept of *fasād* in al-Mā'idah arrives at the conclusion that espionage and sedition against the Shariah are also *ḥirābah* crimes.[95] Quoting classical jurist in his work, al-Shawkānī, Shardūb conclude that the destruction of trees and seas are also acts of *ḥirābah*.[96] Similarly,

[92] Nik Rahim Nik Wajis, 'The Crime of Hirabah in Islamic Law,' 225.

[93] Nik Rahim Nik Wajis, 'The Crime of Hirabah in Islamic Law.'

[94] Mohammad Shabbir, *Outlines of Criminal Law and Justice in Islam* (Petaling Jaya, Selangor: International Law Book Services, 2002), 173-231.

[95] Ṣāliḥ bin 'Abd al-Raḥmān al-Aṭram, *Ḥadd Jarīmah al-Ḥirābah wa-'Uqūbatuhā fi-al-Islām* (n.p.: n.p., 1998), 58-62.

[96] Badr al-Dīn Muḥammad Ja'far al-Shardūb, *Ḥadd al-Ḥirābah fi-al-Fiqh al-Jinā'ī al-Islāmī wa-Atharuhu fi-Istiqrār al-Mujtama'* (Amman, Jordan: Dār 'Ammār, 1999).

Kamali[97] and Fadzil add that *ḥirābah* is a crime of high treason and not a simple robbery or highway robbery.[98] Norfadhilah meanwhile suggests that *ḥirābah* is also true to piracy[99] and al-Zamīlī and ʻAdwān broaden the concept of *ḥirābah* to various forms of crime such as murder, child kidnapping, money laundering and threat against the security and economy.[100]

With regard to recent act of terrorism, al-Qaraḍāwī,[101] bin Bayyah,[102] Amin,[103] Kamali[104] and many other contemporary Muslim scholars agree that terrorism is in fact, a form of *ḥirābah*.

CONCLUSION

This paper has studied the crime of *ḥirābah* from the perspectives of both classical and modern Muslim scholars. Their opinions are best classified into the restrictive approach and permissive approach. The restrictive approach submits that *ḥirābah* is highway robbery or *sariqah al-kubrā* – the great theft. There are four modes of *ḥirābah*: 1) robbery, 2) murder, 3) robbery and murder and 4) causing terror. The crime of *ḥirābah* has seven essential elements and there are certain conditions attached to the said elements. Any person liable

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97 Mohammad Hashim Kamali, 'Freedom of Religion in Islamic Law,' *Capital University Law Review*, vol. 21 (1992): 63-81.

98 Ammar Fadzil, 'Death Punishment for Apostate: Classical Jurists and Contemporary Muslims' Understanding of the Textual Provisions,' *Journal of Islam in Asia*, vol. 3/1 (2006): 177-195.

99 Norfadhilah Mohamad Ali, 'Piratical Activities in the Malacca Strait: The UNCLOS, Malaysian Legal Framework and the Islamic Point of View,' *Malayan Law Journal*, vol. 5 (2006): cxl-clv.

100 Zakariyyā Ibrāhīm al-Zamīlī & Kā'ināt Maḥmūd ʻAdwān, 'al-Iʻjāz al-Tashrīʻī fi-Ḥaddai al-Sariqah wa-al-Ḥirābah,' *Majallah al-Jāmiʻah al-Islāmiyyah*, vol. 14/1 (2006): 75-121.

101 Yūsuf bin ʻAbd Allāh al-Qaradāwī, 'al-Irhāb wa Ḥamalāt al-Karāhiyah ḍid al-ʻArab wa al-Muslimīn', http://www.aljazeera.net/programs/religionandlife/2004/6/3/الإرهاب-وحملات-الكراهية-ضد-العرب-والمسلمين, accessed on 14 June 2020.

102 ʻAbd Allāh bin Bayyah, 'Islam Forbids Extremism', http://binbayyah.net/english/islam-forbids-extremism/, accessed on 14 June 2020.

103 ElSayed M.A. Amin, *Reclaiming Jihad: A Qur'anic Critique of Terrorism* (United Kingdom: The Islamic Foundation, 2014), 127-151.

104 Mohammad Hashim Kamali, 'Terrorism and Cowardly Murder,' *New Straits Times*, March 10 (2015), 14; Mohammad Hashim Kamali, 'Terrorism, Banditry and Hirabah: Advancing New Shariah Perspectives,' *IAIS Malaysia*, vol. 8/1 (2017).

for *ḥirābah* is punished according to al-Mā'idah 33. The four punishments in the provision should correspond the four modes of crime. *Ḥirābah* is proven either by confession or two witnesses who satisfy the normal standard under Islamic criminal law. The punishments under al-Mā'idah 33 are lifted from a criminal who willingly submits himself to the authority before being caught and promises good conduct.

