The Influence of the Application of *Shariy'a* on Crime and Public Security

(The Sudan Case)

by

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Declaration

I hereby declare that this thesis entirely results from my own investigation, and that no part of it has previously been submitted for any degree at this, or any other, University,

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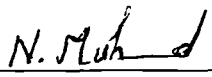
Student 

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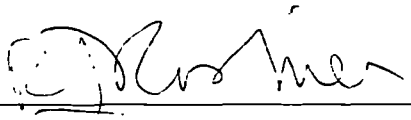
Supervisor 

Bob Roshier

Dedication

Dedicated to my family,
in memory of my father,
and my nephew Hasan
who sacrificed his life
for the sake of the Sudan.

Abstract

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Deterrence has been one of the basic rationales for the use of punishment by Criminal Law. An inverse relationship has been assumed leading deterrence theorists to claim that penal sanctions deter crime. In this thesis, the deterrence hypothesis was examined with special attention to the Sudan's experiment, involving the application of the criminal components of *Shariy'a* (Islamic Law). The full enforcement of these laws in the Sudan allowed for the first time the infliction of harsh, corporal, and publicly imposed penalties for a range of crimes classified under three categories of punishments; *Al hidud* (Limits), *Al qisas* (retaliation) and *Al ta'aziyr* (discretionary).

Primarily based on a theory of deterrence, the major assumption of this thesis has been that *Shariy'a* was anticipated to reduce crime and hence create a climate more conducive to public security. The analysis utilised a victim survey conducted in Khartoum (Sudan) in 1989. Specifically the analysis involved a contrast of a sample reports about, fear, safety, and victimisation experience when *Shariy'a* was/was not in operation.

The main findings were that although the *Shariy'a* experiment did appear to reduce public fear of crime, there was no direct evidence that it reduced victimisation. However discussion of the findings in relation to western research suggests that some "objective" measures used in the latter are faulty and that there is a complex pattern of relationships behind the apparent discrepancies between fear and real victimisation experience.

The knowledge obtained by this study provides some implications both for policy purposes and interested future researchers. At least the discussion of the results offer a useful background information for policy and future research needs.

Acknowledgements

I would like to acknowledge my debt to various contributors who in different ways made the achievement of this thesis possible.

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The student team from the Department of Social and Applied Statistics at the Islamic University of Omdurman played a significant role in making the basic information for the analysis obtainable. To every one of them I owe my greatest appreciation and thanks.

I also obtained valuable information through direct interviews with honourables: 'Awad Aljiyd Muhammad Ahmad (member of the committee for drafting the P.C. of 1983 and former Attorney General during the Shariy'a Experiment), 'Umar 'abd al'Ati (former Attorney General during the Transitional Government), Dr. Dafa'allah Al hag yusuf (former Chief Justice during the Shariy'a Experiment in the Sudan), Dr. Hasan Alturabi (expert in Islamic and Positive Law and leader of the Islamic Movement in the Sudan), and Hafiz al shaykh al zaki (former Attorney General during the Shariy'a Experiment). I am certainly grateful for the precious time provided for me by each of them.

I would like to express my appreciation to all the Secretaries at the Department of Sociology and Social Policy, and to the library staff at Durham University for their help and friendly co-operation.

My appreciation must extend to include a number of friends and colleagues, too numerous to mention by name, who continued to provide help and encouragement.

I am especially indebted, and express my deepest and sincere appreciation to my mother Sa'ida, my brother Sidiq and all my sisters for their continuous support, encouragement, and extraordinary endurance during my stay in Durham.

Of course, I must not forget to thank Alpha Word Power for putting my whole effort in its current form, and above all I direct my greatest gratitude to Allah for all the help.

In the end, I take the responsibility for all the shortcomings, limitations, and errors that remain.

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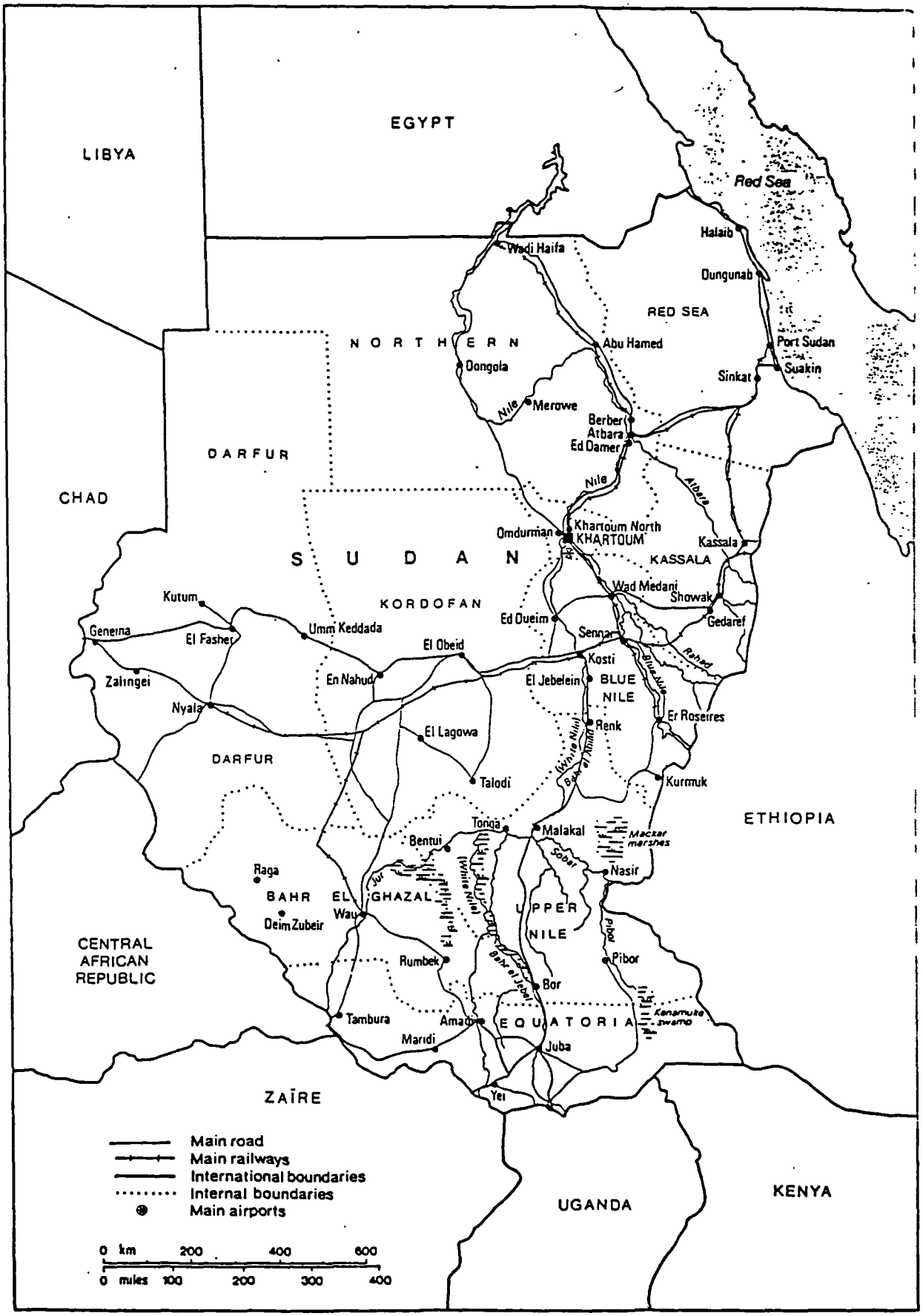
Chapters

List of Abbreviations

C.P	Communist Party
A.N	Arab Nationalist
M.B	Muslim Brotherhood
S.S.U	Sudan Socialist Union
N.F	National Front
P.A	People's Assembly
D.U	Democratic Unionist
S.P.L.M	Sudan People's Liberation Movement
A.I	Amnesty International
T.M.C	Transitional Military Council
S.P.L.A	Sudan People Liberation Army
I.P.C	Indian Penal Code
N.U.P	National Union Party
A.S	Arab Socialism

Map of the Sudan



Source: *Country Profile (Sudan)* (E.I.U.), 1986-1987

Introduction

Establishing the field of the study

It has been observed that "*a sense of personal security is basic to the quality of life in a community, and that personal security is affected more by crime than by anything else*" (Conklin, J., 1975: 1) Conklin considers that, among the catch phrases that have been used to summarise fear and concern about crime in society are: "*The crime problem*" and "*law and order*" (Ibid.) Rosco Pound is also quoted to have said: "*In civilised society men must be able to assume that those with whom they deal in the general intercourse of society will act in good faith. When fear of crime is pervasive such an assumption is often missing*" (Ibid.)

The costs of concern with crime and security involves more than protecting one's self and property. Besides, there are the social costs which are distributed throughout the society. Public reactions to such concern may far exceed the direct losses suffered by the victims of crime. It is believed that using security arrangements and devices such as burglar-alarm systems, additional locks on doors, bars on windows, and brighter lights on yards to prevent property theft may exceed the value of all property stolen in actual burglaries. However, this behaviour is sometimes necessary since it is expected to increase the occupant's sense of security in protected homes. It is also noted that concern about crime leads the public to be more alienated and thus reduces trust and attachment to the community as a whole. This suggests that crime weakens informal social control in the community by reducing social solidarity, which in turn results in more disturbance of the social order. This process has been described as follows:

> "*As social interaction is reduced and fear of crime becomes fear of the stranger, the social order is further damaged. Not only are there fewer persons on the streets and in public places as there might be, but persons who are afraid may show a lack of concern for each other*" (McIntyre, J., 1967 'Public Attitudes Toward Crime and Law Enforcement': 41).

The foregoing suggests that the subject of 'security' as affected by fear of the crime threat has become important enough to deserve some attention. This justifies the demanding need for ever better understanding of means of controlling crime as one of the most current problems affecting people living together in a safe society. Hence, the 'how' to achieve order and security within society is of interest to a variety of people; to policy-makers and to policemen, to judges and juries, to social workers and sociologists, and most importantly, to the public and society who pay the real costs.

Critical to the control of crime in the social control field are the processes that are important to regulation of social behaviour. Sociologists recognise four major types of norm governing human conduct in the society: Folkways, mores, customary law and enacted law. Folkways come through a slow process of unplanned growth of social values, for example, involving social rules imposed on the individual through informal ways of control such as: gossip, ridicule or ostracism. Though folkways are generally based on a sense of obligation, and a feeling of 'should', this is relatively weak in this case. As to the mores, they are distinguished from folkways by their greater insistence on observance. While folkways involve weak social disapproval, violation of the mores involve much strong-moral indignation.

Customary law on the other hand reflects different aspects of the norms which are imposed at the communal level or by the community's formally selected representatives. In this case it is the social group which takes action against the guilty and confronts the transgressor. Finally, enacted law includes formally instituted rules concerned with crimes - acts committed against society as a whole. In such a case, a ruler or a legislative body imposes the rules for the purpose of preventing violation of the norm as stated in the rules. Andenaes, 1966, summarises this role of the criminal law as follows:

> *"By means of the Criminal Law, and by means of specific application of this law, 'messages' are sent to members of a Society. The Criminal Law lists those actions which are liable to prosecution, and it specifies the penalties involved. The decisions of the Courts and actions by the police and prison officials transmit knowledge about the Law, underlining the fact that criminal laws are not mere empty threats, and providing detailed information as to what kind of penalty might be expected for violations of specific laws. To the extent that these stimuli restrain citizens from socially undesired actions which they might otherwise have committed, a general preventive effect is secured."* (Andenaes, J, 1966: 949)

The four types of social rules make up the normative system in the Sudan. However, since its introduction, Islamic religion continued to provide the main elements internalising the values affecting the norms at the different levels of control. This thesis introduces *shariy'a* as an aspect of normative law system recently applied and supported by the state for the purpose of regulating conduct in the Sudan.

The Shariy'a and Legal Reform in the Sudan

From a purely religious point of view it is believed that *shariy'a* is a divine law involving all the authority of God underlying it. But this had to be promulgated by human authority. The genesis of *shariy'a* lies within the Islamic religion. Islam was revealed by God to His Messenger Muhammad to declare to men the concluding words of God's eternal message. Literally, the term *shariy'a* is used to refer to the right way or the clear path to be followed. All Muslims accept that such a path is to be the same path shown by God through His messenger Muhammad. This means that the rules come directly from God. Accordingly in its legal context *shariy'a* is defined to mean the Sacred Law of God (Gordon, C. 1985).

The teachings of *shariy'a* as a system of Law are embodied in four main Sources: The *Qur'a n* which is the holy book of Islam; The *Sunna*, which include a collection of records concerning what the prophet has said, done, approved or forbidden; the *'Ijma'*

or (consensus of opinion) involves the agreement between Muslim scholars concerning particular juristic points and, finally the *Qiyyas*, which involves achievement of legal decisions by means of analytical deduction or independent reasoning that must not contradict any of the previous sources.

According to Muslim jurists the *shariy'a* includes three categories of rules (or *ahkam* in the Islamic term). The rules of each category are treated under a special branch of Science. Those concerning faith and belief in God are studied under *'ilm al kalam*; those concerning moral education are dealt with under *'ilm al'akhlaq*, and finally the last category concerns acts of worship and other inter-personal actions affecting the individual in the Society. The latter are dealt with under the general science known as *'ilm al fiqh*. The special part of this category dealing with crime and punishment is known as *al'akham al jina'iya* or (Penal Rules). The *shariy'a* penal system includes three sets of rules: *Al hidud* (limits), *Al qisas* (retaliation) and, *Al ta'aziyr* (discretionary). This will be explained in full detail in the special chapter dealing with the Islamic Penal Legislation.

The significance of *shariy'a* for the Sudanese Society has deep roots in the history of the Sudan. Historians agree that the process of Islamisation in the nineteenth century resulted in the emergence of an Islamic society. This was responsible from the gradual absorption of the country into the Islamic system of tradition and teaching. Since then, the Sudanese have established the dominant religious structure affecting both the individual and institutions in the society.

Attempts at Islamisation and adoption of *shariy'a* as a means of legal reform continued from 1956 (Independence) and throughout the 1970s. However, it was not until 1983 that the *shariy'a* was constitutionalised as the main source of the Law to be in

force. It will be seen that the radical shift for the adoption of the *shariy'a* in its fullest legal sense has been affected by urgent political events.

This was observable during the rule of Ja'far Numayri, the former President of the Sudan.

Sudan: The Country

Location, People and Culture

The Republic of the Sudan is the largest African country in size. Located in Northern Africa the country extends between latitudes 45° and 23° N and longitudes 21° 45" - 38° 30" E. Its immense borders touch eight other African countries: Egypt in the north, Central Africa and Chad in the west, Libya in the north west, Kenya, Uganda, Zaire in the south, and Ethiopia, Saudi Arabia across the Red Sea in the east.

The country is divided into two main divisions: (1) The Northern Sudan: includes six regions in the north; and (2) The Southern Sudan (includes six regions in the south). The regions of each divisions are divided further into smaller administrative divisions called provinces. Of the three regions of the north, Khartum has the special status of being the national capital city of the Sudan.

In 1985 the population was estimated as totalling 22 million with a growth rate of 2.8 per annum. Originally the Sudanese people were part Arab, part Negro, and part Nubian. The majority of the people in Northern Sudan adopt the Arabic-Islamic traditions. The Sudan's Arabic-Islamic heritage has deep roots in history. Contact between the country and Arabia started earlier before Islam. With the spread of Islam, Muslim immigrants from the Arabian east dominated the northern part of the

country. Since then an Islamic value system has been established which continues to affect all aspects of life in the region.

On the other hand the Sudanese in the southern part represent one third of the country's population, mainly Negro and pagan. The majority of this minority are non-Muslims, but in areas of Islamic influence there are significant numbers of Muslims.

☐ The Economic Situation

Sudan does not have a record of high economic growth. The average growth rate between 1960 and 1970 was estimated at 2.8% to 3% between 1970/74. In 1976 the gross domestic production showed slight decline from 10% in 1974 to 9.4% in 1976. By 1980 a negative trend followed. This was estimated at 4.6% in 1980/81 and dropped again in 1982/83 (EIU, 1985).

Theoretically agriculture has great potential for the Sudan's economy. According to official estimates the country has about 200mn feddans of arable area. According to Al-Farouk (1991) agriculture has recently contributed 30% to 40% of the country's GDP and about 98% of its exports. It also provides the livelihood of about 80% of the population. Also much of the Sudan's industry comes from agricultural produce. Almost one quarter of bank investments go to this sector and almost as much to agro-industries. Shortly agricultural output has an overriding effect on all aspects of the national economy.

During the late 1970s when plans were projected for the country to take off economically, there was much hope that Sudan would be 'the bread basket of the Arab world'. With the promise of $6 bn in Arab aid for a long term programme, the government introduced a six-year project of economic and social development (1977/78-1982/83).

The plan aimed at raising the GDP at an annual 7.5%. Unfortunately events did not help fulfilment of the development plan. Externally Sudan's economy was badly hit by a shift in oil prices and a lag on trade as a result. Internally, revenue needed to finance development dropped drastically, because of the urge of current expenditure. In addition agricultural export earnings were not increasing sufficiently and the government consequently relied on deficit financing.

Due to accumulation of external debt, reserves of foreign currency were exhausted and basic imports (fuel, spare parts and raw materials) were cut back. As the Sudan experienced such negative growth, total public expenditure declined and the previous plan to raise the GDP at an annual 7.5% failed. The Sudan, with an average per capita income estimated at $320 US, is a member of the UN, League of Arab States and the Organisation of African Unity. It is host to about a million African refugees (most of them from Ethiopia, Eritrea, Uganda and Chad). In recent years deteriorating socio-economic conditions affected by the drought and famine in Ethiopia, have led to increasing problems of social unrest and tension in society.

The Problem: The Sudan Case

Sudan offers an example of state supported Islamisation of the law in recent history. The period between the late '70s and early '80s was a transitional stage in the history of Sudan's legal system. In this period a number of changes have affected the status and operation of *shariy'a* as a system of law. In September 1983 the former president, Numayri, introduced *shariy'a* as the sole law to be in force henceforth. In particular the criminal component of *shariy'a Al hidud wal qisas* was to be imposed in its fullest extent.

Following the announcement of Islamisation of the law in general and application of Islamic criminal law in particular, several codes of law were promulgated to introduce the new Islamic code to the whole society. With its Islamic features the new penal code replaced the previous code of 1974 which was based on the British oriented Indian law. The new code included re-definition of already existing crimes and provisions for new ones not previously provided for. The legislative changes affected three main aspects of the legal machinery: the proper structure of judicial institutions, the procedure they should follow, and the most appropriate forms of punishments prescribed by *shariy'a*. The courts of the old regime were abolished - new 'emergency' courts, later to become 'Decisive courts of justice', were established under the new system of courts, settlement of cases followed a short procedure to achieve swiftness of 'effective justice'.

The full enforcement of the criminal aspect of the *shariy'a Al hidud wal qisas* allowed amputations for proven theft, the death penalty or either amputation and imprisonment for *Haraba* or armed robbery, floggings or the death penalty for adultery proven or admitted, flogging for drinking or for the possession, sale, transport or manufacture of alcoholic beverages, and death for apostasy in cases where the apostate was engaged in war against the state.

Since the announcement of the *shariy'a* as a system of law in the Sudan, the harsh components of the *Hidud* penalties were put into force between September 1983 and April 1985 when Alnumayrī and his regime were overthrown in a bloodless mass revolution. However, in practice, the intensive application of *shariy'a* extended from April 1984 (declaration of the state of emergency) until September 1984 (lifting of the state of emergency).

The case of the Sudan towards Islamisation of law was an experiment. The Islamisation agenda has been pursued farther in the Sudan than in any other contemporary example of the Islamic states. Some observers have described the political context in which the experiment occurred (Esposito 1986), others have expressed more concern and worry about the political effect of the state's supported Islamisation in the Sudan (Lobban, 1987 and 1990). According to Lobban (1990), Islamisation of the law "*using the coercive apparatus of the state, must be distinguished from the socio-cultural process of conversion to Islam that has been a major part of Sudanese history for the past five centuries*" (Ibid:610). It is also believed that, "*the strongly politicised nature of the North-South divide has made dialogue on the subject infrequent and emotionally charged*" (Ibid). Within the Sudan debates and conflict about the matter involved judgements both on the political and public levels. On one hand there are those who believe that application of the criminal aspect of *shariy'a Al hidud wal qisas* deters criminal aggression and realises security and stability in society, and on the other hand there are those who reject this argument on humanitarian and political bases. However, no previous scholarly attempt had been made to examine the *shariy'a* experiment in the Sudan in terms of its instrumental effect on crime and security in the society.

Shariy'a and the objective of this thesis

At the time of writing this thesis *shariy'a* was back again in operation in the Sudan after having been frozen since the transitional rule in 1985. The conflict on the subject is still going on, on the same bases of arguments. This thesis is mainly concerned with an empirical assessment of the influence of the application of *shariy'a* criminal policy on the society in the Sudan. The current issues of debate and conflict that the Sudan raises would rather benefit from more scholarly research and understanding of the

problems related to these issues. The objective is to provide more reliable knowledge on the issue. It is only through better understanding that we can minimise the gap between conflicting ideas and views and hence help to guide public policy.

Hypothesis and Methods of Research

Insofar as the previous experiment of the imposition of *shariy'a* in the Sudan is said to have been based primarily on deterrence, it rests on a major assumption to be tested here. This can be stated as follows:

- *Shariy'a* was anticipated to reduce concern and fear of crime and therefore create a climate more conducive to public security as follows:
- *shariy'a* was anticipated to reduce the concern about the seriousness of crime among the public.
- *shariy'a* was anticipated to increase the feeling of safety among the public, and
- *shariy'a* was anticipated to deter criminality and therefore reduce victimisation in the community.

Hence the previous hypotheses are constructed to measure the concept of 'public security' in terms of two aspects: (1) the decreasing worry and concern about crime and increasing feeling of safety among the public; and (2) the decreasing instances in experience of criminal victimisation in society.

Examination of the previous hypothesis is based on data obtained from the victim survey conducted in the Sudan in 1989. Information was obtained from a sample which included the three cities of the national capital city: Khartum, Khartum North and Omdurman. Sampling was undertaken in two stages: in the first stage two areas were chosen at random from each city. In the second stage individual cases were

obtained through the segment sampling. A total of 200 cases were obtained from each city, giving a total of 600 cases in all for the combined sample for the national capital city. A random total of 225 cases for each sex was finally selected for the purpose of analysis.

The survey involved a questionnaire designed to obtain data to enable a comparison of respondents' perceptions and fear of crime, as well as their actual experiences of criminal victimisation, during two reference periods, relating to two periods of enforcement of the penal system: (1) the first period from September 1983 to September 1984 refers to the *shariy'a* programme which began with the destruction of wine and the release of all prisoners in the Sudan by the former president Numayri. This period extended until the end of the Emergency Courts in September 1984 and relates to the penal system when *shariy'a* was in operation; (2) the second period, from September 1984 to September 1985, refers to the penal system following the abolition of the emergency courts in September 1984 and the termination and freezing of *hidud* punishments following the collapse of Numayri rule. This period extends until the first six months of the transitional government of General Siwar al dahab and Dr Aljuzuli Dafa'allah. During this period *shariy'a* was not in operation.

The questionnaire included questions to elicit information relating to respondents' concern and perceptions of crime, as well as their past experience of criminal victimisation, both for the period when *shariy'a* was in operation and the period when it was not in operation. The information mainly involved direct questions and included a set of incidents related to particular types of *hidud* offences ranging from robbery and burglary known as *haraba* in the Islamic terminology, theft known as *sariqá*, physical assault and injury known as *jarayim Al jurh wal'aza*. These were chosen as examples of the offences which were typically treated according to the *shariy'a*

system of punishment *Al hidud wal qisas*. Information about other offences has been obtained through indirect questions because of the particular nature of those offences.

Information was obtained through direct interviews and the fieldworker team included 15 students from the Department of Social Science and Applied Statistics at Omdurman Islamic University, to which I also belong as a teaching assistant. The nature of the relationship between me and the student team facilitated the arrangements and administration of the fieldwork from the earlier stage of selection up to the final stage of data collection and field supervision. The team included students mainly from the third and fourth years whose training mostly covered basic principles and rules of social research techniques and methods. Selection was made on personal interest and the participating students received a job training course on the survey technique related to the research topic. After this comprehensive training course the interviewers moved to the field with an authorised letter showing the purpose of their job and the institution they represented.

Data Limitations, Plan of Analysis, and Problems of Method

The scope of the findings of this thesis is restricted to the time, place and method of the criminal survey described above (full detailed description of the survey is given in chapter 4).

The plan for measuring the influence of *shariy'a* is based on a comparison for the difference in the responses when *shariy'a* was/was not in operation. The significance of the results is examined using the chi-square statistical test.

However, an important warning to be noted here is that the result of the analyses is subject to three sources of errors involving:

- Representativeness of the sample;
- Recall and time placement of incidents; and
- The short dominance of the *shariy'a* programme.

This suggests that understanding of the findings requires taking this warning into consideration.

The Choice of Khartum

The choice of Khartum - the national capital city of the Sudan - as the geographical region to which this study applies involves two main reasons attributed to the multiple aspects of its urban setting:

> Firstly, it has been recognised that urban life is commonly characterised by population density, spatial mobility, ethnic and class heterogeneity, reduced family functions and greater anonymity (Marvin E. Wolfgang and F. Ferracitt, 1967). Al-Farouk (1991) shows that Khartum is the destination of more than one-third of all inter-provincial migration. The process which has been going on for centuries showed marked increase during the 1980s. In 1985 the deteriorating socio-economic conditions resulted in the largest migration influx into Khartum, particularly from the arid western provinces. As a result Khartum has shown the most rapid rate of growth during the 1980s. Between 1956 and 1973 the population of the capital city, including the three towns (Khartum, Khartum North and Omdurman) increased from half a million to just over a million. In 1983 the population was approaching two millions. Al-Farouk considers this is a reflection of the accelerated rate of growth (256-8%), well over double in recent years. As the country's capital city, Khartum exerts a magnetic attraction

for migrants from all other provinces of the Sudan. Hence it represents the most heterogeneous urban centre in the country. Due to lack of adequate housing the development of overcrowded slums has been one aspect of the economic and social changes taking place in the country.

"*The explanations that have been offered for urban areas usually centred around having a larger number of criminal opportunities available, a greater likelihood of association with those who are already criminals, and in many cases, the harsher conditions of slum life around the city.*" Barbara, N, (Ed.) (1970).

The foregoing suggests that Khartum provides the most heterogeneous growing urban setting challenged by the rising anxiety and concern about crime and security.

Secondly as the main centre of administration of all the different spheres and institutions, Khartum includes the most highly qualified personnel, facilities and apparatus with respect to the administration of the legal machinery. Consequently, it provided the most intensive application of the *shariy'a* programme.

Therefore, for the reasons given above, Khartum provides the most appropriate choice for the application of this study.

Thesis organisation

Following this Introduction, the plan of this thesis covers seven chapters as follows:

☐ **Chapter 1 - The Islamic Penal Legislation: Theoretical Background**

This is intended to provide a detailed explanation of the theoretical aspects of *shariy'a* as a religious system of law, based on deterrence. It is meant to provide a further background reference for understanding the assumptions and functions underlying this system from which the *shariy'a* experiment was derived.

☐ **Chapter 2 - Literature on Deterrence**

This chapter reviews the literature and research findings on deterrence. Since this study cannot simply skip over the existing body of knowledge it is essential to examine both the theoretical and empirical assumptions involved in understanding deterrence - the purpose is to build this thesis on an adequate base of understanding relevant to its subject matter and concern.

☐ **Chapter 3 - The Islamic Penal Experiment in the Sudan**

Islamisation of the law in the Sudan cannot be understood separate by the factors affecting the historical development of the country's legal system. Based on Western law, the Sudanese penal code and procedure were re-enacted in 1925, 1974 and, more recently, in 1983. To understand the influence of the *shariy'a* experiment this chapter is devoted to trace what the Sudanese law has been, and what it tends to become. The intention is to show what real change the experiment has brought that might affect crime and security in the Sudan.

☐ **Chapter 4 - Method and Hypothesis of Research**

This chapter offers a detailed description for the objectives, main hypothesis and method involved in collecting the required field data. The chapter also deals with some of the methodological difficulties of measuring backdated experience of the type required in this study, and how it might have a significant effect on the analysis of data.

☐ **Chapters 5, 6 and 7**

Finally, while chapters 5 and 6 turn to the presentation of the main findings of the criminal survey, chapter 7 closes with the final conclusion. At the end, any further enquiries and implications for follow-up research in the future will be as important as any of the conclusions specified.

Chapter 1

The Islamic Penal Legislation: Theoretical Background

Introduction to Islamic Law

Muslim thinkers view Islam as a well-ordered system - a consistent whole resting on a definite set of clear-cut principles (Mawdudi 1939:5). Within this integrated whole a set of sub-systems are established to regulate the various phases of Muslims' behaviour and to connect the various aspects of the Islamic society to its basic principles. The penal system in Islam can thus be viewed as one of those aspects, intended to keep solidarity within the connected whole by regulating the conduct of man in his relation to social life. The study of the penal theory in Islam is then necessary in understanding the principles and philosophy underlying its objectives and ends. The purpose of this chapter is to provide a theoretical description of Islamic Penal Law and principles as derived from Islamic sources.

The Islamic penal theory can well be understood on its general foundation basically in the divine revelation contained in the *Qur'an*, holy book of Islam, and the *Sunna* traditions of the prophet *Muhammad*. But the fact is that both the *Qur'an* and *Sunna* contain very little, if any theory. They rather contain basic commands and regulations. Also there are few specific injunctions and prohibitions which concern a variety of subjects. The formulation of theories in Islamic law started later when the major schools of Islamic law emerged.

During the early centuries of Islam four schools of Islamic law crystallised; The *Maliki*, *Hanafi*, *Shafi'e* and *Hanbali* schools, each named after its founder respectively. The writings of the four schools include many volumes dealing with the various aspects of

rules that are concerned with crime and punishment. All schools of law consider crime as an evil that threatens the whole society, and punishment is a necessity to reduce the influence of that threat. A theory of criminalisation and punishment in Islam is then established. The following provide the bases for understanding the penal theory of Islamic legislation:

- the concept of *Shariy'a* in Islam
- characteristics of the Islamic penal legislation
- criminalisation and punishment

The concept of Shariy'a and aspect of the law

The genesis of *Shariy'a* lies within the Islamic religion. The religion of Islam was revealed to the prophet to declare to men the concluding words of God's final and eternal message. The *Qur'an* states:

> *'Today I have perfected your system of belief and bestowed my favours upon you in full, and have chosen submission (al-Islam) as the creed for you.'*
> (Al Qur'an, Sura Al ma'ida: 3)

The *Qur'an* is, the holy book of Islam. Along with the sacred texts of the holy book (each called *a Sura*), the sayings and practices of the prophet *Muhammad* known as *Hadith* and *Sunna* provide the sources of the Islamic religion.

In its origin the term 'Islam' means submissions or surrender to God. It is derived from the Arabic word *Silm* or peace, from which the traditional Islamic greeting of *Al salam'a laykum*, 'May peace be on you', is taken. According to this concept the Muslim is one who submits to the will of God and to the right path as designed in the divine sources. All Muslim scholars admit that the *shariy'a*, literally the road to the watering place, the clear path to be followed (see the Encyclopaedia of Islam, 1971:

524), is the key to the understanding of such a way to lead a stable life under Islam. As a religious law which is derived from the basic sources of the *Qur'an* and *Sunna*, it is defined to refer to the collection of *'ahkam*, legal provisions divinely revealed to the prophet (Basyuni 1982:128). Such divine provisions provide members of Muslim society with a clear standard of behaviour which they should follow.

Hence, it can be understood that while *shariy'a* is originally religious, it is mainly directed to regulate human life in society. In its fullest meaning the law, the *shariy'a*, is all dealing with rules and matters meant to embody correct Muslim practice in the different spheres of human activity, be they spiritual or secular concerns of daily life. Aspects of the law have been constructed in many verses of the *Qur'an* and *Sunna* to regulate Muslim practice from the level of interpersonal relations to that of the family and the state. Mawdudi, a famous Islamic thinker, was quoted as saying:

> *'Law in Islam is that which answers the following query: what should the conduct of man be in his individual and collective life, in his relationship to God, to others, and to himself in a universal community of mankind for the fulfilment of man's dual purpose: life on earth and life in the hereafter.'* (Basyuni 1982:12)

According to this statement, it can be noted that unlike other social systems Islam regulates the conduct of the individual and society in all phases of life on the basis of an inter-relationship of men and of man and his creator, linking both aspects of his worldly life on earth and life in the hereafter.

The potential of Islam in theory as has been explained in the *Qur'an* and *Sunna* is to achieve and protect the interest of humans on earth and prevent evil and corruption. Peace, solidarity, co-operation, and brotherhood are the basis on which the Islamic society is founded. Numerous verses of the *Qur'an* as well as *Hadith* of the prophet are the reflections of these objectives. For example the prophet states:

'A Muslim is one from whose tongue and hands Muslims are safe.'

Also, the *Qur'an* states:

'But help one another in goodness and piety, and do not assist in crime and rebellion, and fear God surely.' (Al Qur'an, Sura Al ma'ida:2)

Realisation of these objectives in Islam are guaranteed through divine restrictions placed on personal liberty to secure personal abuse of the rights of others.

Characteristics of the Islamic penal legislation

Muslim scholars agree that, the Islamic penal legislation is founded on the following characteristics:

- The religious nature
- The link with *Shariy'a* objectives
- Foundation on moral values
- Foundation on fundamental principles and objectives

The religious nature

The Islamic penal theory as part of Islamic law *Shariy'a* is characterised by its direct foundation on divinely inspired principles and regulations. Islamic jurists classify Islamic rules of law into three categories according to their subject matter:(i) Rules that are concerned with creed, such as belief in God, his characteristics, belief in angels, books, prophets, The last day and fate be good or bad. This category forms the basis for all legislative phases of the Islamic system and is studied under a special science known as *'lm al kalam* - the science of speaking, or the science of logic. (ii) Rules that deal with individual morality. These provide the model characteristics of behaviour which the individual Muslim is strongly encouraged to follow. They include

characteristics of behaviour such as loyalty, braveness, forgiveness, generosity, etc. The individual Muslim must not act in contradiction with this category. The special science that deal with this branch is known as *'ilm'al'akhlaq*, or the science of morals. Finally, the third category includes two types of rules: (a) Those which govern the relationship between the individual and his creator are known as *'ahkam al 'ibadat* and regulate acts of worship such as prayer, fasting, pilgrimage and charity; and (b) Those that regulate the inter-personal actions between individuals, such as sales, gifts, marriage, divorce, and the relationship between the individual and the ruler. These latter rules also include rules of crime and punishment or *al 'ahkam al jina'iya*, as well as those of rights and obligations. All aspects of the third category are dealt with under the special science known as *'ilm al fiqh*, also known as *'ilm al'akham al shariy'a al'amaliya* or *'ilm al mu'amalat*.

- The starting point of the Islamic penal theory

The religious character of the Islamic rules of law can be verified directly from the basic sources of law which include:

- The *Qur'an*, or the holy book of Islam. Sources for practical rules can be found in various texts, as for example the judgement for theft has been stated as follows:

> *'As for the thief, whether man or woman, amputate his hands as requital for what he has done, an exemplary punishment from God; for God is all mighty and all wise.'* (Al Qur'an, Sura Al ma'ida: 38)

The judgement for adultery is also stated as follows:

> *'The adulteress and adulterer should be flogged a hundred lashes each, and no pity for them should deter you from the law of God, if you believe in God and the last day; and the punishment should be witnessed by a body of believers.'* (ibid: 2)

Many other rules can also be found in various texts.

- The *Sunna*, or the authentic traditions of the prophet Muhammad. Similar legal decisions have been stated or approved by the *Sunna* of the prophet. Al'awa states that:

> *'Jurists have recorded approximately 500 Qur'anic verses and 4,000 prophetic Hadith stipulating similar legal decisions or judgements.'* (Basyuni 1982:129)

- The *'ijma'* or the consensus of opinion.

- The *Qiyyas*, or judgement upon juristic analogy which could also include *al-'ijtihad*, or independent reasoning.

The various schools of Islamic jurisprudence tend to rely on the last two sources of law where sacred texts were silent. In response a doctrinal and juridicial heritage developed which continues to guide the legal reasoning in procedural matters today, and to provide a base for Islamic theories in various areas of law.

The religious nature of Islamic penal rules in both sources is apparent. In the first group judgement is directly taken from divinely inspired text, whether it be the *Qur'an* or *Sunna*, while in the second group *'ijtihad* or independent reasoning follows two ways: (i). By deducing the judgement from an inconclusive source in which a group of scholars have different views in regard to its validity. (ii). By getting evidence for a specific judgement by logical means on the basis of analogy to a conclusive judgement in an existing text, by preference, by taking the public interest and custom into consideration, or by other methods of deduction explained by Islamic jurists. Al'awa states:

> *'If the basis of a doctrinal decision lies in 'ijtihad's interpretation of a purportedly applicable text, then the matter presents no problem, since the decision in reality rests upon divine text, and 'ijtihad is merely a tool to facilitate the understanding of what is decreed by text. And if the method of reaching a doctrinal decision is one of the approved methods of deduction*

and in the absence of text, then the religious character of judgements reached through such methods is also evident, since these methods derive legitimacy from their explicit or implicit confirmation by the Qur'an or *Sunna.'*

Al'awa refers to the words of Al Shafi'i (founder of the *shafi'i* school of jurisprudence) as instructive as he states:

'For every thing that affects the life of a Muslim, there is prescribed in the Qur'an a guide to lead him on the right way.'

He also said:

'For everything that befalls a Muslim there is an obligatory (hukm) and a guide to lead him on the right way.' (Basyuni 1982:130)

This means that God has assigned specific judgements to be applied to specific situations, and he also has established some methods by which the Muslim ruler can reach a judgement where an explicitly assigned judgement is absent. It can then be concluded that Islamic penal decisions are religious judgements which are taken directly from divinely inspired texts, or deduced indirectly through certain methods which are prescribed in the divine texts.

The foundation of the Islamic penal legislation on divinely inspired decisions means that sovereignty belongs to God. He alone is the source of law. According to this theory no man has the right to pass orders to others on his own wish. As said Mawdudi, the prophet himself is subject to God's commands and is not entitled to order laws on his own authority. In a famous tradition, the prophet points out that he does not follow anything except what is revealed to him.

It follows that Muslims both individually and collectively should obey the prophet who follows not his own, but God's commands. This constitution forms the basis of all legislation of the Islamic state. Whenever the Islamic state comes into existence, it is hence obliged to follow what has been ordered by God. Its purpose is to forbid

all forms of evil and support all types of virtue and interest as has been divinely inspired by God.

- Consequences of the religious character of the Islamic penal legislation

The Islamic penal rules provide both for earthly punishment and punishment in the hereafter. The principle underlying the decisions is that for every act, be it good or evil, there is a specified reward for it. The *Qur'an* states:

> *'whosoever has done even an atom's weight of good will behold it; And whosoever has done even an atom's weight of evil will behold that.'* (Al-Qur'an, Sura Alzilzila: 7-8)

According to this principle the individual is responsible for all that he does. There can be no act without responsibility and also there can be no act without reward:

> *'And detain them, for they will be questioned.'* (Al Qur'an,Sura Al-safa't: 24)

Conformity to Islamic rules is thus inseparable from faith in God. Many verses of the *Qur'an* and prophetic *Hadith* reflect the association between faith and abstinence from unlawful acts. For example, with regard to usury the *Qur'an* states:

> *'O believers, fear God and forego the interest that is owing if you really believe.'* (Al Qur'an,Sura Al bagarah: 278)

The prophet also says:

> *'A believer neither steals nor commits adultery.'*

According to Al'awa:

> *'The association between legal decisions and faith on the one hand, and between obedience to them on earth and eternal reward or punishment, on the other hand, has always been the motivation to abide by the rules of Islamic penal law.'* (Basyuni, 1982:131)

The *Qur'an* demonstrates this as follows:

'These are the limits set by God, and those who follow the commandments of God and the prophet, will indeed be admitted to gardens with streams of water running by where they will for ever abide; and this will be success supreme. Those who disobey God and the prophet and exceed the bounds of law, will be taken to hell and abide there for ever and shall suffer despicable punishment.' (Al Qur'an Sura, Al nisa': 13-14)

From the previous evidence it is clear that the religious element becomes the basic aspect of deterrence for those who have strong faith in God. Accordingly, the individual can escape punishment and pain by conformity to the rules stated by God. On the other hand, for those who disobey the rules temporal punishment is worthy to exert control over their conduct. It is meant to be their degradation in the world. For example, in the case of adultery God assigns public flogging. Nevertheless, it will be explained later why stoning is also recognised for this case.

'The adulteress and adulterer should be flogged a hundred lashes each; and no pity for them should deter you from the law of God, if you believe in God and the last day; and the punishment should be witnessed by a body of believers.' (Al Qur'an, Sura Al Nur: 2)

In the light of that faith, the Islamic penal legislation provides the individual with a clear theme of behaviour and puts at his hands a practical measurement by which he can choose the type of reward he wishes. This theme of moral choice runs throughout the text of the *Qur'an* and determines the role of man in shaping his personal life as well as life in society as a whole. Consequently, by this measurement he can give peace and happiness both to himself and to society by not doing harm or evil, or he might get pain and punishment if he deviates from the rules. This has best been portrayed by 'Ali Shawart as follows:

'From the available evidence in the Qur'an and the traditions of the holy prophet one can easily construe that man has been given the power to be the architect of his own destiny. At every step of his life he faces the dilemma of a critical moral choice. On the one hand he has the choice of obeying the commands of the creator, and leading a life of piety, uprightness and purity, on the other hand he is at liberty to disobey God's wishes and be condemned

eternally. Those who turn away from his will are certain to become wicked, mean and beastly. The entire superstructure of Islam's social philosophy is built on this choice, and human beings are warned that life is a very serious affair and should not be wasted in frivolities.' ('Ali Shawart 1980:42-43)

Nevertheless, with regard to the freedom of choice we might distinguish between three categories as follows: (i) The first category includes, those who obey God's commands. This category behave in accordance with the right conduct to avoid eternal punishment and realise a happy, peaceful life. (ii) The second category includes those believers whose faith is not strong enough to keep them in the right way without a temporary threat. For this category worldly punishment is the only way to force them to conform to the rules. (3) The disobedients who do not care either for the earthly punishment or for the later reward in the hereafter. This group violates the rules despite both types of punishment and therefore stand as a deterrent for the second group.

☐ **The link with Shariy'a objectives**

As has been mentioned earlier in this chapter, the concern of Islam in the first place is to regulate human affairs. Muslim jurists claim that behind each rule of the Islamic penal legislation there is a purpose relating to the preservation of a specific interest, and that *Shariy'a* objectives relate to one of the following aspects of interest.

