

An examination of Illicit Drug Smuggling and the Usage of Drug Substance through the lens of Islamic Law

Dr Abdirazak Mohamud Takar*

Abstract

Substance misuse is one of the most debilitating and expensive social and medical afflictions of the twenty-first century. Drug usage has contributed significantly to societal problems, crimes and tragically taken the lives of many people. At present, the drug problem is a major global concern in and around Muslim countries.

This article sets out to explore drug smuggling and the usage of drug substances through the lens of Islamic Law. The paper analyses the legal punishment of drug abuse generally and drug-trafficking, particularly according to Muslim jurist view.

The main sources of guidance and reference in Islam are the Holy *Qur'an* and the *Sunnah* of the Prophet (p.b.u.h). The Holy Qur'an does not say anything explicitly about drugs. On the other hand, drug smuggling was not a common issue in the early era of Islamic scholars. That is why the jurist emphasises the judgement and the punishment of only drug abuse. Therefore, this article sets out to explore the opinion of Muslim jurists on drug abuse generally and drug-trafficking particularly.

It is worth noting that the Islamic *Sharī'ah* consists of five safeguards for human beings: faith, life, intellect, posterity, and property. The most precious gift of Allah to mankind is intellect. Drugs cover intellect and power discerning right from wrong. Notwithstanding, drugs affect human being physically, psychologically, socially, and spiritually. As a result, *Al-Sharī'a Al- Islāmiyya* (Islamic Law) considers this illicit trade as mischief on the Earth, because it disturbs or attempts to disturb the faith, the life, intellect, posterity, and the property of the ummah, and Allah does not like

* Ph. D in Islamic studies, President of East Africa University in Somalia.

mischief and prohibits man to do any mischief on the Earth. It is stated in the Holy Qur'an the following verses to the effect that: "...Do no mischief on the earth, after it hath been set in order"(7:56).

Finally, to decrease the prevalence of this problem in our society and setting; increase awareness, promoting additional research on abused and addictive drugs, and exact implementation of existing laws are strongly recommended.

Drug abuse has caused a lot of social problems, crimes and wasted many of youth's lives who are supposed to be the future asset to the country.

Keywords: *Drugs, Smuggling, Illicit Drug, substance misuse, punishment, drug trafficking, Drugs in Islam, Muslim Jurist view.*

Introduction

Drug use and illicit drug smuggling have become prevalent in some Islamic countries. Drug smuggling interferes with legal economic activity in many different ways, as do other types of crime. The consequences stem largely from the direct and indirect influences of the large amounts of money generated by the illicit trade, which must be legitimised, but also from the direct impact of losses to legitimate business and corruption associated with the drug trade. The consequences of illicit drug use are widespread, causing permanent physical and emotional damage to users and negatively impacting their families and the wider community.

This paper analyses the position of Sharia law on drug smuggling and its subsequent usage. The Holy Qur'an does not make a direct reference to drugs. However, the following verses of the Holy Qur'an indirectly address the issue of drugs in the form of Qiyas (analogical deduction).

The glorious Qur'an says what can be translated as: "And make not your own hands contribute to (your) destruction..." (2:195). "Nor kill (or destroy) yourselves: for verily God hath been to you most merciful"(4:29).

It is worth noting that the Islamic consists of five safeguards for human beings: faith, life, intellect, posterity, and property. The most precious gift of Allah to mankind is the intellect. Drugs cover intellect and Power discerning right from wrong. Notwithstanding, drugs affect human beings physically, psychologically, socially, and spiritually.

*An examination of Illicit Drug Smuggling and the Usage of Drug Substance
through the lens of Islamic Law*

Both the Holy Qur'an and the Sunnah of the Prophet forbid explicitly the drinking of alcohol, with reference made to wine (*al-khamr*). The Holy Qur'an says: "Ye who believe! Intoxicants and gambling, (Dedication of) stones, and (divination by) arrows, are an abomination, - of Satan's handiwork, such (abomination), that ye may prosper." (5:93).