The permissive approach on the other hand holds the opinion that *ḥirābah* is not only true to highway robbery. *Ḥirābah* is applicable to unlimited form of crime such as espionage, drug trafficking, piracy and terrorism. *Ḥirābah* is built upon other complete form of crime. The punishment in al-Mā'idah 33 is not prescribed for any mode of crime, but according to the seriousness of crime and other factors as well. The punishment is left at the discretion of authority who decides in the best interest of all.

There are a number of justifications submitted by both approaches with five arguments from each side presented in this small work. They include the general nature of al-Mā'idah 33, the cause of revelation, lexical interpretation, analogical reasoning, common case and occurrence of the time, principle of priorities and the rest other reasons. The significant result from applying either side of approach can be seen in the strict or flexible concept of *ḥirābah*, the limited or unlimited mode of crime, specified or unspecified set of punishment and the application of two witnesses for selected cases or otherwise and the consequence of repentance for a crime classified as *ḥirābah*.

Finally, the paper has also studied codified laws in different Muslim countries/ states. The findings suggest that there is a tendency for the government of each country to opt for the madhhab subscribed by the majority of its people. Of all the countries, only the law in Sudan allows unlimited acts to constitute *ḥirābah* while other countries specify certain acts in one way or another. The major significance from two diverging approaches is one: whether to limit the execution of *ḥirābah ḥadd* to specific acts or otherwise.

REFERENCES

'Abd al-Qādir 'Awdah, *Al-Tashrī' al-Jinā'ī al-Islāmī Muqāran bi al-Qānūn al-Waḍ'ī,* vol. 1 (Bayrūt, Lebanon: Maktabah 'Aṣriyyah, 2013).

'Abd Allāh bin Aḥmad bin Maḥmūd bin Qudāmah, *al-Mughnī*, vol. 10 (Bayrūt, Lebanon: Dār al-Kitāb al-'Arabī, 1983)

'Abd Allāh bin Bayyah, 'Islam Forbids Extremism', http://binbayyah.net/english/islam-forbids-extremism/, accessed on 14 June 2020.

‘Abd Allāh Muḥammad al-Jabourī, *Dirāsāt fi-al-Fiqh al-Jinā’ī al-Islāmī* (United Arab Emirates: Dār al-Qalam, 2006).

Abū Ḥātim Ibn Ḥibbān, *Saḥīḥ Ibn Ḥibbān* (Bayrūt, Lebanon: Dār al-Ma‘rifah, 2004).

Ahmad Ibrahim, ‘Suitability of the Islamic Punishments in Malaysia,’ *IIUM Law Journal* vol. 3/1 (1993): 6-15.

Aḥmad bin Idrīs al-Qarāfī, *al-Dhakhīrah,* vol. 12 (Bayrūt, Lebanon: Dār al-Gharb al-Islāmī, 1994).

Aḥmad bin Muḥammad bin Aḥmad al-Dardīr, *Aqrab al-Masālik li al-Muwaṭṭa’ Mālik* (Kano, Nigeria: Maktabah Ayyūb, 2000).

Aḥmad Fatḥī Bahnasī, *al-‘Uqūbah fī al-Fiqh al-Islāmī: Dirāsah Fiqhiyyah Mutaḥarrirah* (Qāhirah: Maktabah Dār al-‘Arūbah, 1971).

‘Alā’ al-Dīn Abū Bakr bin Mas‘ūd al-Kāsānī, *Baḍā’i‘ al-Ṣanā’i‘ fī Tartīb al-Sharā’i‘,* vol. 7 (Bayrūt, Lebanon: Dār al-Kutub al-‘Ilmiyyah, 1986).

‘Alī bin Muḥammad al-Māwardī, *Tafsīr al-Māwardī,* vol. 2 (Bayrūt, Lebanon: Dār al-Kutub al-‘Ilmiyyah, 1987).

Ammar Fadzil, ‘Death Punishment for Apostate: Classical Jurists and Contemporary Muslims’ Understanding of the Textual Provisions,’ *Journal of Islam in Asia*, vol. 3/1 (2006): 177-195.