Firstly, preservation of all the basic necessities that mutually affect the individual life and lead to disturbance if hurt. These include five basic values of, religion life, reason, honour and wealth.

Secondly, preservation of other needs which are of less importance than the necessities, but also produce tension if not satisfied.

Thirdly, promotion of the statuses of both the individual and the group in accordance with other developments that affects life conditions.

Nevertheless, Muslim jurists agree that the necessities are the most important objective of Islamic legislation, since human life is basically centred around these five values of religion, life, reason, honour and wealth. Hence, since these values represent the basis of human existence, they should be preserved and protected according to the fundamental principles of Islam.

In explaining the philosophy of the Islamic penal legislation, Muslim jurists hold the view that it is mainly intended to secure these five basic aspects of life. According to this philosophy they regard the preservation of each of these necessities of primary importance on the following grounds.

In the first place the right of religious faith is considered as critical to the individual perception of life and his way of conduct. It is necessary then to have this right guaranteed.

Secondly, the right of personal life guarantees the individual's role in human existence. Without this right he cannot realises his message in the earth. This includes protection of one's life, hands, legs and all other organs from being subjected to any kind of aggression. There is clear evidence from the *Qur'an* and *Sunna* to show that Islam has attached a special value and sanctity to human life. The *Qur'an* gives severe warnings to those who through violence and disorder harm the life of other people.

> *'But you still kill one another, and you turn a section of your people from their homes assisting one another against them with guilt and oppression. Yet when they are brought to you as captives you ransom them, although forbidden it was to drive them away. Do you then believe a part of the book and reject a part? There is no other reward for them who act but disgrace in the world, and on the day of judgement the severest of punishment.'* (Al Qur'an, Sura Al-baqara:85)

Thirdly, reason is the basic characteristic of humanity. By this tool the individual determines whether to do good or bad in the society. Shaykh Abu Zahra points out that protection of reason requires that it should not be subjected to any harm or damage that makes the individual a source of evil and aggression. He argues that protection of reason guarantees that every member of the society is able to provide goodness in his community. However the society will lose the goodness of an effective agent and be subjected to evil and aggression if the individual's reason is affected by any type of damage or harm. This is whether by the act of the individual himself or by that of others. For that reason Islam prohibited wine drinking and prescribed punishment for that offence, because of its bad consequences both on the individual and the society.

Fourthly, protection of honour means protection of human kind. It mainly requires organisation of sexual relations under family life. This guarantees that children who belong to their actual fathers will have a good care within their families. This is the justification for considering illegal sexual intercourse outside the family as a crime worthy of punishment. The objective of Islam is to realise an honourable life to the children and their families.

Fifthly, and finally, wealth is considered as a basis of life in its materialistic aspect, and a means for satisfaction of various bodily needs such as food, drink, clothes - and others. It also represents an economic power necessary for fulfilling the developmental needs for the whole nation. In Islam all wealth actually belongs to God. The role of man is to distribute and consume wealth in the proper way and protect it from being used and taken with no right by others.

Scholars of Muslim jurisprudence consider aggression against any of these necessities as a crime that deserves punishment, and that serious crimes are those which disturb basic necessities. They argue that to the extent that members of Muslim society have all the necessities guaranteed, then the whole society will feel safe and secure. Islamic penal law has thus formulated specific rules of punishments by which this goal can be achieved.

All schools of Islamic law distinguish three categories of Islamic criminal rules as follows:

- *Al hidud*: This includes offences punished by fixed penalties which either stated in the *Qur'an* or *Sunna.*
- *Al qisas, wa-al-Diyya*: includes offences punished by retribution.
- *Al-ta'aziyr*: includes offences punished by penalties left to the discretion of the judge.

Discussion of each of these categories will follow later in the chapter.

☐ **Foundation on moral values**

In Islam there is no dichotomy between the rules governing religious, moral and judicial principles. Hence the protection of moral principles by the Islamic penal law represents an integral aspect of Islamic law-making. Both the *Qur'an* and prophetic traditions provide evidence to prove that Islamic penal rules are basically designed with measures to protect the moral values of the Muslim society. Certain acts are prohibited on the basis of their moral consequences. For instance, with regard to gambling and wine drinking the *Qur'an* states:

> *'O believers, this wine and gambling, those idols, and these arrows you use for divination, are all acts of Satan; so keep away from them. You may happily prosper. Satan only wishes to create among you enmity and hatred through wine and gambling, and to divert you from the remembrance of God and prayer, will you therefore not desist.'* (Al-Qur'an, Sura Al ma'ida: 90-91)

In the same way adultery is prohibited as being immoral:

> *'And do not go near fornication as it is immoral and evil way.'* (Al Qur'an, Sura Bani'Isra'iyl:32)

The prophet has also provided several instructions that regulate the relations of Muslims in the community. One of the traditions expresses this as follows:

> *'The Muslims in their mutual affection and mercy should be as a single body. If one member is affected the other members suffer fever and sleeplessness.'*

He also states:

> *'A Muslim is one from whose tongue and hands the Muslims are at peace.'*

This suggests that in such a community where relations of Muslims to each other entail religious and moral obligations, members of the community are expected to reflect tolerance, kindness, mercy and affection towards each other. And also they are expected to respect the privileges and rights which religion has provided for them as members of one community. This is what all Islamic penal legislation is aimed at. 'Ali Shawart puts it this way:

> *'Men have tremendous potentiality for goodness, but at the same time they have numerous very destructive traits. An average human being tends to be fundamentally ambitious and selfish. He has interminable appetites for whose satisfaction he unhesitatingly adopts all kinds of moral and immoral means. There is a lot of Machiavellianism in his nature, and unless it is bridled with high moral ideal life in a society can be extremely chaotic. He can do considerable damage to social equilibrium by his anti-social and oppressive behaviour. It is to remedy such a situation that religious and ethical philosophies throughout the ages have emphasised unless strict legal and moral measures are adopted people will smother each other's rights. In spite of these endless efforts, however, the record of human rights is not very encouraging. Men continue to discriminate against each other on countless trivial and irrational issues, and tyranny and oppression are placarded as legitimate instruments of statecrafts. It was in view of these indisputable realities of human social organisation that Islam laid down an elaborate framework of moral and legal constraints by which certain fundamental rights of men could be safeguarded.'* ('Ali Shawart 1980:68)

Accordingly, the Islamic penal law can be described as the law of moral conduct.

☐ Fundamental principles

All schools of law agree that punishment in Islamic penal law should satisfy three basic principles. It must:

- be consistent with the principle of legality;
- be individualised; and
- apply equally to all persons.

- The principle of legality

Islamic jurists agree that the protection of rights in the Islamic penal system depends upon the recognition of the principle of legality. Such a principle requires that there is no crime and no penalty unless warnings have previously been given. The *Qur'an* states:

> *'We never punish till we have sent a messenger.'* (Al Qur'an, Sura Bani'Isra'iyl: 15)
>
> *'God has forgiven what has happened in the past, but any one who does so again will be punished by God.'* (Al Qur'an, Sura Al ma'ida: 95)

It is also related to the prophet that he disregarded any blood guilt traced back to the time of ignorance. On the basis of these texts jurists have derived two components underlying the principle of legality in Islamic criminal law. (1) There is no criminal charge before the existence of legislation. (2) All things are presumed permissible. Al'awa states:

> *'The application of those rules to the criminal law signifies that no punishment shall be inflicted for conduct which no text has criminalised and that punishment for criminalised conduct is restricted to instances where the act in question has been committed after the legislation takes effect.'* (Basyuni, 1982:134)

Muslim scholars point out that the principle of legality is embodied in each of the three categories of crime. It has firmly been applied to *Hidud* crimes. Since they are precisely specified and have their penalties determined in the *Qur'an*. It also applies to *qisas* crimes and *Diyya* crimes of retribution or compensation. However, in this category the nearest of kin has the right to pardon the offender. With regard to *Ta'aziyr* crimes, the principle of legality provides the judge with the right to decide the appropriate punishment in response to subsequent changes of circumstances in the society. In this category, the personal or independent reasoning of the judge is restricted by what is within the best interests of Muslims.

Hence, it is clear that the principle of legality underlies all penalties under Islamic law. It provides that crime and punishment in Islamic law are not based on human reason, but rather upon divine decrees. Taymour Kamel says:

> *'Islamic law rests upon a principle of legality, but also upon the principle that, the community should, must, and will demand right conduct and forbid indecency of its members. It balances individual, family, and community rights by categories of offences which grant the authority to punish variously to the family of the victim, to the community under the specific command of God, and to the representatives of the community under general guidelines laid down by God. Of these categories, one is based on specified retribution, one on explicit legality with minimal discretion for the judge. Individual, family, and community are all protected; justice is achieved.'* (Basyuni, 1982:169)

- Individualisation of Punishment

A fundamental principle under Islamic criminal law is that the criminal alone is responsible for his crime. This has been expressed in a number of *Qur'anic* verses and prophetic traditions. For example, the *Qur'an* says:

> *'Every man is bound to what each does.'* (Al Qur'an, Sura Al Nur:21)

According to this principle when an unlawful act is committed or attempted, the individual must undergo a systematic investigation in order to determine his criminal responsibility for that behaviour. In the case that the individual is guilty of a certain conduct, the judge must impose the appropriate sanction and the individual must be punished.

Islamic jurists agree that the individualisation of punishment must apply equally whether to a *hadd*, *qisas* or *ta'aziyr* crimes. Where punishment is not stated in the *Qur'an*, the judge must consider the extent of the seriousness of the crime, the personality of the offender, and the amount of social harm. The *Diyya* by contrast is a compensation to be paid to the nearest of kin in cases of murder and injury, if the victim or his nearest of kin forgive the offender and claim their right of retribution. In some cases the *Diyya* is exceptional from the rule of individualisation of punishment. For example, if the offender is poor, his family or his relatives can assume collective responsibility for paying compensation.

- Equality of treatment before the law

The principle of equality has always been an integral part of Islam's social and legal philosophy. Marshall Hodgson states:

> *'The Shariy'a law could recognise no hereditary social class structure, for all Muslims must be on the same footing before God...'* ('Ali Shawart 1980:49)

Evidence for this is numerous both from the *Qur'an* and the *Sunna*. The prophet said:

> *'All men are equal like the teeth of a comb.'*

The *Qur'an* also states:

> *'Verily this your order is one order, and I am your Lord; So worship me.'*
> (Al-Qur'an, Sura Al'anbiyya': 92)

According to this principle Islam denies that any individual or class can have any special position since all men relate to the same ancestor and share the same nature. As slaves of the same God and brothers of each other they all form one group and belong to the same origin. No particular group or class has been born for subjection while another group for mastery.

All Muslim jurists admit that the principle of equality of men before the law in Islam is expressed in terms of *'insaf or 'adala*, which means to grant rights or justice. Its objective is to assure to others the same right that one claims for oneself.

In accordance with the principle of equality the prophet warned against discrimination in applying *hadd* punishments as against the common people while excluding the nobility. He pointed out that if his own daughter, Fatima, committed theft, her kinship ties *nasab* would not save her the *hadd* punishment.

Such principle gives the individual a sense of justice which is necessary to force him to respect the rights of others in the same manner as he claims his own rights.

Degrees of obedience to the law in Islam

In Islam a distinction has been made between lawful acts, known as *halal*, and unlawful or forbidden acts, known as *haram*. The degrees of obedience to what is *halal* and what is *haram* is expressed in terms of a compulsory continuum of acceptable to non-acceptable acts as follows:

☐ *Fard*

That which is commanded by God in the *Qur'an*, by the prophet in the *Hadith*, or by consensus *'Ijma'* of the community of believers. This includes, for example, prayer,

fasting during Ramadan, payment of zakat, religious taxation, etc. All things which are *farad* are obligatory unless under certain excuses.

☐ *Wajib*

An obligatory act, very close to *farad*, but less compulsory.

☐ *Mandub*

Refers to recommended actions, preferred practice, but omission is not punished. Things which are *mandub* include all *Sunna* practice or correct behaviour.

☐ *Jai'z*

Constitutes permissible acts. For example, a great diversity in Muslim practices such as differences in dressing, food taste and styles.

☐ *Makruh*

That which is regarded as an unworthy act, but which is not punished. For example, divorcing a woman while pregnant is unworthy of a Muslim husband.

☐ *Haram*

That which is totally forbidden. Forbidden acts include, for instance, murder, theft, adultery, etc. All acts which fall under *haram* are forbidden and punishable under Islamic criminal law.

The forgone suggests when a certain act is criminal and punishable and when it is not.

The bases of criminalisation in Islam

It has been asserted earlier in this chapter that the Islamic penal legislation is centred around basic religious values and morality. Under this system both the individual and

the community are bound to the public good. The essential task of the Islamic community'*Umma*, then, as has been stated by God, is to enjoin good and prohibit evil:

> *'Of all the communities raised among men you are the best, enjoining the good, forbidding the wrong and believe in God.'* (*Al Qur'an*, Sura 'al'umran: 110)

According to Muslim jurists the good conduct includes *ma'ruf* which is known as decent or proper, and the wrong conduct includes *Munkar*, that which is hateful, disapproved and blameworthy. To realize this task of enjoining goodness and forbidding evil and wrong one must consider that man as God's trustee on earth, owes a duty of maintenance, prudence, judicious use and exercise of himself and endowed faculties. Hence he owes a duty of care and practice of what is good and decent. This duty entails the accomplishment of those subjective values which represent the base of mankind's interest.

Unlike other legal systems, Islamic law emphasises duties rather than rights. It requires the fulfilment of individual obligations before the individual can claim his rights and privileges. The individual is neither apart nor separate from the community, and his rights also neither different nor conflicting with those of the whole community. As part of the society, the fulfilment of his obligations and those of his fellow members in the society constitute the social rights and benefits which are then shared by all.

The concept of enjoining right conduct and forbidding indecency which binds the individual to the public good, also binds him to a principle of personal responsibility. Each individual then becomes responsible for his acts, whether they are good *Ma'ruf* or evil *Munkar*. However one can find no *Qur'anic* text to provide a complete list of what is *Ma'ruf* or *Munkar*. Instead, Islam considers all acts that bring disadvantages

to society as evil, not to be committed, and those acts that bring advantages to society as good, to be recommended. Quite a number of traditions and *Qur'anic* verses provide evidence that the commitment of a certain act, be based on those inherent advantages and disadvantages. For example, the alcoholic drinks and narcotic materials are considered harmful regardless of some of the benefits. The *Qur'an* states:

> *'They ask you of (intoxicants) wine and gambling - Tell them "There is great enervation but also benefits in them for men; but their enervation is greater than their benefit".* (Al Qur'an, Sura Al baqara: 219)

As it is pointed out by Abu Zahr a (1979), Bentham has clearly indicated the distinction between morals and law. Bentham pointed out that the objective of moral science is to regulate human acts so as to achieve the possible degree of happiness. According to him this should also be the same objective of law. But the two sciences differ with regard to their general and special subject matter. He sees all acts as generally coming under the rules of moral science. This however, according to him is not possible in the case of law, Bentham claims that in moral science the individual ought to do every act that entails public utility. But it is not possible for law to order most of these acts. Nevertheless, law is unable to forbid some of the evil acts even if they have been forbidden by moral science. In general both law and moral science share the same ground, but one is wider in scope than the other. Bentham sees this difference as resulting from the following two aspects:

- Law cannot affect the individual's behaviour directly except by punishment. Of course this requires the specification of acts which are punishable. It is also recognised that punishment is an evil which should not be decided unless it is expected to result in more utility.

- Law is always under the fear of affecting an innocent individual instead of an actual offender. Such fear is particularly critical where it requires personal investigations, as in the case of psychological crimes.

One can also add a third distinction, that although in moral science the individual is required to do every act that entails public utility, however, moral science does not possess the power to force the individual to do so or, on the other hand, preventing them from doing the opposite. This suggests that law possesses the effective power to support the moral system.

Abu Zahra admits that the moralistic theory agrees with what Muslim jurists have decided and that the objectives of moral science are the same as those of religion. He claims that Islam has always supported every act which is considered as good according to the judgement of the moralistic measurement. He adds further that if utility has been the basis of laws, as Bentham has decided, it can also be said that actual utility forms the basis of Islamic legislation, and it is observable in all its goals and objectives. The protection of this goal then becomes the basic task of Islamic law.

While all believers in the Islamic community are required to realize the previously mentioned principle of utility, the duty of actualising it falls particularly on those who hold the legal power. In doing this, the Islamic penal legislation considers that in every society there exist some types of behaviour which do not respond to either of the social or moral means of control unless threatened by legal rules. Islam considers the individual as under temptation to do evil damage sometimes. This is clearly stated in the *Qur'an*:

> *'But I don't wish to absolve myself, for the soul is prone to evil.'* (Al-Qur'an, Sura-yusuf:53)

Therefore Islam found it necessary to legislate matters affecting such types of deviant behaviour in order to prevent the spread of evil in the community. those who control the legal authority are then allowed to criminalise all acts which contradict the principle of utility and the public interest. A Muslim scholar, 'Ibn Al qayyim Al jawzi is quoted as saying:

> *'the law of God is where the public good lies'.*

'Ibn 'akki completed these words by adding:

> *'Even if no revelation has been handed down on (the particular) subject and if the prophet hasn't said a word about it.'* (Basyuni, 1982: 160)

According to Islamic jurists, the Legal Authority, is then required to forbid all those acts which are evil. It can only act fairly by warning members of the Islamic community of those acts which are against public interest. One may not consider a forbidden act as a crime except by virtue of an existing text of the law or the legal authority which anticipates the criminalisation of the act, whether legal *hadd* or a discretion of the judge *ta'aziyr*.

Definition of crime in Islamic penal legislation

In its Arabic root the term *jariyma*, crime, comes from the Arabic verb *jaram*, which means gained a hateful or an undesirable act. Hence the term *jariyma* is used to refer to the commitment of any act that contradicts with virtue, justice and the right way. Accordingly, the term *jariyma* in its linguistic origin refers to the commitment of an undesirable or a disgusting act, and the criminal, *Al mujrim* in Arabic, is one who commits such an act, both with complete intention and insistence upon doing it. Sheikh Abu Zahara pointed out that if all what *Shariy'a* has commanded is considered according to the judgement of God and reason, therefore disobedience of any of these

commands will be a crime since it contradicts both God's will and reason. This suggests that crime *Al jariyma* is the commitment of what has been prohibited by God, or the omission of what he has ordered.

Accordingly Islamic jurists consider crime as a forbidden act whose commission is penalised, or an obligatory act whose omission is also penalised. Jurists distinguish between two types of punishment either for omissions or comissions: (i) a worldly punishment to be carried out by the legal authority, and (ii) a later punishment to be carried out after death in the hereafter. Almost all jurists of Islamic schools hold that the omission or commission of an act is not considered as a crime unless it has any of the previous types of punishments decided for it.

But jurists have particularly considered crime from the point of view of juristic power with regard to what worldly punishment the legislator has decided. They specify crimes as violations that invoke punishment, which is carried out by the legal power. In this sense Al Mawardi defines crimes to mean that they are legally prohibited acts which God has threatened for either by a *hadd* or a discretionary *ta'aziyr* punishment. It can be noted here that the definition of crime in this special sense agrees with that of secular penal law, where crime is described as a commission or omission of an act punishable by text.

But it might appear that, the legal definition of crime is not applicable in the case of *ta'aziyr* or discretionary punishments which are not specified by text, be it the *Qur'an* or *Sunna*. Sheikh Abu Zahara argues that this might seem apparent, but actually it is not true because all discretionary punishments aim for the prevention of corruption and evil, and all this has a base both in the *Sunna* and the *Qur'an*.

> *'And do not withhold from people what belongs to them, and do not corrupt the land.'* (Al-Qur'an, Sura Al shura: 183)

The prophet has also pointed out that there is no harm and no causing of harm. Accordingly the ruler is required, according to what God has delegated to his authority, to legislate from punishments what he sees as deterring to offenders. Also considerable evidence from the *Qur'an* and *Sunna* refers to similar expressions of disobedience, corruption and evil and describes them as violations of the right conduct. Jurists consider all of these terms as meeting with the general meaning of crime, since they involve evil and violation of God's command.

On the other hand it is argued that the main element of the legal definition of crime as a legally prohibited act punishable by law, involves a distinction between the meaning of crime in the legal sense, and evil as has been decided by moral science. The reason, as indicated before, is that in moral science whether an act is evil or good, the judgement is based on whether it has bad or good consequences on society. This is the general principle, according to moral scholars who consider the measurement of goodness in society to be the greatest degree of benefit to the greatest possible number of people. But benefit is not only materialistic, it also includes spiritual matters. Also it is not restricted to temporary benefits, but also latest benefit is considered - and protection from evil is one of the benefits.

In summary, the legal element forms the basis in the definition of crime in its special meaning, but this is not the case in moral law. It is pointed out that the difference between penal law and moral law is that in the latter evil in society is greater than to be punished. It constitutes acts that fall under punishment by legal authority and those which do not. This is because for the majority of acts evidence cannot be found. It becomes then the responsibility of the penal legislation to deal with types of evil that fall under its scope. This is what is meant by criminalisation in Islamic penal legislation.

Types of crimes in Islam

Islamic jurists divide all acts which God has ordered for commission (duties) or omission into three categories: (i) The first category includes the absolute right of God *haqq Allah*; and (ii) The second category enjoins both the right of God and that of the individual, with the former being predominant; and (iii) The third category includes more of that which is the individual's right than God's right. All acts which are claimed to be the absolute right of God are those acts whose commission or omission is prescribed as against public interest. Those prescriptions, besides covering the first category, involve the second category as well, where both the individual and divine rights coincide, but the latter predominates. On the other hand, those acts which are prohibited as the right of the individual, their justification is based on the realisation of further private interests and benefits for the individual.

It follows that the previous classification of acts is that, legally prohibited acts (crimes) according to the classical manual of Islamic criminal law, are classified in terms of the degree of aggression they entail, whether against absolute divine, or private interest.

It was previously pointed out that the term crime or *jarayim*, originally, involves aggression against what Islamic jurists referred to as (considered utility or interest), which has been specified by text in the *Qur'an, sunna* or by means of analogy, or that which might result in harm or damage to any of the previously mentioned benefits, which is known as *Sadd aldharayi'* in juristic books. it has also been pointed out that considered utility or benefit in Islam involves the protection of the following basic values: life, property, wealth, honour, reason, and religion.

Accordingly all Islamic schools of law recognise five types of criminal aggression against public interest and benefits as follows:

- aggression against life
- aggression against honour
- aggression against wealth and property
- aggression against reason, and
- aggression against religion.

Each of these types of aggression varies in its effect according to the degree of aggression it entails against its subject matter. Muslim jurists classify benefits under three main categories:

- First of all, whatever affects the individual personal life is a necessity which should be fulfilled.
- Secondly, whatever helps to preserve the individual life without more tension and worry, is a need which is less in importance than the necessities, and
- Thirdly, whatever helps to preserve a better honourable life for the individual is a perfection which is of least importance.

All Islamic jurists admit that criminal aggression varies according to the degree of benefit involved. For example, in the case of crimes against the person, they consider aggression against any of the basic necessities of the individual, such as life, of more critical importance than any other bodily injury. Also aggression against any other aspect of personal life, such as liberty of thought and opinion, is of less importance than the first type. Finally, of least importance are those crimes that involve personal insult and false accusation to the individual. Consequently crimes against the person vary with regard to the degree of aggression and interest in such a way that murder becomes more serious than loss of limbs, and loss of limbs becomes greater than

hitting a person, and preventing freedom of speech. The first type involves one of the basic necessities, while the second involves one of the needs. As for the last type, it does not affect the basis of life nor any of its needs, but rather it affects what is considered to be an aspect of life perfection. Therefore it can be concluded that the hierarchy of crimes varies according to the degree and type of interest lost. Those crimes whose subject matter is one of the necessities rank first in terms of seriousness, followed by those which involve what is to be a need; and finally rank those involving a complementary aspect of the individual's life.

Based on the previous ranking of benefits, it is agreed that punishment should be equivalent to the degree and amount of harm committed. Accordingly, Islamic jurists identify three categories of crimes in terms of the legal penalty to be imposed: *Hidud*, *Qissas* and *Ta'aziyr* crimes.

☐ *Jarayim Al hidud*

It has been recognised that in Islamic law there are two categories of rights and obligations. The first category includes the right of God, *haqq Allah*, and the second refers to the right of man, *haqq Adami*. In its legal sense, the term *hidud*, plural of *hadd*, is used to refer to those offences that violate the right of God. The term *hadd* means a limit or constraint in the case established by God, to prevent the commission of acts which he has forbidden. Islamic jurists define six major offences which have fixed penalties prescribed in the *Qur'an* or the *Sunna*; *Al sariqa* (theft), *Haraba* (armed robbery), *Al zina* (illicit sexual intercourse), *Al qadhf* (slanderous accusation of unchastity), and *Ridda* (apostasy). All of these are considered as violations against public interest and therefore have their punishments imposed by virtue of being a divine right.

☐ *Jarayim Al qisas* **(sometimes called crimes of retribution & compensation)**

This category is concerned more specifically with crimes against persons. The term *qisas* as mentioned in the *Qur'an* and *Sunna*, is interpreted by Muslim jurists to refer to a penalty equivalent to the injury inflicted on the victim, or it may take the form of a pecuniary compensation *diyya* for the victim's injury, to be imposed only when the victim waives his right to claim it:

> *'O believers, ordained for you is retribution for the murdered.'* (Al-Qur'an Sura, Al baqara: 178)

The *qisas* crimes recognised to Muslim jurists are of two types: (a) *fi al nafs* or, involving the individual's life (homicide); and (b) *fi ma dun al nafs* i.e. for wounds and injuries.

This category is equivalent to the crimes of assault, battery, mayhem, and other infringements of the person and bodily integrity of an individual that do not result in death (Basyuni, 1982: 24). *Qisas* is applied for both according to whether the act is deliberate or accidental. This will be explained later in the chapter.

☐ *Jarayim Al ta'aziyr* **(discretionary crimes)**

Muslim jurists consider all violative acts and corresponding penalties outside the framework of *hidud* and *qisas* crimes as discretionary, correction, rehabilitation or chastisement. *Ta'aziyr* offences are not specified in the *Qur'an* or the *Sunna*. The term literally means chastisement in its widest possible sense. Legally it refers to a penalty which is not fixed, since it is not mentioned in the text. Al Mawardi indicates the meaning of *ta'aziyr* as follows:

> *'Punishment inflicted in cases of offences for which the law Shariy'a has not enacted written penalties. The rules relating to it differ depending upon who is inflicting it and upon whom it is inflicted. It has this point in common with written penalties: it, too, is a means of reprieve and reprimand which varies*

with the nature of the offence, however, it differs from them in other respects.'
(Al Mawardi, cited by Basyuni 1982: 212)

Although *ta'aziyr* crimes are not specified in the *Qur'an* or *Sunna*, nevertheless it is concluded that both the *Qur'an* and Sunna provide the principles of this system. *Al'awa* points out that the system of *ta'aziyr* crimes represents the means through which the society protects its social, political, and economic systems and preserves its cultural continuity, by deciding punishments for disruption or infringements of the system. Thus *ta'aziyr* crimes provide the ruler or judge with the flexibility to respond to societal interest and subsequent changes of circumstances through the instrumentality of penal law. *Ta'aziyr* crimes are numerous in Muslim state, however some examples include the following: bribery, bearing false witness, breach of trust, gambling, and tampering with weights and measures.

The previous classification of criminal conduct, resulted in basic consequences that distinguish between acts which violate a divine right and those which violate a private right of the individual. Muslim scholars point out several consequences in this regard. First of all they claim that, when there is a violation against a divine right such as in the case of *hidud* crimes, where there is an injury to the public interest, then the state preserves the right to commence criminal action. Secondly, they also argue that a penalty inflicted by virtue of being a divine right means that the prescription is necessary for the protection of fundamental public interest. Such a penalty may never be abrogated either by the ruler *'Imam* or by the individual. Nevertheless this is not the case in *qisas* crimes, where a penalty may not be imposed if the victim forgives the accused (normally after having substituted the *Diyya* as compensation).

By contrast *qisas* crimes, such as cases of assault against the individual (crimes of retribution and ransom), or cases of defamation (where false accusation of unchastity

is considered injurious to the person), and *ta'aziyr* crimes (which are violative of a private right), the ruling authority does not have the right to commence a criminal action unless the victim claims that right. In *ta'aziyr* crimes, however, the ruler has the right to determine in accordance with public interest and changing circumstances whether to punish the offender or to forgive him.

Finally, with regard to rules of evidence, both *qisas* and *hidud* offences require at least two eye witnesses, and sometimes four are required as in the case of adultery; while in *Ta'aziyr* offences only one eye witness is enough to give evidence.

The procedural differences described above restrict the judicial authority as to the range of possible sanctions. Whether it be a *hadd*, *qisas*, or *ta'aziyr* punishment. This will be dealt with in the following.

Punishment in Islamic criminal law - meaning

The subject of punishment has been intensively investigated by Muslim jurists, who consider penalty as a materialistic reward prescribed by the legislator to prevent and deter. The most common definition given by Muslim scholars is that punishment is a deterrent before the act and suppression after it (Bahnasi, 1983; Al'alfi, 1982; Al Mawardi). In explaining this Bahnasi (1983) points out that the knowledge of punishment is intended to prevent the commission of the criminal act, and its execution thereafter should prevent the criminal from enjoining in similar conduct in the future. This definition thus provides the whole justification of penalties in Islam as a means of justice intended to regulate human behaviour in accordance with society's benefits. Murad puts it this way:

> *'Penalties in Islam are more of a functional nature to regulate and deter. God has laid down a body of mutual rights and obligations which are the true embodiment of justice. He has also laid down certain bounds and limits to*

> *be observed and maintained for his very purpose. If men and nations desire to move in peace and safety on the highways of life, they must stick to the "traffic lanes" demarcated for them and observe all the (signposts) erected along their routes. If they do not, they not only put themselves in danger, but endanger others. They therefore naturally make themselves liable to penalties - not in vengeful retribution - but to regulate the orderly exchange in man's life in accordance with justice.'* (Kurram Murad 1981: 16-17)

Al Mawardi also indicated that God has assigned *hidud* punishments to deter those who might under temptation respond very easily to their desires forgetting about their rewards in the hereafter. Penalties then serve as a warning for those who are ignorant to escape the shame and pain of punishment, by following duties and avoiding commitment of what has been prohibited. Al Mawardi points out that in this way Islam provides a whole system of rewards that reflect a compassionate urge to avoid and eschew. In the *Qur'an* this is what all the message of Islam is intended for:

> *'We have sent you as a benevolence to the creatures of the world.'* (Al-Qur'an, Sura-Al-Anbiya: 107)

meaning saving them from harm by directing them from disobedience and evil and guiding them to obedience and fulfilment of duties. Therefore, justice for human beings, as for other creatures, lies in obeying God by avoiding what he has laid down as (wrong) and doing what he has ordered as right and good:

> *'It is only God who can establish the intricate network of interrelationships and roles, mutual rights and obligations and consequent rewards and punishments on the basis of absolute standards of justice.'* (Murad 1981: 5)

Punishment in Islam is certainly harsh and threatening, but still more strict are the rules of evidence and procedure before one may be convicted. Nobody is punished unless his guilt is established. Also no-one can be punished for someone's guilt, and all individuals must be equal before the law. The principle underlying it is mainly justice as something associated with rewarding people according to how well or badly

they (observe) the body of the mutual rights and obligations obtaining in their community.

According to Murad (1981) it is a significant contribution of Islam that these rewards are called *hidud* or boundaries. They are liabilities incurred as a result of transgression against crossing the boundary designed by God. A transgression which, according to the *Qur'an*, is the main reason of all the corruption and disorders in the society.

Types of punishments

It is provided that in Islamic law violative acts are either the reprehensible *makruh* or the forbidden *haram*. Islamic jurists distinguish three main categories of punishment according to a complex criterion that combines the gravity of the penalty with the nature of the deviation committed. Each category essentially corresponds to a specific type of penal sanction. The few penalties known to Islamic jurists as *hidud* are fixed limits established by God to prevent commission of what is *haram* or forbidden, or the omission of prescribed regulation. Apart from *qisas*, retaliation, which is the penalty for homicide and injury, all other offences are punished by *ta'aziyr* or discretionary punishments which are not precisely established by the *Shariy'a*, but however the decision is left for the judge. Penalties for each category vary according to the nature of the violation as follows.

Al hidud (Fixed penalties)

Penalties classified under this category are prescribed in the *Qur'an* or *Sunna* of the prophet and have been described as limits of God. Unlike *qisas* and *ta'aziyr*, punishment for this category is mandatory and corporal. Jurists consider acts punishable under this category of a grave nature because of the great harm they bring to the

primary interest of Islamic society. The followings are the main offences punishable under this category. There are six such offences of this category recognised to jurists.

- *Al sariqa Al hadiyiah* (Theft)

The *hadd* prescribed for theft in the *Qur'an* is to sever the thief's hand:

> *'As for the thief, whether man or woman, amputate his hand as requital for what he has done, an exemplary punishment from God; for God is all mighty and all wise.'* (Al-Qur'an, Sura Al ma'ida: 38)

Almost all jurists have defined theft as 'Taking someone's property by stealth' (Al'awa 1982:3), Also all schools agree that the thief's right hand should be cut off from the wrist, and the penalty should be executed in public to serve as an example. Nevertheless, amputation is strictly limited to circumstances where the property reaches a minimum value agreed upon at the time of the theft. It should also be taken from the proper place of custody where it is normally kept. In case of doubt, if any of these conditions is not proved, the offender is not liable to the *hadd* penalty. In this case, and in the event of his committing a subsequent theft, he becomes liable to a *ta'aziyr* punishment.

- *Al haraba* (Armed Robbery)

Three terms are used interchangeably for this crime by Muslim scholars in the basic references of Islamic jurisprudence: *Al haraba* or armed robbery; *Al sariqa al-kubra*, or the great theft; and *qat'al tariyq*, or highway robbery. In the view of some scholars the first term *Al haraba*, or armed robbery exactly expresses the spirit of this crime as has been mentioned in the *Qur'an*:

> *'The punishment for those who wage war against God and his prophet, and perpetrate disorders in the land, is to kill or crucify them, or have a hand on one side and a foot on the other amputated, or banish them from the land. Such is their disgrace in the world, and in the hereafter their doom shall be dreadful.'* (Al-Quran, Sura Al ma'ida: 33)

Jurists defined *haraba* or armed robbery as:

> *'Waiting by the way (or highway) to steal a traveller's property by force and by this means obstructing travel on this road.'* (Al'awa 1982: 81)

It appears from this definition that the act of *haraba* involves theft or taking of someone else's property, however it provides a basic distinction between theft and armed robbery. As previously mentioned the basic element in theft is the taking of someone else's property by stealth, however in *haraba* it is the intention to take property from others by means of force. Accordingly in the case of *haraba* the offender is liable to the penalty even if he failed to bring the intended crime to completion. According to jurists *haraba* involves any of the following situations: (i) The victim is only confronted but not robbed, (ii) Property is forcibly taken from the victim, (iii) The victim is murdered but not robbed, and (iv) The victim is robbed and murdered.

The punishment for *haraba* as prescribed in the previous *Qur'anic* verse involves more than one penalty. Accordingly jurists hold that the imposition of the penalty should differ according to the nature of the commitment, and hence the judge has the authority to choose the suitable penalty according to the proper situation. Thus if the criminal commits murder, he should be sentenced to death; if he robbed the victim, he should have his hand and foot cut off alternately; and if he threatens travellers, he should be banished. Jurists understood amputation of hands and feet from opposite sides to mean the right hand and the left foot. Also, banishment is interpreted to involve imprisonment.

- *Al zina* (Illicit sexual relations)

The Arabic term *zina*, as used by Muslim jurists, applies both to fornication, i.e. sexual relations between an unmarried man and woman, and adultery (defined as illicit sexual relations between two married individuals). The act is defined to mean 'sexual intercourse between a man and a woman without legal right or without the semblance of legal right *al milk or shibh al milk*, (Al'awa 1982: 14). All jurists admit that the basic element in this crime is the unlawful intercourse. According to the *Qur'an* the penalty set for *zina* is flogging with a hundred lashes to be carried out in public:

> *'The adulteress and adulterer should be flogged a hundred lashes each, and no pity for them should deter you from the Law of God, if you believe in God and the last day; and the punishment should be witnessed by a body of believers.'* (Al Qur'an, Sura Al Nur: 2).

Depending on the previous *Qur'anic* verse, the punishment for *zina* is flogging. However, in accordance with the *Sunna* of the prophet, jurists distinguish different penalties for *zina* according to the status of the guilty (Al'awa, 1982). An unmarried person known to jurists as *ghair muhsan* is to be flogged with a hundred lashes and may also be banished for a year. As for one who is *muhsan*, or married, the penalty is stoning to death. Jurists justify the distinction between *muhsan* and *ghair muhsan* on the grounds that a married person has no reason to commit *zina* since he or she has a lawful sexual relations. This opportunity, of course, is not available to the unmarried guilty. The term *muhsan* implies that the legal marriage bond restricts the individual only to legal sexual life. This is expected to create more loyalty between couples. In addition it prevents other social problems resulting from illegal sexual behaviour outside the institution of marriage.

In practice jurists hold that the imposition of those penalties is restricted by the evidentiary requirements. *Ahad* is applicable only when the act is witnessed by four

eye-witnesses known for their honesty, or otherwise confessed to by those who are guilty of it who ought to give full details of the commitment. As with other *hidud* penalties, if any doubt might occur the *hadd* cannot apply.

- *Shurb al Khamr* (Drinking of wine)

Wine has been defined as 'any drink which gets a person drunk' (Al'awa 1982: 44). Wine drinking was a common habit which prevailed among Arab tribesmen before Islam. When Islam came it did not declare immediate complete prohibition of this habit from the beginning, but the final prohibition was made through gradual legislations. At the very first stage Muslim believers were forbidden to approach their prayer under the influence of intoxication. The *Qur'an* states:

> *'O you who believe do not pray when you are intoxicated until you are sure of what you are saying.'* (Al-Qur'an, Sura Al nisa': 45)

To follow this *Qur'anic* legislation this means that the individual Muslim should stop wine drinking during the five prayers, which extends from dawn time until after sunset. Another *Qur'anic* verse points out that wine has some benefits, but the same verse goes on to point out that it is a great sin and that its harm outweighs its apparent benefit:

> *'They ask you of (intoxicants) wine and gambling. Tell them: "There is great enervation but also benefits in them for men; but their enervation is greater than their benefit."'* (Al Qur'an - Sura Al baqara: 219)

In a later legislation, the *Qur'an* became more strict in forbidding wine drinking. In this revelation wine drinking is described as an impure thing *rijs* explained in terms of the bad consequences which Satan creates among those who drink:

> *'O believers, this wine and gambling, these idols, and these arrows used for divinations, are all acts of Satan; so keep away from them. You may happily prosper. Satan only wishes to create among you enmity and hatred through wine and gambling, and to divert you from the remembrance of God and prayer. Will you therefore not desist.'* (Al Qur'an, Sura Al ma'ida: 90-91)

Hence one cannot say that wine drinking involves any aggressive act in itself, but as the *Qur'anic* verse indicates, it is the evil effect of alcohol that led to the classification of its drinking as a sin and an impure thing not to be committed. This is supported by the fact that the previously mentioned verse was said to have been revealed, and alcoholic drinks were classified to be forbidden, when a group of Muslims were enraged in a fight among themselves after getting drunk. It has therefore come to be that God has considered wine drinking as a deviation against the limits of God, and consequently penalties have been prescribed against this sin to safeguard the society from its evil and harmful effects.

The vast majority of jurists, though, have said very little either about the benefits or the harmful effects of wine drinking. However, they simply disapprove of it because it is classified by God as a sin not to be committed. Their acceptance of this legislation reflects their complete adherence to God's will. They consider that the creator, God, has the absolute right to prescribe for his creatures what is right and what is wrong, or what is lawful *halal* and what is unlawful *haram*, since he alone knows what is of most benefit and what is of most evil to the individual and society.

Al'awa refers to different research findings that prove the destructive effects of wine drinking both on the individual and society. He points out that doctors, criminologists, psychotherapists and sociologists have all found different effects, which range from physical and mental health, crime commitment, motor accidents and homicide in different western countries. In view of recent Muslim scholars' writings, enough has been said about this to justify the legal punishment that is alleged to have been applied for it.

In summary, it can be said that the principle behind the penalty for alcohol use in Islamic legislation is the safeguarding of the society from its unquestionably destructive effects, and also its established association with crime. Al'awa (1982) pointed out that most of the jurists hold that there is a *hadd* punishment for this sin, nevertheless this has not been prescribed in the *Qur'an*. On the other hand, it is also pointed out that the prophet during his lifetime had imposed and ordered beating as a penalty for drinkers (Ibid).

- *Al qadhf* (Slanderous accusation of unchastity)

Slanderous accusation is known by jurists as an unknown allegation that an individual has committed, *zina*. Clear expression for such allegation should involve only one meaning that is derived from the term *zina*, or any word of the same meaning. The penalty for this offence is classified as the right of God. Therefore once the offence is proved, either by testimony or personal confession, the guilty person is liable to a *hadd* punishment stated in the *Qur'an* as follows:

> *'Those who defame chaste women and do not bring four witnesses should be punished with eighty lashes, and their testimony should not be accepted afterwards, for they are profligates.'* (Al Qur'an, Sura Al-Nur: 4)

- *Al ridda* (Apostasy)

Apostasy is known in Arabic as *ridda*, which means 'turning back'. A person who turns back from Islam after once having embraced it, to unbelief or for another religion, is known to jurists as a *murtadd* (apostate). Turning back from Islam in this way can be by word, deed, or omission. Turning away from Islam by word is to state the non-existence of God, the prophets and the angels; or to deny any part of the *Qur'an* or its principle teachings, such as alms-giving *zakat* and prayer. Turning away from Islam by deed is to act contrary to the teachings of Islam, as for example to intend to commit something *haram*, or unlawful. On the other hand, turning back from Islam by

omission is to refrain from doing all that is required by Islam as a religious duty. The majority of Muslim jurists hold that turning away from Islam after having once embraced it, by any of the ways mentioned, is a crime classified under *hidud* category. No worldly punishment is set for this offence in the *Qur'an*, but all that is mentioned is that the apostate will be punished in the hereafter:

> *'But those of you who turn back on their faith and die disbelieving will have wasted their deeds in this world and the next. They are inmates of Hell, and shall there abide forever.'* (Al-Qur'an, Sura Al baqara: 217)

According to jurists, the strongest evidence that apostasy is punishable by a *hadd* penalty stems from a prophetic *hadith* narrated by 'Ibn 'abbas, in which the prophet has pointed out that whoever changes his religion is to be killed. The consensus of the companions also follows this *hadith*. Jurists point out that the requisite for committing apostasy is to intend to do or omit the act while being aware of the penalty. A person who commits apostasy as such is normally allowed a certain time to repent. If he fails to do so after this period has passed, then the *hadd* or the death penalty is inflicted.