Abu Dawud narrated "that the Holy Prophet prohibited all intoxicant and slander"¹. In addition, the Prophet said: "Do not harm yourself or others"². In another Hadith it is narrated that he said: "Whoever kills himself with a knife will be in hell forever stabbing him-self in the stomach. Whoever drinks poison and kills himself will drink it eternally in the hell fire. And whoever kills himself by falling of a mountain will forever fall in the fire of hell."³

As illustrated in the above Hadith, the Prophet condemned those who drink poison and commit suicide. As a result, drugs can be rightly classified as poison, which unlike other poisons has a gradual effect rather than immediate. On the face of such concrete evidence, drugs are not only unlawful from the Islamic point of view but also a waste of money, wealth, and resources, which can be used for other valuable causes. Drug abuse poses a serious danger to health and can destroy faith and piety. It can disrupt and impair the progress and prosperity of the Ummah (the Muslim nation).

Turning now to drug smuggling, Sharia considers this illicit trade as mischief on the Earth, because it disturbs or attempts to disturb the faith, the life, the intellect, the posterity, and the property of the ummah, and Allah does not like mischief. In addition, Allah prohibited man to do any mischief on the Earth. It is stated in the Holy Qur'an the following verses the effect that:

"...Do no mischief on the earth, after it hath been set in order".(7:56).

"... When he turns his back, His aim everywhere is to spread mischief through the earth and destroy crops and cattle. But God loveth no mischief"(2:205).

"...And seek not (occasions for) mischief in the land; for God loves not those who do mischief." (28:77).

Moreover, Allah has ordered the most severe type of punishment for anyone who commits any mischief on the Earth. The Holy Qur'an says:

"The punishments of those who wage war against God and His Apostle and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides or exile from the land. That is their disgrace in this world, and a heavy punishment is theirs in the Hereafter" (5:36).

Drug smuggling was not a common issue in the early era of Islamic scholars that is why the jurist emphasises the judgement and the punishment of only drug abuse. This article sets out to explore the following issues:

1. The opinion of Muslim jurists on drugs
2. Evidence of drug prohibition in Islamic law
3. The punishment towards drug use
4. The punishment of drug smuggling according to Islamic law
5. Saudi Scholars Committee resolution in this regard
6. The similarities between Drug Smuggling and *al-Hirābah*
7. How Islam fights against illicit drug smuggling
8. Conclusion and Suggestions

1- The Opinion of Muslim Jurists on Drugs

Drugs were not known in the early era of Islam, because these substances appeared at the end of the sixth century of Hijra. In other words, drugs are not mentioned in the Qur'an and Sunnah, and we cannot find any express reference to it in the name of the founders of the four legal schools.

Ibn Taimiyah said: the classical Jurists never talk on drugs, because it was not utilised during their lifetime; that is why the prominent four legal theory schools did not mention any fatwa regarding drug abuse. It appeared in the latest years of the sixth century and the earliest years of the seventh century when the Tatar captured Baghdad the capital of Muslims.⁴

Whatever the name under which it was known, certain presumed Pharmacological properties of hemp were known to Physicians in the Muslim orbit as early as there was a scientific medicine in Islam. However, then, and later, little was made of this knowledge by medical writers. The quotation brought, for instance, by Ibn al-Bayṭār and al-Maqrīzī can be 382-*The Islamic Quarterly: Vol 66, No.3*

considered as quite representative. Hashish might also have been used here and there for 'Pleasure and enjoyment' but there is no evidence to this effect from the first four to five centuries of Islam.⁵

According to Islamic law, whatever substance that is not intoxicating, harmful or poisonous is permitted. The ulama' (Islamic jurist) are in unanimous agreement that whatever causes harm to the human body, mental state and dignity is prohibited, yet they disagree on judgement of taking a small amount of what may cause intoxication if it is large quantities. Some view that there is no prohibition till the amount reaches at the stage of drunkenness, because the Prophet prohibited the consumption of every intoxicating or corruptive matter and did not specify the prohibition by quantity whether it is large or small. Some ulama' viewed that the quantity made no difference.