Badr al-Dīn Muḥammad Ja‘far al-Shardūb, *Ḥadd al-Ḥirābah fi-al-Fiqh al-Jinā’ī al-Islāmī wa-Atharuhu fi-Istiqrār al-Mujtama‘* (Amman, Jordan: Dār ‘Ammār, 1999).

ElSayed M.A. Amin, *Reclaiming Jihad: A Qur’anic Critique of Terrorism* (United Kingdom: The Islamic Foundation, 2014).

Encyclopedia Britannica, ‘North Sudanese Culture’, https://culturalatlas.sbs.com.au/north-sudanese-culture/north-sudanese-culture-religion, accessed on 24 September 2020.

Ḥusayn bin Mas‘ūd al-Baghawī, *Ma‘ālim al-Tanzīl* (Bayrūt, Lebanon: Dār Ibn Ḥazm, 2002).

Ibn Rushd al-Qurṭubī, *Bidāyah al-Mujtahid wa al-Nihāyah al-Muqtaṣid* (Oman, Jordan: Bayt al-Afkār al-Dawliyyah, 2007).

‘Īsā al-‘Umarī and Muḥammad Shallāl al-‘Ānī, *Fiqh al-‘Uqūbāt fī al-Sharī‘ah al-Islāmiyyah* (Amman, Jordan: Dār al-Masīrah, 2003).

Ismā‘īl bin ‘Umar, Ibn Kathīr, *Tafsīr al-Qur’ān al-‘Aẓīm,* vol. 3 (Bayrūt, Lebanon: Dār al-Kutub al-‘Ilmiyyah, 1998).

Khalīl bin Isḥāq al-Jundī, *Mukhtaṣar Khalīl* (Bayrūt, Lebanon: Dār al-Fikr, 1981).

Maḥmūd Aḥmad Ṭāhā, *Ḥadd al-Ḥirābah fi-al-Fiqh al-Islāmī wa-Atharuhu fi-Istiqrār al-Mujtama'* (Egypt: Dār al-Fikr wa-al-Qānūn).

Mālik bin Ānas, *al-Mudawwanah al-Kubrā,* vol. 4 (Bayrūt, Lebanon: Dār al-Kutub al-'Ilmiyyah, 1994).

Mohamed S. El-Awa, *Punishment in Islamic Law: A Comparative Study* (Plainfield: American Trust Publication, 2000).

Mohammad Hashim Kamali, 'Freedom of Religion in Islamic Law,' *Capital University Law Review,* vol. 21 (1992): 63-81.

Mohammad Hashim Kamali, 'Terrorism and Cowardly Murder,' *New Straits Times*, March 10 (2015).

Mohammad Hashim Kamali, 'Terrorism, Banditry and Hirabah: Advancing New Shariah Perspectives,' *IAIS Malaysia*, vol. 8/1 (2017).

Mohammad Shabbir, *Outlines of Criminal Law and Justice in Islam* (Petaling Jaya, Selangor: International Law Book Services, 2002).

Mohammed Amin, 'Sudan Repeals Death Sentence for Apostasy', https://www.aa.com.tr/en/middle-east/sudan-repeals-death-sentence-for-apostasy/1907476#:~:text=KHARTOUM%2C%20Sudan,apostasy%20was%20stoning%20to%20death and https://www.loc.gov/law/foreign-news/article/sudan-new-law-amending-penal-code-takes-effect/, accessed on 24 September 2020.

Muḥammad Abū Zahrah, *al-Jarīmah wa al-'Uqūbah fi al-Fiqh al-Islāmī*, vol. 2 (Qāhirah: Dār al-Fikr al-'Arabī, 1998).

Muḥammad 'Arfah al-Dussūqī*, Ḥāshiyah al-Dussūqī 'ala al-Sharḥ al-Kabīr* (Miṣr: Dār Iḥyā' al-Kutub al-'Arabiyyah, 2001).

Muḥammad bin 'Abd Allāh al-'Umayrī, *Musqiṭāṭ Ḥadd al-Ḥirābah wa-Taṭbīqātuha fi al-Mamlakah al-'Arabiyyah al-Sa'ūdiyyah* (Riyāḍ, Makkah: Nayef Academy, 1999).

Muḥammad bin Aḥmad al-Qurṭubī, *al-Jāmi' li-Aḥkām al-Qur'ān,* vol. 6 (Riyāḍ: Dār 'Ālam al-Kutub, 2003).

Muḥammad bin Idrīs al-Shāfi'ī, *al-Umm*, vol. 7 (Manṣūrā, Egypt: Dār al-Wafā', 2001).