More recently it is accepted that the concept of punishing one who displays in any way disloyalty to the Islamic state is equivalent to treason or conspiracy in modern legal systems (Al'awa, 1987). In the Islamic sense apostasy can be harmful to the Islamic society in two ways. Firstly, in the case of the apostate who encourages other people to reject Islam in order to weaken the law and order of the Muslim society which is based on its religious teachings. Secondly, in the case of the apostate who unites or joins hands with enemies in an actual state of war against Islam. It is noteworthy to point out here that war against Islam might take different forms, for example by delivering talks or writing material to degrade Islam. According to Muslim scholars, in both cases punishment is justified to protect the Muslim society from the

harm of the apostate's action. However, some scholars see that in other cases, for example in the case of the simple change of someone's religion, the punishment cannot be imposed. Al'awa says:

> *'One can understand, therefore, the Hanafi school's view of punishing the male apostate only, leaving the female apostate unpunished, because she is not able to fight against the Muslim state, which the male apostate is able to do.'* (Ibid: 63)

In summary, Islam is viewed by Muslim jurists as a complete system of life based on religion. Its rules are prescribed to shape and protect the public order in the Muslim society. Accordingly, apostasy is regarded as a crime for which a *hadd* penalty is justified. However, the punishment is said to be inflicted only in cases in which the apostate is a cause of harm to order in the Muslim society. This is the underlying principle for penalising this offence in modern times.

☐ *Al qisas* Penalties (Retaliation)

Penalties classified under this category apply to crimes against the person, such as murder and the infliction of physical injury. According to jurists these appear to be more civil wrongs, rather than a crime in the strict sense, the remedy for which is the concern of the victim or his nearest kin, and the public power has no right to intervene in this case. The principle 'a life for a life' stems both from the *Qur'an* and *Sunna*, and has radically replaced the pre-Islamic custom of revenge *tha'r*, which was common among Arab tribesmen in cases of injury and homicide before Islam.

The *Qur'an* states:

> *'O believers, ordained for you is retribution for the murdered, (whether) a free man (is guilty) of (the murder of) a free man, or a slave of a slave, or a woman of a woman. But he who is pardoned some of it by his brother should be dealt with equity, and recompense (for blood) paid with a grace. This is concession from your Lord and kindness. He who transgresses in spite of it shall suffer painful punishment.'* (Al-Qur'an, Sura Al baqara: 178)

This rule is also provided in *Sunna*, where it is related to the prophet that he has indicated that if a man is murdered, his nearest kin have either to kill the murderer or, if they prefer, to take compensation.

Following the previous regulations of the *Qur'an* and the *Sunna* all schools of law agree that the punishment for homicide and the infliction of injury in Islamic law could be either *qisas* (retaliation) or, alternatively, the payment of *diyya*, or blood money for compensation. But the *Qur'anic* verse clearly indicates a preference for the latter, since the forgiver will be rewarded in the hereafter, which for a believer is a much greater reward than any other.

Muslim scholars understood the term *qisas* as mentioned in the *Qur'an* and *Sunna* of the prophet to mean 'infliction on a culprit an injury exactly equal to the injury he inflicted on his victim' (Al'awa, 1982: 69). There the institution of *qisas* can be understood as a two-fold policy of deterrence as follows:

- It provides for exact reparation for the loss or harm suffered, to the victim or his avenger. This satisfied the tendency of vindictiveness on the part of the victim and his kin relatives, while excluding unnecessary harm on the offender. There is however an alternative option to resolve the conflict peacefully, by compensation to be paid to the victim or his family, if this is preferred.

Islamic jurists distinguish two categories of *qisas* penalties: *qisas* for homicide, known in the Islamic terminology as *fi al nafs*, or involving one's self; and *qisas* for wounds or injuries, known as *fi ma dun al nafs*, or involving less than one's self. Homicide itself is divided into two types - deliberate and accidental - which are both mentioned in the *Qur'an*. As prescribed in the previous verse, the punishment for deliberate homicide is the killing of the culprit, or alternatively the payment of blood money. In

the case where the nearest kin of the victim do not demand *qisas*, or in other cases where it is not possible to carry out the penalty, or if the crime does not satisfy the evidentiary requirements recognised by Islamic schools of law. Nevertheless the infliction of *qisas* for injuries is ruled by the following conditions: (i) the injury must be deliberate *'amd* and not accidental *Khata*; (ii) the part of the body on which *qisas* may be inflicted must be the same, and in the same condition, as the part of the victim's body which was affected; and (iii) *qisas* must be possible to inflict, i.e. the injury must involve cutting off from a joint as, for example, from the wrist. When all these conditions are satisfied, *qisas* must then be inflicted by experts to avoid any possible error.

On the other hand, concerning the punishment for quasi-deliberate *shibh al'amd* and accidental homicide *Khata*, previously described as *fi ma dun al nafs*, such as blows and wounds inflicted voluntarily without intent to cause death, but without causing it, or in cases of the physical injury not resulting in death, the *Qur'an* states:

> *'It is not for a believer to take a believer's life except by mistake; and he who kills a believer by mistake should free a slave who is a believer, and pay blood-money to the victim's family unless they forego it as an act of charity. If he belonged to a community hostile to you but was himself a believer, then a slave who is a believer should be freed. In case he belonged to a people who are your allies, then give blood-money to his family and free a believing slave. But he who has no means (to do so) should fast for a period of two months continuously to have his sins forgiven by God, and God is all-knowing and all-wise'.* (Al-Qur'an, Sura Al nisa': 92)

Referring to this verse jurists hold that no *qisas* is prescribed in case of accidental homicide, but only the blood money and penance, or *Kaffara*. But if the criminal refuses to pay for compensation according to juristic consensus, he is to be punished by *qisas* or retribution. In this case the offender has to undergo the same harm or loss of an organ or a life which he caused to the victim.

Jurists disagree by what means the death penalty should be carried out in cases of *qisas*, but according to the late Shaykh Shaltout this should not be a subject of concern, since it is related of the prophet that he ordered the believers to improve the method of killing, even for the slaughtering of animals. It can therefore be concluded that retaliation is the punishment prescribed for deliberate homicide, and it should be carried out in the manner that causes the least possible pain. However, the death penalty for *qisas* is owed only if the nearest relatives of the victim insist on carrying it out. Otherwise they have the right to claim *diyya*, or the blood money for compensation, or pardon the victim altogether in exchange for God's reward in the hereafter. The four *Sunna* schools have also added that if *qisas* is demanded, it is the right of the victim's relatives to carry out the penalty if they are capable of doing so in the proper way. This might have been justified on the old principle of personal revenge or *tha'r*.

According to the classical rule, the *diyya*, or blood money, which is the sole punishment for injuries and quasi-deliberate homicide, is to be paid in the value of one hundred camels. However, recent scholars admit that it can be paid by an equivalent value of money, gold, silver, or whatever economic value, there being no camels available at a specific place and time.

Finally, it can be concluded that Islamic law has prescribed *qisas* for homicide and injuries. On one hand it implies the sense of punishment which the wrongdoer has to undergo, and on the other hand it implies the sense of a tort which makes the wrongdoer liable to pay compensation, from which the affected party may benefit. It is the traditional heritage of Pre-Islamic Arabs which has been modified by Islamic law to satisfy the needs of individuals and order in society.

☐ *Al ta'aziyr* **(Discretionary Punishment)**

Penalties classified under this category are commonly known to jurists as discretionary punishments. They might involve transgression against God or an individual. By definition these do not have either fined punishments or penance *Kaffara* prescribed in the *Qur'an* or *Sunna*. It is hence understood to Muslim jurists that where *hadd*, *Kaffara* or *qisas* are applied, *ta'aziyr* cannot intervene or replace any of these.

The term *ta'aziyr* as has been used in the Islamic legal writings, was never mentioned in the *Qur'an* or in the *Sunna*. Nevertheless the *Qur'an* has established the legal principle ruling the treatment of any misdeed in the Muslim society as follows: '*The recompense of an evil is a like evil*' (Al-Qur'an, Sura Al shura: 40). That it cannot be treated with anything but a penalty commensurate with the misdeed. According to Muslim scholars this provides the base from which the *ta'aziyr* punishment is deduced. Both the *Qur'an* and the *Sunna* refer to some types of deviant acts which have no punishment prescribed for them, and it is left to the ruler or the legal authority to decide what sort of penalty is suitable to be inflicted. For example, with regard to homosexual relations, the *Qur'an* states: '*If two among you are guilty of such acts then punish both of them*' (Al-Qur'an, Sura Al nisa': 16).

Commentators understood the *Qur'anic* order 'punish them both' as directed to the ruler of the community without deciding of what type and amount, or how the penalty must be inflicted. It was this authority provided for in the *Qur'an* which jurists consider as the legal origin of the *ta'aziyr* doctrine in Islam.

Moreover, the *Sunna* of the prophet does also show more examples concerning the application of *ta'aziyr* penalties. Al'awa (1982) refers to several cases of *ta'aziyr* penalties applied in the *Sunna*. In one of the examples it is related of the prophet in

a *hadith* transmitted by Muslim and Abu Da'wud that he deprived a man of his share of the spoils of a battle because of a misdeed he committed against the Commander of the army. It is also related of the prophet, for example, with regard to the payment of *zakat* that he has pointed out that whoever pays it will get reward from God, and that whoever refuses to pay it, it will be taken from him, and he will have one half of his wealth taken for the state treasury. Scholars understood this fining of the offender as a sort of *ta'aziyr* penalty.

Hence it can be concluded that, the previous mentioned examples from the *Qur'an* and *Sunna* provide the legal base for the *ta'aziyr* institution. In this way rulers and judges are provided with the authority to enable them to protect the interests of the community when it is threatened by violations or omissions which fall outside the very limited area of the prescribed penalties, whether it be *hidud* or *qisas*. Al Mawardi clarifies this as follows:

> *'Ta'aziyr consists of chastisement for errors unpunishable by "Hidud". Theoretically, the crimes of this category are those acts which bring injury to the social order as a result of the trouble they cause. Some unquestionably would be held by any society or any judge at any time or place to be criminal: False witness, corruption, extortion. But the Divine plan left their precise determination to the community and its representatives, to allow for changes over time in the needs of that community'.* (Basyuni, 1982: 167)

Among the various types of behaviour which are considered in the *Qur'an* as prohibited sins, jurists commonly classify the following as examples of *ta'aziyr* offences: usury *Al riba*, false testimony *sihadat al zur*, breach of trust *Khiyyana al'amana*, insult *Al sab*, and bribery *Al rashwa*.

- Examples of *ta'aziyr* Penalties

In the Islamic legal sense the term *ta'aziyr* denotes a penalty aimed at reforming the offender while deterring from further deviant acts. It is related to 'Ibn Farhun in his

famous book, *Tabsyra al hukam*, that he describes the aim of *ta'aziyr* as 'Disciplinary, reformative, and deterrent punishment' (Al'awa, 1982: 96). This suggests that both of the two aspects, deterrence and reformation, are combined in the doctrine of *ta'aziyr*. This is true, since discipline is expected to result in reformation, it is logical to admit that the later becomes in fact a means of deterrence. To realise this end under the system of *ta'aziyr*, the judge has given a wide variety of options to decide the most suitable punishment according to the criminal circumstances, his records, and psychological conditions.

Ta'aziyr thus provides an area of social control where the intervention of the judge is critical and his discretionary power is manifest. Particularly this is clear in the case of some of the penalties that fall outside the scope of purely penal law but more relate to the moral and educational theories of penology. The following provide some of the examples aimed at this goal.

Al wa'z (Admonition)

This type of treatment is suggested to those offenders who for the first time commit minor unlawful acts, provided that the judge sees it is enough to remind the offender, if he has forgotten or in case he is unaware, that he has done something wrong, in order to reform him and consequently restrain him from future transgression. At the most basic level there is simply notice given to the offender in private. Often, however, he might be summoned to court in public. It is intended that such proceedings will have a psychological impact upon the offender in both situations.

Al tawbiykh (Reprimand)

This might be by any statement or act which in the judge's view is sufficient to make the offender feel shame at what he has done.

Al tahdiyd (Threat)

In some cases the judge might feel that it is necessary to induce the offender to mend his behaviour by means of threatening him with punishment if he repeats the offence, or by deciding a sentence against him which is suspended until he commits another offence (within a specific period of time).

Al tashhiyr (Public Disclosure)

Muslim scholars consider this punishment as more suitable for offences which involve the trustworthiness of the offender. However, the judge is also free to apply it for any other suitable offence. Traditionally disclosure involves taking of the offender to different parts of the city and informing the public that he has been punished for a wrong act. As the mass media in the current time have developed enormously, recent scholars admit that public disclosure can be done by publishing the court's decisions in the daily press, by broadcasting on the radio or television, or by any other media which will inform the public about the offender and his offence.

Al qarama wal musadara (Fines and Seizure of Property)

Jurists are not in agreement concerning this penalty. On the other hand, 'Ibn Taymiyya and his student 'Ibn Alqayyim argue in support of this punishment, referring to evidence related to the practice of the prophet in this regard.

Al habs (Imprisonment)

In Islamic criminal law two types of imprisonment are known to jurists: (i) Imprisonment for a limited period can be imposed for simple offences. Jurists suggest a time limit ranging from one day to six months, or even a year. The maximum period is left to the authorised judge. (ii) Imprisonment for an indefinite term. This is normally prescribed for habitual offenders who in the view of the judge cannot be reformed by

other punishments. All authorised schools of law agree that this punishment can last either until the offender's repentance, or until his death, in the case of serious offenders.

Al jald (Flogging)

Flogging is most commonly recommended as a discretionary punishment by jurists because it can be readily inflicted without causing any deprivation of the offender's liberty. Normally the penalty is administered by means of beating the criminal with a stick or an unknotted whip, avoiding the most serious areas of the body. Jurists are not in agreement with regard to the number of lashes which the offender must receive. However, the minimum is three, while the maximum ranges between thirty-nine and sixty-five lashes.

Al ta'aziyr bi al qatl (The Death Penalty)

The death penalty is prescribed only for the most serious crimes in Islamic law. However, exceptional cases in which *ta'aziyr* by the death penalty is allowed are to be found in the writings of almost all schools of Islamic jurisprudence. However, in application it is to be restricted to cases where it is made necessary only by the offender's character or by the nature of the offence.

With regard to the previous examples, it is worth mentioning here that *ta'aziyr* may either be the original punishment for less grave crimes which have no punishment prescribed in law, or an additional punishment for offences which normally carry fixed penalties but which, for reasons of doubt, or according to the situation of the offender, cannot be inflicted.

The Judge's Discretionary Authority in Islam

As it has been shown above, *ta'aziyr* penalties range from a simple reprimand to imprisonment, and from flogging to the death penalty. Fines and seizure of wealth may also be applied. The most common notion about the judge's discretionary power is that he is completely authorised to choose the punishment which he sees suitable for the offence, the offender's character, and the victim. Al'awa relates to a contemporary *Shariy'a* scholar, that he describes the extensive scope of the ruler's or judge's powers outside the fields of *hadd* or *qisas* offences as follows:

> *'extensive powers at the ruler's disposal, to discipline anyone, for anything, with any punishment'.* (Al'awa, 1982: 111)

On the other hand, the *Qur'an* justifies this discretionary power saying: *'Obey God, His prophet and those in authority (in charge of your affairs)'* (Al-Qur'an, Sura Al nisa': 59). However, jurists hold that this authority must be exercised in accordance with the general principles of the *Qur'an* and *Sunna*, and mainly with the intention of protecting the basic parts of the law which relate to public interest. In this regard Al'awa states:

> *"Indeed the legislation passed by the ruler must not contradict the general principles laid down by the Qur'an and the Sunna, but when this condition is met, the ruler or rather the Umma is completely free to pass whatever legislation is needed. This legislative right is known as siyasa shariyya or governmental authority. The only condition on which this siyasa or policy attains legitimacy is that it does not contradict what is contained in the Qur'an or the Sunna. According to 'Ibn Al-Qyam any means which establishes justice and prevents injustice is "legitimate siyasa"*". (Al'awa, 1982: 15)

It can then be said that this authority provides evidence of the flexibility of the Islamic penal law. However, this is not to be understood beyond the bounds of legality. Accordingly the judge ought not to decide penalties at his own pleasure, for this is considered by jurists as *fisuq*, or injustice. He must do his best, by means of conscientious (reasoning) to decide the most suitable penalty that fits the case in question,

both with regard to the crime and the personal situation of the offender. As a general rule, within the *ta'aziyr* system, a Muslim member realises that he and the authority are required to act rightly in accordance with the objectives of the law. The sovereign, on the other hand, as a representative of his community, will consider it necessary to act on behalf of the community to warn fairly before punishment in order to promote public interest. The judge is a delegate of the sovereign, and consequently restricted by him, his decrees, the demands of the existing legal policy *siyyasa shar'iyya* and some limitations on the exercise of punishments at his disposal.

Up to that point, it can be said that within the *ta'aziyr* system the modern Muslim state can formulate other penal codes outside the limited area of *hidud* and *qisas* punishments, to be applied whenever demanded according to the existing legal policy.

In the end, having established a system of criminalization and punishments and imposed certain limitations on individual liberty not to conflict with the public interest, Islam has thus built a whole range of principles which is not intended to flog and to cut off hands, but rather a compassionate urge to avoid and eschew. If the idea of punishment is universal, however, Muslim jurists consider the philosophy underlying it in Islam as an intense one. The chapter now turns to discuss some of the basic aspects underlying the philosophy of punishment in the Islamic penal law.

The Philosophy of Punishment in Islam

A question might be raised as to why *Shariy'a* wants to punish and not reform. In fact, punishment is not the only way of treating crime and achieving social control in the Muslim community, but it is the last means of treatment when the other educational ways fail to promote the individual's right conduct. As we have seen, the overall scheme of the *Shariy'a* and its various teachings and institutions is basically value-

oriented towards the goodness of society. The entire fabric of the *Shariy'a* thus runs through a functional relationship between the individual and the society. On one hand the individual lives in a society where he can survive and find satisfaction. Provided with a free will, a moral sense and the basic knowledge of right and wrong, he is expected to behave in accordance with the goals of the social order. On the other hand, the social order and its benefits are not separate from, nor conflicting with, the individual's benefits. The society should enable him to realise his goals and achieve his potential. His life, personality, freedom, property and honour are all sacred and should be protected. No-one is allowed to take any of these values unless acting in accordance with the law of God. The interdependent relationship between the individual and society is described by Karam Murad as follows:

> *'Both should stand together, fused and harmonious, co-operating and assisting - in the service of their one God. Both are interdependent and in equilibrium - Both have their well-defined functions and orbits to follow'.* (Murad, 1982: 8)

It can hence be said that the balance in the Muslim society is determined by the way Islam resolves the tension between the individual and the community, and the crucial role it assigns to each of them through the development of high moral qualities and social values. The concept of moral reform has always been the cornerstone in Islam's total plan of goodness, and the individual's status and achievement can only be based on his real moral qualities. Islam has thus made every effort to promote the individual morality in order to ensure that inducement to evil is minimal. Reform is therefore a pre-crime goal and not a post-crime treatment. As Murad (1982) argues:

> *'Once the crime is committed, the best place for reform is in the family and in society, where a criminal is to live after punishment, and not in a prison where every inmate is a criminal, unless of course a society considers itself to be more corrupt and less competent to effect reform than a jail'.* (Murad, 1982: 19)

Therefore, with regard to the treatment of crime and deviant behaviour, Islam basically depends on promoting the moral deterrent before the legal deterrent. Before punishment, Islam takes different ways of reform to prevent the individual from doing evil.

☐ Three-fold Reform

According to the *Qur'an* human actions relate to three sources of states, as follows:

- The first source represents the natural state. It is described in the *Qur'an* as *Nafs AMmarh*, or incitement to evil: 'For the soul is prone to evil' (Al Qur'an, Sura-ysuf: 53). In this state the human self is opposed to the individual attainment of perfection and urges a person towards undesirable behaviour and evil ways. Unless guided by understanding and reason, the individual can only follow his natural bent towards all types of evil and anti-moral behaviour.

- The second source is described in the *Qur'an* as the reproving self, *Nafs Lawwama*: *'And I call the reprehensive soul to witness'* (Al Qur'an, Sura Al qiyyama: 2). It is so described as it reproves man from vice, instead of submitting to his natural desires, behaving like animals. In this state man develops good morals, and his natural desires are regulated by reason. Though it reproves itself from vice, it is occasionally dominated by natural desires when it stumbles and falls.

- In the third state, after the individual defeats his natural condition and reproves his desires on vice, he will be filled with spiritual powers and he is closely related to his God. At this stage his soul is in complete rest. It undergoes a great transformation while in this life, and is bestowed a paradise in the hereafter:

> *'O you tranquil soul, return to your lord, well pleased and well pleasing Him. Enter then among My votaries, Enter then among My garden'.* (Al Qur'an, Sura Al fajr: 270-30)

The true purpose of the teachings of Islam is the promotion of the three states described above. Since they are inter-related, reform accordingly follows three stages of education. There is no reform which is imposed by compulsion.

- *Al nafs Al'ammarah* (Incited to Evil)

In the first stage of reform man is taught the elementary values related to social behaviour. He is raised from his barbaric ways to adopt the behaviour of a civilised human being. In this stage there is no much concern with moral qualities. What is important is the promotion of good humanistic manners and behaviour. Several examples of these elementary teachings have been mentioned in the *Qur'an*. For instance, God states:

> *'O you who believe, do not enter other houses except yours without first asking permission and saluting inmates. This is better for you, you may happily take heed. If you find that no one is in then do not enter unless you have received permission. If you are asked to go away, turn back - that is proper for you. God is aware of what you do'.* (Al Qur'an, Sura Al'a'raf: 31)

- *Al nafs Allawwama* (Reproving Self)

The second stage of reform begins when a person's reason becomes mature enough to enable him to distinguish between good and evil. At this stage he is bestowed so much reason and understanding, and is conscious of the existence of God to a degree that stimulates his true moral qualities. For the first time he reproves himself over a wrong done and is anxious to do good. This is the time when he can be taught to convert his natural conditions into higher moral qualities, and he can be instructed to employ his faculties in their proper places and on their proper occasions.

Moral qualities designed in the *Qur'an* fall under two types. The first type is concerned with the discarding of evil - and the second with the doing of good.

- Discarding of Evil

This includes those qualities by which the individual is instructed that he should not do harm to any of his fellow beings' property, honour, or life, either by his tongue, eyes or hands. The *Qur'an* recognises four moral qualities, as follows:

The first quality with regard to the discarding of evil is known in Arabic as *'Ihsan*, or chastity. The term relates to the faculty of procreation of men and women. Both men and women are known as chaste, who would refrain altogether from illicit sex and all of its approaches because of the bad consequences and disgrace it brings to both. Nevertheless this moral quality of chastity would only come into play when the individual who possesses the capacity for committing this particular act restrains himself from doing it. Otherwise, if he is young or impotent, or arrived at an extreme old age, in such cases and in such natural conditions he cannot be credited with the moral quality of chastity. In this regard the *Qur'an* assigns the teachings against unchastity before prescribing punishment as follows:

> '*Tell the believers to lower their eyes, guard their private parts. This is purer for them*'. (Al Qur'an, Sura al Nur: 31)
>
> '*Tell the believing women to lower their eyes and guard their private parts and not display their charms except what is apparent outwardly, and lower their bosoms with their veils and not to show their finery except to their husbands or their fathers or fathers in law, their sons or step-sons, brothers, or their brothers and sisters' sons, or their women attendants or captives, or male attendants who do not have any need (for women), or boys not yet conscious of sex. They should not walk stamping their feet but they make known what they hide of their ornaments. O believers, turn to God, every one of you, so that you may find success*'. (Al Qur'an, Sura Bani'Isra'iyl: 33)
>
> '*And do not go near fornication, as it is immoral and an evil way*'. (Al Qur'an, Sura Bani'Isra'iyl: 33)
>
> '*Those who can not afford to marry should abstain from what is unlawful until God enriches them by his grace*'. (Al Qur'an, Sura al Nur: 34)

- Beside providing the previous teachings for achieving the quality of chastity, the previous verses furnish certain remedies against unchastity. Both men and women are instructed to lower their eyes from those who are outside their prohibited degree. They are also instructed to avoid all occasions of incitement that might lead towards this vice and to control themselves from sex until they get married. It is thus clear that with regard to the quality of chastity, the teachings are that human faculties should be regulated in such a manner that they should not be confronted with any occasion that would lead to serious tendencies.

The second quality in the context of discarding of evil is concerned with honesty or integrity. In this regard the *Qur'an* has comprehensively classified all dishonest practices in such a way that no type of acquiring improper wealth or property has been omitted. The following examples are clearly stated in the *Qur'an*:

> *'And do not consume each other's wealth in vain, nor offer it to men in authority with intent of usurping unlawfully and knowingly a part of the wealth of others'.* (Al Qur'an, Sura Al baqara: 189)

Another verse states:

> *'God conjoins that you render to the owners what is held in trust with you'.* (Al Qur'an, Sura Al nisa': 59)

In short, God has not only prescribed punishment for theft, but at the same time he has discarded all other means of acquiring illegal property.

The third moral quality related to the discarding of evil is *hasana*, or *haum*, which means refraining from doing harm to any one and behaving peacefully towards others. This quality, which is essential for humanity, means overlooking trivial matters of annoyance that do not cause great harm. *Haum* becomes a moral quality when a

person willingly refrains from doing harm and exercises the quality of peacefulness on its proper occasions. The *Qur'an* provides many examples for this, i.e:

> *'But if they are inclined to peace, make peace with them, and have trust in God'.* (Al Qur'an, Sura Al najm: 61)

> *'Good and evil are not alike. Repel evil with what is better. Then you will find your erstwhile enemy like a close, affectionate friend'.* (Al Qur'an, Sura Hamim al sajda: 34)

The fourth moral quality with regard to the discarding of evil is that of courtesy, or saying a good word. Examples of divine teachings in this regard are as follows:

> *'And speak of goodness to men'.* (Al Qur'an, Sura Al baqarah: 83)

And

> *'O you who believed, men should not laugh at other men, for it may be they are better than them; and women should not laugh at other women, for they may perhaps be better than them. Do not slander one another, nor give one another nick-names. After believing, it is bad to give (another) a bad name. Those who do not repent behave wickedly'.* (Al Qur'an, Sura Al hujurat: 12)

- Doing of Good

Among the first qualities related to the doing of good are forbearance and forgiveness. The *Qur'anic* teaching in this regard is that one must consider forgiveness on its proper occasions. The *Qur'an* states:

> *'Who expend both in joy and tribulation, who suppress their anger and pardon their fellow men; and God loves those who are upright and do good'.* (Al Qur'an, Sura 'al'umran: 64-134)

The second, the third and the fourth moral qualities related to the doing of good are equity, benevolence, and graciousness, as between kindred. These have been summarised in the *Qur'an* as follows:

'Verily God has enjoined justice, the doing of good, and the giving of gifts to your relatives; and forbidden indecency, impropriety and oppression'. (Al Qur'an, Sura Al nahl: 91)

There are also several other teachings in the *Qur'an* which encourage the doing of good. These include, for example, truthfulness, brotherhood, co-operation and sympathy for mankind.

- *Al nafs Al mutmainna* (The Soul at rest)

The major transformation in this stage is that man is carried from the grade of a moral condition to that of a higher spiritual condition. Finding his complete rest in returning to God, a person realises that the worship that was assigned to him is in fact the food that nurtures his soul and his spiritual life. All of what his reproving self has administered to him in his moral stage, is transformed by this urge into further disgust against evil desires. This is the development of the soul at rest, when a person begins to feel a strengthening breeze begin to blow upon his soul. He looks upon his previous weakness with remorse, and consequently his habits exhibit a complete transformation and he is drawn far away from his previous condition. Under the condition of the reproving self a person repents time after time, and yet falls down and often despairs, considering himself beyond remedy. He remains in this state until he develops a spiritual condition where God inscribes love of faith upon his heart and makes him averse to disbelief, wickedness and disobedience, and drives from his heart all the evil ways. As follows, the *Qur'an* indicates this condition:

'But god has made faith more desirable to you, and attractive to your hearts, and rendered disbelief and sin and disobedience repugnant. They are those who are well directed'. (Al Qur'an, Sura Al hujurat: 8)

The Place of Reformation in Islamic Penal Law

The belief in the reformative theory of penology seems to have reached its peak in the last years. Reform has been equated with cure and the criminal is no longer considered as a 'bad man'. He is rather a 'sick man', perhaps physically, almost certainly mentally and psychiatrically. He needs help because something has gone wrong with him and led him to react in an anti-social manner. In short, the overall theory of reformation can be understood as a mere justification for the criminal behaviour. This might be encouraging to the majority of people to behave against the social order, since they are going to be considered as sick people who need special care.

As it has been shown, in the Islamic system reform is only a pre-crime objective, where the individual is given every effort in the process of moral education to lead him along the right way. Once the crime is committed, reformation is not the objective and the individual should undergo punishment. Whatever the justification of the reformative theory, the sense of equating reform with treatment has no place in the justification of punishment in the Islamic penal law. As we will see, the goals of justice, utility and deterrence in no way diminish the goal of individual reformation in Islamic penal law. As Al'alfi puts it:

> *'Crime is not just an event which provides an occasion for rebuilding the character of the criminal, but an evil which the criminal intentionally and voluntarily inflicted on society'.* (Basyuni, 1982: 23)

This is true, because if reforms were the main objective of punishment, it would be then unnecessary to prescribe punishment, or even to discuss it. Also, it would create the question of what could be done for those who could not be reformed?

This being the case, it is therefore necessary for society to react to such criminal acts with punitive measures, sufficient to deter the criminal and other potential offenders from walking the same path again. Al'alfi also sees this concern for reformation as not being a primary goal. This is also evident from the view that the execution of punishment seeks to prevent the criminal from returning to crime.

Achieving Justice and Utility in Islamic Penal Law

Justice is the ruling spirit and the supreme purpose for which God has sent all the prophets to guide men to conduct themselves within its framework.

> *'We have surely sent apostles with clear signs, and sent with them the book and the Balance, so that men may stand by justice'.* (Al Qur'an, Sura Al hadid: 25)

This is also the basic purpose around which the Islamic community is set. The *Qur'an* states:

> *'O you who believe, stand up as witnesses, and do not let the hatred of a people deviate you from justice. Be just. This is the closest to piety, and beware of God. Surely God is aware of all you do'.* (Al Qur'an, Sura Al ma'ida: 8)

Justice is therefore associated with obedience to God by doing what he has ordered as right, and avoiding what he has forbidden as wrong. Hence it is only God who can establish the inter-related network of obligations, mutual rights and their consequent rewards and punishments on the basis of complete justice.

Moral scholars assume that duty is the basis of all the good acts man ought to do, and that such duty in its real meaning is justice, since every individual considers that what he ought to do is a rule which applies to all other people. Islamic penal law and its rewards is built on this principle of justice, and therefore punishment can be understood as a requirement of absolute justice. Since crime is deemed to be a threat to

the prevailing value system of the society and a violation of the victim's right, punishment on the other hand must seek justice to both of them. Satisfaction for the victim and his family is an important part of that goal, which in turn will result in further protection for society's values and order.

It appears, then, that the foundation of punishment on justice is strongly associated with the protection of real utility. According to Shaykh Abu Zahra, this association can be explained as follows. The social structure is based on an inter-related network of benefits, and association of utilities. Some elements of the mixture might overcome the others. It would then be a safeguard to have the law to protect the basic utility and prevent injustice. Punishment thus achieves this goal.

'Ali Mansour argues that those who think that punishment in Islamic Law is excessively harsh must consider the harmful effects on the victim and society. Shaykh Abu Zahra on the other hand, gave further examples in support of this argument. He argues that if we look on different examples of *hidud* penalties, we can recognise that they are fairly suitable for the crimes for which they are prescribed. For instance, in the case of theft, the punishment is the cutting off of the thief's hand. By no means can this be understood as exceeding the harm and damage inflicted on the individual and society. For theft is not merely a loss of great wealth or of something valuable, but most critical is the disturbance and threat to people's security. A thief who breaks into a home at night does not only threaten and disturb an individual family, but rather spread worry and fear throughout the neighbourhood and the whole community. Not only do people in the community live in tension and worry, they also spend a lot of money taking the necessary precautions in their homes to avoid further victimisation. Hence it can be understood that the loss of property or wealth is not the only reason

for punishment, rather it is the loss of the security and the disturbance of order in the community which justifies the cutting off of a thief's hand.

It is thus clear from what has been previously pointed out, that the *Shariy'a*, or Islamic law, within the limits of its basic objectives by which it protects public utility, does not contradict the principle of justice. Both justice and utility meet the same goal. Hence, it can be understood that the philosophy of punishment in Islam provides the basis for a just, ideal state.

This being the case, realisation of such an ideal society requires the protection of its ideals. Shaykh Abu Zahra argues that since the goal is ideal and the mean just, excess sympathy for criminals should not lead to forgetting about their crimes, as it prevents the infliction of deterrent punishments on them and consequently opens the way for more of their evil and exposes the society to their corruption - and this will be far from just. Justice can only be achieved when someone who behaves against the law suffers the correct punishment, and all people should be equal in this regard if they have committed crimes which require punishment.

Achieving Deterrence Through Retribution

Islamic penal legislation includes two parts related to crime prevention. Firstly, the negative part concerned with criminalisation. It prevents the commission of the act at all times. Secondly, the positive part concerned with the infliction of punishment when the act is committed. Each preventive rule, therefore, is protected by a punitive retribution prescribed by the legislator. As it has been pointed out earlier, the term 'retribution' is mentioned in many verses of the *Qur'an* as the sole purpose of punishment, referring both to worldly rewards in this life and in the hereafter.

With regard to retribution as a purpose of *hidud* punishments, two features have been noted. Firstly, the severity of the punishment and its mandatory infliction when the crime is committed in the case of *hidud* offences. Secondly, the publicity of the punishment when the penalty is inflicted. It is thought that the two aspects combine together to give the punishment its fullest possible deterrent function.

Retribution plays a deterrent role in the sense that it serves to prevent the growth of a climate favourable to the spread of criminal activity. Being obligatorily inflicted in public and causing great physical pain (as in the case of cutting off a hand), *hidud* penalties work through a psychological mechanism to deter potential offenders who are always under the temptation to commit crime. The severity of the punishment and its public infliction without any mediation warn the public of the consequences of committing crime. Those who have a tendency to commit crime will restrain from the act lest they suffer its unpleasant consequences. When the opportunities for crime decrease under the fear of threat, potential wrongdoers - except those who are uneducated, or those who enjoy committing crime as a hobby - will forget altogether about crime. Peace and security are preserved, and stability of society is achieved. By making penalties corporal and executed in public, Islam also intends that they may be morally condemned. This will also contribute to the elimination and suppression of criminal activity.

Hence, according to the deterrence theory, punishment is justified on the grounds that it prevents the commission of further offences, both by the criminal and other potential offenders. The deterrent effect is thus known to Muslim jurists to have a dual impact. There is general deterrence, which refers to the effect of the penal system in preventing criminality among the population at large; as well as the specific deterrent which means the preventive effect of the punishment on an individual

offender. 'Ibn-al Humam, the well-known writer of the *hanafi* school, points out that *hidud* penalties are intended as general deterrents. However, when an offender suffers the experience of one of the *hadd* punishments, the aspect of individual deterrence comes into play. The same view is taken by many commentators on the *Qur'an*. General deterrence is achieved by the widest possible publicity when inflicting actual punishment. On the other hand, individual deterrence is achieved through frightening off the offender, making him reluctant to offend again.

The fact that *hidud* penalties are of a bodily nature, which are executed for a limited time and cause unforgettable pain so that in most cases the offender refrains from similar future conduct, makes them of a more reformative nature - in contrast with imprisonment, which normally deprives the individual of liberty and makes the offender accustomed to prison life after a long sentence. It is argued that imprisonment soon loses its deterrent effect - if it has any - and prisoners return to crime after being released from jail. Al'awa pointed out that the most common example shown by contemporary Muslim scholars as evidence of the deterrent effect of *hidud* penalties is the enormous drop in crime in Saudi-Arabia since its re-introduction, when the Saudis took over the country in the 1920s following the Ottoman administration.

Although it is the belief of this thesis that Islamic penal legislation does provide a strong theory of deterrence, the strong support for the deterrent theory by Muslim scholars does not mean that the imposition of *hidud* punishments will suppress crime completely. There is a high probability that such rules will at least diminish criminal acts, but some criminals will avoid the light in search of darkness and continue with deviant activity. 'Ali Mansour has best put it:

'There is a critical difference between crime that is rarely committed by weak and sick people who are unable to be socially restrained, and crime being publicly and openly committed with great frequency'. (Basyuni, 1981: 196)

Conclusion

This chapter has attempted to analyse and explain the theories underlying Islamic penal provisions. It has pointed out that specific rules of the *Shariy'a* can be well understood in the total scheme - its conceptual basis, primary goals and objectives and overall framework. *Shariy'a*, 'the way to the watering place', prescribes the right way to God, as given by him. Its regulations thus encompass the totality of human life in society. Being so secular in its objectives and goals, the final aim of the *Shariy'a* is the protection of life, religion, lineage, property, and personality, which represents the basic necessities of man's existence. All the obligations and prohibitions of the *Shariy'a* are set to achieve this basic goal. Thus it provides the best way to justice, security and peace. As to the role of punishment within this integrated whole, Murad describes it as follows:

'Most importantly, punishments are only a part of a vastly larger integrated whole. They can neither be properly understood, nor successfully or justifiably implemented in isolation. First, law is not the main, or even major, vehicle in the total framework for the reinforcement of morality; it is the individual's belief, his God consciousness and taqua - that inherent and innate quality which makes him refrain from what displeases God and do what pleases him. Second justice is a positive ideal which permeates and dominates the entire life, it is not merely an institutionalised means of inflicting punishment. Third and consequently, a whole environment is established where to do right is encouraged, facilitated and found easy, and to do wrong is discouraged, inhibited and found difficult. All men and women are enjoined, as their foremost duty to aid, exhort and commend each other to do good and to avoid evil'. (Murad, 1982: 16)

Thus, as far as this chapter has dealt with the theory of penal law in Islam, it can be concluded that Islamic penal law possesses a unique system of penology which is concerned very little with the criminal's reform, and concentrates mainly with the

protection of the society by preventing the commitment of crime. This is evident particularly in the specific legislations of the Islamic penal rules involving *hiā qisas*. It can also be said that, although deterrence and retribution are the objectives of punishment in Islamic penal law, nevertheless the scope is available reformation, particularly within the discretionary penalties known as *ta'aziyr*. To wh extent this theory adapts to reality needs to be understood in its real context.

Chapter 2

Literature on the Deterrent Effect of Legal Threats

This chapter reviews and highlights the existing body of knowledge about deterrence as a legal issue. It formulates the general theoretical orientation which guides the assessment of this thesis. Traditionally, the practice of judicial punishment has been justified on the base of three main theories: Retribution, deterrence and rehabilitation.

As to the idea of retribution, this was based on the classical principle 'an eye for an eye and a tooth for a tooth'. This principle constitutes the view that, by harming someone, the offender is disturbing the natural order, and hence it becomes necessary to inflict upon him the same degree of harm that he inflicted upon his victim, in order to restore the balance. According to this theory, the offender deserves the punishment just as the fair cost he has to pay in return for his evil and aggressive behaviour.

However, the idea of 'deterrence' is that the goal of punishments is not to redress some sort of aggression or violation that was committed in the past, but rather to prevent possible similar aggressions or violations in the future. The assumption in this case is that the potential offender expects what terrible consequences he will suffer for his planned aggression, and will be deterred from committing it.

Finally, the rehabilitation theory assumes that the offender is someone who deviates or commits aggressive behaviour because of misguidance, not because of the evil inside him. In this case, any punishment should involve treatment of the offender in such a way that renders subsequent offending less likely, by revealing to him the erroneous way of his behaviour.

Naturally, each of the three theories has its supporters, as well as its opponents.

For the purpose of this thesis, 'deterrence' was the basic rationale for the imposition of *shariy'a* in the area of criminal law in the Sudan.

The concept of deterrence

In the literature on criminal law, the term 'deterrence' has been used to refer to two distinct effects of legal threats - Johannes Andeneas (1960: 494) has pointed out this distinction as follows:

> *'In continental theories of criminal law, a basic distinction is made between the effects of punishment on the man being punished - individual prevention or special; and the effects of punishment upon the members of society in general - general prevention. The characteristics of special prevention are termed "deterrence", "reformation" and "incapacitation" ... General prevention, on the other hand, may be described as the restraining influences emanating from the criminal law and the legal machinery'.*

A brief survey of the literature in the deterrence issue involves discussions dealing with both types of general and special prevention. There has been heated debate around what type of legal reaction to crime is the most appropriate. On the one hand, the positive school of justice, while being skeptical of the deterrent efficacy of punishment, recommends the rehabilitation of offenders through the individualisation of legal treatment. On the other hand, members of the classical school of justice favours the opposite. They recommend a uniform legal punishment of all offenders who commit the same crime. Since this will deter the majority of potential offenders.

Sociologists have also long been involved in the debate. Many of them have questioned the deterrent effect of legal punitive reaction to crime. Their views have similarly conflicted between the classical and positive school of thought.

The existence of the two conflicting types of argument and evidence suggests that the debate over the issue has often taken a polarity form. On the one hand arguments and evidence are given in support of an irrefutable theory of deterrence. On the other hand evidence is adduced in support of '*an equally incontrovertible but antithetical theory of non-deterrence*' (Zimiring & Hawkins 1973: 11).

The non-deterrence theory

The hypothesis that the legal threat of sanctions does not deter the individual reflects the ideological orientation which dominated the field after World War II. The literature suggests that many sociologists have tended to be skeptical of the hypothesis that negative threat of punishment significantly affects conformity to the law. In response, a non-deterrence theory of punishment has developed. The blanket rejection of deterrence has been expressed by many scholars. As G. Sykes, for example, put it:

> '*Indeed said one writer, by 1950 it became evident that there had been a revolution in the way people regarded crime, the criminal, and methods of handling the offender. The "rehabilitation ideal" ruled the field, in words at least, if not in deeds. And it was not only criminologists, penologists, psychiatrists and enlightened judges who had embraced the idea of reforming the wrong-doer rather than making him suffer*' (G. Sykes, 1978: 459).

According to Jerome Hall, legal punishment for deviance is not only irrelevant, but rather a useless relic of barbarism.

> '*The prevalent academic attitude - it is hardly more - is that punishment is a useless relic of barbarism, a main symbol of man's lust for vengeance, hence lacking in any rational support*' (Jerome Hall, cited by Sykes, 1978: 45).

According to other scholars the legal threat is assumed to bring more of the behaviour it is intended to suppress:

> *'Deterrence is belied by both history and logic. At best the criminal is merely epiphenomenal, a dependent variable shaped by current mores and prevailing norms. At worst the threat of punishment is likely to provoke more of the behaviour it is intended to control or suppress'* (Zimiring & Hawkins 1973: 5).