The following are the details of the jurist's opinions:

a. Hanafi School

Hanafi school of thought explains very widely that every intoxicated substance in Islam is prohibited (Haram) but has some disagreement about the punishment. The author of the book (Durr) said: "benj, hashish and opium are prohibited but in a less extreme of that is wine". It is also mentioned in Durr: "...benj, hashish, and opium are prohibited because they corrupt the person's mind and divert the user from God's remembrance and praying".⁶

Shalabī (the author of *Hashiyah 'alā Tabyīn al-Haqā'iq*) discussed the issue and stated that according to the modern fatwa of Hanafi School, the drunkard from the Benj should be inflicted with punishment. He said: "I would prefer that drug abusers are liable to *ta'zīr* punishment other than *ḥadd* punishment. This because *ḥadd* punishment relates to the wine, not any other types of drugs, and there is a difference between wine and drugs."⁷

b. Maliki School

Ibn Abdul-Bar stated in his book (Al-Kāfī): "There is no *ḥadd* punishment upon the person who is intoxicated by food or milk, and hopefully, there will be no sin. However, it is reprehensible to intend on what may cause mental interruption."⁸

Ahmed M. Šāwi said: "*ḥadd* punishment is limited to liquid drinks that cause intoxication but a person who takes a solid element and gets mental interruption will be punished by *ta'zīr*. Similarly, a small amount of solid that has no clear impact in the mind is not prohibited."⁹

It is worthy to note the difference between *Muskir* and *Mufattir*. The first is intoxicant while the latter is Tranquilizer (*Mu'jam Lughat al-Fuqahā'* 1985). In the regard of differentiating between *Muskir* and *Mufattir*, Al-Ḥaṭṭab said in his book "*Mawāhib al-Jalīl'*": There is no question that the quantity of drug, which may change the man's intellect, is prohibited, but *Muskir* is absolutely prohibited, whether it is a small or large quantity. In other words, the quantity made no difference. Al-Qarafi preferred that Hashish is among drugs...and he said: our leading Sheikh Abdullah Manūfi has preferred that Hashish be among intoxicates. Al-Qarafi mentioned in his book *al-Furūq* that Jurists in his lifetime disagreed whether a drinker of hashish is punishable with *ḥadd* or *ta'zīr*. However, Al-Qarafi said: I would prefer a *ta'zīr* punishment.¹⁰

c. Shāfi'i School

Shamsudin al-Ramli said in his book *Nihāyat al-Muḥtāj*: All drinks that may cause intoxication are forbidden whether in large quantities or little, and anybody who drinks will be inflicted on *ḥadd* punishment. However, all liquids such as, Benj, hashish, opium, etc. are excluded from this formula. They merit only *ta'zīr* punishment.¹¹

In the view of an-Nawawi, the use of non-liquid substances and medicines such as banj and hashish were forbidden like wine but entailed *ta'zīr* and not *ḥadd*, for punishment.¹²

Ibn Hajar al-Haytami said: According to the opinion of some leading jurists Hashish is prohibited just like wine, therefore it is applicable to the same punishment. In fact, it is worse than wine. Benj, Opium and the rest of intoxicating elements are, also, under the same rule.¹³

Ibn Ḥajar al-ʿAsqalānī said: Some ulama viewed that anything that may cause intoxication is forbidden whether it is liquid or non-liquid, by relying on the Holy Prophet's tradition of "All intoxicating is prohibited."¹⁴

d. Hanbali School

Ibn Qudāmah said in his book *Mughnī*: The jurists are unanimous that if the person who lost his mind without drinking or taking any drugs

384-*The Islamic Quarterly: Vol 66, No.3*

pronounces divorce; his pronouncing will not be considered. But if someone takes Benj etc. intentionally and becomes drunk, they will be considered as a person who drank wine.¹⁵

Ibn Taymiyah said: "Anybody who loses his mind in doing unlawful act such as, drinking wine, eating Benj or Hashish etc. deserve to be condemned and punished, due to the loss of his mind intentionally"¹⁶.