Muḥammad bin 'Īsā al-Tirmidhī, *Sunan al-Tirmidhī* (Bayrūt, Lebanon: Dār al-Fikr, 2005).

Muḥammad bin Ismā'īl al-Bukhārī, *Ṣaḥīḥ Bukhārī* (Bayrūt, Lebanon: Dār Ibn Kathīr, 2002).

Muḥammad bin Jarīr al-Ṭabarī, *Tafsīr al-Ṭabarī,* vol. 3 (Bayrūt: Mu'assasah al-Risālah, 1994)

Muḥammad bin Yūsuf, Ibn Ḥibbān, *Tafsīr al-Baḥr al-Muḥīṭ,* vol. 3 (Bayrūt, Lebanon: Dār Iḥyā' Turāth 'Arabī, 2002).

Muḥammad Muḥammad 'Abd al-Ḥakīm, 'Ḥadd al-Ḥirābah bayna al-Nazariyyah wa-al-Taṭbīq: Dirāsah Fiqhiyyah Muqāranah,' *Majallah al-Buḥūth wa-al-Dirāsāt al-Shar'iyyah*, vol. 5 (2012): 255-282.

Muḥammad Rashīd Riḍā, *Tafsīr al-Qur'ān al-Ḥakīm* 2nd ed. (Qāhirah: Dār al-Manār, 1947).

Muhammad Tahir & Abazahir Khan, 'Penalty Provisions of Banditry between Present and Past: A Comparative Study,' *Ekta Islamika*, vol. 2/2 (2014): 101-107.

Muslim bin al-Ḥajjāj, *Ṣaḥīḥ Muslim* (Riyāḍ: Dār Ṭayyibah, 2006).

Nik Rahim Nik Wajis, 'The Crime of Hirabah in Islamic Law' (Ph.D Thesis, Glasgow Caledonian University, Scotland, 1996).

Norfadhilah Mohamad Ali, 'Piratical Activities in the Malacca Strait: The UNCLOS, Malaysian Legal Framework and the Islamic Point of View,' *Malayan Law Journal*, vol. 5 (2006): cxl-clv.

Paizah Ismail*, Undang-Undang Jenayah Islam* (Selangor: Dewan Pustaka Islam, 1996).

Ramaḍān 'Alī al-Sayyid al-Sharnabāṣī, *al-'Uqūbah fī al-Sharī'ah al-Islāmiyyah wa-al-Qawanīn al-Waḍ'iyyah: Dirāsah Muqāranah* (Alexandria: Dār al-Maṭbū'āt al-Jāmi'ah, 2010).

Sa'id Ibrahim, *Qanun Jinayah Syar'iyyah dan Sistem Kehakiman dalam Perundangan Islam Berdasarkan Quran dan Hadith* (Kuala Lumpur: Darul Ma'rifah, 1996).

Ṣāliḥ bin 'Abd al-Raḥmān al-Aṭram, *Ḥadd Jarīmah al-Ḥirābah wa 'Uqūbatuhā fi-al-Islām* (n.p.: n.p., 1998).

Sayyid Abū al-A'lā al-Mawdūdī, *Tafhīm al-Qur'ān,* vol. 2 (United Kingdom: The Islamic Foundation, 1989).

Sulaymān bin Ash'ath Abū Dāwud, *Sunan Abī Dāwud* (Riyāḍ, Saudi Arabia: Bayt al-Afkār al-Dawliyyah, 1998).

'Umar Muḥy al-Dīn Ḥourī, *al-Jarīmah: Asbābuhā - Mukāfaḥatuhā* (Damascus, Syria: Dār al-Fikr, 2003).

Wahbah al-Zuḥaylī*, al-Fiqh al-Islāmī wa-Adillatuh,* vol. 6 (Damascus, Syria: Dār al-Fikr, 1985).

Yūsuf bin ‘Abd Allāh al-Qaradāwī, ‘al-Irhāb wa Ḥamalāt al-Karāhiyah ḍid al-‘Arab wa al-Muslimīn’, http://www.aljazeera.net/programs/religionandlife/2004/6/3/الإرهاب-وحملات-الكراهية-ضد-العرب-والمسلمين, accessed on 14 June 2020.

Zakariyyā Ibrāhīm al-Zamīlī & Kā’ināt Maḥmūd ‘Adwān, ‘al-I‘jāz al-Tashrī‘ī fi-Ḥaddai al-Sariqah wa-al-Ḥirābah,’ *Majallah al-Jāmi‘ah al-Islāmiyyah*, vol. 14/1 (2006): 75-121.