More recently an increasing number of criminologists have also asserted that the deterrent effect is unknown. According to Sykes (1978), this viewpoint persists and continues to influence much of the research on deterrence and criminology, as well as the formation of public policy. In general, as Roy Watson (1986: 293) points out:

> *'Social scientists have long been sceptical of the power of the threat of legal sanctions, as evoked by enacted laws, to control behaviour'.*

A great deal of empirical research to support this argument has grown impressively after World War II. The following reviews some of the evidence shown in support of that postulation.

Empirical evidence demonstrating the ineffectiveness of deterrence

The bulk of the empirical work in line with this hypothesis has grown after World War II. Most of the literature refers in particular to the United States of America, Great Britain, and some European countries. The findings suggest that anti-deterrence researchers have continued to show the absence of deterrence effect. For example, a number of researchers conclude that, for many offenders, probation is likely to be at least as effective in preventing recidivism as an institutional sentence, i.e. Williams (1958), Babst and Mannering (1965), Martin (1960) and Hammond (1969). For some researchers, imprisonment has often failed to prevent further criminal behaviour (Tittle, 1969).

According to Sykes (1978), prison terms do little more than delay the recommitment of crime for more than half of the prisoners:

> *"Similar arguments were commonly presented concerning the alleged failure of imprisonment. Police chiefs, Judges, wardens, professors of criminology all, noted Daniel Glaser, were frequently to be found claiming that 60-70 per cent of those who have been imprisoned commit new crimes after their release. Again, said the critics of deterrence, it was clear that State-inflicted penalties were of little use in controlling crime. Punishment in reality, was not more than vengeance".* (Ibd:485)

It is even argued that while the prison term isolates the offender from society, at the same time it gives him the opportunity to learn from his inmates better techniques for escaping future punishment. According to Tittle (1969), some researchers found that corporal punishment was ineffective in preventing further recidivism.

In general the literature does provide a body of theoretical and empirical arguments which points to the ineffectiveness of sanctions on recidivism.

This seems to have affected the penal reform, as Andenaes (1974: 3) stated:

> *'The trend in penal reform in the past two generations has pointed in the direction of wider scope for individual prevention (specific prevention). As a result, the prosecuting authorities and the courts have, through the years, had an ever wider choice of sanctions put at their disposal, adapted to the personality of the offender'.*

Such developments suggest that it is the criminal but not the crime that is to be treated.

The absence of deterrence effect is also reported by many other studies. The U. S. President's Commission on Law Enforcement and Administration of Justice Task Force Report, Narcotics and Drug Abuse (1967), reported that despite the application of increasing severe sanctions to marijuana, *'the use and traffic in that drug appear to be increasing'*. Also Beyleveld (1980: 314), in his attempt to summarise and assess empirical research to test the 'deterrence' theory, concludes that *'other studies have provided evidence for the absence of such effects'*. More recent studies on the effect of legal sanctions on drunk drivers have also indicated a minimal relationship between sanctions and outcome. For example Gerald R. Wheeler and Rodney V. Hassing

(1988: 29:42), based on a three-year follow-up study on the effect of sanctions on offenders in Houston Texas, showed no significant differences in outcome among sanctions. Other studies such as those by Holdens (1983), and an earlier study by Krenck (1979) are cited as having similar results. Even more striking, in a study by Zalzberg and Pailsrude (1983) it is reported that individuals convicted under Washington State 1980 mandatory jailing law had higher accident rates and drunk driving recidivism than those convicted under the previous law.

Numerous researchers have also continued to investigate correlations between crime rate and different measures of law enforcement. For instance, some researchers found no relationship between the severity of punishment and differences in some crime rates. In that respect the literature involves reference to the opponents of capital punishment who pointed to statistics which showed that availability or non-availability of the death penalty was not associated with differences in homicide rates (Walker, 1987: 84-85).

Similarly, some researchers have focused on the relationship between certainty of arrest and subsequent crime rates. For exemple, David F. Greenberg, Ronald Kessler and Charles H. Logan (1979), in a penal model of crime rates and arrest rates, utilised data to examine the relationship between the two variables for a sample of U.S. cities for the years 1964- 1970. They suggested no meaningful relationship between arrest rates and crime rates. This study even suggests that crime rates may indeed affect enforcement capabilities more than enforcement affect level of crime. This has been explained in terms of *'the saturation effect'*, *'which will tend to reduce enforcement efficiency as crime increases*" (ibid: 843). According to this,

> *"The impact of crime on enforcement practices can come about in at least two ways. (1) Higher crime rates could tend to saturate crime control capabilities that are fixed in the short run. Thus when crime rates increase,*

police resources may be stretched thin, reducing the probability of an arrest following an offence. When the number of arrests increases, prosecuters and judges faced with larger case loads may dismiss more cases and accept plea bargains more favourable to the defendant. If the number of commitments to prison leads to over crowded prisons, parole authorities may release prisoners earlier than usual, reducing the average length of sentence served in prison. (2) Crime rates could influence enforcement through their effect on attitudes towards crime. It is possible that high crime rates create habituation to crime and hence lower penalties, on the other hand, high crime rates might tend to increase public fear of crime and thus lead to more punitive enforcement measures" (ibid).

In the latter case, however it is argued that

"*This effect will not be felt immediately but will lag behind crime rate, both because public recognition generally lags behind 'objective' indicators of social problems, and because it usually takes time for public concern to be translated into enforcement policy*" (ibid).

In a similar study, Henry N. Pontell, 1978, *Theory versus practices*, attempted to examine the idea that the rate of crime may indeed affect the capacity of the legal machinery to administer the negative santions more than the opposite. The study involved tests of two conflicting hypotheses simultaneously: (1) Certainty of punishment is prior to and inversely correlated with crime rate (the deterrence model), and (2) Crime is prior to and inversely correlated with the certainty of punishment (the system capacity model) (ibid: 14- 15. It is concluded that:

"*overall, the system capacity model does produce as strong, if not stronger, results than the deterrence model*" (ibid: 19).

The foregoing involved some of the Anti deterrence arguments and research findings. Nevertheless, there is no dearth of both theoretical and empirical literature dealing with the deterrent effect of legal sanctions.

Effect of general prevention - a theory of deterrence

Traditionally, general prevention has played a substantial part in the philosophy of the criminal law. It is mentioned in Greek philosophy and its basis in the classic writings of Beccaria and Bentham, as well as writings of scholars such as Morris', *Impediments to Penal Reform*, (1966), and Kenny, *Outlines of criminal law*, (1929). Kenny cited as authorities the most pioneer writers, as, for example, Beccaria, Blackstone, Romilly, Paley and Feuerbach. He considers deterrence as the mere effect of criminal law. This can happen by associating the idea of a deterrent with a sense of terror, that, whenever an offender has actually committed a criminal act, he shall incur punishment.

It followed that criminal deterrence has had a major influence on thought about criminal law and policy ever since. Richard D. Schwartz and Sonya Orleans (1967) for example, state that:

> '*Sanctions are officially imposed punishments aimed at enforcement of legal obligations. They are said to constitute the core, if not the defining characteristics of the legal order. Inadequate sanctions are blamed for the failures of legal control in such divergent areas as international laws, domestic crime, and civil rights*' (274).

Also Tittle (1969), later states that:

> "*The effect of punishment on the amount and kind of deviance that occurs continues to be a topic of concern to both laymen and intellectuals. Many legislators and jurists continue to place confidence in official punishments as deterrents, and entire legal codes are based on the premise that negative sanctions are instrumental in inducing conformity to norms*" (Tittle, 1969: 409).

Suggestion was also made that many legislators as well as penologists believe that the application of punishments discourage potential imitators (Walker, 1987).

In some, the literature suggest that the idea of deterrence has become the only sound justification for punishment.

☐ **The mechanism of deterrence**

R. Tittle (1969), suggests that sociologists at least take the idea of deterrence seriously, and at least three theories have provided the rationale for making legal sanctions, theoretically meaningful to conformity - deviance on a societal level. These include: (1) The labelling theory; (2) The exchange theory and; (3) The social learning theory.

Labelling theory, from the beginning, has focused on the impact of reaction to rule-breaking on the life patterns of individuals. According to this theory, the infliction of sanctions while resulting in offending identities on the part of the rule breakers, it also affect the conduct of those not so labelled. Though labelling a rule- breaker may lead to greater rule-breaking on his own part, I would add it may also lead to less rule-breaking by those observing his unpleasant stigmatised experiences.

With exchange theory, deterrence is explained in terms of the costs and rewards involved in social interaction. The application of this theory on a macroscopic level would, theoretically, require specification of typical rewards and costs. The outcome, however complex might be, was thought to add more sophistication to the pleasure-pain principle adopted by the classical criminologists. Hence the deterrent effect of legal sanctions, according to this perspective, seems theoretically cogent.

Thirdly, the two previous theories, as well as the deterrence idea, might be understood in terms of social learing theory. Within this theoretical frame work, legal sanctions could be viewed as negative reinforcement for law-abiding behaviour. Tittle indicates this as follows:

> "*The application of reinforcement principles on a macroscopic level would require extensive application of concept of vicarious reinforcement. To account for rates of deviance in a population, one would have to think of reinforcement as taking place continuously and over a lifetime for most*

individuals, as they imagine themselves engaging in various behaviours and experiencing the potential reaction, or as they identify with models who have been punished or rewarded" (Tittle, 1969: 421).

Tittle, though, believes that specification of reinforcement contingencies for this kind of problem would be most complex, but it was thought as well worth the effort. The literature, however, has not developed without evidence to demonstrate the effectiveness of legal deterrence as a means of enforcing compliance in different circumstance of threats.

Empirical evidence demonstrating the effectiveness of deterrence

More recently, social researchers have compiled more empirical evidence on the question about whether legal threats of sanctions do have impact on producing conformity to norm. It has been pointed out that actual progress on empirical evidence has continued since Nagin's review (Donald E. Lewis, 1986).

Among the correlations suggested to have much effect on the degree of deterrence, some researchers consider certainty of arrest (i.e. making potential offenders feel they are more likely to get caught) to be of more importance. In this case the hypothesis is, that the more the likelihood that individuals will be caught, the more likely that they will be deterred. The opposite happens in the case where individuals feel that it is less likely that they will be caught. Other researchers, however, believe that frightening off potential offenders by severity of punishment is more likely to deter (severity is perceived by how bad penalties are expected to be). In this case more severity will result in more deterrence.

☐ **Evidence on certainty of arrest**

An example of deterrence by certainty of arrest was the sudden increase of some types of crime rates as a result of some accidental change in the likelihood of detection when police forces were put out of action for seven months in Nazi-occupied Denmark. It is reported that "*during these seven months without police, robbery and larceny in Copenhagen apparently increased tenfold*" (Schwartz & Orleans 1967: 277). Similarly on other occasions on which other police forces have been on strike, similar increases have been noticed. Examples of this can be shown in the official report made on lawlessness during the 1919 police strike, during which nearly half of the Liverpool policemen were out of service:

> "*In this district the strike was accompanied by threats, violence and intimidation on the part of the lawless persons. Many assaults on the constables who remained on duty were committed. Owing to the sudden nature of the strike the authorities were afforded no opportunity to make adequate provision to cope with the position. Looting of shops commenced about 10 p.m. on August 1st and continued for some days. In all about 400 shops were looted. Military were requisitioned, special constables sworn in and police brought from other centres*" (Andenaes, 1966: 961-62).

There are many similar reports involving conditions of disorganisation following revolutions, or instances as an indicator of how lawlessness flourishes when the probability of detection, apprehension and conviction is low.

Evidence of the opposite is also shown. For example, a decline in bank robberies and kidnapping in the United States is reported to have followed the enactment of federal legislation which increased the likelihood of punishment. It has also been pointed out that the introduction of breath testing in Britain in 1967 was followed by a marked drop in serious road accidents, especially on weekend evenings when most heavy drinking takes place (Walker 1987: 86). Many other studies carried out in different countries have reported, although this might seem different, that the imposition of

speed limits has, in general, the effects of reducing speed and accidents (Department of Scientific and Industrial Research Laboratory 1963: 155-63). An example of this is shown by Franklin E. Zimring and Gordon H. Hawkins (1973) who cited Munden (1966) with reference to an experiment conducted in Great Britain by the Ministry of Transport Road Research Laboratory. It demonstrated that the police enforcement of a 30 m.p.h. speed limit has not only reduced speed on experimental roads, but also that injury accidents were reduced by 25 per cent, and driver and passenger casualties were cut in half.

A similar result is found in a study conducted by Professor 'ali 'abd al Rahman and Dr. Hussein Abu Salih (The Brain and Nerves Surgery Unit, School of Medicine, University of Khartum, Sudan, 1987). The researchers found that following the imposition of the new Road Traffic Act of 1983 in Sudan, there was a considerable decline in serious head injuries among road users. The new Road Traffic Act of 1983 requires that a driver either pay a *Diya* or blood money, in case of death or injury, or to be imprisoned if he failed to do so.

A number of earlier works (Chiricos and Waldo, 1970; Clark, 1969; Jensen, 1969; Logan, 1971 and 1972; Ross et al, 1970; Tittle, 1969; Tittle and Rowe, 1973; Waldo and Chiricos, 1972), have been cited to have suggested that "*the probability or perceived probability of punishment for non conformity is a key determinant of behaviour*". (Tittle and Alan R. Rowe, 1974: 456). In their own attempt to further testing of hypothesis, Tittle and Rowe, 1974, examined the relationship between certainty of arrest and crime rates. They report that their results are consistent with other findings recently reported as providing some support for deterrent hypothesis.

> "*The findings in this study suggest that certainty of punishment is an important influence on the degree of conformity that can be expected in a political unit, but that this influence does not show noticeable results until certainty has reached at least moderate levels*" (ibid: 459).

The researchers, hence, suggest that the deterrence theory needs to specify at what level of enforcement sanctions become operationally effective on behaviour, as well as the circumstances under which sanctions might have more or less effect on behaviour.

Other research findings by Gibbs, (1968); Tittle, (1969); Chiricos and Waldo, (1970); Logan, (1972); Bailey and Smith, (1972); are cited to have found that certainty is more instrumental than severity in deterring criminal behaviour (Henry N. Pontell, 1988).

☐ **Evidence on Severity of Punishment**

On the other hand, some of the research on deterrence has paid more attention to whether severity of punishment deters. Several researchers claim to have found an inverse relationship between severity of punishment and crime rates.

Among the attempts made to assess the deterrent effect of enforcing severe penalties, Ehrlich, 1975, examined the deterrent effect of capital punishment. Ehrlich is critical of the previous investigations denying the existence of the deterrent effect of capital punishment. He considers "*The multi-faced opposition to capital punishment relies partly upon ethical and aesthetic considerations*" (ibid: 397). His shortcomings mainly involve those investigations by Sellin, 1959. Ehrlich attempted a systematic analysis to examine the hypothesis that "*offenders respond to incentives and in particular that punishment and law enforcement deter the commission of specific crimes*" (ibid: 397). The analysis was based on recent application of economic theory, mainly to examine the relationship between capital punishment and the crime of murder. Contrary to earlier investigations, his attempt "*does indicate the existence of pure deterrent effect of capital punishment*" (ibid: 398). However, like most deterrence researchers Ehrlich has been much critized for his statistical method (see William J. Bowers and Glenn L. Pierce, 1975).

In a later attempt Donald E. Lewis, (1986), has reviewed some of the recently published studies. His survey incorporated mainly those studies which attempted to assess empirically, the magnitude of the deterrent effect of longer sentences. The studies refer to a variety of data bases, representing different countries, different time periods and holding constant other variables which may possibly affect crime rates. Donald came to the conclusion that,

> "*Taken as a whole, the studies reviewed constitute a substantial body of evidence which is largely consistent with the existence of a deterrent effect from longer sentences ..., in general, criminals do respond to incentives and that longer sentences do deter crime*" (ibid: 60).

Similarly, N. Pontell, 1978, reviewed research on deterrence and cited some researchers (Logan, 1972) who found that "*severity of punishment was of greater consequence in reducing crime than earlier studies had indicated*" (Pontell, 1978: 6).

A number of studies, however, suggest that both severity and certainty of punishment are instrumental in deterring potential offenders. According to N. Pontell, certainty does have more effect than severity.

Some systematic investigations of parking violations on a mid university campus have found a significant decline in violations following an increase in both severity and certainty of penalties (Tittle, Charles R., 1969). This suggests that both severity of punishment and certainty of arrest might have a more deterrent effect when they are simultaneously operated.

In 1980, Beyleveld reviewed and summarised findings of research that have attempted empirical testing of deterrence correlations. Among his findings are the following:

- Recorded felony rates vary inversely with recorded rates of arrest, conviction and imprisonment in cross jurisdiction and ordinary time.

- Some studies find inverse relations between police expenditure, police manpower and crime, and direct relations between police variables and certainty of arrest, but others do not.

- Crime control programmes which increase certainties of arrest, etc., are generally followed by reduced crime rates, whereas programmes which increase the severity of penalties are less systematically followed by declining crime rates.

- Subjective severity of penalties, when increased by how bad perceived penalties are expected to be 'in general' or for 'oneself' generally varies inversely with crime index. Experiments generally indicate that non-violations can be controlled by sanctions threats, and that the efficacy of threats varies directly with the certainty and severity of sanctions.

Summary of the Deterrence Literature

This chapter has so far attempted to review some of the enormous literature on legal deterrence. An explosion of scholarly literature in that field has grown impressively in recent years. Because there is no available work relevant to Sudan or other countries of similar legal systems, most of the literature refers to England and the United States.

While some of the theoretical arguments accept the existence of deterrence, still others do not. Empirical assessment involve two aspects of deterrence: (1) Individual deterrence (preventing those who have been punished from offending again) and (2) General prevention (frightening off potential offenders from offending). Research examined two aspects of general prevention: (A) deterring potential offenders by

severity of punishment (i.e. more severity leads to more deterrence) and (B) frightening off potential offenders by making them feel that they are likely to be caught or detected.

In all, the literature provides both conflicting arguments and evidence, some to deny the effectiveness of legal threats, as well as to support the methods of enforcing compliance in different circumstances. Though this might seems contradictory, such contradiction needs to be clarified in the light of what might be inferred from the existing state of knowledge.

Discussion of the current state of knowledge

On the basis of the foregoing, it can be seen that the current state of knowledge cannot provide conclusive evidence for or against the existence of a deterrent effect of punishment.

A brief survey of available information provides the scattered and sometimes inadequate nature of available evidence. It also reflects the need for better understanding of the issue. Although some studies have provided evidence against the deterrence effect, equally others have pointed to evidence in support of deterrence theory. This might seem contradictory from the beginning, but the seemingly apparent contradictions can simply disappear if we try to understand these results in a different way. Instead of accepting as a general rule that deterrence works universally for all individuals or the opposite, it would be more realistic to infer from the available evidence that, although under certain conditions some people can be deterred by threats of sanctions, the opposite might sometimes happen. If this is so, it will then be the role of sociologists, penologists, and criminologists to try to specify the

conditions, the time, the people, and the nature of sanctions under which deterrence sometimes works and sometimes does not.

The empirical evidence, whether in support of the deterrence hypothesis, or in opposition, is not conclusive. Critics involve both types of evidence.

Critics of anti-deterrence research

Opponents of the deterrence hypothesis have mainly focused on two types of evidence. The first involves the relationships between capital punishment and homicide rates. However, the finding that the presence or absence of the death penalty has no relationship to predict the occurrence of homicide can not be broadly generalised to all types of punishment. Evidence on the anti-deterrent effect of capital punishment neglected the certainty with which the penalty is administered, other various degrees of punishment affecting other types of deviance, as well as other etiological circumstances that may have an effect on homicide rates. On the basis of these considerations, it is argued that research findings about the anti-deterrent effect of capital punishment, which might provide a reasonable rationale for abolition of that penalty, of course cannot provide a strong ground for questioning the general deterrent effect of all other official negative sanctions (Tittle, Charles, 1969).

The second body of evidence involves the effect of punishment on the recidivism of punished offenders. For example, evidence previously cited as providing support to the effect of probation on recidivism (Mannering, 1965; Martin, 1960; and Hammond, 1969); also, research cited as showing the failure of imprisonment on preventing recidivism (Sykes, 1978; Tittle, 1969); evidence involving the negative effect of sanctions on drunk drivers (the U.S. President's Commission on Law Enforcement and Administration of Justice, 1967; Gerald R. Wheeler, 1988; Holdens, 1983;

Krenck, 1979; and Zalzberg and Pailsrude, 1983); also the negative effect of corporal punishment on recidivism (Tittle, 1969).

Likewise, Anti-deterrent findings on the effect of sanctions on recidivism are handicapped by illustrative material showing instances where sanctions failed to prevent future recidivism. Even if such evidence can be taken as conclusive, it would still be invalid to reject the deterrent effect of punishment on potential offenders who have not yet been punished or caught in a criminal act. Hence the argument that deterrence has never worked because some research suggests so, is based on weak rather than hard evidence.

☐ The weak evidence against deterrence

First, the failure of deterrence cannot only be attributed to the inefficiency of legal sanction, but rather one would think of other factors which might significantly affect the efficiency of legal threats. For example efficiency of deterrence might vary with variations in the following:

- Personality type

It is noted that citizens are not equally receptive to the general preventive effects of the penal law. However, such noted 'undeteribility' can not only be attributed to the failure of deterrence, but many other factors in personality type might be involved. This has been explained as follows:

> *'We needed to be reminded not only ... that different kinds of offences are committed in very different states of mind, with or without planning, impulsively or compulsively, and from a wide variety of motives ... but also that some people are restrained from yielding to impulsion or motives not by fear of law enforcement but what psychologists call "internal restraints", meaning usually the thought of the guilt or shame which they would feel if they yielded, and also that some people are "undeterrable" so far as some kinds of offence are concerned, so that even a very high subjective probability of detection does not restrain them.'* (Walker, 1987: 88)

This suggests that so far as undeterribility is concerned, the citizens could be classified into three groups:

- The law-abiding citizen who does not require the legal threat to keep him within the law. An example of this type is the religious believer who avoids commiting evil or hurting others in any way because it is against God's regulations.
- The potential criminal who would violate the rules unless they involved threats of punishment.
- The criminal who violates the law despite the threat of punishment.

It is within the second group, the potential offender, that deterrence is at work. The statistics that show high recidivism rates can not only be used to demonstrate the absence of deterrence, but they can also be used to mean that some people - according to their personality - cannot be deterred. An example of such a type is the professional criminal who usually commits crime to enjoy making criminal plans in such a way that he can escape conviction. Another example is the aggressive or sadistic personality who just enjoys hurting others. For such types, threats are unlikely to affect deterrence.

- The type of offence

Theories of criminal law distinguish between acts which are immoral in their own right and those which are illegal because they are prohibited by the law. With regard to the first group, the legal threat function is a supplementary factor to support the social mores. If the legal threats were abolished, the social pressure would still remain as a powerful crime control mechanism. Nonetheless, in the case of the second group the legal threat stands alone to keep conformity.

- Society type

Effectiveness of the criminal laws varies according to the society they serve. For instance, in a small community which is based on homogeneity, social control functions as powerfully as legal threats, while in a heterogenous, expanding society legal threats assume a far more basic mechanism in controlling conflicting interests of potential individuals.

- Law obedience in law enforcement agencies

The effect of legal machinery in controlling or deterring crime varies from country to country according to the degree of corruption, neglect of duty, and law obedience within the police, courts, and different agencies of the system. For example, in countries where the police can accept bribes, or judges and lawyers are out of duty most of the time, the legal machinery is expected to lose more of its effect.

- Enforcement of the legal machinery

The efficiency of the legal threat can also be affected by the degree of enforcement within the whole system. For example, by intensifying the efforts of the police so as to increase the probability of detection. Few people would violate the law if there is a policeman on every doorstep. The same would happen if we increase both the certainty and severity of punishment. The efficacy of the system thus is affected by the variations in enforcement of the different aspects of the legal machinery. More deterrent effect can be expected in a system that fully enforces all of its legal machinery. Moreover, despite the above, other problematic areas might yet be undiscovered.

In the second place, it is a fallacy to infer from statistics that deterrence is ineffective because sanctions do not seem to reduce recidivism rates. It is argued that this would be a very difficult thing to demonstrate. Nigel Walker (1987: 85), for example, points out that:

> *'To deter someone from doing something is to influence him by a threat or threats so that he refrains from doing it, does it somewhere else, gets someone else to do it, or finds some other way of achieving his desire. To demonstrate by statistics that the use of a deterrent is not having any of these results would obviously be very difficult'.*

Thirdly, it can be noted that most of the discussions have concentrated mainly on one aspect of deterrence, the prevention of recidivism among criminals having actual experience with the courts - individual prevention (with however the exception of the research on capital punishment.) The fact that the legal threats might have failed to deter such committed offenders does not mean that it failed with all the rest of potential offenders and the law-abiding public. Andenaes (1974: 41-42) has the following example to indicate this:

> *'If a man commits a crime, we can only conclude that general prevention has not worked in his case. If I interview a thousand prisoners, I collect information about a thousand men in whose cases general prevention has failed. But I cannot infer from this data that general prevention is ineffective in the cases of all those who have not committed crimes. General prevention is more concerned with the psychology of those obedient to the law than with the psychology of criminals'.*

Many scholars today argue on the same basis. We punish X not only because we believe that we can change the probable course of his future conduct, but by doing so we can force others to obey the rules.

Fourthly, from a methodological point of view, studies on recidivism have mainly focused on the offender's conduct during a specific time, often his experience of punishment. The effect is then considered to have succeeded if the offenders have not committed further offences, and to have failed if they do. However, a number of questions could be raised at once about what length of follow-up period is appropriate to judge for failure or success? In the case of failure, what guarantee can be made to show that different treatment would prevent convicted offenders from recidivism for

the rest of their lives? It could also be argued that with two different types of treatment, different results might be expected. It is argued (Hood & Sparks 1970: 192) that:

> *'Thus, even if all offenders could be allocated to the kinds of treatment most effective for them, the "success rate" of the present system as a whole would be very unlikely to reach 100%.'*

Moreover, the high recidivism rates might be due to the weakness of the existing system. It is possible that new forms of legal enforcement might reduce recidivism still further. But for the maintenance of the social order and security, the prevention of recidivism is not and can never be the only objective of the legal policy.

As to the legal policy, the allocation of specific sentences to a particular type of offender is necessarily limited by many considerations of which general, and the well-being of the whole society are the most important, for which the reformation of the individual is not of basic concern. Other institutions within society, such as educational, religious, social welfare, etc., can function to undertake programmes of social policy directed both to the reformation and well-being of the individual.

Critics of deterrence research

Like anti-deterrent researchers, supporters of deterrence, as well, are restricted to illustrative material, mainly concerned with understanding how punishment affects crime rates. According to Henry N. Pontell, 1978, deterrence researchers have relied on an extremely simple bivariate research design. Specifically, they have claimed an inverse relationship between different aspects of legal threat levels and subsequent rates of crime. For example, some of the evidence suggests that the existence of some kind of legal punishment does deter (if nothing happens at all when people commit

crimes, the incidence will increase) i.e. the case of Nazi Denmark, Liverpool police strikes, or, as in other instances where active police surveillance led to reduction in crime, or where introduction of technical innovations (breath test) resulted in a dramatic decline in drunk drivers. In addition, some of the evidence suggests that increasing both the severity and certainty of punishment led to reduction in violations in a University campus, and that higher apprehension and longer imprisonment lowered homicide rates.

Thus deterrence researchers, on the basis of such results, have precisely come to justify the conclusion that sanctions deter crime. Yet their interpretation is questionable (Pontell, 1978). A notable limitation of deterrence research is that researchers have mainly directed their concern to one way causation, that is, to the possible effect of legal sanctions on crime rates. Hence, researchers have neglected to account for other causal factors which may possibly affect the relationship between sanctions and crime in the opposite way (i.e. the system capacity model). As this model suggests, the rate of crime might possibly over-burden the capacity of the legal machinery to enforce sanctions more than the opposite.

Thus the system capacity model seriously questions deterrence research findings supporting the effect of penal threat on crime. Hence deterrence researchers may need to examine further the opposite correlation between crime and legal sanctions. It is possible that the application of such a model might yield better understanding of when legal sanctions affect crime rates, as well as when crime rates over-burden the effect of legal sanctions.

Taking the literature as a whole the thrust of the foregoing is not that punitive measures deter crime or not, but rather that the literature does not provide a

conclusive answer to the question. While some studies provide evidence against the effect of general prevention, others point to more evidence of the effectiveness of such effect. However, to be more realistic, this should not be taken as conflicting. What can be inferred as a general rule is that while under certain conditions legal threats can exert deterrent effect, sometimes they don't.

While there is a place for questioning assumptions, The job that remains is to elaborate empirical knowledge concerning when legal sanctions are of more or less deterrent effect. According to Gibbs even under the best circumstances, the results are likely to be inconclusive.

What guidance can be inferred for the current thesis?

It might seem unprofitable to build this thesis on the base of research findings referring to other countries of different legal systems. Nevertheless it is necessary, if only to understand the shortcomings and limitations inherent in previous research on deterrence alone in other countries with a more established research history.

In the first place, for the purpose of any generalisations, the literature should be treated with great care since the research material is limited in scope to the places, the time, and the systems and circumstances to which results refer. However, such findings are useful for the purpose of comparison with research to be conducted in different countries and under different systems.

Secondly, previous research has mainly attempted to answer whether legal threats deter crime or not. However, part of the issue involves questions such as to what degree, and under what conditions, can deterrence best work? For the most part

these seem to have been left without answers. To build an adequate theory of legal compliance current research must focus on the neglected issue.

Thirdly, the concept of general deterrence as opposed to individual prevention is what *hidud* philosophy is all about. Islamic jurists consider punishment as a deterrent before the act and suppression after it. Thus, knowledge of punishment is intended to prevent the commission of the criminal act. Accordingly Basywni (1982: 23) states:

> *'The deterrent function of punishment serves as a warning to the public not to commit crimes, to forbid them imitating the criminal lest they suffer his fate, and to guarantee the safety of those who refrain from crime'.*

In Islam, however, the deterrent function of *hidud* penalties represent the limits ordained by God; and individuals are warned not to violate them. The *Qur'an* states:

> *'These are the limits ordained by God'.*

Where in another verse it states:

> *'And any who transgress the limits of God, does verily wrong his own Soul'.*

It is obviously clear that the basic objective of *Shariy'a* criminal law is to maintain peace, security and stability in society through a general theory of deterrence. Thus the rationale for enforcing *hidud* penalities for the more serious crimes is to prevent the recurrence of similar conduct and hence create a climate preferable for communal security.

It follows that, for the purpose of this study, the literature provides a general theoretical base of assessment.

> *"Both sociologists and jurists have often claimed that penal sanctions have a general preventive effect in reinforcing social values and strengthening what Durkeim called 'the common conscience' as well as alleviating fear and providing a sense of communal security. It is surely important to know how far this is true"* (Roger Hood and Richard Sparks, 1970: 172-73)

Despite the inconclusive evidence in support of deterrence, further proof has been inferred in the same direction of this thesis.

The proof of deterrence

Some scholars argue, on the basis of common sense, that perhaps it might require greater imagination to develop alternatives to threat measures. It might be interesting to imagine what would happen if the whole legal system in the society is abolished in favour of a lawless society. According to the Marxist theory, this state will be fulfilled when the Communist society will be established. In this stage there will be no need for punishment because people will perform their duties willingly, and consequently the state authority will wither away. But it is argued that the current situation in all Communist countries still contradicts the theory. Neither legal threats have been abolished, as it has been assumed in theory, nor the state is withering away. Andenaes (1974: 62) states that:

> *'Nearly half a century after the Russian Revolution, we find capital punishment used in the Soviet Union, not only for treason, but for economic crimes as well'.*

This suggests that no society will experiment in such a matter as abolishing its legal system in favour of a lawless society. On the other hand, a lawless society is perhaps one which could best be imagined as has been described by Hobbes, as one in which man is engaged in a state of war against his fellow man.

Similarly it has been considered to be too imaginary to think of a purely treatment system. As Andenaes (1974: 62) points out:

> *'We know as yet very little about what kinds of treatment are most suitable for what kind of criminals and even less about how, or whether the rate of success varies according to the duration and intensity'.*

A final point is that, in all societies, it has been noted that more people tend to obey the laws than those who tend to violate them. To assume that a deterrent is ineffective, the opposite should have happened.

The hypothesis that legal threats of punishment do have a general deterrent function still remains a viable one that will be tested here. This has been the main justification behind the Sudan experiment of *Shariy'a* application.

The attempt is hoped to be a further contribution in understanding some of the necessary knowledge required for building an adequate theory of legal deterrence.

Chapter 3

The Islamic Penal Experiment in The Sudan

What Has Been Changed in the Sudan's Legal System

What happened in the Sudan since 1983, has been described as "*nothing less than a revolution in changing its legal system to one based primarily on Islamic law.*" (N. Cary Gordon, 1985: 794). In the attempt to assess the influence of the so described revolution or *shariy'a* experiment, it is perhaps necessary to understand how this came about.

The following chapter reviews the evolution of the Sudan's legal system and describes certain aspects of radical change recently affected the penal system (mainly the introduction of *Shariy'a* as a penal system of Law).

The Sudan's Legal and Political Heritage

Historians agree that there was contact between the Sudan and Arabia before Islam. With the rise of Islam, Muslim immigrants including religious preachers, and in particular, *Sufi*, mystic Brotherhoods or *Turuq*, orders, from the Arabian East became the dominant social groups in the Northern part of the Sudan. As the Sudanese continued to embrace Islam, the Arabic language and Islamic values were assimilated. A process of Arabisation and Islamisation was then started. According to historians, this was responsible for the gradual absorption of the Northern part of the country into the Arab-Islamic traditions. By the early sixteenth century, an Islamic society had emerged, giving rise to the first Islamic kingdom and withdrawal of the previous Christian kingdoms of the North.

Religious Teachers *fuqaha'*, associated with Sufi orders were engaged in a variety of activities. Some focused on the spread of Sufism through preaching and initiation into an order. Others fulfilled the more traditional role of leadership generally associated with the *'ulama'* (learned men, particularly in religion) teaching and administering the *shariy'a*. In addition they served as advisers to tribal chiefs as well as intermediaters between the people and their rulers. (John Esposito, 1986 : 181-82).

Following their own *Sufi* orders, the Sudanese have later established the dominant social structures and institutions in the society giving rise to the religious nature of the Sudanese politics.

☐ **Administration of Justice Prior to the Introduction of the Code**

According to Madani (1970), the administration of justice in the Sudan was under no single unified authority or system of administration. Riyad (1987) suggests that until the fifth century A.H. - like all other primary simple societies - the Sudanese Communities, followed the norms and the main rules of conduct which they had inherited from their ancestors. Hence the norm was the main source of the rules regulating the group affairs in this period. There was no evidence that the ruler or the chief of the tribe had followed any type of coded rules that the natives had to obey.

The history of the Sudan's criminal justice before the Law was codified refers back to the development of the first Islamic states in the sixteenth century. Under the influence of Islamic teachings put on by the wide spread of religious scholars *fuqaha'* on these states, the *shariy'a* had full dominance in all aspects of life. For the first time justice was under the authority of selected religious scholars, knowledgeable both of the *Qur'an* and the *Sunna* of the prophet. Three systems of rule trace the evolution of the penal system before the introduction of the code, (1) The *Funj Saltana* state,

(2) the formal Islamic policy of Muhammad 'Ali during Ottoman Egyptian rule, and,

(3) the Mahdist Islamic state.

- The Funj Saltana (1504-1820)

The majority of historians accept that, the first dominance of Islam refers back to the evolution of the *Funj* state at about the beginning of the sixteenth century. During this period *Sufi* orders flourished and the *Funj* succeeded in putting to an end the Christian kingdoms of Swba and Dungla prevailing before that period.

Historians hold that the *Funj* rulers though did not order any form of written rules of circulars to be followed by the natives; justice was carried out in accordance with the regulations of the *shariy'a*. The courts, hence, were following the *shariy'a* in settling all matters whether they were religious, civil, or criminal. The ruler though was authorised to order rules but he ought not to prescribe rules contradicting with the *Qur'an* and the *Sunna* or traditions of the prophet. The Islamic character of the *Funj* state was strongly supported by the *Sufi* orders. However as a result of internal disintegration and the invasion by Muhammad 'Ali, the *Funj* kingdom came to an end in the nineteenth century, opening the way to the Ottoman Egyptian rule.

- Ottoman Egyptian Rule - (1820-1881)

Following the conquest of the Sudan by the Egyptians, the Sudan was under the control of Muhammad 'Ali Pasha. Attempting to establish a more centralised government, the aim of the new rule was to weaken the authority of the local religious leaders. One of the basic changes brought about by Muhammad 'Ali was the introduction of modern westernising reforms for the first time in the Sudan. The new reforms resulted in the application of recent Ottoman law in all civil and penal

matters. The Islamic Law, however, was restricted to governing questions of marriage, divorce, and inheritance. Hill is quoted describing this period in the following:

> *"Before the coming of the Egyptian the Muslim people of the Sudan knew only Islamic Law, and they knew that vaguely. Codes of civil and military law were Egyptian importations inspired by western practice and administered fitfully with uncertain skill and heavy-handed interpretation. The law at the beginning of the Egyptian rule was the law applying to the personnel of the government. In the large correspondence concerning criminal investigations and trials there is scarcely any mention of the Sudanese except occasionally as petitioners and witnesses against alleged injustice."*
> (Al Azmeh, A. 1988: 232-33).

The Sufi orders responded to the change differently. Some like the *Khatmiyya* co-operated with the Egyptian rule, while others such as the *Sammaniyya* opposed it. By the 1800s, dissent continued, and the Ottoman Egyptian rule was challenged by the growing popular uprisings. The most effective revolution was led by Muhammad Ahmed Almahdi, who withdrew the Ottoman authority and established an Islamic state in 1885.

- The Mahdist State (1885-1899)

Muhammad Ahmed Almahdi, a member of the *Sufi* order, blamed the Ottoman Egyptian rules for the socio-moral decline of the society. Professing a revival of an Islamic tradition based on the *Qur'an* and the *Sunna* of the prophet, he declared himself Almahdi, (The Guided One). Hence he called upon people to strive *jihad* against the mal-administration, corruption, and foreign non-Islamic practices adopted by the Ottoma-Egyptians' rule. In 1885 Almahdi's movement successfully conquered the Ottoma-Egyptian rule and created an Islamic state. The new state erected on the ruins of the old one aimed to be a theocracy in which the society and the government would be ruled by religion.

Being the Supreme Spiritual and secular ruler, Almahdi was the first religious authority of legislation in the country. The *shariy'a* was the main source of the law in the Mahdist state. Almahdi, hence declared that every learned man *'al'im* should be a judge and pronounce his decrees in accordance with the rules of the *shariy'a* contained in the *Qur'an* and the *Sunna*. Also every *'amiyr* (ruler) should be an executive of these decrees.

Almahdi's most significant contribution on legislation is reflected in his letters and circulars known as *manshurat Almahdi*. These were mainly directive to all the provincial judges and rulers drawing their attention to the theological and jurisprudential aspects of the *shariy'a*. Almahdi applied the *shariy'a* to all aspects of criminal and civil disputes. In one of his most important circulars, he pointed out that he was a slave who had been ordered to display the Book the *Qur'an* and the *Sunna* of the prophet until they are followed.

Being in power for fourteen years, the Mahdist state was finally conquered by the Anglo-Egyptian army in 1891. It left a legacy of religious ideology, leadership, and identification associated with the state which continued to influence Sudanese politics as well as the legal system.

The *shariy'a* rules though continued to apply strictly under the ruling authority of the *Mahdyia* state, but without any form of code to be followed until the rise of the condominium rule.

- The Condominium Rule (1898)

In September 1898 the Sudan was reconquered by the Anglo-Egyptian forces, who defeated the Mahdi's army at the Battle of Omdurman. A condominium status was then established between Britain and Egypt who jointly took the right as the ruling

authority in the country. Immediately the question was raised about what type of law should be applied to the country.

The new administration decided from the beginning that the *shariy'a* rules should no longer apply to civil and criminal matters. However, as the need for a civil as well as a penal or a criminal procedure code became manifest, the main steps taken by the new authority were to establish a code of civil procedure, and a code of penal and criminal procedure. The new penal code and the code of criminal procedure were enacted and applied to Sudan in 1899. The Penal Code of 1899 which was copied with minor modifications and simplifications from the Indian Penal Code, was in turn an adaption of the English Law to the needs of British India (see Madani, 1970).

The *shariy'a*, however, was given a very limited scope in the judicial system of the condominium. The Sudan Muhammadan Law Court's ordinance of 1902 had empowered the *shariy'a* courts only to regulate matters affecting personal Muslims' affairs, e.g. marriage, divorce, guardianship, gifts etc.

Meanwhile both COdes of the Criminal Procedure and the Penal Law continued in effect until the post independence period.

Post Independence and the Process of Reforming the Legal System in the Sudan (1965-1970s)

The development of the Sudan's legal system has passed through different stages of political conflict. The Sudan regained its independence in January 1956. During the early years of independence, the Sufi orders developed into modern political parties. Among the new parties, the *Ansar*, Almahdi followers, and the *Khatmiyya* - followers of Al Sayyid 'ali Almirqani (leader of a Sufi order) were the dominant parties. The

Khatmiyya wing known as *Ashiga* constituted what would later become the National Union Party (N.U.P) supported and led by Isma'iyl Al 'azhari.

The *Ansar* and the *Khatmiyya* continued to struggle for power, however they failed to win the support of the majority in the first national elections. The first civilian government was led by Isma'iyl Al 'azhari, Leader of the National Union Party (N.U.P.). The new government though issued a demand for reforming the laws, had to apply a temporary constitution approved by the Parliament, until the establishment of the new constitution for the country. Hence the judges and courts being trained in the common law system, continued to apply both the principles and status of the English law.

In 1966, the process of reforming the law started with the formation of the first National Commission for the Constitution.

☐ **The Sudan National Constitutional Commission**

Following independence it was at once realised that the independence of the country required the establishment of new legislation different from those adopted by the occupiers. The political parties, however, held different views as to what type of laws should be applied. One view advocated the application of the Islamic law. A second view advocated the application of English law. A third view, however, advocated the application of Egyptian law.

In 1966 the dispute between the political parties was settled by the formation of the National Commission for the first time. The new commission had to undertake the responsibility of drafting a permanent constitutional project for the country. In January 1957, the Commission finished drafting the general outline for the Sudan's constitution, and the first report was published in April 1958. The discussion of the

proposed constitution, however, was terminated by the abrupt end of civilian rule, after 'Aboud's military take-over in November 1958. After a long struggle the military rule was overthrown by the civilian revolution of October 1964.