He once again said: "The hashish made from cannabis is haram, and its user will be inflicted with stripes like the user of wine. He extremely condemned those who believe that hashish etc. is permitted". He said: "This solid hashish is forbidden whether it causes intoxication or not. Therefore, anyone who claims that it is permitted is required to repent to God. If he does so, he is saved; otherwise, he is to be killed as apostasy"¹⁷.

After he mentioned the hadith of "all intoxication is forbidden", Ibn Rajab said: "a group of Ulama defined intoxication (Muskir) as anything that may cause intoxication generally, whether it is liquid like milk, water etc. or solid like fruits, dates etc."¹⁸

In summary, although the classification of whether drugs are part of *Muskirāt* (intoxicating) elements or *Mufsidāt* (moral corruption) is still controversial, all Jurists agree upon its prohibition. Drugs are intoxicating as well as corruptive. Consequently, the view is regarded that where a large quantity causes intoxication, a small quantity is forbidden. Islam takes an uncompromising stance on intoxicants, regardless of whether the amount is little or much. This is why the prophet said, "... of that which intoxicates in a large amount, a small amount is haram"¹⁹.

The Prophet was once asked whether a concoction made of honey, barley and other cereals is prohibited. The Prophet replied as narrated by Aishah "Everything that intoxicates is khamr (wine) and every khamr is Haram (unlawful)"²⁰.

Sheikh Yusuf al-Qarḍāwī who is very famous in Modern Islamic Scholar said, that "a general rule of the Islamic Shariah is that it is haram for the Muslim to eat or drink anything which may cause his death, either quickly or gradually, such as poisons, or substances which are injurious to health or harmful to his body. It is also haram to eat or drink large quantities or it cause illness, for the Muslim is not entirely his own master; he is also asset to his religion and his ummah (the Muslim nation), and his life, health,

wealth, and all that Allah has bestowed upon him are a trust with him which he is not permitted to diminish".²¹

In short, the views of Islamic jurist can be divided into three categories; the first view that intoxication due to an anaesthetic (Benj) or any other type of narcotic requires legal punishment. The leading proponent of this view is Ibn Taymiyah. The second view contends that taking narcotics is forbidden but intoxication due to narcotics requires restraint (*ta'zīr*) rather than legal punishment. The third view distinguishes between taking narcotics for medical reasons, in which case taking the necessary amount for the treatment is permitted. But if it is taken for pleasure, then it is forbidden, and he who takes it is then restrained by *ta'zīr* though not legally punished by *ḥadd*.

2- Evidence of Drug's Prohibition

If critically analysed the views of the jurists discussed above, we can conclude that they are in agreement on some points while they disagree on others.

Firstly, they agreed on the prohibition of whatever substance that may cause mental interruption.

Secondly, they agreed whatever substance that does not cause pleasure and emotion and is not strictly addictive such as Benj, does not require *ḥadd* Punishment, but *Ta'zīr* Punishment will be resorted to.

Thirdly, they disagree on the judgement of what does not cause mental interruption because of its small quantity.

Fourthly, they disagree on whether *ḥadd* Punishment is obligatory on drugs, which cause pleasure and emotional uplift or *ta'zīr* Punishment is more applicable.

There is numerous evidence from the Holy Qur'an, Sunnah, and the Qiyas which show us that drugs or any substance that causes intoxication was prohibited. The following are some of them:

There is no question that drugs contribute to the death and destruction of human beings, and it is not permissible for a Muslim to use anything in the form of food or drink which endangers his life.

The Holy Qur'an says: "And make not your own hands contribute to (your) destruction. But do good, for God loveth those who do good." (2:195).