The October Revolution 1964 revived with even more vigour all the ideas which had emerged post independence. Article 109 of the Sudan Transitional Constitution of 1964 modified Article 113 of the Transitional Constitution of 1956. Three provisions were added to the National Charter concerning the judicial and legal system of the country (S.H. Amin, 1985). However the process of reforming the legal system, was affected by the emergence of new ideologies following the civilian revolution of October 1964.

☐ Emergence of New Ideologies At Work Following the October Revolution

In addition to the traditional parties, the revolution of 1964 brought new parties into action. Among the non-Sufi parties which appeared later were the leftist (The Communist and the Arab Nationalist), and the Muslim Brotherhood (M.B.) (Islamic Front Charter). Being so concerned with the growing activity of the leftists, the M.B. and the traditional political parties asserted their political efforts and dominated the national elections in 1965-1968. Banning the activity of the Communist Party (C.P.), the constituent assembly passed a new draft of an Islamic constitution in 1968. However in May 1969, a group of Army officers (known as The Free Officers), succeeded in seizing power in a military coup d'etat, led by Colonel Ja'far Muhammad Numayri. Hence work was discontinued on the Islamic constitution project.

The Free Officers' revolution in the Sudan was but one of a series of radical socialist movements all around the Arab countries during the 1960s in Syria, Iraq, Libya, and Egypt. Alnumayri introduced a new ideological stage in the drift of May revolution

towards a secular nation, namely Arab Socialism. Hence he was strongly supported by the leftists, mainly the C.P. and the Arab Nationalists (A.N).

Three main ideological forces were at work in the Sudan during 1969-1970 - Islam, Communism, and Arab Socialism. The presence of the communists and their strong support and co-operation with Numayri regime, led the traditional elites and parties to join against their influence on the government's policy. Moreover, Alnumayri's exclusion of the traditional elites and parties, and his aggressive attack against the *Ansar* in Aba, gave purpose to the formation of an opposition coalition, the National Front. This included Shariyf Al hindi and the Democratic Unionist (D.U.), *Khatmiyya*, Sadiq Almahdi and the *Umma Ansar*, and Hasan Alturabi, of the M.B.

A series of political events followed. This had progressively limited, Alnumayri's political options following the 1970s. This was the starting of his appeal to Islam.

☐ **Beginning of The Appeal to Islam**

Esposito (1986) suggests that both political and personal factors seemed to have influenced Alnumayri's espousal of an Islamic direction in his personal and political life.

Since 1971, the relations between Alnumayri and the Communists began to decline. This started when the leader of the C.P. was exiled, and three of its members were withdrawn from the Revolutionary Command Council, because of their opposition to the membership of the Islamists in the Sudan Social Union (S.S.U.). In July 1971, the Communists succeeded to overthrow Alnumayri from power in an attempt to transform the May revolution into a "true proletariat" revolution. However with assistance from some Arab leaders, Alnumayri toppled the three day coup d'etat and executed its Communist leaders. Eventually, he moved in a series of political, economic and foreign policy changes. He radically reversed his pro-Soviet position, purged

the C.P., and executed its members. Henceforth he would remain extremely anti-Communist following an Islamic direction both in his personal and political life.

As Esposito, indicates this as follows:

> *"During the 1970s Alnumayri had become increasingly more religiously observant, abstaining from alcohol, gambling, and carousing. He began to frequent Sufi celebrations and seek the private counsel of local Sufi shykhs or pirs (leaders). At the same time Alnumayri continued to assert a holistic understanding of Islam in his public statements."*
> (Esposito, 1986:191).

> *"This shift away from Sudan's more secular post-independence political path could be seen in Alnumayri's new concerns about Islamic Law and the greater use of Islam in public statements and political rhetoric."*
> (ibid: 189).

Henceforth, the force of religion in political and legal reform was clearly evident.

The Turning Point Towards The Sudan's Legal Reform

In August 1970 Alnumayri took the first step to reform the legal system to conform with the Sudan's traditions. A legal commission was then formed to fulfil that goal. Including members of the Sudanese and Egyptian legislature, the Commission was headed by Mr Babikr 'awad Allah (Vice Revolutionary Council President). In his letter to the commission in the first meeting (August 1970), Alnumayri asserted that the new laws should be based on the teachings of Islam. According to the honourable 'awad Aljiyd Muhammad Ahmed, the commission however had intentionally copied the Egyptian jurisprudential experience of the 1948 civil code. The civil code which came into force in 1971, was soon rejected in 1973 and courts returned again to follow the previous status of the English law. In 1973, the Permanent Constitution was drafted and passed by the Peoples' Assembly (P.A.). Principle 9 of the Constitution states that the Islamic rules and custom shall be the main sources of legislation.

In 1974 a further step was taken by the promulgation and issuing of six Arabic Acts which included the Penal Code 1974 (translated from the 1925 code), the Penal Procedure Act, the Civil Act, the Contract, Agency, and Sales Act. (These were all codified on the base of English law.)

☐ **Influence of the National Reconciliation (1977)**

Despite his appeal to Islam, Alnumayri, however, continued at odds with the National Front (N.F), which included the Islamic organisations and defunct political parties. Its leaders Shariyf Alhindie and Sadiq Almahdi were in exile in England, and Hasan Alturabi of the Brotherhood was imprisoned in the Sudan.

The real turning point in the Sudan's path of Islamisation came following an abortive coup d'etat in 1976, led by Sadiq Almahdi and the members of the N.F. Despite his military action to put it down, the N.F. remained an important challenge to Numayri's staying power. Following a series of meetings to resolve the conflict between Alnumayri and the N.F., a formal agreement was finally concluded in July 1977 between Numayrî, and the leader of the N.F. The National Committee of 1977 included a political reform agreement, required the right of political participation to traditional leaders and forces in exchange for the dissolution of the N.F., and most important more intensification of Islam's role in the Sudan.

Hence, the general Amnesty Act of August 1977, allowed Sadiq Almahdi to return from exile. Hundreds of political prisoners were also freed. The *Ansar*, D.U., and M.B., competed in the national election and won significant numbers of seats in the P.A. Sadiq Almahdi, Hasan Alturabie, Ahmed 'ali Almirqani and other members of the coalition were invited to the Sudan Socialist Union's central committee and political bureau.

In May 1977 Alnumayri had appointed a new commission for the revival of Islamic law. The commission included a number of *shariy'a* and legislative scholars from the Sudan and other Arab states. In his letter to the members Alnumayri pointed out that he wanted the commission to review the Sudan's legislation so as to conform with Islamic law and to be freed from following western jurisprudence.

As it is known, Hasan Alturabi of the M.B., who supervised the commission is an expert both in Islamic and western law, and an author of many draft laws. The commission started by drafting several laws to replace those contradicting with *shariy'a*. Also additional laws were drafted to include those aspects of *shariy'a* that were not in action before. Nevertheless, the new law drafts remained unacted upon.

Since the Reconciliation in 1977, the M.B. became closely associated with Numayri. From its foundation the Brotherhood advocated the establishment of an Islamic political and social order by the introduction of an Islamic law based on the *Qur'an* and *Sunna*. Alnumayri's return to Islam and his increasing critiques to westernising the Sudanese culture and society, besides advocating a greater role for Islam both in social and political life, had thus coincided with the very programme and agenda of the Brotherhood.

Hence, from the beginning the Brotherhood accepted the fruits of the National Reconciliation - greater political involvement. Alturabi, leader of the Brotherhood, after finishing supervising the Law Commission for the revival of Islamic law, was later appointed Attorney General. Alnumayri also appointed other members of the Brotherhood in the cabinet and government ministries (Religious Affairs, Education). Some of them, however, secured senior appointments in the judiciary and in the Sudan Socialist Union (S.S.U.). Later in 1980 the Brotherhood won considerable numbers of seats in the elections for the new P.A.

☐ The Muslim Brotherhood and the Islamic Trend during the 1980s

By the early 1980s, an Islamic trend was accelerating throughout the country. Islamic issues dominated both student and government elections, and the Brotherhood's candidates proved the most successful. With the exception of Juba University in the south, the student brotherhood controlled students' unions in all the other universities and educational institutions in the north. Demonstrations dominated by Islamically oriented students expressed strong support for Alnumayri's increasing criticism of westernisation of culture and society, and his condemnation of secularism, and assertion of the need for Islamising both the society and politics. Influence of the M.B. extended even further to affect the economic system. For the first time the M.B. dominated a growing system of Islamic banks and insurance companies. In a word, during the early 1980's the Sudan had shifted ideologically from an extremely leftist to an extremely Islamic ideology.

By the beginning of 1983, Alnumayri was much concerned about the growing influence of the Brotherhood in Sudanese politics. In July 1983 he requested the honourable Al nayyal Abu quruwn (Judge and the son of a Sufi leader) to co-operate with any of his trusted colleagues for the purpose of building a new judicial system based on right and justice. Alnumayri expressed his keen interest in declaring the Islamic laws, but claimed that this was hampered by the reluctance of the legal consultants working with him. (This information is based on a personal interview with the honourable Advocate 'awad Aljiyd Muhammad Ahmed at his office in 1989.) Later a commission of three members carried the task of drafting the new laws. The commission included: Honourable Al nayyal Abu quruwn (Judicial Attache), Badryia Sulayman 'abaas (Head of Legislation Department at the Presidential Palace) and 'awad Aljiyd Muhammad Ahmed (Advocate). A series of laws and assorted

regulations and policies were formulated. The changes to the Sudanese legislative system affected both substantive and procedural laws, as well as civil and criminal legislations.

Introduction of Islamic Laws

In August 1983, Alnumayri proclaimed an "Islamic revolution" which would have an impact on politics, law, and society. He announced that the Sudan would be an Islamic republic and issued an official decree for the application of *shariy'a* for the first time in the Sudan. The presidential order was ratified and made constitutional by the P.A. of the S.S.U., the only legal political body in the country. A major change then followed in the Sudan's legal system resulting in the repeal of several laws including the Civil Procedure Act, the Penal Code, the Criminal Act, the Sales Act, the Agency Act, all of 1974, and the promulgation of new laws of Islamic features.

The new laws include five categories of legislation. The largest category is composed of status mainly regulating the court's operation and included (1) The Civil Procedure Act, 1983; (2) The Evidence Act, 1983; (3) The Criminal Procedure Act, 1983; (4) The Judgements Basic Rules Act, 1983; and (5) The Supreme Council Judiciary Act, 1983. The second category involves three acts regulating the courts and legal personnel. These include: (1) The Judiciary Act, 1983 and 1984; (2) The Advocates Act, 1983; and (3) The Attorney General Act, 1983. The third category involves three acts regulating *zakat*, excise duty and customs; and the fourth category is composed of a number of important substantive laws including (1) The Road Traffic Act, 1983; (2) The Penal Code, 1983; and (3) The Khartum Province Act, 1983. The fifth and final category, however, involve a statute concerning a purely religious duty, entitled 'The order of *Ma'rouf* good and prohibition of *Munkar* bad Act 1983 .

The new Islamic orientation of the Sudan's legal system was based on the Judgements (Basic Rules Act), which shows that Islamic law and the Arabic language were to replace English law and the English language as the main source of legislations and the medium for legal transactions.

Reasons Behind the Implementation of shariy'a

Implementation of *shariy'a* in the Sudan was justified in terms of returning to the nation's roots and ridding the state's legal system of colonial influence. (See Alnumayri's address at the opening session of the International Conference on the Implementation of *shariy'a* in the Sudan, reproduced in English in Al'ayam; Khartum, Supplementary Issue, Sept 26,1984). The Honourable Dr Dafa'allah al hag yusuf, former Chief Justice of the Supreme Court during *shariy'a* programme also mentioned the same points (see Sudan Now, October 1984). According to the Honourable Hafiz al shaykh al zaki (former Attorney General during the *shariy'a*, the argument is that the application of Islamic law *shariy'a* involves realisation of societal benefits, and that the laws are made to protect the rights and benefits of the people. He believes that *shariy'a* had mainly come to preserve the rights of the individual as well as the benefits of the group in justice, equality, freedom, security and stability. It puts the benefits for society in order: (1) the necessities, (2) the needy, and (3) those of improvement. Then it legislated the rules and morals that ensure their preservation and made the violation of those whole benefits and the basic rights as violation of the right of God that requires their prescribed penalties *Al hidud wal qisas*. *"Indeed the new laws must be seen as a whole, as a concerted effort to re- organise and improve the legal system and the principles it applies with a view to achieving the declared ambition*

of instantaneous justice and the security of all the people's rights and property." (Sudan Now, 1983, Nov: 9, quoting the President in his address to the nation on Republic Day.)

The Islamisation programme of the criminal justice system brought about both substantial and procedural legislation. The legislation affected two main areas: The Penal Code and The Judiciary.

☐ The Penal Code of 1983

Following the announcement of *shariy'a* the Penal Code 1983, with its Islamic features replaced the Penal Code 1974. The new code includes definitions of already existing crimes and provisions for new ones not previously provided for, together with new sanctions *hidud and qisas* as based on the basic sources of the Islamic legislation: the *Qur'an*, the *Sunna* and the *'ijma'*. Offences which do not have their penalties specified in the code are left to the authority of the judge. However, it is required that the judge should not make his judgements in contradiction with the spirit and bases of *shariy'a*. These are known as *ta'aziyr*. The code elaborates on the definitions of each of the three categories and their adaptation to Islamic jurisprudence.

Jarayim Al hidud (Hidud offences)

For the first time the Sudan Penal Code 1983 included definitions of the offences known as *hidud* offences as adapted to Islamic jurisprudence. In fact this category with its specific sanctions, involves few offences which bring with them their own strict rules of evidence.

The following offences which are included in the new code are the typical offences described as being the limits of God *hidud Allah*, and hence their sanctions are prescribed in the basic sources of Islamic jurisprudence *the Qur'an and Sunna*. This category includes: Theft *Sariqa haddiyya*, Adultery *zina*, Burglary and Highway

Robbery *haraba*, Apostasy *ridda*, and Drinking of alcohol *shurb al Khamr*. Of these only the latter was introduced for the first time. The change however is in the way the new code handles the rest of the other offences.

Al sariqa al haddiyya (Theft)

Section (2) of Article 320 introduces for the first time what is known according to Islamic schools of jurisprudence as *Al sariqa al haddiyya* or theft qualified for *hadd* punishment, distinguishing it from ordinary theft. The code indicates that this applies to anyone who intentionally takes someone else's property by stealth, on condition that the stolen property is not less than the minimum value. The code prescribed the amputation of the thief's hand for such a proven theft.

Al zina (Adultery)

The definition of adultery is modified in the new code to include any act of unlawful sexual intercourse, including sodomy and rape. According to Section 318 the sanction for the adulterer is either by execution or whipping (not more than 80 lashes), depending on whether the offender is married or unmarried. In the case of the unmarried male adulterer, the code added fine or imprisonment for at least one year. However a non-Muslim adulterer is not subject to these penalties. Section 318 in an adaptation to the Basic Rules Act states:

> *A male unmarried offender shall be sentenced to imprisonment and exile for one year in addition to whipping. Provided that the penalty specified in sub-sections (1) and (2) above shall not be imposed upon any person whose heavenly Religion provides an alternative penalty for fornication. In such cases the offender shall be punished by the alternative penalty provided by his religion. In cases where no alternative penalty is provided, the offender shall be punished by whipping (not more than eighty strikes), and fine or imprisonment for at least one year. However the Evidence Act 1983 made the infliction of the penalty subject to very strict rules of evidence. It is either by pregnancy in the case of unmarried women or otherwise, the code requires the testimony of four reliable and respectable eye witnesses in order to secure a conviction.*

Al haraba (Highway or Armed Robbery)

The term *haraba* means waging of war. Hence, the definition of Highway or Armed Robbery, *haraba*, in the new code expresses the spirit of the offence as described in the relevant text of the *Qur'an*. What distinguishes *haraba* from theft according to the code is the intention to take the property of others by force or under threat. The code also considers it to be a case of *haraba* or war whether this offence is committed in a public area (that is to say with disregard to the public order and the security of the community) or at some isolated areas on the traveller's way where help cannot be found. Articles 393 to 399 involve all cases of burglary and aggression against places. The commission of this grave crime is prevented by the threat of an unusual punishment of which details are given in Article 332 and the following. The penalty prescribed for this offence ranges between death by hanging or otherwise amputation of the right hand and the left foot alternately or imprisonment. However, it is left to the judge to make his decision depending on whether murder was committed during the course of the robbery. The explanatory memorandum for the code considered the infliction of this punishment is to fulfil both the rights of God and the people's in the community.

Shurb al Khamr wal sukr (Drinking of Wine and Intoxication)

Article 443 of the code (and the following articles) prohibit drinking of alcohol for Muslims. The code prohibits both drinking and dealing with wine beverages, as well as intoxication by all means other than wine. Some other sorts of immoral practices are also included in the code, such as public disturbance and gambling - among others. Public lashing is prescribed for the drinking of alcohol and intoxication (40 lashes in public for Muslims). Non-Muslims, however, are subject to fine or imprisonment in case of repetition of the offence. The explanatory memorandum of the code required

that the legal whipping should be moderate, by a moderate tool. Neither during intoxication nor severe cold, not during illness, in public and in presence of a judge.

Al ridda (Apostasy)

The explanatory memorandum indicates that Apostasy involves violation of the leader and declaring war against the order of the state. The text of this offence is included in Section 9 of the new code. The definition for Apostasy involves all activities against the state. The violations mentioned in this section fall under what has been considered as corruption on the land. The code considered that if someone who turned back from Islam is engaged in any activity against the Islamic state (i.e. objecting to the main teachings and rules of the book *Qur'an*, which regulate the state), this means that he is declaring war against the existing social order. Apostasy is treated in the code as a *hadd* punishment. Hence Article 458 (Section 3) provides the court with the right to inflict a *hadd* punishment for this offence. According to the code the punishment ranges from death to imprisonment (either a long life term or less). A famous case of Apostasy during the *shariy'a* in the Sudan was that of Mahmoud Muhammad Taha. (A leader and the founder of a religious group known as "The Republican Brotherhoods", who rejected reliance on the Basic *shariy'a* rules considering it as incapable of resolving the current problems of the twentieth century). He published books, circulars and delivered talks, organising a wide activity all over the country to gain supporters for his new understanding of Islam. Later during the *shariy'a* he intensified his activity further so that he was convicted of Apostasy and was executed.

Al qadhf (False Accusation of Unchastity)

Article 433 of the code defines False Accusation of Unchastity as: the allegation that someone has committed Adultery *zina*. The definition is derived from that given by Islamic jurists. The code prescribes (80 lashes) for such unproved accusation. Also, the code prohibits false accusation of other immoral practices less than adultery, and discretionary punishment is due in such cases (Qanuwn al'Uqwbat, 183).

- *Jarayiem-Al qisas* (Crimes of Retaliation)

In conformity with Islamic jurisprudence, the code included for the first time two types of *qisas* offences or retribution: *qisas* for homicide *fi al nafs*, according to the Islamic terminology - and *qisas* for wounds and injury *fi ma dun al nafs* or *Al jurh wal'aza*. The code distinguishes three categories of behaviour under such types of offences: (1) deliberate, (2) semi-deliberate, and, (3) accidental for both homicide and injury. The code prescribes *qisas* or retaliation both for deliberate homicide and injury. *qisas* for deliberate homicide in the code meant taking the life of the culprit for the life he has taken. In the case of deliberate injury the code however requires the infliction of the same injury the offender had inflicted on his victim. The code considers that, in the case that, *qisas* is not demanded by the victim's relative(s) in case of homicide, or the victim in the case of injury *diyya* or (blood money) is owed instead. The code, however, prescribed no *qisas* in cases of accidental homicide and injury, but the *diyya*, or blood money, is owed in such cases. The code considers the complete *diyya* as equivalent to the value of 100 camels. This is only due in the case of deliberate homicide.

- *Jarayiem Al ta'aziyr* (Discretionary Offences)

The definition of this category in the code excludes all the cases which fulfil the requirements for either *hadd or qisas* penalty. In such cases the code provides the judge the authority to meet the needs of the society and protect it against any kind of similar transgression. Examples and cases of *ta'aziyr* in the code include: Prohibited Sexual Actions (less than adultery), Theft not Equivalent to *hadd*, Usury (*Al riba*), False Testimony (*Sihadat al zur*), Break of trust (*Khiyyana al'amana*), Insult (*Al sab*), Bribery (*Al rashwa*) etc. The explanatory memorandum recommends whipping for the purpose of deterrence and the judge has the right to inflict the penalty when necessary.

As it is required by the Basic Rules Act 1983, all of the previous offences and their sanctions can be traced in the main sources of Islamic Law. Dr Ahmad 'ali 'abdu'alla (a contemporary Sudanese jurist) pointed out that the new laws included judgements drawn directly from the *Qur'an* and *Sunna*, and that in the absence of text the rules did not contradict the general principles of the *shariy'a*. The honourable Al Kabashi (1986), also explained how the legal text of the Penal Code 1983 relates to Islamic jurisprudence.

☐ The Judiciary

Three items of legislation have been issued in this area to bring the new Penal Code into reality: (1) the Judgements Basic Rules Act, (2) the Criminal Procedure Act, and (3) the Evidence Act, all of 1983.

- The Judgements (B.R.A)

Perhaps this is the most important piece of legislation for the purpose of Islamisation of the law. It relates the code to the Arabic language as well as the basic sources of

Islamic jurisprudence *Qur'an, Sunna, and Qiyyas*. Section 2 of this act indicates the methods for the interpretation of unclear legislative texts as well as the judgements in the absence of a text. This section reads as follows:

> *In the interpretation of legislative provisions, and unless the text is legislatively defined or categorical in its implication:*
>
> - *The judge shall presume that the legislative does not intend to contravene shariy'a by negating a positive duty permitting a clear prohibition, and shall also presume that the legislative respects shariy'a guidelines with regard to desirable and undesirable conduct.*
> - *The judge shall interpret all generalised and discretionary expression in accordance with the principles, rules and general spirit of shariy'a.*
> - *The judge shall interpret the term and the technical expressions in the light of the cardinal rules and linguistic principles of Islamic jurisprudence.*

However Section 3 of the same act requires that in the absence of any text before the court, the judge shall apply the *shariy'a*, exercising his own discretion or judgement. The code, nonetheless, provides certain principles and rules to govern this authority of the judge.

- The Criminal Procedure and Court Structure Act of 1983

Provisions of this act brought about substantial reorganisation of the court structure, as well as the procedural matters associated with that structure.

> *"Beginning at the bottom, there has been a significant upgrading of the magistrates' courts which have up to now handled some 70% of all the cases. Whereas under the old system these were presided over by three justices of the peace, none of whom had legal training, now, although there are still three members of the bench, one of them has to have at least five years experience in the legal profession"* (Sudan Now, Nov, 1983 : 9).

Another change which affected the courts is described as follows:

> *"The previously existing 'Major Courts' have now been abolished. This has the additional advantage of streamlining the legal system and quickening the progress of cases through the courts. The time and resource consuming stage*

of the Magistrate's Enquiry has now been removed as well, so that the lower courts now either try cases as a court of first instance, if they come within their jurisdiction, or simply refer them to a higher court if they don't, ... Speeding up the legal process has become a major concern in the light of the multifarious delays to which cases have customarily been subject. Procedural bottlenecks have been ironed out to allow the same courts to apply civil, criminal and shariy'a principles to cases which come before them, so that one court can reach a full settlement of the matters at stake, thus avoiding a long-winded process of constant referrals" (Ibid: 9-10).

The Honourable 'awad Aljiud Muhammad Ahmed (member of the law's drafting commission to whom reference was made earlier), told me that, the main goal of the re-organisation of the judiciary and court structure was to ensure a more effective and just settlement of individual disputes, as well as protecting the society's interest.

- The Evidence Act of 1983

Section 458 of the code requires strict conditions to fulfil conviction of the previously provided for *hidud and qisas* offences. This has been made in accordance with *shariy'a* principles. The text of the code also showed when either *ahad* or *qisas* punishment should be excluded. Section 485 reads:

> "*If the 'Hadd' (certain specified offences where the shariy'a strictly defines the offence and prescribes the penalty to be imposed), is excluded by doubt the court may in its discretion impose any sentence it deems appropriate even if no such sentence is expressly provided for in the penal code.*"

Taking Steps to Bring Shariy'a into Reality

Following the announcement of the *shariy'a* implementation in the Sudan, President Alnumayrî took several steps to enhance his new role as an Islamic political leader. In September 1983, he started with a decree for the release of all the prisoners in the Sudan. On this occasion Alnumayrî warned the prisoners that their release was to give them a second chance to abide by the law under a new penal system. Alnumayrî assumed that the new system of penal law would be more strict in controlling criminal

aggression and maintaining justice and security in the society. Moreover, Alnumayri threatened the prisoners whom he freed that, "*If you return [meaning to crime], we will be returning.*" In a public demonstration and a big media event, he also supervised the destruction of alcohol estimated to be worth eleven million dollars (Sudan Now, 1983).

Nevertheless, the attempt to reform the legal system did not stop at the structure, but involved reforming the personnel as well. "*The high judiciary council now becomes a body enjoying supervisory control over all the judges being empowered not only to appoint but to dismiss as well. Both the Attorney General and the President of the Bar Association become members of the Council*" (Ibid:10). Alnumayri blamed the existing magistrates of corruption, drunkenness and inefficiency when he fired a number of judges. Some protested while others resigned, and the three months strike by judges paralysed the legal system. Alnumayri responded by the announcement of a state of emergency as well as by establishing a new system of courts - Decisive Justice Courts - both to provide swift adjudications and justice in criminal cases. This was followed by the appointment of a new Chief Justice, who immediately issued a series of judiciary circulars (*manshurat*) intended to explain and simplify the text of the new code to help the judges to apply the new laws. A decree - involving an explanatory memorandum for the Penal Code was also issued for the same purpose.

Hence, since September 1983 *shariy'a* was the law put in force, and the three types of Islamic penal punishments: *hidud, qisas, and ta'aziyr* had been applied. The abstract rules, however, had been practically carried out and further intensified within a special programme, involving the establishment of emergency state regulations.

The State of Emergency

Pursuant to Article III of the constitution, President Numayrî issued a presidential decree (No 258) declaring a State of Emergency in all parts of the Sudan. The decree of Emergency stated to be valid from the date of issue on April 29, 1984, suspended certain constitutional rights and promulgated new regulations to keep order in the country.

The text of the Emergency Order named, "Delegation of Power" granted to the military soldiers a police role and responsibility to keep order and security in the Sudan. (See the Appendix for the complete translation of the text.) By way of example, soldiers of the armed forces were awarded the right to arrest any individual if, on the basis of reasonable doubt, it appeared that he/she has planned to commit a crime or in any way was a source of danger to public security as well as waging war against the state and the Emergency regulations.

Alnumayrî justified the announcement of the Emergency State on the basis of subversion both from within and outside the country. Speaking on this occasion he accused various categories, including some judiciary members of hindering the development of *shariy'a*. He pointed out that the basic goal of the Emergency regulation was to apply the law in a more efficient and strict way that realises justice and order. It was his realisation that this can only happen by means of more efficient courts, operated by qualified judiciary who have the will to apply the new laws, that led Alnumayrî to establish a special system of courts: "The Emergency Courts" and "The Decisive Courts of Justice". Both were said to provide swift adjudication and justice in settlement of criminal cases.

☐ **The "Emergency State and Decisive Courts of Justice"**

Immediately following the announcement of the Emergency State, special courts "The Emergency Courts", and the "Decisive Courts of Justice" had been set up by a separate decree. These had to hear and speed along the settlement of cases involving violations of the Emergency regulations, as well as provisions of the Islamic law contained in the new code.

After the new courts became operational, criminals were sentenced to various sanctions prescribed in the code - the Sudanese media reported nearly every day a great volume of cases, the majority of which involved offences such as theft, adultery, possession or dealing in alcoholic beverages or drugs, embezzlement, as well as violations of price controls. Where an accused was found guilty he was typically subject to multiple sanctions ranging from fines, to imprisonment. In certain cases public lashing, amputations, death by hanging, had largely drawn public attention. According to official sources (The Prisons Department), the total of amputations applied in the Sudan had been 88 for those sentenced to hand amputation only, and 21 for those sentenced to amputation on alternate limbs.

The concept of "Decisive Justice" as associated with the State of Emergency meant to ensure that the individual's right in justice should not be delayed. The Honourable 'awad Aljiyd agrees with the famous legal principle that (justice delayed if justice denied). According to him, this was the underlying philosophy behind the *shariy'a* experiment in the Sudan. Initially the new system of courts provided no right of appeal from the judgements given by the Emergency and Decisive courts. Decisions of the trial court were hence final and the penalties had at once to be carried out. However where the death sentence was imposed the approval of the President is required to inflict the penalty. A bit later a Decisive Justice Court of Appeal, was established "*to*

look into appeals, objections and pleas for clemency" (N. Carey Gordon, 1985: 805, quoting *Suwna*). President Alnumayri later stated "*By setting up emergency courts we aim at establishing justice and acting in compliance with what God has revealed and with what the prophet Muhammad has done and said,*" (Ibid, quoting Saudi Gazette).

The State of Emergency continued until September 29, 1984, when the President ordered his decree for lifting the Emergency State. (The text of the decree is shown in the Appendix.) The "Decisive Courts of Justice", however, continued in action after the lifting of the Emergency State. New laws were also enacted to regulate work in the judiciary and a State Minister for Criminal Affairs was appointed at the Attorney General's chamber. The new State Minister was given the following functions:

- The power of inquiry and investigation stated for in the Attorney General Act 1983
- Conducting criminal prosecutions before criminal courts, and
- Giving advice to state departments in criminal matters.

Attitudes in Reaction to Shariy'a Programme in the Sudan

Reactive attitudes in response to the *shariy'a* programme were of two types: (1) Attitudes of the common public (those not involved in politics) and (2) Attitudes of the political forces.

Thus *shariy'a* as an experiment, came about in response to certain political pressures during the course of Alnumayri's rule, was not without social consequences. Initially, it proved popular in the North. Reporting on current events, Sudan Now states, "*A degree of popular enthusiasm was manifested in a variety of demonstrations, debates, telegrams, and so on.*" (Sudan Now, November 1983: 9). According to my own

observations, a wide strong belief was also prevalent among the public that corruption and crime declined during the time when the *shariy'a* was in effect. Whether this was true or not in reality, it reflects for the first time the public's concern with how the law could affect their life in the society. The support was particularly evident during the public amputations and floggings. These attracted large supportive crowds who throughout the "Emergency and Decisive Courts" system kept watch, punishing those who were thought to be disturbing their sleep at night and threatening their peace as well (a man interviewee commented).

Politically, the most significant voice of support raised from the M.B. In September 1984, a mass demonstration organised and led by the Brotherhood, marched before hundreds of Islamic leaders and thinkers invited to attend the first international Conference for the Implementation of *Shariy'a* in Sudan. Hasan Alturabi, leader of the Brotherhood, though critical of some aspects of the experiment, considered it as having several positive consequences. (This is based on a personal interview which I took with Dr Hasan Alturabi in his office at the Islamic National Front, Khartum, during the fieldwork in 1989.)

According to him it was the first time that the public had responded to certain evolutions in legal matters which previously had been the concern of the professional specialists *'ahl al mihna*. He considers this as resulting from their belief and respect for the values represented in these laws. According to him it also reflects their understanding of the legal judgements, since it became familiar to the common people to deal with the judgements from a juristic point of view.

In contrast the experiment had also caused strong opposition and criticism. This ranged from objections shown within the country, to those hostile attitudes expressed outside the country.

Within the Sudan, the primary attack came both from the secularists and the non-Muslim minorities and the Christian churches. The churches and non-Muslims, particularly those in the South claimed that "*The new laws will be detrimental to the interests of the Christian communities and would tend to undermine the principle of equality before the law.*" (Sudan Now, Nov: 1983: 9). Beside the non-Muslim minorities, the extremely secular leftists (mainly the Communist and the Arab Nationalist) condemned what they described as the arbitrary way in which *shariy'a* was interpreted and implemented in the Sudan. Some of the criticisms were that the laws were not equally applied, and that the sanctions were imposed against common people but not the wealthy or those who were in power. Part of the attack also included criticism of the announcement of the judgements through the media on humanitarian basis. The Honourable Dr Al Mikashfi Taha was the most famous judge whose name is associated with the Decisive Courts of Justice during the *shariy'a* experiment in the Sudan. He made the decisions for the famous cases during the programme and later wrote his book "*The Shariy'a Application in The Sudan, Between Reality and Excitement*". The book involves explanations, classifications and necessary defending points against some of the critics and hostile attitudes. The Honourable Al Mikashfi Taha, 1986, made the following points in defending the previous critiques. Firstly the judgements were not restricted to the poor, but extended to include the sons of the members of the cabinet, and relatives of the President's staff, as well as some leaders of the regime. In the book he showed examples of such cases. Secondly the an-

nouncement of the judgements through the media was made in response to God's order. For example in the case of *zina* the *Qur'an* states:

> *"And the punishment should be witnessed by a body of believers,"*
> (Al Qur'an, Sura Al nur: 2).

Hence the reason behind publicising the judgements was to provide warnings, awareness, and lessons meant to deter and suppress other people by informing them about the consequences of any similar behaviour. Dr Al Mikasfi referred to some of the cases brought under his trial, and showed how these deserved the sanctions inflicted on them, for the serious consequences they left on the community.

The critiques from the other traditional parties the N.U. and D.U., however does not involve direct hostility to Islam, but members of these parties claimed different shortcomings of the laws. Sadiq Almahdi (leader of the Umma Party), avoiding to attack the laws on the name of *shariy'a* preferred to call them the "September Laws". He summarised his critique in one statement that these laws did not deserve the cost of the ink with which they had been written.

The primary attack against the implementation of *shariy'a* from outside the Sudan came from the West. The international church in particular questioned the rights of the Christians in the Sudan. The imposition of *shariy'a* in the Sudan was an event of basic concern to Amnesty International. Since September 1983 (declaration of *shariy'a* in the Sudan), (A.I.) continued to express its humanitarian concern as well as condemnation of the new legal transformation in the Sudan (see the special reports on Sudan by A.I., sep 1983 - 1985). Also, since the start of the "Decisive Courts of Justice" there had been an increased media campaign against the public amputation and floggings. Even Saudi Arabia, though a conservative Muslim state became so concerned as the international criticism increased against the new Islamic experiment

in the Sudan. Both Saudi Arabia and Egypt showed their concern about the strong influence of "Islamic fundamentalists" in the government. Esposito (1986), considers their fears "*as a reaction to the Iranian Revolution (1974), the Seizure of the Grand Mosque in Mecca (1974), and the Assassination of Anwar al-Sadat (1982)*" (Esposito, 1986: 199). However, as to the United States, it was pointed out that: "*reports circulated in Khartum and throughout the Middle East that Bush reiterated Washington's concern about Islamisation.*" (Ibid).

Uprising Pressure and Relaxation of shariy'a

Throughout the last part of 1984, Alnumayri appeared to show greater awareness of the growing pressure and critiques of *shariy'a*. The country was also under frustrating economic conditions. Fuel shortages and electricity blackouts led to the closing of schools. In addition to the drought, the effect of the famine in Ethiopia, added to the problem. Thousands of refugees drifted into the Sudan which was already suffering. Arab oil countries diminished their economic aid. Esposito (1986: 198), reports that "*Even Saudi Arabia, declined to afford unconditional support to the Sudanese approach.*" It is also pointed out that two of the four conditions Bush required for lifting the freeze on American economic aid to the Sudan were: (1) Discontinuation of implementing Islamic penalties *Al hidud* and (2) Dismissal of Islamic fundamentalists from the cabinet and governmental institutions.

Alnumayri's response was to moderate his push towards *shariy'a* by taking a series of further steps. On September 29, 1984, he cancelled the State of Emergency which had been in effect since the previous April (see the Presidential Decree in the Appendix). Later he stopped the previous announcements of the imposition or infliction of amputation punishments. Most important, he gave assurances that *shariy'a* would not

be implemented in the South: "*The Sudan does not impose religion on its people, and will not force anyone to abandon his religion.*" (Ibid: 188, quoting David B Ottawa on Muslim Law Threatens Sudan Unity, Guardian weekly, September 30). Later on March 10, 1985, several prominent members of the Muslim Brotherhood were arrested (see Amnesty International, 25 March, 1985: 5). As Esposito (1985) puts it: "*Thus the stage was set for the Brotherhood to take the blame for all the Sudan's religious, political and economic ills. Making it the scapegoat of his regime's failure, Alnumayri accused the Brotherhood of exploiting religion, comparing them to the Communists, he denounced them as fanatics, a diabolical group which thought to undermine national power, and create another Iran. The fact that Bush ended his visit with an announcement of the resumption of United States aid and that a team from the World Bank left for the Sudan the following day appeared to confirm the United States' responsibility for Alnumayri's new initiatives*". (Ibid: 200). Responding to further pressure, the government lifted subsidies upon fuel and bread. This gave way to the immediate collapse of Alnumayri and his regime.

Collapse of Alnumayri's Regime

The lifting of subsidies on fuel and bread provided Alnumayri's opponents with a base to enable them to unite, despite their political interests. A National Alliance for the Country's Salvation was immediately formed. This consisted of some forty-five professionals, unions, organisations and political parties (Umma Party, the *Khatmiyya*, the Brotherhood, and on the left, the Communists), who all united demanding Alnumayri's resignation. They were supported by a group of senior military leaders who expressed dissatisfaction over the conditions of the armed forces and the war in the South.

On March 27, Alnumayri left the Sudan for Washington to meet Reagan, the former President of the United States. Soon after, food riots and demonstrations broke out in the streets of Khartum. 'Umar Muhammad Al-Tayib (President's Assistant) moved quickly to contain the situation. However, demonstrations continued to spread all over the country. It was estimated that over twenty thousand demonstrators marched through the streets of Khartum chanting both against Alnumayri and the United States. A short while later a general strike paralysed the country. On April 5, the political conflict reached its peak, when General 'Abd al Rahman Siwar al Dahab (a senior military leader) seized power over the country.

Immediately after the withdrawal of Alnumayri and his regime, a transitional military council (T.M.C.) was formed. This had to take the responsibility for the rule, until a new government was elected. A period of one year was given as a deadline for the T.M.C. to be in power.

The Transitional Military Rule and the shariy'a Question

In the foregoing it has been pointed out how *shariy'a* was one of the causes behind the 1985 March/April uprising. Though members of the National Alliance for Salvation united during the last stage, disputes soon arose when some of them announced the need to repeat what they called "September Laws" (referring to the introduction of *shariy'a* since September 1983). In fact the laws continued in effect but no further sanctions were inflicted. Despite the complicated economic tensions, the Transitional government, at once had to deal with the question of *shariy'a* as the main issue on the political agenda.

Since April 6, 1984, the debate has continued between those who claimed the continuation of the existing laws *shariy'a* laws and those who completely demanded their repeal. As Safia Safwat pointed, in particular "*The Shariy'a has presented a*

stumbling block to negotiations with the Sudan's People's Liberation Army (S.P.L.A.), *for ending the civil war in the South.*" (Al-Azmeh, A 1988:246).

In August 1985 the National Salvation Alliance, now including the Communist Party, the Umma Party, and the National Union for Professions and Organisations, in addition to the Alliance of Southern Parties, had delivered a memorandum to the Government. (The complete text was published in Al 'ayam, Khartum, November 8.) The memorandum claimed the abolition of "September laws", mainly; the Sudan Penal Code, the Criminal Procedure Act, Judgements and Basic Rules Act, all of 1983, and the Business Act (no year mentioned). However, two parties, the M.B. and the D.U. didn't sign the memorandum. Both at once withdrew from the National Salvation Alliance because of *shariy'a*. Hence the pressure upon the transitional government continued from both of the two conflicting sides.

Freezing of the Shariy'a

The transitional government responded with a project of a new Penal Code assumed to amend the previous one. The Honourable 'Umar 'Abd Al'Ati (former Attorney General during the transitional rule, who I interviewed at his office in 1989), believes that the previous code included some shortcomings and needed to be modified. Particularly he expressed his concern about the right of appeal for certain laws, as well as other procedural matters. He also pointed out that he had personally opposed the infliction of all the judgements made in accordance with the previous code. As he claimed, it is his consent that it is not fair to inflict a judgement based on a law that needs to be modified or amended. According to official information (refers to the Prisons Department), the total of unfulfilled judgements during the transitional period rule had been: 70 cases (confirmed) and 187 (not yet confirmed).

As a result of the equivalent force both in opposition and in support, it appears that the outcome of the conflict was the freezing of *shariy'a*. The decisions was finally made to postpone the matter of the Penal Code to the constitutional assembly after the general election. However, it was made necessary that the *shariy'a* would be the core of the election campaign.

The transitional government didn't abolish the Islamic laws, but at the same time didn't continue to inflict the punishments based on them.

The former Attorney General 'Umar 'Abd Al'Ati considers that the law was more likely not existing. during this period. Also the Honourable Al Mikashfi Taha Al-Kabashi, 1986, suggests that in such case the legal situation can be described as both Islamic and non-Islamic. Islamic in the sense that the Islamic laws introduced in September 1983 were still in existence; and non-Islamic because there was no more infliction of the sanctions issued in accordance with these laws. He assumes that in such a legal situation it is normal for all types of crimes to spread.

Summary and Conclusion

Imposition of *shariy'a* in the Sudan was an experiment. It came about through a long process of political conflict. Explaining this required an assessment of Sudan's Islamic heritage as well as the political realities of the 1970s. I believe that the efficiency of any legal system cannot be understood in isolation from the socio- cultural and political aspects of the society.

> *"The shariy'a in Sudan evolved with the Islamic state itself, dating from the sixteen century Furji kingdom, and its history is inseparable from successive governments which have ruled the country, whether indigenous or foreign, secular or theocratic."* (Lobban, Carolyn, 1987:227).

However the recent development of *shariy'a* as a Muslim set of laws has been affected by further political events following Independence.

Since 1956 (when the Sudan gained its independence) and throughout the 1970s, attempts of Islamisation of the law continued with the National Committee, to establish a constitution recommending that the laws of the Sudan should be derived from the principles and spirit of Islam, and that the *shariy'a* should be the source of all legislation. But it was not until September 1983 that President Alnumayri brought this to a reality. In response to personal and political events to maintain his power, Alnumayri was the first leader to announce the application of *shariy'a* in the Sudan. In fact the Sudan's Islamization experiment of the law by Numayri, must be seen as a response to the broader political context. All other options had failed or proven inadequate - for example Arab or Sudance Nationalism/socialism had not been particularly successful in attracting popular support. At the same time the Muslim Sudan, like other Islamic States experienced a revival of religion observable in the committment of students, young professionals, and some influential leaders and thinkers.

Though *shariy'a* was put into force in September 1983, nonetheless in its fullest operation *shariy'a* was in effect from April 1984 (beginning of the Emergency and Decisive Courts system) until September 1984 (lifting of the Emergency and Decisive Courts System). From September 1984 throughout the transitional rule it had been frozen.

The full application of *shariy'a* introduced to the Sudan a whole range of criminal sanctions all based in the Islamic penal jurisprudence. This included the three main categories of Islamic punishments; *Al hidud, Al qisas, and ta'aziyr.*

Throughout the period when *shariy'a* was in operation, the *hadd* punishments had been carried out publicly: amputation for qualified theft; flogging for adultery and for drinking, possession, sale, transport or manufacture of alcoholic beverages; death penalty or amputation of limbs for burglary and armed robbery. *Diyya* or blood money was also fulfilled in compensation for injury or homicide. Floggings were most common in cases of *ta'aziyr* or discretionary punishment less than *hidud* and *qisas*.

In theory the application of *shariy'a* was assumed to achieve justice and to preserve the rights of the individual and the society in justice, security, and stability. However, the experiment resulted in popular arguments for and against the issue. Whatever the reasons behind the difference of opinion, what seems certain to this thesis, is that the conflict concerning the application of *shariy'a* in the Sudan will continue for some time yet. At present the amount of empirical evidence to support or refute any particular argument is insufficient.

I believe that the efficiency and reality of any system of law to achieve its goals can be judged through the assessment of empirical observations for the community reaction to that system. The implementation of *shariy'a* in the Sudan might provide a test case for the achievement of that objective.

In this chapter, having considered how *shariy'a* in the Sudan came about, and operated, the next chapter turns to deal with how the attempt has been made to assess whether the Sudan's experiment succeeded in achieving its theoretical goals.

Chapter 4

Hypotheses and Methods of Research

Before turning to discuss the substantial data relating to this study, this chapter provides a general framework for the main concepts, hypotheses and methodology necessary for understanding the main findings of this thesis.

Shariy'a and the assessment of this thesis

The term *shariy'a* as used in the title of this thesis refers to the Sudan experiment of *hidud* applied from September 1983 to December 1984 under the rule of the former President Numayri. This period involved the establishment of specific Islamic penal rules and punishments applied within a new judicial system known as the 'decisive justice system'. The whole experiment, which has been described earlier in this thesis, is the focus of this study.

Public security

For the purpose of this study the term 'public security' is meant to involve a reflection of an increasing feeling of safety, and decreasing worry and concern about crime among the public, associated with decreasing fear of criminal victimization.

Research hypotheses

On the basis of the previous definitions of *shariy'a* and public security and the theoretical objectives assumed to justify the experiment, this study examines the following hypotheses:

- *shariy'a* was anticipated to deter concern about and fear of crime and therefore creates a climate more conducive to public security as follows:
    - *shariy'a* was anticipated to reduce the concern about the seriousness of crime among the public;
    - *shariy'a* was anticipated to increase the feeling of safety among the public, and
    - under *shariy'a* it was felt that less protective measures were needed to avoid victimization.
- *shariy'a* was anticipated to deter criminality and therefore reduce victimization in the community.

Research Technique: an overview of the victim survey

In my attempt to assess the Sudan's experiment concerning the influence of *Shariy'a* on crime and public security, I conducted the victim survey to be described in this chapter in 1989. This recent research technique has been recommended by several researchers.

According to Maguire and Pointing, criminal victimization studies are useful research instruments to deal with the problem of inadequate statistics and to pinpoint more accurately problems within society. Commencing on a large scale in the United States in the 1960s, they reached Britain by the late seventies. A series of British crime surveys then followed. For a while it seemed that the problem of the dark figure offences which are not included in official records because they are not reported to the police would be tackled. Richard Sparks and his associates, in the introduction to their pioneering British victimization study, summarised the decade of American research prior to their own in the following:

'Within a decade some of the oldest problems of criminology have come at last within reach of a solution'. (Maguire & Pointing, 1988 : 90)

In this regard Sparks states:

'By using this technique to ask samples of the general public directly about their experiences as victims of crimes, researchers in a number of countries are now obtaining a wealth of information about crime and society's reaction to crime, of a kind which could not be obtained in any other way. In particular, they are learning much, for the first time, about the so-called "dark figure" of crime. Those offences which are not reported to the police and not recorded in official criminal statistics'. (Sparks et al., 1977, : 5)

Among those criminologists who have questioned the validity of official statistics as a means of measuring crime, reference has been made to Beattie, (1955,1960); Cressey, (1957); and Robinson, (1966) (Fox, 1981).

The use of victim surveys has thus provided an alternative method to compensate for the limitation of official statistics. The first techniques of this type were first carried out in the United States for the president's commission on law enforcement and administration of justice, in 1966.

Following wide expenditure on this technique, an abundance of data has been made available which concerns victimization, the general public's perception of the crime problem, the public attitude and beliefs concerning the social order, and the system of social control. Therefore it was hoped that this technique might make an important contribution to the understanding of crime and consequently to the development of criminological theories. But although it provides an alternative picture to the nature and amount of crime that emerges from the official statistics, the victim survey technique is not without its limitations. In the view of current scholarship the accuracy of this technique as a method for measuring crime is not assured in certain crucial respects. (See Richard Sparks et al, 1977, in their pioneering study to investigate the

feasibility of the victim survey technique as a means of measuring crime). However, despite these limitations it is the most useful method to hand at the present time.

☐ Application of The Survey

Using the victim survey as a basic technique for this research was a pioneering attempt insofar as it was applied for the first time to Sudan. It was hoped that useful empirical data on the amount and type of victimization would be obtained by asking people about their actual experiences as victims over a given period of time. A random sample of people was taken to provide information relating to their experiences of victimization before and after *shariy'a* application. The period covered by this study involves two phases: the first phase refers to the period from September 1983 to September 1984 (when *shariy'a* was in operation); the second phase refers to the period from September 1984 to September 1985 (when *shariy'a* was not in operation). The substantive data refers to urban regions taken randomly from the 1986 election list consisting of the basic circles (zones) representing the main geographic regions of the national capital city of the Sudan, Khartum. Khartum comprises the three towns Khartum, Khartum North, and Omdurman. The regions are distributed as follows:

- Khartum City includes

  Khartum the second geographical circle (zone). This includes: Al Sagana Council, Khartum North Council, Al Khartum janoub (3), Railway residential area, Paris residential area, and Al-Khartum West.

  Khartum the seventh geographical circle (zone). This includes Al Sahafa Council (Al sa-hafa and gabra).

- Khartum North (Bahrie city) includes

  Bahrie first geographical circle (zone). This consists of: Al-Khatmia, Al Sababie, Hilat Hamad and Khojalie, Al Danagla North, Al Danagla South and Al-Shabia South, Al-Amlak, and Al-Diyoum.

  Khartum Bahrie the second circle (zone). This includes Shambat North, Shambat extension, Shambat al-Aradie, Al Shaabia North, Al-mazad North, Al-Safia, Shambat-al Ziraa'a, Al-Higrha, and Shambat South.

- Omdurman City includes

  Omdurman, the third geographical circle (zone). This includes wad Nobawie and Beit al Mal Council.

  Omdurman, the fourth geographical circle (zone). This includes Almahdi City Council which includes the residential area known as *Al harat*, extending from *hara* number one to *hara* number eight, and the Nile city.

Having selected six areas to be surveyed within the three towns which form the capital city Khartum, and having the final forms of the questionnaire completed, the field-work started in mid-February 1989. A team of interviewers was selected from the third and fourth-year students of the Department of Sociology and Applied Statistics of the Islamic University of Omdurman in the Sudan. Information was collected through direct interviews, over a period of approximately two and a half months. A total of six hundred interviews was completed. The completed questionnaires were checked and finally a random sample consisted of four hundred and fifty questionnaire was drawn from the total (original sample) for the final analysis.

The influence of the *shariy'a* experiment on public security has been examined on the basis of the questionnaire to be described in the following.

The Questionnaire

The questionnarie was designed to obtain data to enable a comparison to be made of respondents' experiences of criminal victimization, perceptions and fear of crime during two reference periods relating to two levels of enforcement in the penal system:

- The first period from September 1983 to September 1984 refers to the *shariy'a* programme involving the implementation of the Islamic penal sanctions described in the previous chapter. This programme started by destruction of wine and the announcement of *hidud* application, and was followed by the release of prisoners in the Sudan by the former President Numayri in September 1983. The period finished with the end of the emergency courts in September 1984. This period thus relates to the criminal justice system when *shariy'a*, was in operation.

- The second period, from September 1984 to September 1985, refers to the criminal justice system following the end of emergency courts in September 1984; and the termination of the Islamic punishments following the collapse of Numayrî's rule, until the first six months of the transitional government of General Siwar al dahab and Dr. Aljuzuli Dafa'allah. During this period *shariy'a*, was not in operation.

After the necessary revision of the first draft a pilot study of the questionnaire was made with a sample of Sudanese students and their families attending Durham University, to assess its validity. This was thought necessary in order to test whether the data relating to individuals' previous experience of victimization could or would be accurately recalled and reported to the interviewers. The only available group was

of highly educated individuals who can easily recall and locate events with chronological accuracy. It was found that with such respondents the questionnaire could provide good information of the type needed for the objectives of this research. Consequently, on the basis of some of the comments obtained from this pre-test, the final revision of the questionnaire was made and approved in preparation for its administration in Sudan.

☐ **Content of the questionnaire**

The questionnaire, which included 36 questions, falls into two main sections.

- The first section consisted of basic demographic (personal) data relating to such characteristics as sex, age, education, residence, works and socio-economic status. The purpose was to assess the relations between the respondents' personal characteristics and previous experience of criminal victimization.

- The second section of the questionnaire was designed to elicit information relating to respondents' concern about, and past experience of, criminal victimization, both while *shariy'a* was in operation and for the following period when it was terminated.

Because it was felt important that the information in this section be accurate in terms of recall of previous events, some time was allowed at the beginning of this section to help respondents to recall the intended periods by a series of descriptions of important events both at the beginning and at the end of each period (see Appendix on survey of criminal victimization). Following this memory prompt a set of questions was asked repeatedly to measure the experiences of respondents for each period as objectively

specified and described in the questionnaire (see Appendix). Information was categorised as follows.

- Concern about crime

This category involves information to measure fear of crime in three ways:

- Feeling of safety
- Seriousness of Crime
- Defensive behaviour undertaken to avoid expected victimisation

- Experience of past victimization

At the beginning of this category, respondents were also allowed enough time to permit them to recall particular incidents of victimization during the two periods specified. The information obtained involves two types of victimization.

Personal experience of victimization

Following this memory prompt a list including descriptions of particular victimization incidents was given. Each respondent was then asked to check from the list if any of these typical incidents fitted the description of any case that might have happened to him/her during that time. The list included a description of incidents related to particular types of *hidud* offences, mainly ranging from robbery and burglary known as *haraba* in the Islamic terminology), theft known as *Sariqa*, and physical assault known as *adha* in the Islamic sense. These were chosen as examples of those which were treated under *hidud* punishments during the criminal justice system when *shariy'a*, was in full operation in the Sudan. The rest of the offences, such as *ridda* or apostasy, illicit sexual relations *zina*, slanderous accusation *qadhf*, and drinking of

alcohol *shurb al Khamr*, were not included in the list, since no-one was expected to give information if directly asked about these offences.

In the first place apostasy *ridda* is of rare occurrence and normally the influence of this offence affects the community rather than the individual. Secondly, with illicit sexual relations *zina* and slanderous accusation *qadhf*. They both involve shame to the extent that no-one not even a victim will give information about these. Even asking someone directly if he or she has been a victim of either of these offences is seen to question their personal honour. And, finally, the drinking of alcohol can only be examined by its influence on other crime incidents, because it does not involve harming others in a direct way.

The next question asked respondents to report whether anything else had happened to them and which was not included in the previous list. They were allowed to describe a maximum of three such incidents. The purpose was to gather information on other minor offences that might fall into the category of discretionary punishments *ta'aziyr*, and if possible other *hidud* offences not included in the list.

Victimization against other people (community victimization)

In order to cover all possible previous incidents of victimization, the questionnaire then seeks information on community victimization. Respondents were asked to report whether anyone else they know of was similarly affected by any of the previous incidents of victimization. The previous list was repeated and respondents were asked to choose from the list those typical incidents which might have happened to anyone of their acquaintance at any time during the two reference periods.

The final question was intended to obtain information about respondents' political orientation. The purpose is to examine whether respondents' political orientation in

any way reflected a bias with regard to their willingness to report incidents of victimization and with regard to their feelings about the existing criminal justice system.

The questionnaire closed by asking each interviewer to thank each respondent for his/her cooperation at the end of each interview. The interviewers were then instructed to fill out the respondent's assessment form attached to the questionnaire before moving on to the next one.

The sample

The sample, which consisted of six hundred cases, was obtained on the basis of the following criteria.

The original intention was to take random cases from the registration list, which includes the names of voters of the 1986 presidential election for the Sudan's national capital city Khartum, Omdurman, and Khartum North. However, this plan proved to be impossible due to the difficulty of locating individual cases. It was then felt necessary to use some form of area sampling instead. Accordingly the 1986 geographical list, representing the main geographical urban areas in the three cities of the national capital, was found to be the most readily available suitable sampling frame.

As shown at the beginning of the chapter, two areas were then picked (at random from the list of names including the main areas for each city) from each city, giving a total of six areas for the three towns of the captial city. Initally therefore, a sample of areas was obtained. It is important to note that this initial area sampling included mainly inner urban areas of the national capital city consisting of different socio-economic levels. No adequate sampling frame was found for the areas obtained. It was

then felt useful to divide each area into sub-divisions containing residential areas *Ahya'*. Information on the location and boundaries of each area was obtained from the local council offices. Each council sub- division in the six surveyed areas was then identified according to its boundaries and further divided into smaller segments.

Individual cases were obtained through two stages of systematic sampling. First, within each segment streets were systematically selected according to their ordering numbers. Within each street dwellings were randomly obtained. An adult member was taken from each dwelling by knocking at the door. Fieldworkers were instructed to interview the first person who came to open the door. If there was no response then the next dwelling was to be selected. A sample of one hundred cases was covered in each area, giving a total of six hundred cases for the combined sample for the national capital city. A randomised total of four hundred and fifty cases, weighed for two hundred and twenty five cases for each sex, was finally selected for the purpose of analysis.

This method of segment sampling was found more manageable with regard to locating dwellings than selecting from a big (and inadequate) list of dwellings, which proved to be impossible. It also ensures that segments provide a more complete coverage of dwellings which are located next to each other rather than being spread around a vast area, which would be the case if choosing from a large list of the population. One problem of this process, however, is that the interviewers clearly did not contact a random sample and this means that some sources of sampling bias are possible.

It can confidently be said that the overall response rate of the survey was one hundred per cent, since not one of the interviewers team was refused entry to any of the houses he targetted during the fieldwork. This is not surprising in a society where individual

members consider themselves obliged to show the best welcome and hospitality to any visitor regardless of the purpose of the visit. All of the interviewers reported that they were strongly welcomed and all were shown great hospitality and generousity by all the respondents. None of the respondents refused explicitly to provide information and in each case the questionnaire was completely filled. Despite this full acceptance of our interviewers and the great concern shown by all the respondents about the matter of crime and security, there was a slight variation in the degree of cooperation observed by some interviewers, as reported in the interviewer's assessment form attached at the end of the questionnaire.

Interviewer's Assessment of Respondent's Cooperation

Degree of Cooperation	% Response
Very cooperative	78.4
Somewhat cooperative	20.4
Not cooperative	1.1

Interviewers' selection, training, and task

The fieldworkers team consisted of fifteen students, whose training was mainly in social science and applied statistics at Omdurman Islamic University, to which I also belongs as a teaching assistant. The nature of the relationship with my University student's team facilitated the arrangements and administration of the fieldwork from the earlier stage of selection up to the final stage of data collection and field supervision. The team included students mainly from the third and fourth years, whose training mostly covered basic principles and rules of social research techniques and methods. Selection was based on personal interest and the participating students received a job training course on the survey technique related to the research topic.

They were also motivated by financial award (payment), as well as a certificate of fieldwork experience in data collection from the University department.

The training programme lasted for twenty hours and started with an introductory meeting about the general plan of the survey, why it was being done, by whom, and how the results were to be used. The role they should play and what was expected from them was also clearly explained.

This was followed by the fieldwork instructions and briefing. In this stage explanation of the interviewer's task included such things as where to locate and select sample members; how to open the interview, ask the questions and record the answers as instructed. Most important, the questionnaire instructions specified the allowable extent of recalls and probing, and how to deal with different types of non-response.

The training programme ended with the trainees performing a few experimental interviews with some of their fellows under my direct supervision, I also performed the first few examples. After this comprehensive training course the interviewers moved to the field, with an authorised letter showing the purpose of their job and the institution they represented. Throughout the fieldwork, the data collection was directed under my direct supervision. The fieldwork check was done at the end of each working day, to test whether the interviewers were asking the right questions, and recording the answers in accordance with the instructions. To control this job each interviewer was requested to put his name on all the questionnaires he filled out.

Despite all these efforts to secure the accuracy of the data, some limitations and problems of method should be considered.

Data limitations and problems of method

The scope of the findings in this study is limited by the survey of criminal victimization described above. Although every effort was made to ensure the reliability and accuracy of information, it should be noted here that the analysis has been affected by the following limitations of the data and some unavoidable problems of method.

Representativeness of the sample

Perfect estimation of victimization incidents can only be drawn from a large-scale survey including all the population. In practice, this was of course beyond the limited resources and available facilities of an individual researcher. This being the case, the data was inevitably subject to some errors as well as other sources of unknown bias resulting from imperfect randomness of selection. Such errors might lead to a different estimation of victimization events with a one hundred per cent representative sample, if it were possible to select all the members of the population who had actual experience as victims of specific types of crimes at a specific period of time.

Recall and telescoping of incidences

Two sources of error and inaccuracy are recongized by expert researchers in the field of victims survey technique (Richard F. Sparks et al., 1977). In the first type, the respondent may completely fail to remember the incidents in question or, if he/she does correctly remember them, he/she might not wish to release that information. The second type of error is related to telescoping of events. This occurs when an individual remembers and reports an incident but fails to specify exactly at what time it occurred. According to expert researchers the incident is placed either earlier or (more usually) later than when in fact it did occur (Sparks et. al, 1977:35). The net

effect in both of these cases is that some events are completely lost so far as the statistical estimation of previous victimization is concerned.

Victims studies usually refers to the previous year and are still acknowledged to have recall problems. In this study, however the respondents were asked to recall and locate events going back to six years of time. Hence it must be noted that (so far as Telescoping and recall of previous incidents is concerned) there are bound to be some errors affecting the data. The two sources of errors previously mentioned are both inevitable. Firstly, some of the incidents might not be exactly located vis-a-vis the *shariy'a* period. This error might lead to the confusion of some of the incidents, to the extent that it was not clear to which of the two periods some of the incidents could related. Still some events might completely be lost either because of memory failure or because of the unwillingness of the respondents to release some of the information.

☐ **The short dominance of the shariy'a programme**

An important factor to be taken into account is that, the survey involved a full year term for *shariy'a* (from Sept 1983 - to Sept. 1984), however during this term the intensified program involved actually five months extending from April 1984 to September 1984

Despite the previous cautionary remarks and the limitations of method, the information obtained for this study cannot be obtained, at least at the present time, by any other method. With regard to Sudan particularly, the application of this technique provides for the first time valuable information on criminal victimization. This is in strong contrast with official statistics, which concentrate on figures relating to rising or falling rates of crime, rather than on providing explanatory information about such incidents. Reliable information of the kind provided by the victim survey may be of

great importance to public policy, since it provides a better understanding of criminal victimization and public concern about crime and security. This was in itself seen as an important and worthwhile contribution which, it is hoped, this study may achieve.

In the judgement of some recent researchers in the field there are, in fact, at least three distinct ways in which victim surveys may contribute to explanatory research in the field of criminology:

- by providing a more accurate measure of crime rates;
- by providing data on victimization; and
- by throwing light on the nature of social reaction to crime and the working of part of the criminal justice system.

The method has different strengths and limitations in each of these three areas, however. With reference to Skogan, 1986, it has been pointed out that, despite the evident achievements of victim surveys, there remain technical and theoretical difficulties involved in the 'measurement' of crime which mean that some survey findings must be interpreted cautiously (Maguire et. al., 1988:90). The following plan of analysis for this study was made with these warnings in mind.

Method of Analysis

For the purpose of this study the influence of *shariy'a*, is measured by comparing the difference in the responses when *shariy'a*, was and was not in operation. The validity of the significance is examined using the chi-square statistical test.

Chapter 5

Data Analysis and Discussion of Findings

The Shariy'a Experiment and Fear of Crime

The victim survey described previously included three sets of questions aimed to examine whether the *shariy'a* experiment in the Sudan had deterred fear of crime in the society. In this chapter the findings related to this issue will be presented, analysed and discussed under the major hypothesis that, the *shariy'a* was anticipated to deter fear of crime in the Society. Fear of crime was examined in connection with three indicators of concern about crime; Concern about the seriousness of crime; Concern about Safety; and Defensive behaviour undertaken to avoid victimisation. In the following data related to each of the three aspects of fear of crime will be presented, analysed and discussed.

Concern about the Seriousness of Crime

This section examines whether the *shariy'a* experiment in the Sudan had any influence on concern about the seriousness of crime in the society.

Table 5.1 presents the responses to the question about how serious crime was thought to be when *shariy'a* was/was not in operation. It shows that the respondents, looking back at the period when *shariy'a* was in operation, thought that they had felt that crime was a less serious problem during that time. Well over a half 57% thought that they had considered it to be "not at all serious" during the *shariy'a* experiment, while only about a third 33% thought that they had felt the same when *shariy'a* was not in operation. These differences are statistically significant (see Table). The conclusion

hence is that; looking back at the period when *shariy'a* was in operation significantly more respondents felt that crime was not at all a serious problem.

Table 5.1

Concern about the Seriousness of Crime when *shariy'a* was/was not in Operation.

All respondents

	shariy'a was in operation		*shariy'a* was not in operation	
How serious was crime	**%**	**No.**	**%**	**No.**
Serious	24	106	37	167
Quite serious	19	87	30	136
Not at all serious	57	257	33	147
Total	100	450	100	450
* calculated chi square for 'not at all serious'			= 29.9	
D.F.			= 1	
Critical level			= 0.001	
Critical value			= 10.82	

Sub Group Characteristics and Concern About the Seriousness of Crime

Prior Research (Western) suggests that, there are some personal and demographic characteristics associated with fear of crime. (Hindelang 1979, Hindelang and colleagues 1978, R.1. Mawby 1988, Garofalo 1978, Stauko 1988, Walklate 1989, and Balkin 1979). Ever since there has been much attention given to the understanding of the influence of gender, age, employment, economic status, and education (among other social variables) on fear of crime. The following analysis examines whether the findings of this study are similarly affected by any sub group characteristics or variables other than *shariy'a* in the Sudan.

☐ Gender and Concern About The Seriousness of Crime

Table 5.2

Concern about the Seriousness of Crime When *shariy'a* was/was not in Operation

All Respondents by Gender

	Persons who thought crime was 'not at all serious'				No. of Respondents
	When *shariy'a* was in operation		When *shariy'a* was not in operation		
Sex	%	No.	%	No.	
Female	56	126	32	71	225
Male	58	131	34	76	225
Total	57	257	33	147	450
* Adapted from Appendix Table 1					

Table 5.2 shows that there is no significant difference between males and females respondents on this variable. The two sexes revealed the same difference in the proportion concerned about the seriousness of crime in the two periods. The table thus suggests that Gender is not related to *shariy'a* in terms of respondents concern about the seriousness of crime. This result is opposite to western research findings where reports showed that females generally had much higher levels of fear than men did (Warr 1984 and 1985, Manfield 1984, Hough and Mayhew 1983, and 1985, Chambers and Tombs 1984, and Smith 1987). However, the fact is that in the Sudan according to their life style role modelling women are expected to be less mobile and consequently have less exposure to actual risk of victimization than men do. Consequently their awareness of actual risk might be much less than that of men. This may explain why they display the same views as men about the seriousness of crime.

☐ **Age, Economic Status and Concern About The Seriousness of Crime**

Tables 5.3 to 5.5 examine the differences in concern about the seriousness of crime for age, economic status and employment. For each of the three variables the discrepancy on fear is not found to be significant (see Tables). The result hence suggests that there is no relationship between these variables and views about safety.

Table 5.3

Concern about the Seriousness of Crime when *shariy'a* was/was not in Operation.

All Respondents - by Age.

	Persons who thought crime was 'not at all serious'				No. of Respondents
	When *shariy'a* was in operation		When *shariy'a* was not in operation		
Age group	%	No.	%	No.	
Under 30	58	193	32	104	330
Over 30	53	64	36	43	120
Total	57	257	32	147	450

* Adapted from Appendix Table 2

calculated chi square = 0.9
D.F. = 1
critical level = 0.05
critical value = 3.8

Table 5.4

Concern about the Seriousness of Crime When *shariy'a* was/was not in Operation.

All Respondents by Economic Status.

	Persons who thought crime was 'not at all serious'				No. of Respondents
	When *shariy'a* was in operation		When *shariy'a* was not in operation		
Economic group	%	No.	%	No.	
Didn't mention	61	152	34	85	249
Poor	59	43	37	27	73
Low	39	32	29	24	82
Middle and high	65	30	24	11	46
Total	57	257	33	147	450

* Adapted from Appendix Table 3

calculated chi square = 3.2
D.F. = 3
critical level = 0.05
critical value = 7.8

Table 5.5

Concern about the Seriousness of Crime When *shariy'a* was/was not in Operation.

All Respondents by Employment Status

	Persons who thought crime was 'not at all serious'				No. of Respondents
	When *shariy'a* was in operation		When *shariy'a* was not in operation		
Employment status	**%**	**No.**	**%**	**No.**	
Government employee	47	44	31	29	94
Private business	59	107	35	63	181
Manual	64	9	43	6	14
Unemployed	63	59	24	23	94
Retired	28	5	39	7	18
Housewife	67	33	39	19	49
Total	57	257	33	147	450

* Adapted from Appendix Table 4

calculated chi square = 5.4
D.F. = 5
critical level = 0.05
critical value = 11.07

☐ Political Background and Concern about the Seriousness of Crime

Table 5.6

Concern about the Seriousness of Crime When *shariy'a* was/was not in Operation.

All Respondents by Political Background.

	Persons who thought crime was 'not at all serious'				No. of Respondents
	When *shariy'a* was in operation		When *shariy'a* was not in operation		
Political Category	%	No.	%	No.	
(1)Secular right wing	49	65	30	40	134
Islamic Front	67	39	21	12	58
(2) Secular left wing	33	14	29	12	42
No Party	64	139	38	83	216
Total	57	257	33	147	450

* Adapted from Appendix Table 5
(1) includes: National Union Party, Democratic Union Party and Umma Party
(2) includes: Communist and Arab Nationalist Parties

calculated chi square = (5.37)
D.F. = 3
Critical level = 0.051
Critical value = (7.815)

Table 5.6 suggests the following:

- The Islamic Front have the biggest difference, which suggests that the fact that they favoured *shariy'a* (46%) influenced their views.
- The secular left wing have the least difference (4%), which suggests that their opposition to *shariy'a*, influenced their views.

However:

- even for the secular left wing groups, a few more felt that crime was not at all serious when *shariy'a* was in operation than when it was not.

- Anyway, the differences are not statistically significant, (though this might be because of the small numbers in the subgroups).

Concern about safety

This section examines whether the *shariy'a* experiment in the Sudan resulted in an increasing feeling of safety in the society. The hypothesis to be tested here is that; *shariy'a* increases the feeling of safety in the society.

Table 5.7

Concern about Safety When *shariy'a* Was/Was Not In Operation

All Respondents

How did you feel about the safety of your own self, family members and property in this period?	*shariy'a* was in operation		*shariy'a* was not in operation		No. of Respondents
	%	No.	%	No.	
*1 Very safe	34	151	10	47	
Safe	36	162	32	145	
*2 Not safe	29	132	49	218	
Very unsafe	1	5	9	40	
Total	100	450	100	450	450
*1 calculated chi square for 'very safe' = 54.6 *2 calculated chi square for 'not safe' = 21.14 D.F. = 1 critical level = 0.001 critical value = 10.82					

Table 5.7 generally suggests that the respondents looking back at the time when *shariy'a* was in operation, thought that they had felt safer than when *shariy'a* was not in operation. A greater proportion 34% to 10% when *shariy'a* was in operation said it was "very safe". But a Ratio of 29% : 49% when *shariy'a* was not in operation said

it was "not safe". This result is statistically significant (see Table). The conclusion hence is that there is sufficient evidence to show that the *shariy'a* experiment significantly increased the feeling of safety in the Society.

■ Sub Group Characteristics And Concern About Safety

The following analysis examines whether any sub-group characteristics had any influence on views about safety.

☐ Gender, Age, Economic Status And Concern About Safety

Tables 5.8 to 5.10 examine the differences for gender, age and economic status. In fact it can be seen that, non of these variables shows a statistically significant difference. But with the exception of gender, this is probably due to the small numbers in some of the sub-groups.

Table 5.8

Concern about Safety When *shariy'a* Was/Was Not In Operation

All Respondents By Gender

	Persons who thought that it was 'very safe'				No. of Respondents
	When *shariy'a* was in operation		When *shariy'a* was not in operation		
Sex	%	No.	%	No.	
Female	39	87	10	23	225
Male	28	64	11	24	225
Total	34	151	10	47	450

* Adapted from Appendix Table 6

calculated chi square = 1.02
D.F. = 1
critical level = 0.05
critical value = 3.84

Table 5.9

Concern About Safety When *shariy'a* Was/Was Not In Operation

All Respondents By Age

	Persons who thought that it was 'very safe'				No. of Respondents
	When *shariy'a* was in operation		When *shariy'a* was not in operation		
Age Category	%	No.	%	No.	
Under 30	35	115	10	34	230
Over 30	30	36	11	13	120
Total	34	151	10	47	450

* Adapted from Appendix Table 7

calculated chi square = 0.148
D.F. = 1
critical level = 0.05
critical value = 3.84

Table 5.10

Concern About Safety When *shariy'a* Was/Was Not In Operation

All Respondents By Economic Status.

	Persons who thought that it was 'very safe'				No. of Respondents
	When *shariy'a* was in operation		When *shariy'a* was not in operation		
Economic status	%	No.	%	No.	
Didn't mention	38	95	12	30	249
Poor	30	22	5	4	73
Low	18	15	11	9	82
Middle and high	41	19	9	4	46
Total	34	151	10	47	450

* Adapted from Appendix Table 8

calculated chi square = 3.46
D.F. = 3
critical level = 0.05
critical value = 7.815

☐ Employment Status And Concern About Safety

Table 5.11

Concern About Safety When *shariy'a* Was/Was Not In Operation

All Respondents By Employment Status.

	Persons who thought that it was 'very safe'				No. of Respondents
	When *shariy'a* was in operation		When *shariy'a* was not in operation		
Employment status	**%**	**No.**	**%**	**No.**	
Government employee	21	20	3	3	94
Private business	39	70	11	20	181
Manual	29	4	21	3	14
Unemployed	44	41	10	9	94
Retired	11	2	22	4	18
Housewife	27	14	16	8	49
Total	34	151	10	47	450
* Adapted from Appendix Table 9					

Table 5.11 generally suggests that there are differences across all employment groups. However the divergence is most marked for; the unemployed 34% and the manual 8%. But it is not known whether this is a significant difference or not because some of the numbers are very small.

☐ Political Background And Concern About Safety

Table 5.12

Concern About Safety When *shariy'a* Was/Was Not In Operation.

All Respondents By Political Background

	Persons who thought that it was 'very safe'				No. of Respondents
	When *shariy'a* was in operation		When *shariy'a* was not in operation		
Political Category	**%**	**No.**	**%**	**No.**	
Islamic Front	60	35	7	4	58
(1) Secular left groups	19	8	7	3	42
(2) Other parties	28	37	14	19	134
No Party	33	71	10	21	216
Total	34	151	10	47	450

* Adapted from Appendix Table 10
(1) include The Communist and the Arab Nationalist Parties
(2) include Umma, Democratic Union and National Union Parties

calculated chi square = 7.4
D.F. = 3
Critical level = 0.01
Critical value = 11.34

Table 5.12 suggests that:

- First, in all political categories more respondents reported that they had felt "very safe" when *shariy'a* was in operation than when it was not.
- Second, as expected the difference is greater for the Islamic Front (60% as compared with 7%), and for the secular left groups (19% compared with 7%). But generally the findings of Table 5.12 are not statistically significant (see Table).

Defensive Behaviour

This section examines the influence of *shariy'a* on defensive behaviour undertaken in reaction to fear of victimisation. The hypothesis to be tested here is that *shariy'a* reduces reactive defensive behaviour resulting from fear of crime.

Table 5.13

Persons Undertaking Defensive Behaviour When *shariy'a* was/was not in Operation

Whether undertaking defensive behaviour?	When *shariy'a* was in operation		When *shariy'a* was not in operation		No. of Respondents
	%	No.	%	No.	
'Yes' defensive behaviour undertaken	59	265	75	339	
'No' defensive behaviour not undertaken	41	185	25	111	
Total	100	450	100	450	450
		calculated chi square		= 28.5	
		D.F.		= 1	
		critical level		= 0.001	
		critical value		= 3.8	

Table 5.13 suggests that: generally more defensive behaviour was undertaken when *shariy'a* was not in operation. Three quarters of the sample said that they had undertaken defensive behaviour compared with 59% when it was not in operation. This is a statistically significant result (see Table). Therefore this gives sufficient evidence to demonstrate the research hypothesis, and hence the conclusion is that *shariy'a* had significantly reduced concern about defensive behaviour in relation to fear of victimisation.

☐ **Type Of Defensive Behaviour Mostly Undertaken**

Some of the survey respondents pointed out that they had been undertaking typical arrangements such as putting wire and glass on walls, more powerful light on outside doors a long time before the *shariy'a*. Consequently these are probably not reliable indicators of typical reactionary behaviour. A better indicator would be "stay in home at night" since it involves limitations of social activity undertaken at the actual periods in question.

Table 5.14

Type of Defensive Behaviour Undertaken When *shariy'a* Was/Was Not In Operation

Type of defensive behaviour undertaken	Persons undertaking defensive behaviour			
	shariy'a was in operation		*shariy'a* was not in operation	
	%	No.	%	No.
Stay home at night	32	146	41	185
Keep watchdog at home	18	80	23	105
Keep personal weapons at home	28	128	34	155
Put more powerful lights outdorrs	22	99	34	151
Put barbed wire and glass on walls	22	101	29	131
* Adapted from Appendix Table 11 calculated chi square for 'stay home at night' D.F critical level critical value			= 4.5 = 1 = 0.05 = 3.8	

According to Table 5.14, a smaller proportion 32% of the sample showed that they tended to "stay at home at night" when *shariy'a* was in operation. This is a significant result (see Table). The conclusion hence is that *shariy'a* had significantly contributed

to the reduction of the tendency among the public to undertake defensive behaviour because of fear of victimisation.

Sub Groups Characteristics And Tendency To Undertake Defensive Behaviour

Like other fear indicators, the tendency to undertake defensive behaviour has also revealed some differences for all sub group characteristics. The following examines whether these are of any significance.

Gender, Age, Economic Status And The Tendency To Undertake Defensive Behaviour

Table 5.15 to 18 presents the differences in the tendency to undertake defensive behaviour for gender, age, economic status and employment status. The findings for all these variables do not reveal statistically significant differences (see Tables).

Table 5.15

Defensive Behaviour when *shariy'a* was/was not in operation

All Respondents By Gender

	Persons responding 'stay home at night'				No. of Respondents
	When *shariy'a* was in operation		When *shariy'a* was not in operation		
Sex	%	No.	%	No.	
Female	30	68	39	88	225
Male	35	78	43	97	225
Total	32	146	41	185	450

* Adapted from Appendix Table 12

calculated chi square = 0.09
D.F. = 1
Critical level = 0.05
Critical value = 3.84

Table 5.16

Defensive Behaviour when *shariy'a* was\was not in operation

All Respondents By Age

	Persons responding 'stay home at night'				No. of Respondents
	When *shariy'a* was in operation		When *shariy'a* was not in operation		
Age Category	**%**	**No.**	**%**	**No.**	
Under 30	31	101	41	134	330
Over 30	38	45	43	51	120
Total	32	146	41	185	450

* Adapted from Appendix Table 13

calculated chi square = 0.54
D.F. = 1
Critical level = 0.05
Critical value = 3.84

Table 5.17

Defensive Behaviour when *shariy'a* was\was not in operation

All Respondents By Economic Status

	Persons responding 'stay home at night'				No. of Respondents
	When *shariy'a* was in operation		When *shariy'a* was not in operation		
Economic status	**%**	**No.**	**%**	**No.**	
Didn't mention	25	62	33	83	249
Poor	36	26	45	33	73
Law	48	39	55	45	82
Middle and high	41	19	52	24	46
Total	32	146	41	185	450

* Adapted from Appendix Table 14

calculated chi square for the middle and high = 0.59
D.F. = 1
Critical level = 0.05
Critical value = 3.841

Table 5.18

Defensive Behaviour when *shariy'a* was\was not in operation

All Respondents By Employment Status

	Persons responding 'stay home at night'				No. of Respondents
	When *shariy'a* was in operation		When *shariy'a* was not in operation		
Employment status	**%**	**No.**	**%**	**No.**	
Government employee	44	41	51	48	94
Private business	28	51	36	65	181
Manual	21	3	29	4	14
Unemployed	30	28	40	38	94
Retired	39	7	44	8	18
Housewife	33	16	45	22	49
Total	32	146	41	185	450

* Adapted from Appendix Table 15

calculated chi square = 0.292
D.F. = 5
Critical level = 0.05
Critical value = 11.070

Table 5.19

Concern About Defensive Behaviour when *shariy'a* was\was not in operation

All Respondents By Political Background

	Persons responding 'stay home at night'				No. of Respondents
	When *shariy'a* was in operation		When *shariy'a* was not in operation		
Political Category	**%**	**No.**	**%**	**No.**	
(1) Secular right wing	34	52	46	61	134
Islamic Front	24	14	46	27	58
(2) Secular left wing	24	10	33	14	42
No Party	32	70	38	83	216
Total	32	146	41	185	450

* Adapted from Appendix Table 16
(1) include: National Union, Democratic Union and Umma Parties
(2) include: The Communist and Arab Nationalist Parties

calculated chi square	= 2.13
D.F.	= 3
Critical level	= 0.001
Critical value	= 16.268

Table 5.19 suggests, the Islamic Front shows the most observable divergence from all the other political categories. However according to the statistical test this is not of any significance - (see Table).

Understanding Fear Variability

According to earlier research findings (western) it is suggested that patterns of fear are associated with different sub-groups characteristics. (Michael J. Hindelang, Michael R. Colt, J. Redson, and James Jarofalo (1978), Riger and Gordon, (1981), Warr (1984) and (1985), chambers and Tombs, (1984), and Smith (1987). Most of these researchers explained fear variability across subgroup characteristics (mainly for age,

sex, economic status, and employment.) on the basis of life chances and opportunities which might expose the individual more or less to high risk situations.

In the case of the current results, diversity in fear across sub groups is not statistically significant. However, since there are very small numbers in some sub-groups, it is not known whether this lack of significance is due to the lack of any real differences or to the limitations of the sample.

Summary and Conclusion

In this chapter, influence of *shariy'a* on public security in the Sudan has been examined in terms of three indicators of fear of crime, mainly involving concern with; (1) Seriousness of crime, (2) Safety of oneself, property and family members, and (3) Type of defensive behaviour undertaken to avoid expected victimisation. With each of the three indicators of fear, the analysis started with a very broad inquiry to answer the following questions: (1) How serious did people think crime was; (2) How did the respondents think about their own safety, property and family members?, and (3) whether they had taken any type of precaution because of expected victimisation.

Taken together, the analysis of the findings related to each of the previous questions provide sufficient evidence that is in line with the expectations of this thesis. The conclusion, hence, is that; the *shariy'a* experiment in the Sudan had significantly deterred fear of crime in the community.

Nonetheless, as the analysis showed, there are some differences in the way that the three indicators of fear are distributed across the different sub group characteristics. Some variability was shown when the data was broken down by gender, age, economic status, employment and respondents' political background. The application of the chi-square statistical test, however, showed that these are all insignificant.

Chapter 6

Data Analysis and Discussion of Findings

Shariy'a And Experience of Victimisation

The analysis of the findings presented and discussed in the previous chapter showed that *Shariy'a* application has generally resulted in lower levels of fear and concern about crime. This chapter turns to examine whether the application of specific types of punishment under *shariy'a* criminal policy has also shown in any way a corresponding decline in victimisation experience. The analysis involves data relating in particular to certain types of victimisation incidents mainly ranging from robbery and burglary known as *Satw*, things taken under threat *haraba* in the Islamic Legal Terminology theft known as *sariqa*, and physical assault known as *jarayim al nafs wal'aza*. These represent a typical set of offences legally treated under *hidud* punishments, during the time when *shariy'a* was in full operation in the Sudan. Part of the information also relates to other minor offences, that might fall under descretionary punishment known as *ta'aziyr* in Islam.

The data examines the influence of *shariy'a* criminal policy in the Sudan in terms of the following.

☐ **Victimisation by legal offence type - *hidud* and *qisas* offences**

This includes two types as follows:

- Personal Experience of Victimisation
- Experience of Victimisation against other people in the Community (community victimisation).

☐ **Experience of additional victimisation incidents**

This also includes:

- Personal experience
- Experience of additional incidents against other people (community victimisation.)

☐ **Negative experience of victimisation**

This also includes two types of experience:

- Personal experience
- Experience of other people in the community (community victimisation).

Finally the chapter closes with a general summary and discussion of the findings.

Victimisation by Legal Offence Type

A house/shop broken into and property stolen - *Satw*

☐ **Personal Experience**

Table 6.1 shows the distribution of the responses to the question was your house/shop broken into and property stolen? The question relates to a specific type of *hidud* offence known as *Satw*. This was punishable by the amputation of limbs alternately during *Shariy'a* experiment, in the Sudan. The evidence presented in the table reveals that for the majority of the respondents in the Sample - 83% when *shariy'a* was in operation versus 84.0% when *shariy'a* was not in operation, the answer to this question has been negative.

For the minority who answered 'yes' there is no significant difference between the two periods (see table)

Table 6.1

Experience of victimization when *Shariy'a* was/was not in operation

Personal Experience by Legal Offence Type

Was your house/shop broken into and property stolen?	*Shariy'a* was in operation		*Shariy'a* was not in operation	
	%	No.	%	No.
No	83	372	84	378
Yes (date specified)	10	47	11	51
Yes (date not specified)	7	31	5	21
Total	100	450	100	450
Chi square = 2.136				
D-F = 2				
Critical level = 0.05				
Critical value = 5.991				

☐ **Community Victimisation *Satw* Against Other Persons in the Community**

In order to include as much victimisation as possible under the previous offence *satw*, the respondents were also asked whether they had experience of other people in the community who had been similarly victimised.

Table 6.2 shows Experience of Burglary Victimisation *Satw* against other persons who are known to the respondents. It is revealed that for the great majority of the respondents (79% when *shariy'a* was in operation compared with 68% when it was not in operation) the answer was negative.