Firstly, drinking intoxicants is explicitly forbidden in the Qur'an and is punished. Secondly, taking narcotics also is forbidden explicitly in the Qur'an. There is, however, disagreement as to whether the punishment is legal punishment (Had) or discretionary punishment (*ta'zīr*). The importance of this question becomes evident if we assume the view that the penalty for taking narcotics is legal (ḥadd) punishment. It would follow from then that it should take on all the characteristics of legal punishment, the guilty individual is necessarily punished without the chance to be pardoned or to have others intercede for him.²²

It is worth noting that alcohol causes intoxication as well as corruption. Many intellectuals reported that all kinds of drugs are intoxicating. Moreover, it is already seen that people addicted to drugs do not hesitate to sell their belongings, so as to use the proceeds to purchase and obtain drugs by any means. Therefore, it could be argued that drugs must be Haram for two main reasons:

Firstly, it is included in types of Muskir (intoxicant) which were forbidden by the prophetic traditions like: "Every intoxicant is unlawful."²³ "Every intoxicant is wine (Khamr), and every intoxicant is forbidden."²⁴

Secondly, this can be analysed analogically, because the ratio or '*illah*' of prohibition of wine is the intoxication, and intoxication is available in all kinds of drugs.

3- The Punishment toward Drug Addicts

We have already mentioned that jurists are unanimous that whatever causes mental capacity or loss, without pleasure, emotion, and enjoyment like Benj and so on are prohibited. Nevertheless, it does not require *ḥadd* Punishment, but discretionary *Ta'zīr* instead.

However, the ulama' (jurists) disagreed on the types of drugs which cause pleasure and emotion and thus are strictly addictive, such as Hashish (Herb), Opium, etc. A large number of jurists, mainly Ibn Taymiyah, Ibn Hazm and Ibn Hajar al-Haytami, suggested that it deserves ḥadd punishment, in the analogy of intoxication.

In contrast, a number of jurists said that there is no *ḥadd* in drugs but *Ta'zīr*. According to them, *ḥadd* punishment is applicable to alcoholic

drinking only, not for what to eat or to take. So that it is only liable for *Ta'zīr*.

It must be understood from the outset that the disagreement among jurists is not over the basis of punishment but rather as to whether imposing punishment on a person for taking narcotics in the same manner as for drinking alcohol or whether to impose it in accordance with *ta'zīr*. This is because the prohibition against taking drugs is explicitly stated in the text. Imām Ahmed Ḥanbal has said this in *al-Musnad* as has Abu Dawūd in his *Sunan* based on genuine transmission from Umm Salma, who said: "The Prophet has prescribed all that intoxicates and numbs." Additionally, the scholars have stated: "that which numbs is anything that leads to numbness of the limbs."²⁵

4- The Punishment of Drug Smuggling in Islamic Law

Sheikh Abdul-rahman Al-Jaziri said: Of course, some Muslims engaged in trading drugs including all kinds of wine, hashish, opium, and cocaine due to its easy income making (though this is an image). In fact, they automatically fall upon evil deeds. Furthermore, it is well known that drug trading is absolutely prohibited in Islamic law and those who gain such benefit from are equated to have eaten Haram. There are numerous Hadiths clarifying the prohibition of wine, as well as there are many Hadiths showing that whatever is prohibited to consume is also prohibited to sell or deal with it. The reasoning is that such unlawful things bring corruption, deceit, and destruction to the society. Thus, a person who carries on business in drugs is a person who has intentionally devastated society. He is likened to having killed people and causing them to lose their wealth.²⁶ There is no question that drug smuggling is extremely forbidden in Islamic law, since drug abuse generally, and drug smuggling particularly are the sources of hatred, aggression, violence, and corruption. Indeed, drug smuggling is the cause of trouble and mischief on the earth, in this regard Allah says:

"The punishment of those who wage war against Allah and His Messenger and strive with might and main for mischief through the land is: execution or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: That is their disgrace in this world, and a heavy punishment is theirs in the Hereafter." (5:34).