Table 6.2

Experience of Community Victimisation when *Shariy'a* was/was not in operation

Victimisation Against Other Persons Who Are Known to the Respondents by Legal Offence Type

Did any one whom you know has his/her house/shop broken into and property stolen?	***Shariy'a* was in operation**		***Shariy'a* was not in operation**	
	%	**No.**	**%**	**No.**
No	79	356	68	306
Yes (date specified)	8	38	18	80
Yes (date not specified)	12	56	14	64
All	100	450	100	450
chi square d.f. Critical Level Critical value	= 19-26 = 2 = 0.05 = 5.991			

On the other hand, for the rest whose response was positive, it was not certain to all of them when exactly those whom they know had a burglary victimisation *Satw*.

In sum table 6.2 reveals that, while a large majority of the respondents said they don't know other people who had a burglary when *shariy'a* was in operation, more reported incidents of burglary against other people when *shariy'a* was not in operation than when it was. These differences are statistically significant (see table).

Things Taken Under Threat - *haraba*

Personal Experience

The data on table 6.3 presents the respondents personal experience in relation to whether they had things taken under threat. The data relates to a *hidud* offence punishable either by death by way of hanging or by amputation of limbs when *shariy'a* was in operation.

Table 6.3

Experience of Victimisation when *Shariy'a* was/was not in operation

Personal Experience by Legal Offence Type

Did any one take things from you under threat?	*Shariy'a* was in operation		*Shariy'a* was not in operation	
	%	No.	%	No.
No	96	430	97	438
Yes (date specified)	3	14	2	10
Yes (date not specified)	1	6	0.4	2
All	100	450	100	450
chi square = 2.74 d.f. = 2 Critical Level = 0.05 Critical value = 5.991				

According to table 6.3, the findings reveal that for the greater majority, the response to the question was negative.

For the smaller proportion to whom the answer for the question is positive a very slight difference is revealed between those who could specify when exactly they had *haraba* 3% to 2%, and those who could not 1% to 0.4% when *shariy'a* was/was not in operation. But these are not statistically significant (see table)

☐ **Community Victimisation : *haraba* Against other Persons in the Community**

The previous question was repeated to examine whether the respondents have any knowledge of *haraba* victimisation in the community other than their own personal experience.

As presented in table 6.4 for the great majority the response is negative. For the minority who did report knowledge of *haraba* victimisation there was no statistically significant difference for the two periods (see table).

Table 6.4

Experience of Community Victimisation when *Shariy'a* was/was not in operation

Victimisation Against Other Persons Who are Known to the Respondents by Legal Offence

Did any one whom you know had things taken under threat in this period?	*Shariy'a* was in operation		*Shariy'a* was not in operation	
	%	No.	%	No.
No	95	428	93	420
Yes (date specified)	4	17	5	24
Yes (date not specified)	1	5	1	6
All	100	450	100	450
chi square = 1.434 d.f. = 2 Critical Level = 0.05 Critical value = 5.991				

In sum, the combination of the data on Table 6.3 and Table 6.4, lead to the conclusion that there is no evidence to support any influence of *shariy'a* in reducing victimisation in the case of burglary or *haraba.*

Car Theft:

Personal Experience

During *shariy'a* experiment a typical *hidud* theft (which fulfils the legal requirements for the *hadd*) was punishable by cutting off the thief's hand from the wrist.

Table 6.5 examines whether the application of such severe unforgettable punishment has had any effect on deterring criminal activity, in this particular case when *shariy'a* was in operation. The Table shows more reported car thefts when *Shariy'a* was in operation than when it was not (6% to 4%). But the difference is not statistically significant.

Table 6.5

Experience of Victimisation when *Shariy'a* was/was not in operation

Personal Experience by Legal Offence

Did you have a car? If yes was it stolen?	***Shariy'a* was in operation**		***Shariy'a* was not in operation**	
	%	**No.**	**%**	**No.**
Not applied (Did not have a car)	58	261	54	244
Not applied (had a car not stolen)	36	164	41	186
Applied (had a car stolen)	6	25	4	20
All	100	450	99	450
chi square d.f. Critical Level	= 2.520 = 2 = 0.05			
Critical value = 5.991				

☐ **Community victimisation : (Car Theft) Against other Persons in the Community**

Table 6.6 displays the responses about whether the respondents have any experience of victimisation against any other people who are known to them, in the case of car theft. The majority said they don't know of any one.

For the smaller category in the sample who showed a positive response 2% when *shariy'a* was in operation to 5% when *shariy'a* was not in operation are able to tell when exactly this happened. However, a bit more of this category 6% when *shariy'a* was in operation to 7% when it was not in operation are not able to tell the exact date of the event.

In general the overall reading of table 6.6 shows that in the case of car theft, the respondents claimed less experience of victimisation against other people when *shariy'a* was in operation. The difference is statistically significant (see table).

Table 6.6

Experience of Community Victimisation when *Shariy'a* was/was not in operation

Victimisation Against Other Persons Who Are Known to the Respondents by Legal Offence

Did any one whom you know have a car stolen?	*Shariy'a* was in operation		*Shariy'a* was not in operation	
	%	No.	%	No.
No (don't know)	92	416	88	395
Yes (date specified)	2	7	5	25
Yes (date not specified)	6	27	7	30
All	100	450	100	450
chi square = 10-845 d.f. = 2 Critical Level = 0.05 Critical value = 5.991				

Physical assault and Injury - *Al jurh wal'aza*

Personal Experience

It has been pointed out earlier that when *shariy'a* was in operation, the punishment for a physical assault or injury against the person *jarayim al nafs* was retribution *qisas*. The offender had to undergo the same injury or physical loss he inflicted on his victim. However, if the victim or his relatives (in the case of death) wish, they or he might have compensation instead. Table 6.7 shows the data examining whether *shariy'a* experiment has had any effect in deterring criminality and therefore reducing victimisation in this case.

It is shown that the great majority (99% in the two periods), said they didn't have a personal experience of victimisation. Only 1% in the two periods said they have, therefore there is no significant difference in the two periods (see table).

Table 6.7

Experience of Victimisation when Shariy'a was/was not in operation

Personal Experience by Legal Offence

Were you assaulted and physically injured by someone/some people?	*Shariy'a* was in operation		*Shariy'a* was not in operation	
	%	No.	%	No.
No	99	444	99	445
Yes (date specified)	-		1	3
No (date not specified)	1	6	0	2
All	100	450	100	450
chi square d.f. Critical Level Critical value	= 2.502 = 2 = 0.05 = 5.991			

☐ **Experience against other persons in the community**

Table 6.8 presents the data in response to whether the respondents know any other people in the community who had a physical assault and injury. It is shown that; A bigger proportion (98% when *shariy'a* was in operation to 95% when it was not in operation) said they don't know of anyone.

For the small proportion who said they know of some other people, a smaller proportion said they did when *shariy'a* was in operation than when *shariy'a* was not in operation.

Table 6.8 reveals that; generally there was less reported victimisation of others when *shariy'a* was in operation than when *shariy'a* was not in operation. This difference is statistically significant. (see Table)

Table 6.8

Experience of Community Victimisation when *Shariy'a* was/was not in operation

Victimisation Against Other Persons Who Are Known to the Respondents by Legal Offence.

Was any one whom you know assaulted and physically injured by someone/some people in this period?	***Shariy'a* was in operation**		***Shariy'a* was not in operation**	
	%	**No.**	**%**	**No.**
No	98	441	95	429
Yes (date specified)	1	3	3	13
Yes (date not specified)	1	6	2	8
All	100	450	100	450
chi square = 13-56 d.f. = 2 Critical Level = 0.05 Critical value = 5.99				

Experience of Additional Victimisation Incidents

The previous analysis has only included a sample of offences that had been typically treated under *hidud* and *qisas* when *shariy'a* was in operation in the Sudan. However, as for the rest of other *hidud* and *qisas* offences (i.e. illicit Sexual Intercourse *zina*, Wine Drinking *shurb al Khamr*, Apostasy *ridda*, and Murder *Al qatl*), it was explained earlier why those were not directly included in the questionnaire (see Chapter 4 on methods of research).

In addition the influence of *Shariy'a* was examined to include any possible offences that occured outside the area of *hidud* and *qisas*. The respondents thus are requested to add further if they had any experiences of any more incidents of victimisation not included in the list, whether relating to themselves or the other people who are known to them in the community. The following analysis presents the findings in that regard.

☐ **Personal Experience of additional Cases of Victimisation**

Table 6.9 presents the personal experience of the respondents as to whether they had any victimisation incidents other than those mentioned in the list. The data revealed no statistically significant differences.

Table 6.9

Additional Experience of Victimisation when *Shariy'a* was/was not in operation

Personal Experience.

State of experience	*Shariy'a* was in operation		*Shariy'a* was not in operation	
	%	No.	%	No.
No incident reported	95	428	92	416
One incident reported	4	20	7	32
Two incidents reported	0	2	0	2
All	99	450	99	450
chi square d.f. Critical Level Critical value	= 0.17 = 1 = 0.05 = 3.841			

☐ **Experience of other cases of victimisation against persons who are known to the respondents**

Table 6.10 examines whether the respondents have any more experience of other incidents of victimisation in relation to other people who are known to them. The table shows that 7% reported such experience when *Shariy'a* was in operation, compared with 17% when it was not. This result is statistically significant suggesting that other people have more additional experience of victimisation when *Shariy'a* was not in operation..

Table 6.10.

Experience of Community Victimisation

Additional Cases Against Other Persons who are Known to the Respondents.

Whether more cases known!	*Shariy'a* was in operation		*Shariy'a* was not in operation	
	%	No.	%	No.
No	93	420	83	374
Yes	7	30	17	76
All	100	450	100	450
* derived from appendix Table 6-10.1 chi square = 22.63 d.f. = 1 Critical value (critical) = 3.84 Critical level = 0.05				

Types of Additional experience of victimisation affecting other people

Analysis of additional experience of victimisation showed that the respondents did not themselves have any experience of these crimes (i.e. drug abuse, rape and attempts, and other cases of sexual abuse). However they tended to report more experiences of these crimes on the part of other people who are known to them. It might be that, due to social stigma associated to such types of experience, people tend to report that experience of such cases is something removed from themselves, happening elsewhere to other people, but never to them. Hence it could be that reports on other people's experience in such cases are unreliable

Table 6.11

Summary: Persons not victimised when *Shariy'a* was/was not in operation

Persons Responding 'Not Applied' by Legal Offence Type

Type of offence	% Personal		% community (against other people)	
	Shariy'a was in operation	*Shariy'a* was not in operation	*Shariy'a* was in operation	*Shariy'a* was not in operation
A house shop broken into and property stolen *satw*	83	84	79	68
Things taken under threat *Haraba*	96	97	95	93
*2 A car stolen theft	36	41	92	88
physical assault and injury *Al jurh wal'aza*	99	99	98	95
Other not mentioned in the list	95	92	93	83
*1. adapted from tables 6.1,6.2,6.3,6.4,6.5,6.6,6.7,6.8,6.9 and 6.10 *2. "not applied" for car theft includes only person who own cars. The result is in significant in this case				

Negative Experience in Victimisation

Table 6.11 Summarises the findings for Tables 6.1 - to 6.10. The results generally suggest that in both periods the vast majority of people were not victimised. In both types of victimisation (personal and community experience of victimisation) at least 2/3 were not victimised. The Table also suggests that (with the exception of car theft), more of the negative experience is marked for all the cases involving reports of other people in the community (community victimisation), and that the negative experience in this case is greater when *shariy'a* was in operation than when it was not. According to the previous analysis this was statistically significant.

The details of Table 6.11 also suggest that there is more negative experience of victimisation in the cases of *haraba*, and physical assault and injury (both involving

individual contact with the offender). But as the analysis showed the difference between the two periods is particularly insignificant in the case of *ḥaraba*. This could be due to the particular nature of this offence. According to police experts this offence most of the time involves more than one offender and is mostly committed in places where police resources are inadequate. Therefore, since, these offenders are less likely to get caught, the difference in punishment is likely to be less important.

☐ **Diversity in the Negative Experience of Victimisation Against Other People in the Community**

Reporting of negative experience of victimisation in the community varies for all sub groups in the sample. The analysis examined the possibility of some influence of selected sub-group characteristics (gender, age, education, economic status, employment and political background), leading to such differences in experience. None, of these variables however showed a significant effect (see tables 6.12 to 6.14 for gender, age and education). The findings for economic status, employment and political background are shown in Appendix Tables 6.15, 6.16, and 6.17.

Table 6.12

Negative Experience of Victimisation Against Other People in the Community

% Responding "Not Applied" When Shariy'a was/was not in Operation
All Respondents by Gender

Negative experience by offense type	Female			Male		
	Shariy'a was in operation	*Shariy'a* was not in operation	% difference	*Shariy'a* was in operation	*Shariy'a* was not in operation	% difference
	No.	No.		No	No	
A house/shop broken into and property stolen (Satw)	185	146	17	171	160	5
Things taken under threat *Haraba*	209	211	1	219	209	4
A car stolen *sariqa*	213	197	7	203	198	2
Physical assault and injury *Al jurh wal'aza*	223	213	4	218	216	1
Other (not mentioned in the list)	211	185	12	209	189	9
All			225		225	450

1. Adapted from Appendix tables: 17,18,19,20,21
Calculated chi- square for (F) = 3.1
Calculated chi-square for (M) = 0.47
d.f. = 4
Critical Level = 0.05
Critical value = 9.488

Table 6.13

Negative Experience of Victimisation Against Other People in the Community.

All Respondents by Age

% Responding "Not Applied" When Shariy'a was/was not in Operation

Negative experience by offense type	Under (-30)			Over (+30)		
	Shariy'a was in operation	*Shariy'a* was not in operation	% difference	*Shariy'a* was in operation	*Shariy'a* was not in operation	% difference
	No.	No.		No	No	
A house/shop broken into and property stolen *Satw*	259	229	9	97	77	17
Things taken under threat *Haraba*	310	305	2	118	115	2
A car stolen *sariqa*	302	292	4	114	103	1
Physical assault and injury *Al Jurh wal'aza*	322	316	2	119	113	5
Other (not mentioned in the list)	315	281	10	105	93	10
All	330			120		450

1. Adapted from Appendis tables: 22,23,24,25,26

Calculated chi- square for (-30)	= 1.526
d.f	= 4
Critical Level	= 0.05
Critical value	= 9.488

Calculated chi square for (+30)	= 1.371
d.f	= 4
Critical level	= 0.05
Critical value	= 9.488

Table 6.14

Negative Experience of Victimisation Against Other People in the Community.

% Responding "Not Applied" When Shariy'a was/was not in Operation
All Respondents by Educational Status

Negative experience by offense type	1. Less than high school			2. High school and college		
	Shariy'a was in operation	*Shariy'a* was not in operation	% difference	*Shariy'a* was in operation	*Shariy'a* was not in operation	% difference
	No.	No.		No	No	
A house/shop broken into and property stolen *Satw*	144	110	19	212	196	1
Things taken under threat *Haraba*	166	170	2	262	250	4
A car stolen *sariqa*	171	154	10	245	241	2
Physical assault and injury *Al jurh wal'aza*	170	166	2	271	263	3
Other (not mentioned in the list)	165	148	9	255	226	11
All	175			275		450
* Adapted from Appendix tables: 27,28,29,30,31 Calculated chi- square for (1) = 3.24 d.f. = 4 Critical Level = 0.05 Critical value = 9.488						
Calculated chi square for (2) = 0.905 d.f. = 4 Critical level = 0.05 Critical value = 9.488						

Summary and Discussion of Findings

This chapter aimed to examine whether the application of *shariy'a* had any influence in reducing criminal victimisation. The analysis involved a sample of offences legally treated under *hidud* and *qisas* systems of punishments. The offences include; house/shop burglary known as *Satw*, things taken under threat known as *haraba*, theft known as *sariqa* and physical assault and injury known as *jarayim al nafs wal'aza*, in

the Islamic Terminology. Some other offences that have no punishment prescribed in the *Qur'an* or *Sunna*; *Ta'aziyr* were also considered.

Findings of the Examination of the influence of *shariy'a* on experimental observation of victimisation experience reveals the following:

- In both periods most people were not victims of any of the types of offences examined. The findings thus suggest that generally there was little criminal activity in the society as a whole. This suggests that Sudan is generally a law abiding society.

- Individuals on the whole, didn't themselves report any significant increase in experience of victimisation when *shariy'a* was not in operation.However they did report more victimisation of people known to them. This finding will be considered in the duscussion later.

- The greatest difference between the two periods in terms of respondents reports of people known to them not being victimised, was for burglarly *satw.* The evidence showed less criminal activity when *Shariy'a* was in operation for this particular offence.

However in both periods, the level of reported victimisation was lowest for this offence. Probably this could be because in this type of victimisation offenders are more at risk to be caught and taken to court. On the other hand experience reports of other people not victimised, showed less differences between the two periods in two cases namely; *Haraba* (things taken under threat), and physical assault and injury *Al jurh wal'aza.* The evidence however was particularly insignificant in the case of

Haraba. This suggests that the severity of the punishment when *Shariy'a* was in operation had no effect in this particular case.

- Additional experience of victimisation included certain cases; (i.e. drug abuse, rape and attempts, and other sort of sexual abuse). These were mentioned only as part of other people's experience but never of the individuals themselves. However, as pointed out earlier in such cases the reliability of the information is suspect.

☐ **Discussion**

Evidence has been presented in this chapter that suggests the following:-

The evidence tends to show that, as reflected in the actual experience of victimisation reports, generally the fear of crime in the society was much exaggerated when compared with reality. The evidence has also tended to show that reported increases in victimisation experience when *shariy'a* was not in operation was something not actually related to the personal experience of the individuals, but rather that it was happening to other people in the community. This, of course, is not technically possible. For any given community, the individuals who make up that comunity, and the individuals known to them are ultimately the same people. Hence, the latter cannot experience an increase in victimisation without the former also doing so.

The possible explanation of such finding then would be that reports of other people's experience are not direct reflections of respondents knowledge about actual events but more likely a reflection of their belief about *shariy'a* law in the previous chapter (i.e. that it was much safer when *shariy'a* was in operation.) In other words, this might suggest that the findings in the previous chapter, that people believed it was much safer under *shariy'a* could be a belief based on (hearsay) about experience of other

people rather than on their own actual personal experience. It is suggested that, "*people might form a subjective probability of being victimised from the experiences of other people*," (Hindelang 1978: 180).

Earlier western research findings on victimisation experience, safety and fear of crime, suggests that certain population groups and cities show higher levels of fear of crime but lower measured victimisation rates (Steven Balkin 1979, Hindelang 1978, Jock Young and R.I. Mawby both included in Mike Maunguire and John Pointing 1988, Richard F. Sparks, Hazel G. Genn, and David J. Dodd 1977). Balkin (1979) postulated a model of how victimisation rates, safety, and fear of crime interrelate. The model suggests that the apparent inconsistency between fear and victimisation rates can happen because certain groups that do have higher "real" risks of victimisation expose themselves less to crime and hence show lower measured victimisation rates. Balkin argues that fear of crime is a rational response to the actual incidence of crime, and that where discrepancies appear it is because of faulty "objective" measures of crime incorrectly calibrating the real risk of crime. (Balkin 1979:343). The model demonstrates that fear of crime has correlations with victimisation rates adjusted for exposure, and that exposure appears to be negatively related to fear of crime (Ibd). Explanation of this relationship suggests that an environment may be so unsafe that when the real risk to crime increases, people lock themselves inside their fortresses to such an extent that the measured victimisation falls. Hence, the model further suggests that the unusual victimisation rates are not the correct calibrators of safety, and that safety has to be defined as a probability of victimisation per exposure to risk (Ibd). "*Both victimisation rates and reported crime rates potentially fail to calibrate safety because neither accounts for differing exposure to crime*" (Boggs, 1966, Matlz, 1972, cited by Balkin, 1978: 344.)

In this study the fact that the respondents reported no significant increase in their own experience of victimisation when *shariy'a* was not in operation, while thinking it was less safe during this period may fit the exposure model hypothesis.

For certain individual cases, i.e. *ḥaraba* the findings suggest that despite the extreme severity of punishment for this offence, *shariy'a*, particularly did not show any significant difference in either types of experience (both of individuals own experience, and of other people as well). The evidence also suggests that this offence reflects the most common experience of victimisation in either periods. According to police records *ḥaraba* normally occurs in isolated places where the police resources are limited or probably not available. It is also reported that in the case of *ḥaraba* normally more than one offender is involved. Both condition makes the possibility of arrest uncertain. Hence it becomes reasonable to assume that in this particular case, the severity of punishment alone might have little consistent or independent effect. Charles R. Tittle and Alan R. Rowe, (1974) came to the conclusion that support an independent influence of sanctions in generating conformity, but added further that certainty of punishment is not the only, nor even perhaps the most important variable (Charles Tittle, Certainty of Arrest and Crime Rates, 1974; 451). The authors suggested a significant co-relation between certainty of arrest and crime rate. According to this thesis this could be because certainty of arrest leads to legal sanctions. Otherwise certainty of arrest by itself might have little role in generating conformity.

Reports on the additional experiences of other people suggest that the influence of *shariy'a* was particularly unpredictable for those cases involving stigma and social degradation i.e. drug abuse, rape and attempts and other sorts of sexual abuse. This is probably because the individuals would be unwilling to admit that they had been subject to any of these stigmatising events at any time.

And finally taking all the findings together with great caution, the evidence suggests that assessment of the deterrent effect of *shariy'a* as a legal machinery is a rather complex task. The capacity of *shariy'a* as a system of Law must account for all the inter related variables and processes affecting the conformity - deviance behaviour. For example any careful understanding of the issue should consider the complex pattern of relationships between conformity, Law breaking, severity of punishment and certainty of Arrest, as part of the legal machinery. On the other hand the complexity of this pattern also require careful understanding of other social patterns of reactions involving the victim, the offender, and the nature of victimisation.

To conclude with the previous warning in mind, the findings in this chapter suggest that there was no difference in personal victimisation in the two periods. This appears to be incompatible with the findings in the previous chapters, where respondents reported feeling safer, and that there was less concern about, crime under *shariy'a*. This incompatibility will be discussed in the conclusion.

Chapter 7

Summary, Conclusions and Implications

The objectives of this concluding chapter are: (1) to give an overview of the study and summary of findings; (2) to discuss the findings; and (3) to point out the contribution and the implications of the study for future background data and policy recommendations.

Overview

In this thesis the plan was to carry out an empirical assessment of Sudan's experiment involving the application of the Islamic system of Punishments known as *Al hidud wal qisas*. The experiment was operated by Numaryi (The former President of the Sudan). Numaryi and his regime had to survive increasing political pressure demanding the application of *shariy'a* (Islamic Law) as a broad reform affecting politics, the economy and society. However, in addition, the claim was made for its specific effect as a deterrent against crime and therefore conductive to security in society.

Hence, primarily basing my research on work on a theory of deterrence, the major assumption of this thesis was that it was anticipated that the *shariy'a* would produce a climate favourable to public security by deterring criminality in society.

The analysis examined data designed to elicit information concerning perceptions of crime and security, as well as the actual experience of victimisation by means of a victim survey applied to a sample of respondents obtained from the Sudan's national capital - Khartum. The findings related to two reference periods in the Sudan (when *shariy'a* was in operation and when it was not) are summarised in the following.

Summary of Findings and Main Result

The statistical analysis of the data on fear indicators and the actual experience of victimisation suggests that:

- Generally there was less fear and more feeling of security when the *shariy'a* was in operation, and that there was more fear and less feeling of safety when it was not.

- In terms of actual experience of victimisation, it was generally suggested that the image of crime was much exaggerated in the community compared with reality. In both periods the experience of victimisation was mostly negative for all the types of victimisation examined.

- When *shariy'a* was not in operation, respondents did not show an increase in victimisation in terms of their own experience. However they paradoxically reported more experience of victimisation by persons known to them.

- With both types of experience, the difference in victimisation varied slightly by individual cases. The imposition of *shariy'a* had no observable difference in the case of *haraba* (things taken under threat), particularly.

- Respondents did not report any personal experience of cases such as rape and attempted rape, and other cases of sexual and drug abuse. However, they did report knowledge of such incidents among people known to them.

Taking the above findings together, the main incompatibility of the data was that though the imposition of the *shariy'a* in the Sudan effected a climate favourable for a better feeling of safety and security, this was not reflected in an observable decline

in terms of individual's own experience of victimisation incidents. But this result is not to be generalised beyond the scope of the time, place, conditions and associated problems of method. The following limitations and erroneous sources of unknown bias would have considerable effect on the assessment of the "deterability" of *shariy'a*:

(1) The political upheaval behind the experiment; (2) Representativeness of the sample; (3) Recall and telescoping of backdated incidents; (4) Reliability in certain types of information; and (5) The short dominance of the *shariy'a* programme (only five months from April 1984 - declaration of the state of emergency to September 1984 - lifting of the state of emergency).

Discussion of Findings

As far as the "deterability" of *shariy'a* was concerned in this thesis the following observations are very important in understanding the incompatibility of the findings. There are six different ways to explain this.

(i) The first, and most obvious is that *shariy'a* was mainly operated in response to an increasing political upheaval claiming Islamisation of all the economic, political, and social aspects of the society. Hence, the emergency situation in which it was applied means that in a way it was a special case and not actually an emergency response to a crime problem in the society. More support for this fact was even shown by the survey findings where it was generally revealed that the incidence of victimisation was very low in reality. This might explain why the effect of *shariy'a* on actual victimisation was not observable.

It is also misleading to assess the effect of *shariy'a* on the base of the urgent political events that led to its application. As a religious system of punishment

shariy'a must be viewed as part of Islam's whole scheme of reform which encompasses the totality of human life in society. Punishment within such a structure works as part of a set of integral sub-systems (i.e. educational, political and economic), all based on belief and fear of God and working in harmony for enforcement of the "good individual" and the "good society". In such a structure an inter-relationship exists between the individual and the society. Provided with a free will to choose it is the individual's belief and fear of God that encourages him to refrain from what displeases God, and hence behave in accordance with his teachings in society. Hence punishment is not the only means for the achievement of reform. Rather it is the last vehicle when all other educational ways fail to adapt the individual to the right conduct. Perhaps the assessment of *shariy'a* would be more objectively observed if the experiment was applied within a social structure that fully enforces its moralistic and belief values. It also might need a longer time until a noticeable change of behaviour can be observed (i.e. in the case of crime and victimisation). In fact *shariy'a* was operated for a short period of time (only five months)and at a time when the country was suffering from economic, social and political unrest.

(ii) Secondly, it is possible that people's belief about personal safety and security are more affected by what is being done about crime than it is by their actual experience as victims of crime. This means that such a feeling is probably a reflection of the individual's inner feeling that certain laws exist which are believed to protect and secure their basic values and interests. According to sociologists, Law, as a necessary means of social control, involves two kinds of effect: (a) The material effect. This involves the negative sanctions imposed by the law on those who violate the norm; and (b) the psychological effect,

involving the connection between laws and certain inner beliefs and feelings of those who are affected by them. Hence it might be that the association of the two effects (in the case of *shariy'a* in the Sudan) created a common sense that the existing laws satisfied their need for a better feeling of safety and security. To achieve this end, despite any failure of the effect of legal sanctions to deter the incidence of crime, is in itself a successful goal of the law. As has been documented earlier in this thesis, the cost of security in terms of the necessary arrangements and precautions to protect one's home, property, etc., far exceeds the cost of crime and victimisation in terms of the actual events and losses suffered.

(iii) Thirdly, an alternative possibility is that the individual's image and perceptions of crime are probably affected by hearsay about experiences of other victims despite their own experiences. Hence individuals might form a subjective impression of the probability of being victimised from what they hear about other people's experience. This means that fear of crime can spread in the society due to concern about the subject of crime only. Consequently, it can be inferred that in a law abiding society like the Sudan, news about a single event of a burglary might produce tensions and worry within every individual in every house in a neighbourhood.

(iv) Fourthly, some faulty "objectives" measures might have affected the data. A number of western research findings - namely those cited in the last chapter - by Steven Balkin, Hindelang, Jack Young and R.I. Mawby, Richard F. Sparks, Hazel C. Conn, and David J. Dodd, have all found in common with this study an inverse relationship between fear of crime and the actual incidence of victimisation (i.e. the higher the level of fear, the lower the level of crime).

Balkin (1979) explains this in terms of the faulty "objectives" measures affecting victimisation statistics. He argues that fear of crime is a rational response to actual incidence of crime, and that victimisation rates, safety and fear of crime interrelate. Balkin suggests the following model: Fear of crime has more correlation with rates of victimisation adjusted for exposure, and that exposure and fear of crime are negatively related. This has been explained as follows:

"*An environment may be so unsafe that when the real risk to crime increases, people lock themselves in their 'fortress' to such an extent that the measured victimisation falls*" (Ibid: 343). Accordingly, safety is defined as "*a probability of victimisation per exposure to risk*" (Ibid). Balkin cited Boggs (1966), and Maltz (172) as supporting the same argument.

Consequently, the exposure model may help to explain the inconsistency between fear and victimisation statistics found in this study.

(v) Fifthly, perhaps the "deterability" of *shariy'a* can be understood within the inter-dependency of the legal machinery as a whole. For example, increasing the severity of punishment alone might be useless without increasing the certainty of arrest. Also, certainty of arrest should not be understood apart from the legal machinery as a whole. According to this thesis, without the threat of legal sanctions certainty of arrest alone might not affect conformity. It is argued that "*Arrest is not a pure sanction*" and that "*If higher arrest rates are achieved by arresting the suspect on the basis of weak evidence that will not stand up in court - with more dismissals as the consequence - the net effect could be to nullify any crime prevention effect due to arrest alone*" (Greenberg and others, 1979: 849).

On the other hand, the certainty of arrest can be mitigated by the efficiency of the police role in three ways: (i) Limitations on the size of the police force; (ii) Lack of efficient means such as communication, transportation, and advanced means of crime detection; and (iii) Corruption and inadequate role-training. In addition, in the case of *shariy'a* in the Sudan certainty of arrest might be reduced by the nature of certain crimes and offenders, i.e. *haraba* and *satw* both of which involve violence. According to police experts the event of *haraba* normally occurs in isolated places where police resources are limited or probably not available. On the other hand both *satw* and *haraba*, normally involve more than one offender who are in most cases better equipped with efficient weapons and facilities than the police. In both cases offenders are more likely to assault their victims with little possibility of getting caught.

(vi) Finally, the findings suggest that, in certain cases, the reliability of the information might be questionable. This suggests that the "deterability" of *shariy'a* might be unpredictable mainly for those cases involving socially stigmatising effects, (i.e. rape and other sexual abuses). Also, for such cases the certainty of punishment is restricted by the strict rules of evidence required for conviction.

On the basis of the above, the assessment of *shariy'a* in this thesis suggests that it's influence is not a touchstone for explaining deterability. The findings can be seen in line with what has been inferred earlier from western research and literature showing no conclusive evidence for or against "deterrence".

What Contribution this Thesis Provides

Whilst the findings of the current study are not conclusive, they do have significant implications both for policy makers and interested future researchers. An important

contribution of the results obtained is that they offer a useful background for a better understanding of the research issues.

As for policy purposes the data suggests that as far as the "deterability" of *Shariy'a* is concerned, policy questions should consider a number of matters concerning the police role in controlling crime and achieving security in the community.

The empirical evidence presented and discussed in this study provides a useful background for more elaborate future research. It prepares the way at least to avoid the limitations and criticisms of the current study. This is an important way to promote our knowledge about the phenomenon affecting our social life. It might be that the citizens have a general idea about the "deterability" of *Shariy'a* but this has never been formulated in such a way that more plausible assumptions can be articulated. It is therefore necessary to explore further the assumptions that can more accurately quantify the relationship between the incidence of crime and *Shariy'a* criminal policy.

It seems that specifications of the mechanisms and variables by which the "deterability" of *Shariy'a* can be understood is only possible by work toward obtaining more data. The quantity and quality of the data currently available for empirical investigation is at the moment inadequate for achieving this purpose.

On the basis of the above, this thesis specifies the following as imperative recommendations both for policy purposes and further research and data requirements.

Research and Policy Recommendations to Sudan

In this area a number of issues which might have significant effects on the 'deterability' of *Shariy'a* are awaiting exploration. The most important need by far is for more accurate quantitative measures of crime and victimisation. For this purpose data

should be obtained in such a way to account for the various components of societal reaction to crime and victimisation.

- Though it might seem difficult to measure the real victimisation rate to assess safety, it is not impossible to generate reasonably accurate victimisation statistics, This study recommends 'the exposure model' (the model relates to Balkin, 1979, and was mentioned in chapter six), as a useful technique for this purpose. Balkin suggests:

  > *"Exposure to crime could be measured by using a periodic survey of random samples of a community's population, with a set of questions about exposure to crime. An exposure index could be created which when multiplied by the population size, could serve as the denominator of the real victimisation rate. If such a denominator can not be developed, at least one could inquire, using such a survey, whether exposure had changed when the reported crime rate changed - if exposure had not changed, then the changes in the real victimisation rate would be reflected in changes of the reported nominal victimisation rate in the same direction."* (Steven Balkin, 1979: 353).

  This model can be adapted to examine the relationship between victimisation, exposure, and change in the existing penal system.

- Critical to an accurate standardisation of crime rates is the way in which victims may in part determine the distribution of crime. It can be hypothesised that; the distribution of chances of being a victim of crime is to a great extent a function of the amount and frequency of contact between potential victims and offenders. For further explanatory purposes, more survey data might need to raise the following inquiries: Who are the people most at risk? Where are they located? What type of common activity do they do?...etc. At the descriptive level such data are essential for the understanding of patterns of interaction which criminal victimisation might tend to follow. In another way, understanding of such 'opportunity structures' will also be of practical use to the police authorities. Since

the risk of victimisation is not randomly distributed in the population 'opportunity' can provide good information about the most risky people, places, and times. This can guide police strategies to locate more resources where most protection is needed.

- As far as the deterability of *Shariy'a* is concerned future research should consider a number of issues related to offenders. For example, systematic research can be planned to obtain information about: To what extent actual offenders have previous information about the sanctions applied to them? Who are they? What motivates them to violate the law? and in what situations do they commit violative acts (i.e. physical ability, state of mind in terms of drunkenness, mental disturbance etc.). Offenders can also be classified by the type of individual cases. Such analysis of individual cases might need to answer whether certain offenders tend to commit certain offences (i.e. whether there is any pattern for offending).

- An important area to be mentioned, however, on which data is needed involves the relationship between crime and *Shariy'a* as a criminal justice system. Research plans need to be carried out in order to study this aspect of the process in detail. To learn exactly what type of victimisation incidents might particularly be undeterrable such as in the case of *Ḥaraba* and *Satw*. How are these handled by the police? And whether and how such incidents might effect the system input load.

- For most people, the policeman is known as the protector of the law. He is expected to uphold the law and keep the peace. Hence, assessment of the 'deterability' of *Shariy'a* in the future might involve policy questions such as the deterrent impact of police power. Data is needed to assess different problems affecting the police role. For example, empirical resources must be devoted to the

development of reasonably accurate arrest and crime measures by following individual cases through courts. In this area research is required to deal with a number of problems affecting the police role in law enforcement: (i) There is a need to develop techniques to discover patterns of corruption within the police; (ii) reaction of the police when confronted by danger and serious situations; (iii) attitudes of the community to the police, i.e. (how do people respect the police? to what extent does the existence of the police in the street generate fear? What sort of interaction normally exists between common people and the policeman while he is performing his duty?); and finally the type of training and qualifications made available by the police administration. Explanation of such issues would provide an idea about the role of the police in enforcement of the legal machinery.

☐ **Policy Recommendations**

For the purpose of policy decisions this thesis concludes that; proposals focusing on reducing crime by the imposition and carrying out of severe sanctions only (such as in the case of *Shariy'a* in the Sudan) may have little observable influence, unless all other aspects of law enforcement are improved. There is a need for reform, promotion, and better achievement in the following areas:

- The police

As has been suggested by the United Nations International Code of Police Ethics, the role of the police is to prevent breaking of the law by means of apprehension and prosecution of those who do. This is to suggest that promotion of the police efficiency can achieve two benefits: (i) firstly it functions to maintain order and security under the law, and (ii) secondly, an important consequence that follows is that less severe sanctions will need to be inflicted since few law breakers are taken to courts.

However, improvement of the efficiency of the police role may not only require more of the individuals who work in the service, but rather it seems that increased efficiency in law enforcement on the part of the police could be achieved by better role understanding and commitment - this can be accomplished by the following:

- Training
- All police officers and men should hold in common with magistrates, judges, and lawyers, a legal training programme, based on the ethics and principles of the legal system in which they perform their duties. In addition, a police 'code of ethics' should apply to all members of the police force engaged at any stage of enforcing the law; maintaining order, watching aggressive activity in the community, or investigating violations. The code should include a clear responsibility for acts of commission or omission in contradiction with the principles and ethics of the job.
- Evolution in methods of crime commission require the introduction of better methods of crime detection and control to be made available. As well, a highly intensive, experiential training course should be established, especially in the sophisticated use of more advanced technical devices (i.e. electronic equipment of communication, information and detection).
- The need for priorities in the protection and security of the citizenry, perhaps in isolated areas where serious crimes mostly happen (i.e. *ḥuraba* and *Satw*). A specialised force of 'Security Guards' should be established to respond to the need of security in such areas. The need for such police surrogates is just as vital as the need for those police operations in the urban centres (i.e. in factories, retail businesses, schools etc.). If well trained and supervised, these guards can contribute to control of urban crime.

- With the exception of those who occupy the higher administrative levels (officers and top leaders), the police profession includes individuals who are for the most part under-educated. Vocational admission, at the lower ranks tends to include individuals with low educational attainment. This may be because work in the police is not an attractive job. This problem might have a significant effect on the level of training to be offered.

Perhaps, effective training should require the creation of a new conception of "the police social role', particularly in such courses concerned with law and order, sociology and psychology of crime. To achieve this objective of necessary vocational training, there should be a minimum educational background, not less than a successful completion of high school.

- Police Status

At the lower ranks of the service, policemen make many sacrifices in both their physical and social lives: They are exposed to all riots and trouble-makers, may get shot during a robbery or *ḥaraba* situation and spend most of their time outside of their homes. In return, this category is paid minimal wages. In addition, no social security plans are guaranteed for their families. The expected consequence of this situation is that such depressing financial and social status might result in a more negative role by this category. Unless conditions of the police are improved, there is every excuse and many avenues for police corruption. Hence, this thesis strongly recommends promotion of the financial and social status of the policemen as follows: (i) Payments should not be less than the rising cost of living at any time; (ii) Housing, education and health care should all be improved for the families; (iii) Achievement should continuously be encouraged by incentives, i.e. promotions, medals, etc.; (iv) Good social security plans should be guaranteed for the families; and finally (v) in

terms of uniform, the appearance of the policeman should imply to the public a sense of authority and respect.

☐ **Research and Information**

Police strategies for community protection should consider the developments and changes affecting social life. Funds should be allocated to fulfil the requirements of periodic research to trace the evolution of crime. The current effort of the criminal statistics unit at the police headquarters can have little use for explanatory purposes. The activity of this unit needs to be expanded and supported by qualified social researchers who can carry out future plans for more scientific research on crime.

Part of the police strategies should deal with providing the citizens with information about crime. The police department can include information units to provide regular reports through the media about where and when most of the serious crimes occur. This can have two benefits: (i) Help the public to be aware of the risk of times, places and people, and (ii) provide another way of reducing crime.

☐ **Moral Citizenry Education**

Strategies of crime control are not only the responsibility of the legal system. Law is but one aspect of regulating conduct in the society. Along with the effort of the law, many educational institutions in the society (i.e. the family, schools, religious institutions, the media) should contribute to the conception of 'the good citizen'. Considerable influence of such institutions is expected if they are all directed towards the goals of the existing ethic.

Appendix A

Questionnaire: Survey of Criminal Victimization in Sudan (Khartoum)

September 1983 - September 1985

Form No.

A **Area:** **City:**

Contacted and completed

Contacted but not completed

Not contacted

Note:
We would like to take some of your time to answer the following questions contained in this form. We appreciate your co-operation and we would also like to let you know that the information contained here is absolutely confidential and mainly for scientific use.

Interviewer:
Fill in for all respondents please and indicate response by checking [ ]

Demographic Data:-

A-1	**Sex:**	Male	[ ]
		Female	[ ]
A-2	**Age:**	20 - 30	[ ]
		30 - 40	[ ]
		40 - 50	[ ]
		50 - 60	[ ]
		60 +	[ ]
A-3	**Education:**	Illiterate	[ ]
		Elementary	[ ]
		Intermediate	[ ]
		High School	[ ]
		College	[ ]
A-4	**Place of Residence:**	Specify what area	
		Khartoum	[ ]
		Omdurman	[ ]
		Khartoum North (Bahri)	[ ]

A-5	**Type of work:**	Government employee	[ ]
		Private Business	[ ]
		Manual	[ ]
		Unemployed	[ ]
		Retired	[ ]
		Other (specify)	[ ]
A-6	**Income:**	Specify amount/month	
A-7	**Type of residence:**	Owned	[ ]
		Rented	[ ]

A-8 For how long have you been living here?

2 - 3 years	[ ]
3 - 5 "	[ ]
5 - 6 "	[ ]
more than six	[ ]
moved recently	[ ]

Past experience with Criminal victimization:-

Now I would like to ask you some questions about your past experience of criminal victimization in this area. I am interested to know about your experience from September 1983 (just following the big celebration of wine distruction and the release of prisoners by President Numeri) to September 1984 (end of the emergency courts).

B-1 Just thinking about this period (September 1983 - September 1984) do you think crime was a serious; quite serious; not at all serious; problem in this area?

Serious	[ ]
Quite serious	[ ]
Not at all serious	[ ]

B-2 On the basis of your previous experience during this period how was your feelings about the safety of your own self; family members; and property in this area?

Very safe	[ ]
Safe	[ ]
Not safe	[ ]
Very unsafe	[ ]
Do not know	[ ]

B-3 What type of the following precautions did you feel needed to avoid expected victimization?

Stay in home at night	[ ]
Keep watch dog at home	[ ]
Keep personal weapons	[ ]
Put higher light on outdoor	[ ]
Put barbed wire and glass on walls	[ ]
None of the above	[ ]

Now I would like you to go back with your memory to recall some of the specific incidents that might have happened to you during that period (September 1983 - September 1984).

Interviewer: (Allow enough time to permit respondent to remember some of the important events during that period, then continue -)

Check from the following list any incidents that happened to you during that period. Please take your time and think carefully about each incident, then if you remember anything which happened to you that fits the description just mention it, and show when, and whether it happened only once, twice, or more.

B-9 Did anything else serious happen to you which is not mentioned here?

Yes	[ ]
No	[ ]
Do not know	[ ]

B-10 If yes please describe briefly but accurately some of the incidents that happened to you which are not mentioned above.

Interviewer: (Briefly record description of each incident separately)

month Year

Incident (1)

Incident (2)

Incident (3)

Total of incidents

B-11 Can you remember whether anyone else whom you know was affected by any similar incidents during the previous period?

Yes	[ ]
No	[ ]

If yes please check from the same list a typical crime that happened to anyone whom you personally know. It is not important to mention to whom it happened, the most important thing is to be sure of its occurrence.

	month	year	once	twice	more
B-12 Did anyone whom you know have his/her house broken into and property stolen?	[ ]	[ ]	[ ]	[ ]	[ ]
B-13 Did anyone whom you know have things taken under threat?	[ ]	[ ]	[ ]	[ ]	[ ]
B-14 Did anyone whom you know have a car which was stolen?	[ ]	[ ]	[ ]	[ ]	[ ]
B-15 Was anyone whom you know assaulted and physically injured by someone/some people?	[ ]	[ ]	[ ]	[ ]	[ ]

B-16 Did anything else serious happen to anyone whom you know which is not mentioned here?

Yes	[ ]
No	[ ]
do not know	[ ]

B-17 If Yes Interviewer: (Record briefly description of other incidents not mentioned in the list)

	month	year
Incident (1)		
Incident (2)		
Incident (3)		
Total of incident		

This time I would like you to think about a different period. I am interested to know about criminal victimization in this area from September 1984 (end of emergency courts) to September 1985 (the first six months of the transitional government of General Swar al Dahab and Dr. El jezoli Dafa alla).

B-18 Just thinking about this period (Sept. 1984 - Sept 1985) do you think crime was a serious,quite serious,not at all serious problem in this area?

Serious	[ ]
Quite serious	[ ]
Not at all serious	[ ]

B-19 On the basis of your previous experience during this period how was your feelings about the safety of your own self, family members, and property in this area?

Very safe	[ ]
Safe	[ ]
Not safe	[ ]
Very Unsafe	[ ]
Not known	[ ]

B-20 What type of the following precautions did you feel you needed to avoid expected victimization during his period?

Stay in home at night	[ ]
Keep watchdog at home	[ ]
Keep personal weapons	[ ]
Put higher light on out door	[ ]
Put barbed wire and glass on walls	[ ]
None of the above	[ ]

Now I would like to know whether any of the previously mentioned incidents happened to you sometime between September 1984 (end of emergency courts) to September 1985 (the first six months of the transitional government of Genral Swar El Dahab and Dr. Jizulie Dafa alla).

Interviewer: (Allow enough time to permit respondent to remember what happened to him during this period then check on the list any incident he mentions).

B-21 Was your house/shop broken into and property stolen?

month	year	once	twice	more
[ ]	[ ]	[ ]	[ ]	[ ]

B-22 Did anyone take things from you under threat?

[ ]	[ ]	[ ]	[ ]	[ ]

B-23 Did you have a car?

Yes	[ ]
No	[ ]

B-24 If Yes was it stolen?

Yes	[ ]
No	[ ]

B-25 Were you assaulted and physically injured by someone/some people?

month	year	once	twice	more
[ ]	[ ]	[ ]	[ ]	[ ]

B-26 Did anything else serious happen to you which is not mentioned here?

Yes	[ ]
No	[ ]

B-27 If yes please describe briefly but accurately some of the incidents that happened to you which are not mentioned above.

Interviewer: (Briefly record description of each incident separately).

	month	year
Incident (1)		
Incident (2)		
Incident (3)		
Total of incidents		

B-28 Can you remember whether anyone else whom you know was affected by any similar incidents during the previous period?

Yes	[ ]
No	[ ]

If yes please check from the same list a typical crime that happened to anyone whom you personally know. It is not important to mention to whom it happened, the most important thing is to be sure of its occurrence.

B-29 Did anyone whom you know have his/her shop/house broken into and property taken?

month	year	once	twice	more
[ ]	[ ]	[ ]	[ ]	[ ]

B-30 Did anyone whom you know have things taken under threat?

[ ] [ ] [ ] [ ] [ ]

B-31 Did any one whom you know have a car which was tolen?

[ ] [ ] [ ] [ ] [ ]

B-32 Has anyone whom you know been assaulted and physically injured by someone/some people?

[ ] [ ] [ ] [ ] [ ]

B-33 Did anything else serious happen to anyone whom you know which is not mentioned here?

Yes [ ]

No [ ]

Not known [ ]

B-34 If yes Interviewer: (Record briefly any other inciderts to be given by respondents other than those mentioned in the list)

month year

Incident (1)

Incident (2)

Incident (3)

Total of incidents

B-35 Finally I would like to know whether you support any of the political parties?

Yes	[ ]
No	[ ]

B-36 If Yes which of the following parties do you support?

The National Union Party	[ ]
The Democratic Union Party	[ ]
Umma Party	[ ]
The Islamic Front Party	[ ]
The Communist Party	[ ]
Arab/Nationalism/Socialism	[ ]
Other (specify)	[ ]
None	[ ]

End of questionnaire

Interviewer: (Thank respondent and turn to fill respondent assessment form before leaving).

Interviewer Assessment of Respondent

1. **Respondent co-operation:**

a) very co-operative	[ ]
b) somewhat co-operative	[ ]
c) not co-operative	[ ]

2. **Respondent's understanding of questions:**

a) very good	[ ]
b) good	[ ]
c) just fair	[ ]
d) poor	[ ]

3. **Respondent's ability to recall previous events:**

a) very good	[ ]
b) good	[ ]
c) just fair	[ ]
d) poor	[ ]

4. **Interviewer's comments:**

Note especially questions with which respondent seems to have more difficulty.

Appendix B

Data Tables

Contents

Appendix B
Data Tables

Appendix Table 1
Concern about the seriousness of crime when *shariy'a* was/was not in operation

All respondents by gender

Do you think crime was a serious problem in this period?	*Shariy'a* was in operation			*Shariy'a* was not in operation		
	Female	Male	Row Total	Female	Male	Row Total
Serious	61	45	106	86	81	167
Quite serious	38	49	87	68	68	136
Not at all serious	126	131	257	71	76	147
Totals	225	225	450	225	225	450

Appendix Table 2
Concern about the seriousness of crime when *shariy'a* was/was not in operation

All respondents by age

Do you think crime was a serious problem in thi period?	*Shariy'a* was in operation			*Shariy'a* was not in operation		
	Under 30	Over 30	Row Total	Under 30	Over 30	Row Total
Serious	78	28	106	115	52	167
Quite serious	59	28	87	111	25	136
Not at all serious	193	64	257	104	43	147
Totals	330	120	450	330	120	450

Appendix Table 3

Concern about the seriousness of crime when *shariy'a* was/was not in operation

All respondents by economic status

Do you think crime was a serious problem in this period?	*Shariy'a* was in operation				*Shariy'a* was not in operation			
	Serious	Quite serious	Not at all serious	Row Total	Serious	Quite serious	Not at all serious	Row Total
Didn't Mention	64	33	152	249	86	78	85	249
Poor	14	16	43	73	22	24	27	73
Low	15	35	32	82	42	16	24	82
Middle and high	13	3	30	46	17	18	11	46
Totals	106	87	257	450	167	136	147	450

Appendix Table 4

Concern about the seriousness of crime when *Shariy'a* was/was not in operation

All respondents by employment status

Do you think crime was a serious problem in this period?	*Shariy'a* was in operation				*Shariy'a* was not in operation			
	Serious	Quite serious	Not at all serious	Row Total	Serious	Quite serious	Not at all serious	Row Total
Government employees	19	31	44	94	41	24	29	94
Private business	47	27	107	181	68	50	63	181
Manual	3	2	9	14	1	7	6	14
Unemployed	18	17	59	94	39	32	23	94
Retired	7	6	5	18	6	5	7	18
Housewife	12	4	33	49	12	18	19	49
Totals	106	87	257	450	167	136	147	450

Appendix Table 5

Concern about the seriousness of crime when *shariy'a* was/was not in operation

All respondents by political background

Do you think crime was a serious problem in this period?	***Shariy'a* was in operation**				***Shariy'a* was not in operation**			
	Serious	Quite serious	Not at all serious	Row Total	Serious	Quite serious	Not at all serious	Row Total
National Union Party	1	-	6	7	4	-	3	7
Democratic Union Party	35	18	40	93	38	26	29	93
Umma Party	6	9	19	34	18	8	8	34
Islamic Front	3	16	39	58	31	15	12	58
Communist Party	12	7	12	31	10	9	12	31
Arab Nationalist	6	3	2	11	8	3	-	11
No Party	43	34	139	216	58	75	83	216
Totals	106	87	257	450	167	136	147	450

Appendix Table 6

Concern about safety when *shariy'a* was/was not in operation

All respondents by gender

How did you feel about the safety of your own self,family members and property in this period?	When *shariy'a* was in operation			When *shariy'a* was not in operation		
	Female	Male	Row Total	Female	Male	Row Total
Very safe	87	64	151	23	24	47
Safe	71	91	162	72	73	145
Not safe	67	65	132	108	110	218
Very unsafe	-	5	5	22	18	40
Totals	225	225	450	225	225	450

Appendix Table 7

Concern about safety when *shariy'a* was/was not in operation

All respondents by age

How did you feel about the safety of your own self,family members and property in this period?	When *shariy'a* was in operation			When *shariy'a* was not in operation		
	Under 30	Over 30	Row Total	Under 30	Over 30	Row Total
Very safe	115	36	151	34	13	47
Safe	117	45	162	110	35	145
Not safe	96	36	132	152	66	218
Very unsafe	2	3	5	34	6	40
Totals	330	120	450	330	120	450

Appendix Table 8

Concern about safety when *shariy'a* was/was not in operation

All respondents by economic status

How did you feel about the safety of your own self,family members and property in this period?	When *shariy'a* was in operation					When *shariy'a* was not in operation				
	Didn't mention	Poor	Low	Middle and high	Row Total	Didn't mention	Poor	Low	Middle and high	Row Total
Very safe	95	22	15	19	151	30	4	9	4	47
Safe	79	31	39	13	162	81	37	18	9	145
Not safe	74	20	25	13	132	120	24	50	24	218
Very unsafe	1	-	3	1	5	18	8	5	9	40
Totals	249	73	82	46	450	249	73	82	46	450

Appendix Table 9

Concern about safety when *shariy'a* was/was not in operation

All respondents by employment status

How did you feel about the safety of your own self,family members and property in this period?	When *shariy'a* was in operation					When *shariy'a* was not in operation				
	Very safe	Safe	Not safe	Very unsafe	Row Total	Very Safe	Safe	Not safe	Very unsafe	Row Total
Government employee	20	41	31	12	94	3	40	45	6	94
Private business	70	65	46	-	181	20	62	81	18	181
Manual	4	6	3	1	14	3	3	3	5	14
Unemployed	41	20	31	2	94	9	21	53	11	94
Retired	2	9	7	-	18	4	5	9	-	18
Housewife	14	21	14	-	49	8	14	27	-	49
Totals	151	162	122	5	450	47	145	218	40	450

Appendix Table 10

Concern about safety when *shariy'a* was/was not in operation

All respondents by political background

How did you feel about the safety of your own self,family members and property in this period?	When *shariy'a* was in operation					When *shariy'a* was not in operation				
	Very safe	Safe	Not safe	Very unsafe	Row Total	Very safe	Safe	Not safe	Very unsafe	Row Total
National Union Party	5	1	1	-	7	2	-	5	-	7
Democratic Union Party	16	31	44	2	93	11	24	48	10	93
Umma Party	16	11	7	-	34	6	4	23	1	34
Islamic Front	35	19	4	-	58	4	12	35	7	58
Communist Party	6	3	20	2	31	3	7	16	5	31
Arab Nationalist	2	1	8	-	11	-	1	8	2	11
No Party	71	96	48	1	216	21	97	83	15	216
Totals	131	162	132	5	450	47	145	218	40	450

Appendix Table 11

Type of defensive behaviour when *shariy'a* was/was not in operation

All respondents

Type of defensive behaviour followed	*Shariy'a* was in operation			*Shariy'a* was not in operation		
	Yes	No	Row Total	Yes	No	Row Total
Stay at home at night	146	304	450	185	265	450
Keep watch dog at home	80	370	450	105	345	450
Keep personal weapons at home	128	322	450	155	295	450
Put bright light on outdoors	99	351	450	151	299	450
Put barbed wire and glass on walls	101	349	450	101	319	450

Appendix Table 12

Defensive behaviour when *shariy'a* was/was not in operation

All respondents by gender

Whether defensive behaviour was undertaken	*Shariy'a* was in operation			*Shariy'a* was not in operation		
	Female	Male	Row	Female	Male	Row Total
No	157	147	304	137	128	265
Yes	68	78	146	88	97	185
Totals	225	225	450	225	225	450

Appendix Table 13

Defensive behaviour when *shariy'a* was/was not in operation

All respondents by age

Whether defensive behaviour was undertaken	*Shariy'a* was in operation			Shariy'a was not in operation		
	Under 30	Over 30	Row Total	Under 30	Over 30	Row Total
No	229	75	304	196	69	265
Yes	101	45	146	134	51	185
Totals	330	120	450	330	120	450

Appendix Table 14

Defensive behaviour when *shariy'a* was/was not in operation

All respondents by economic status

Whether defensive behaviour was undertaken	*Shariy'a* was in operation					*Shariy'a* was not in operation				
	Didn't mention	Poor	Low	Middle and high	Row Total	Didn't mention	Poor	Low	Middle and high	Row Total
No	187	47	43	27	304	166	40	37	22	265
Yes	62	26	39	19	146	83	33	45	24	185
Totals	249	73	82	46	450	249	73	82	46	450

Appendix Table 15

Defensive behaviour when *shariy'a* was/was not in operation

All respondents by employment status

Whether defensive behaviour was undertaken	*Shariy'a* was in operation			*Shariy'a* was not in operation		
	No	Yes	Row Total	No	Yes	Row Total
Government employees	53	41	94	46	48	94
Private business	130	51	181	116	65	181
Manual	11	3	14	10	4	14
Unemployed	66	28	94	56	38	94
Retired	11	7	18	10	8	18
Housewife	33	16	49	27	22	49
Totals	304	146	450	265	185	450

Appendix Table 16

Defensive behaviour when *shariy'a* was/was not in operation

All repondents by political background

Whether defensive behaviour was undertaken	*Shariy'a* was in operation			Shariy'a was not in operation		
	No	Yes	Row Total	No Yes	Row Total	
National Union Party	3	4	7	3	4	7
Democratic Union Party	58	35	93	49	44	93
Umma Party	21	13	34	21	13	34
Islamic Front	44	14	58	31	27	58
Communist Party	23	8	31	22	9	31
Arab Nationalist Party	9	2	11	6	5	11
No Party	146	70	216	133	83	216
Totals	304	146	450	265	185	450

Appendix Table 17

Experience of victimisation against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All repondents by gender

Was anyone whom you know have his/her house/shop broken into and property stolen?	*Shariy'a* was in operation			*Shariy'a* was not in operation		
	Female	Male	Row Total	Female	Male	Row Total
No	185	171	356	146	160	306
Yes (date specified)	16	22	38	43	37	80
Yes (date unspecified)	24	32	56	36	28	64
Totals	225	225	450	225	225	450

Appendix Table 18

Experience of victimisation against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by gender

Did anyone whom you know have things taken under threat?	***Shariy'a* was in operation**			***Shariy'a* was not in operation**		
	Female	Male	Row Total	Female	Male	Row Total
No	209	219	428	211	209	420
Yes (date specified)	12	5	17	12	12	24
Yes (date unspecified)	4	1	5	2	4	6
Totals	225	225	450	225	225	450

Appendix Table 19

Experience of victimisation against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All repondents by gender

Did anyone whom you know have a car which was stolen?	***Shariy'a* was in operation**			***Shariy'a* was not in operation**		
	Female	Male	Row Total	Female	Male	Row Total
No	213	203	416	197	198	395
Yes (date specified)	-	7	7	12	13	25
Yes (date unspecified)	12	15	27	16	14	30
Totals	225	225	450	225	225	450

Appendix Table 20

Experience of victimisation against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by gender

Was anyone whom you know assaulted and physically injured by someone/some people?	*Shariy'a* was in operation			*Shariy'a* was not in operation		
	Female	Male	Row Total	Female	Male	Row Total
No	223	218	441	213	216	429
Yes (date specified)	-	3	3	8	5	13
Yes (date unspecified)	2	4	6	4	4	8
Totals	225	225	450	225	225	450

Appendix Table 21

Experience of victimisation against persons known to respondents (additional cases) when *shariy'a* was/was not in operation

All respondents by gender

Number of incidents experienced if any	*Shariy'a* was in operation			*Shariy'a* was not in operation		
	Female	Male	Row Total	Female	Male	Row Total
Nothing	211	209	420	185	189	374
1	14	15	29	32	34	66
2	-	1	1	4	1	5
3	-	-	-	4	1	5
Totals	225	225	450	225	225	450

Appendix Table 22

Experience of victimisation against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by age

Did anyone whom you know have his/her house/shop broken into and property stolen?	*Shariy'a* **was in operation**			*Shariy'a* **was not in operation**		
	Under 30	Over 30	Row Total	Under 30	Over 30	Row Total
No	259	97	356	229	77	306
Yes (date specified)	30	8	38	55	25	80
Yes (date unspecified)	41	15	56	46	18	64
Totals	330	120	450	330	120	450

Appendix Table 23

Experience of victimisation against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by age

Did anyone whom you know have things taken under threat?	*Shariy'a* **was in operation**			*Shariy'a* **was not in operation**		
	Under 30	Over 30	Row Total	Under 30	Over 30	Row Total
No	310	112	428	305	115	420
Yes (date specified)	15	2	17	19	5	24
Yes (date unspecified)	5	-	5	6	-	6
Totals	330	120	450	330	120	450

Appendix Table 24

Experience of victimisation against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by age

Did anyone whom you know have a car which was stolen	*Shariy'a* **was in operation**			*Shariy'a* **was not in operation**		
	Under 30	Over 30	Row Total	Under 30	Over 30	Row Total
No	302	114	416	292	103	395
Yes (date specified)	6	1	7	18	7	25
Yes (date unspecified)	22	5	27	20	10	30
Totals	330	120	450	330	120	450

Appendix Table 25

Experience of victimisation against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by age

Was anyone whom you know assaulted and physically injured by someone/some people?	*Shariy'a* **was in operation**			*Shariy'a* **was not in operation**		
	Under 30	Over 30	Row Total	Under 30	Over 30	Row Total
No	322	119	441	316	113	429
Yes (date specified)	3	-	3	7	6	13
Yes (date unspecified)	5	1	6	7	1	8
Totals	330	120	450	330	120	450

Appendix Table 26

Experience of victimisation against persons known to respondents (additional cases) when *shariy'a* was/was not in operation

All respondents by age

Number of incidents experienced if any	*Shariy'a* was in operation			*Shariy'a* was not in operation		
	Under 30	Over 30	Row Total	Under 30	Over 30	Row Total
Nothing	315	105	420	281	93	374
1	15	14	29	39	27	66
2	-	1	1	5	-	5
3	-	-	-	5	-	5
Totals	330	120	450	330	120	450

Appendix Table 27

Experience of victimisation against persons known to repondents by legal offence type when *shariy'a* was/was not in operation

All respondents by educational status

Did anyone whom you know have his/her house/shop broken into and property stolen?	*Shariy'a* was in operation			*Shariy'a* was not in operation		
	Less than High school	High school and college	Row Total	Less than High school	High school and college	Row Total
No	144	212	356	110	196	306
Yes (date specified)	14	24	38	33	47	80
Yes (date unspecified)	17	39	56	32	32	64
Totals	175	275	450	175	275	450

Appendix Table 28

Experience of victimisation against persons who are known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by educational status

Did anyone whom you know have things taken under threat?	*Shariy'a* was in operation			*Shariy'a* was not in operation		
	Less than High school	High school and college	Row Total	Less than High school	High school and college	Row Total
No	166	262	428	170	250	420
Yes (date specified)	7	10	17	5	19	24
Yes (date unspecified)	2	3	5	-	6	6
Totals	175	275	450	175	275	450

Appendix Table 29

Experiance of victimisation against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by educational status

Did anyone whom you know have a car whic was stolen?	*Shariy'a* was in operation			*Shariy'a* was not in operation		
	Less than High school	High school and college	Row Total	Less than High school	High school and college	Row total
No	171	245	416	154	241	395
Yes (date specified)	-	7	7	3	22	25
Yes (date unspecified)	4	23	27	18	12	30
Totals	175	275	450	175	275	450

Appendix Table 30

Experience of victimisation against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by educational status

Was anyone whon you know assaulted and physically injured by someone/some people?	*Shariy'a* **was in operation**			*Shariy'a* **was not in operation**		
	Less than High school	High school and college	Row Total	Less than High school	High school and college	Row Total
No	170	271	441	166	263	429
Yes (date specified)	1	2	3	6	7	13
Yes (date unspecified)	4	2	6	3	5	8
Totals	175	275	450	175	275	450

Appendix Table 31

Experience of victimisation against persons known to respondents (additional cases) when *shariy'a* was/was not in operation

All respondents by educational status

Number of incidents expoerienced if any	*Shariy'a* **was in operation**			*Shariy'a* **was not in operation**		
	Less than High school	High school and college	Row Total	Less than High school	High school and college	Row Total
Nothing	165	225	420	148	226	374
1	9	20	29	25	41	66
2	1	-	1	2	3	5
3	-	-	-	-	5	5
Totals	175	275	450	175	275	450

Appendix Table 32

Experience of victimisation against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by economic status

Did anyone you know have his/her house/shop broken into and property stolen?	*Shariy'a* **was in operation**					*Shariy'a* **was not in operation**				
	Didn't mention	Poor	Low	Middle and high	Row total	Didn't mention	Poor	Low	Middle and high	Row total
No	201	62	60	33	356	169	56	49	32	306
Yes (date specified)	13	7	15	3	38	32	12	31	5	80
Yes (date not specified)	35	4	7	10	56	48	5	2	9	64
All	249	73	82	46	450	249	73	82	46	450

Appendix Table 33

Experience of victimization against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by economic status

Did any one whom you know have things taken under threat?	*Shariy'a* **was in operation**					*Shariy'a* **was not in operation**				
	Didn't mention	Poor	Low	Middle and High	Row total	Didn't mention	Poor	Low	Middle and High	Row Total
No	236	66	80	46	428	234	72	73	41	420
Yes (date specified)	8	7	2	-	17	11	1	9	3	24
Yes (date not specified)	5	-	-	-	5	4	-	-	2	6
All	249	73	82	46	450	249	73	82	46	450

Appendix Table 34

Experience of victimization against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by economic status

Did any one whom you know has a car which was stolen?	*Shariy'a* was in operation					*Shariy'a* was not in operation				
	Didn't mention	Poor	Low	Middle and High	Row total	Didn't mention	Poor	Low	Middle and High	Row Total
No	228	70	78	40	416	218	70	69	38	395
Yes (date specified)	3	-	2	2	7	13	1	8	3	7
Yes (date not specified)	18	3	2	4	27	18	2	5	5	27
All	249	73	82	46	450	249	73	82	46	450

Appendix Table 35

Experience of victimization against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by economic status

Did any one whom you know assaulted and physically injured by some one/some people	*Shariy'a* was in operation					*Shariy'a* was not in operation				
	Didn't mention	Poor	Low	Middle and High	Row total	Didn't mention	Poor	Low	Middle and High	Row Total
No	245	73	78	45	441	241	73	72	43	429
Yes (date specified)	1	-	2	-	3	3	-	9	1	13
Yes (date not specified)	3	-	2	1	6	5	-	1	2	8
All	249	73	82	46	450	249	73	82	46	450

Appendix Table 36

Experience of victimization against persons known to respondents when *shariy'a* was/was not in operation (additional cares).

All respondents by economic status

Number of Incidents if has Experience of any	*Shariy'a* was in operation					*Shariy'a* was not in operation				
	Didn't mention	Poor	Low	Middle and High	Row total	Didn't mention	Poor	Low	Middle and High	Row Total
Nothing	236	72	68	44	420	218	62	54	40	374
1	13	1	14	1	29	23	11	27	5	66
2	-	-	-	1	1	4	-	-	1	5
3	-	-	-	-	-	4	-	1	-	5
Column	249	73	82	46	450	249	73	82	46	450

Appendix Table 37

Experience of victimization against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by employment status

Did any one whom you know has (his/her) (house/shop) broken into and property stolen?	***Shariy'a* was in operation**				***Shariy'a* was not in operation**			
	No	Yes "date specified"	No date not specified	Row total	No	Yes "date specified"	Yes "date not specified"	Row Total
Covernment employee	74	11	9	94	64	25	5	94
Private Business	144	11	26	181	123	27	31	181
Manual	12	1	1	14	11	1	2	14
Unemployed	74	9	11	94	58	18	18	94
Retired	15	2	1	18	15	2	1	18
House Wife	37	4	8	49	35	7	7	49
All	356	38	56	450	306	80	56	450

Appendix Table 38

Experience of victimization against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by employment status

Did any one whom you know have things taken under threat?	***Shariy'a* was in operation**				***Shariy'a* was not in operation**			
	No	Yes "date specified"	No date not specified	Row total	No	Yes "date specified"	Yes "date not specified"	Row Total
Covernment employee	86	8	-	94	88	6	-	94
Private Business	180	1	-	181	172	7	2	181
Manual	14	-	-	14	14	-	-	14
Unemployed	86	7	1	94	83	7	4	94
Retired	17	1	-	18	16	2	-	18
House wife	45	-	4	94	47	2	-	49
All	428	17	5	450	420	24	6	450

Appendix Table 39

Experience of victimization against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by employment status

Did any one whom you know has car which was stolen?	***Shariy'a* was in operation**				***Shariy'a* was not in operation**			
	No	Yes "date specified"	No date not specified	Row total	No	Yes "date specified"	Yes "date not specified"	Row Total
Covernment employee	86	3	5	94	82	8	4	94
Private Business	168	1	12	181	156	4	21	181
Manual	14	-	-	14	13	-	1	14
Unemployed	86	2	6	94	82	11	1	94
Retired	17	1	-	18	17	1	-	18
House wife	45	-	4	49	45	1	3	49
All	416	7	27	450	395	25	30	450

Appendix Table 40

Experience of victimization against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by employment status

Did any one whom you know assaulted and physically injured by some one/some people?	***Shariy'a* was in operation**				***Shariy'a* was not in operation**			
	No	Yes "date specified"	No date not specified	Row total	No	Yes "date specified"	Row total	Yes "date not specified"
Covernment employee	93	1	-	94	93	1	-	94,
Private Business	177	1	3	181	169	9	3	181
Manual	14	-	-	14	14	-	-	14
Unemployed	92	1	1	94	90	3	1	94
Retired	18	-	-	18	18	-	-	18
House wife	47	-	2	49	45	-	4	94
All	441	3	6	450	429	13	8	450

Appendix Table 41

Experience of victimization against persons known to respondents (additional cares), when *shariy'a* was/was not in operation

All respondents by employment status

Number of incidents if has experience of any	*Shariy'a* was in operation					*Shariy'a* was not in operation				
	Nothing	1	2	3	Row total	Nothing	1	2	3	Row total
Covernment employee	84	10	-	-	94	69	24	-	1	94
Private business	167	13	1	-	181	159	21	1	-	181
Manual	14	-	-	-	14	13	1	-	-	14
Unemployed	89	5	-	-	94	72	16	2	4	94
Retired	17	1	-	-	18	14	4	-	-	18
House wife	49	-	-	-	49	47	-	2	-	49
All	420	29	1	-	450	374	66	5	5	450

Appendix Table 42

Experience of victimization against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by political back ground

Did any one whom you know has (his/her) (house/shop) broken into and property stolen?	*Shariy'a* **was in operation**				*Shariy'a* **was not in operation**			
	No	Yes "date specified"	No date not specified	Row total	No	Yes "date specified"	Row total	Yes "date not specified"
National Union Party	4	-	3	7	3	-	4	7
Democratic Union Party	66	14	13	93	56	23	14	93
Umma Party	27	5	2	34	15	8	11	34
Islamic Front	52	1	5	58	32	12	14	58
Communist Party	24	-	7	31	25	6	-	31
Arab Nationalist Party	4	1	6	11	7	3	1	11
No Party	179	17	20	216	168	28	20	216
All	356	38	56	450	306	80	64	450

Appendix Table 43

Experience of victimization against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by political back ground

Did any one whom you know have things taken under threat?	*Shariy'a* was in operation				*Shariy'a* was not in operation			
	No	Yes "date specified"	No date not specified	Row total	No	Yes "date specified"	Row total	Yes "date not specified"
National Union Party	7	-	-	7	7	-	-	7
Democratic Union Party	85	6	2	93	87	4	2	93
Umma Party	34	-	-	34	28	5	1	34
Islamic Front	58	-	-	58	58	-	-	58
Communist Party	31	-	-	31	27	4	-	31
Arab Nationalist Party	10	1	-	11	11	-	-	11
No Party	203	10	3	216	202	11	3	216
All	428	17	5	450	420	24	6	450

Appendix Table 44

Experience of victimization against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by political back ground

Did any one whom you know has a car which was stolen?	*Shariy'a* was in operation				*Shariy'a* was not in operation			
	No	Yes "date specified"	No date not specified	Row total	No	Yes "date specified"	Row total	Yes "date not specified"
National Union Party	6	-	1	7	7	-	-	7
Democratic Union Party	88	-	5	93	83	5	5	93
Umma Party	30	1	3	34	25	1	8	34
Islamic Front	58	-	-	58	42	4	12	58
Communist PArty	26	2	3	31	25	6	-	31
Arab Nationalist Party	11	-	-	58	9	2	-	11
No Party	197	4	15	216	204	7	5	216
All	416	7	27	450	395	25	30	450

Appendix Table 45

Experience of victimization against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by political back ground

Was any one whom you know assaulted and physically injured by someone/some people?	***Shariy'a* was in operation**				***Shariy'a* was not in operation**			
	No	Yes "date specified"	No date not specified	Row total	No	Yes "date specified"	Row total	Yes "date not specified"
National Union Party	7	-	-	7	7	-	-	7
Democratic Union Party	90	-	3	93	86	3	4	93
Umma Party	34	-	-	34	33	-	1	34
Islamic Front	58	-	-	58	51	7	-	58
Communist Party	29	2	-	31	31	-	-	31
Arab Nationalist Party	11	-	-	11	11	-	-	11
No Party	212	1	3	216	210	3	3	216
All	441	3	6	450	429	13	8	450

Appendix Table 46

Experience of victimization against persons known to respondents by legal offence type when *shariy'a* was/was not in operation (additional cases)

All respondents by political back ground

Number of incidence if has experience of any	*Shariy'a* was in operation					*Shariy'a* was not in operation				
	Nothing	1	2	3	Row total	Nothing	1	2	3	Row Total
National Union Party	7	-	-	-	7	4	3	-	-	7
Democratic Union Party	87	6	-	-	93	73	18	2	-	93
Umma Party	31	2	1	-	34	27	7	-	-	34
Islamic Front Party	51	7	-	-	58	41	14	2	1	58
Communist Party	29	2	-	-	31	26	1	-	4	31
Arab Nationalist	11	-	-	-	11	9	2	-	-	11
No Party	204	12	-	-	216	194	21	1	-	216
All	420	29	1	-	450	374	66	5	5	450

Appendix Table 6.10

Experience of victimization against persons known to respondents when *shariy'a* was/was not in operation (additional cases).

Number of incidence if has any experience	*Shariy'a* was in operation		*Shariy'a* was not in operation	
	%	No	%	No
Nothing	93	420	83	374
7	6	29	15	66
2	-	1	1	5
3	-	-	1	5
All	100	450	100	450

Appendix Table 6 - 15

Negative experience of victimisation against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by economic status

Vitamization by type offence	Persons responding "not applied" when *Shariy'a* was/was not in operation				
	Shariy'a was in operation		*Shariy'a* was not in operation		No. Respondents
	%	No	%	No	
1. Didn't mention: $X^2 = 1.893$					249
a house/shop broken into and property stolen *(satw)*	81	201	68	169	
Things taken under threat *(Haraba)*	95	236	94	234	
Area stolen *(sariqa)*	92	228	88	218	
Physical assault and injury *(jurh wal'aza)*	98	245	97	241	
Other (not mentioned in the list)	95	236	88	218	
2. Poor: $X^2 = 0.96$					73
a house/shop broken into and property stolen *(satw)*	85	62	77	56	
Things taken under threat *(Haraba)*	82	66	99	72	
a car stolen *(sariqa)*	96	70	96	70	
physical assault and injury *(jurh wal'aza)*	100	73	100	73	
other not mentioned in the list	97	72	85	62	
3. Low: $X^2 = 0.659$					82
a house/shop broken into and property stolen *(satw)*	73	60	60	49	
things taken under threat *(Haraba)*	96	80	89	73	
a car stolen *(sariqa)*	95	78	84	69	
physical assault and injury *(jurh wal'aza)*	95	78	88	72	
other (not mentioned in the list)	83	68	66	54	

Appendix Table 6 - 15 (Cont.)

Negative experience of victimisation against persons known to respondents by legal offence type when *shari'a* was/was not in operation

All respondents by economic status

4. Middle and High: $X^2 = 0.199$					46
a house/shop broken into and property stolen *(satw)*	72	33	70	32	
things taken under threat *(Haraba)*	100	46	89	41	
a car stolen *(sariqa)*	87	40	83	38	
physical assault and injury *(jurh wal'aza)*	93	45	93	43	
other (not mentioned in the list)	96	44	87	40	
No. respondents all groups					450

* Adapted from appendix tables: 32, 33, 34, 35, 36
Note: for all above
d.f = 4
probability level = 0.05
tabulated value = 9.488

Appendix Table 6 - 16

Negative experience of victimisation against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by employment status

Vitamization by type offence	Persons responding "not applied" when *Shariy'a* was/was not in operation				
	Shariy'a was in operation		*Shariy'a* was not in operation		No. Respondents
	%	No	%	No	
1. Government employee: $X^2 = 1.496$					94
a house/shop broken into and property stolen *(satw)*	79	74	68	64	
Things taken under threat *(Haraba)*	91	86	94	88	
a car stolen *(sariqa)*	91	86	87	82	
Physical assault and injury *(jurh wal'aza)*	99	93	99	93	
Other (not mentioned in the list)	89	84	73	69	
2. Private Business: $X^2 = 0.663$					181
a house/shop broken into and property stolen *(satw)*	80	144	71	123	
Things taken under threat *(Haraba)*	99	180	95	172	
a car stolen *(sariqa)*	93	168	86	156	
physical assault and injury *(jurh wal'aza)*	98	177	93	169	
other not mentioned in the list	92	167	88	159	
3. Manual: $X^2 = 0.?$					14
a house/shop broken into and property stolen *(satw)*	88	12	79	11	
things taken under threat *(Haraba)*	100	14	100	14	
a car stolen *(sariqa)*	100	14	93	13	
physical assault and injury *(jurh wal'aza)*	100	14	100	14	
other (not mentioned in the list)	100	14	93	13	

Appendix Table 6 - 16 (Cont.)

Negative experience of victimisation against persons known to respondents by legal offence type when *shari'a* was/was not in operation

All respondents by employment status

4. Unemployment: $X^2 = 1.753$					94
a house/shop broken into and property stolen *(satw)*	79	74	62	58	
things taken under threat *(Haraba)*	91	86	88	83	
A car stolen *(sariqa)*	91	86	87	82	
physical assault and injury *(jurh wal'aza)*	98	92	96	90	
other (not mentioned in the list)	95	89	77	72	
5. Retired: $X^2 = 0.13$					18
a house/shop broken into and property stolen *(satw)*	83	15	83	15	
Things taken under threat *(Haraba)*	94	17	89	16	
a car stolen *(sariqa)*	94	17	94	17	
Physical assault and injury *(jurh wal'aza)*	100	18	100	18	
other (not mentioned in the list)	94	17	78	14	
6. House wife: $X^2 = 0.186$					49
a house/shop broken into and property stolen *(satw)*	76	37	71	35	
Things taken under threat *(Haraba)*	92	45	96	47	
a car stolen *(sariqa)*	92	45	92	45	
physical assault and injury *(jurh wal'aza)*	96	47	92	45	
other (not mentioned in the list)	100	49	96	47	
No. respondents all groups					450
* Adapted from appendix table: 37, 38, 39, 40, 41					

Appendix Table 6 - 17

Negative experience of victimisation against persons known to respondents by legal offence type when *shariy'a* was/was not in operation

All respondents by political back ground

Vitamization by type offence	Persons responding "not applied" when *Shariy'a* was/was not in operation				
	Shariy'a was in operation		*Shariy'a* was not in operation		All
	%	No	%	No	
1. National Union Party: $X^2 = 0.677$					7
a house/shop broken into and property stolen *(satw)*	57	4	43	3	
Things taken under threat *(Haraba)*	100	7	100	7	
a car stolen *(sariqa)*	86	6	100	7	
Physical assault and injury *(jurh wal'aza)*	100	7	100	7	
Other (not mentioned in the list)	100	7	57	4	
2. Democratic Union Party: $X^2 = 1.116$					93
a house/shop broken into and property stolen *(satw)*	71	66	60	56	
Things taken under threat *(Haraba)*	91	85	94	87	
a car stolen *(sariqa)*	95	88	89	83	
physical assault and injury *(jurh wal'aza)*	97	90	92	86	
other not mentioned in the list	94	87	78	73	
3. Umma Party: $X^2 = 2.471$					34
a house/shop broken into and property stolen *(satw)*	79	27	44	15	
things taken under threat *(Haraba)*	100	34	82	28	
a car stolen *(sariqa)*	88	30	74	25	
physical assault and injury *(jurh wal'aza)*	100	34	97	33	
other (not mentioned in the list)	91	31	79	27	

Appendix Table 6 - 17 (Cont.)

Negative experience of victimisation against persons known to respondents by legal offence type when *shari'a* was/was not in operation

All respondents by political back ground

4. Islamic Front Party: $X^2 = 0.692$					58
a house/shop broken into and property stolen *(satw)*	90	52	55	32	
things taken under threat (Haraba)	100	58	100	58	
A car stolen (sariqa)	100	58	72	42	
physical assault and injury (jurh wal'aza)	100	58	88	51	
other (not mentioned in the list)	88	51	71	41	
5. Communist Party: $X^2 = 0.363$					31
a house/shop broken into and property stolen *(satw)*	77	24	81	25	
Things taken under threat *(Haraba)*	100	31	87	27	
a car stolen *(sariqa)*	84	26	81	25	
Physical assault and injury *(jurh wal'aza)*	94	29	100	31	
other (not mentioned in the list)	94	29	84	26	
6. Arab Nationalist Party: $X^2 = 1.327$					11
a house/shop broken into and property stolen *(satw)*	36	4	64	7	
Things taken under threat *(Haraba)*	91	10	100	11	
a car stolen *(sariqa)*	100	11	82	9	
pysical assault and injury *(jurh wal'aza)*	100	11	100	11	
other (not mentioned in the list)	100	11	82	9	

Appendix Table 6 - 17 (Cont.)

Negative experience of victimisation against persons known to respondents by legal offence type when *shari'a* was/was not in operation

All respondents by political back ground

7. No party: $X^2 = 1.81$					216
a house/shop broken into and property stolen *(satw)*	83	179	78	168	
Things taken under threat *(Haraba)*	94	203	94	202	
a car stolen *(sariqa)*	91	197	94	204	
physical assault and injury *(jurh wal'aza)*	98	212	92	210	
other (not mentioned in the list)	94	204	90	194	
No. respondents all groups					450
* Adapted from appendix table: 42, 43, 44, 45, 46 For all above d.f. = 4 Probability level = 0.05 Tabulated value = 9.488		44			

Appendix C

Presidential Decrees and Orders

In the Name of God, Most Gracious, Most Merciful
Presidential Decree No. (258) for 1984

Declaration of a State of Emergency in the Country

The President:-

In accordance with article 111 of the constitution and article 2 of the Sudan's defence code of 1939. I order what stated as follows:

Declaration of a State of Emergency

1 In due to this decree the emergency state should be declared in all parts of the Democratic Republic of The Sudan commencing from the day 28th of *Rajab* 1404, be the 29th of April 1984.

2 Work should be stopped in accordance with Articles; 40 to 42 exclusively and 48 to 52 exclusively and 58, 66, 67 and 79 of the constitution and throughout the validity of the emergency state declared in due to this decree.

3 Work should be followed in Accordance with the Emergency rule issued in due of this decree.

4 No Assembly, Marches and Demonstrations allowed.

5 Public Institutions and Public Services should be in a state of Emergency until the end of the state of Emergency.

Issued under my signature at the Presidential Palace on the 28th of *Rajab* 1404 being the 29th of April 1984.

Ja'far Muhammad Numayri

The President

Translated by Ni'ma K. Muhammad from the original Arabic

Copy signed by Ja'far Muhammad Numayri - The President

In the Name of God, Most Gracious, Most Merciful

The Emergency Order (Delegation of Power) for 1984.

The President:

After reading the Presidential Decree no. 258 for 1984, and on the Emergency rule for 1984, and accordance with article 3 of the Sudan's defence code for 1939 - I order what follows:

Name of order, and commencing of application and validity.

1 This order is called "The Emergency Order (Delegation of power for 1984) and to be applied from the date of its signature and continue until the abolition of the Emergency State.

Delegation of Power:

2.A: The Armed Forces are responsible for restoring security and order in the Democratic Republic of The Sudan.

2.B: All the Soldiers of the Armed Forces have all the authorities stated in this order or in any other code or rule or order same as the Police forces and that all acts issued by the Soldiers of the Armed Forces during the Performance of their duties should be considered are issued by the Police forces.

2.C: Every police officer has the right, while performing his duty to arrest and keep any person if he has on the base of a reasonable doubt that this person is intending to commit a crime or he is a source of danger against the general security of the society. Every person who might be arrested under such circumstances can be kept by order of a police officer not less than *Nagib* at any place appointed in this order. However no person should be kept under this paragraph for more than fourteen days without being brought to a judge and has a specific conviction directed to him.

Issued under my Signature at the Presidential Palace on the 28th of *Rajab* 1404, being the 29th of April 1984.

Ja'far Muhammad Numayri

The President

Translated by Ni'ma K. Muhammad from the original Arabic

Copy holding the President's signature.

In the Name of God, Most Gracious, Most Merciful
Presidential Decree No. (30) 1405.

Lifting the State of Emergency

The President:

After reading the Presidents orders no. 258, 331, 472, 503, 637 for 1984 and accordance with article 111 of the constitution I order what follows:

Lifting of the State of Emergency

1 The State of Emergency should be lifted as from the twenty fourth of *Muharam* 1405 be the twenty ninth of September 1984.

2 Issued under my signature at the Presidential Palace on the fifth of *Muharam* 1405 being the 30th of September 1984.

Ja'far Muhammad Numayri

The President

Translated by Ni'ma K. Muhammad from the original Arabic

Copy signed by the President Ja'far Muhammad Numayri

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