Put simply, drugs are a modern evil equivalent to harm caused by nuclear or chemical warfare because drugs are substances, which render the mind inactive and ultimately destroy it. There is no question that all drugs have powerful effects on the nervous system. In addition, drug abuse severely affects normal social functioning, intelligent and responsible behaviour. Moreover, it is reported that criminal networks, which gain enormous profits from illicit drug trafficking, cause considerable damage to the economies of those countries where there is a great demand for illicit drug; created by a large number of drug-addicted persons.

For these reasons, there is explicit evidence of prohibiting drug smuggling. Although both the Holy Qur'an and the Sunnah do not inflict ḥadd punishment for drug producing and drug smuggling, it is narrated from 'Abdullah Ibn 'Umar, that the Prophet said: "The curse of Allah is on khamr and one who drinks it, serves it, buys it, sells it, extracts it and carries it and also on the one to whom is borne."²⁷

The death penalty is rarely inflicted as ta'zīr. Its sphere of application is naturally limited because the judge's discretionary authority is not very broad. The sovereign determines criminal acts which are punishable by death, but only if absolutely necessary. For example, the death penalty is proper in the case of the incorrigible criminal only when it is indispensable to protect society.²⁸

According to Islamic Law, for the crime where no ḥadd has been prescribed by the law-given, the ta'zīr punishment must be awarded upon the offender. There is no disagreement amongst the jurists that if the judge sees the case is more serious and harmful to the society interest like drug-trafficking, death penalty may be applicable and be inflicted.²⁹

"The Islamic position seems to be that whilst the death penalty for drug-trafficking might be in conformity with the Islamic doctrine of *Siyāsah Shar'īyyah*, the imposition of such a mandatory sentence prescribed by legislation would seem to run counter with the jurists' views that the *ta'zīr* punishment of death should remain as a discretionary punishment to be imposed by the judge or the court in a particular given case."³⁰

In short, I am of the view that any activity related to drug smuggling, whether it is serving, selling, buying, consuming and helping in it, is Haram (unlawful) in Sharī'ah Law. In addition to the Jurists' views, drug smuggling has helped the enemies of Islam against the Muslims. It is

worthy to note that, one of the first and foremost of Islam enemies (Tatar) were the first people smuggled drugs into Muslim countries, during their devastating conquest.

It is fair to say that drug abusers are liable to be punished with ḥadd, in line with the opinions of the ulama (jurists) stated above. However, drug smuggling is more harmful than the consumers because they do business through selling people's soul and prestige. Therefore, it follows from the above that they too must suffer from harsh punishment, which commensurate with haram introduced to the society. This will, most probably, be the death penalty as a ta'zīr punishment. Several Muftis have already pronounced this fatwa. The best example is the Saudi Arabian Muftis one.

5- Saudi Scholars Committee Resolution on the Punishment of Drug-Traffickers and Drug promoters, *Resolution No. 138*

The Saudi Islamic Scholars Committee met in Riyadh, Kingdom of Saudi Arabia, between 9-6-1407 to 20-6-1407, H. Their meeting concerned with the judgement of drug smugglers and drug promoters in Islamic legislation.

After having discussed the impact of the drug problems, whether is smuggling, selling, promoting, using and, their consequence on society such as: crimes, health, and the mental intellect, the committee issued the following Fatwa:

With regards to the punishment of drug smugglers, the committee agreed that the death penalty be passed on anyone who is caught engaged in drug smuggling. The underlying reason is that the smugglers spread disease in the community through their illicit activities and that could have a negative impact on the whole society. Regarding the seller, the committee divided the punishment of drug sellers into two parts:

First-time offenders should be sentenced by severe discretionary punishment, which could be an imprisonment, flogging, fine, or combination of all the three together according to the judge's opinion. The punishment of the hard core of drug sellers should be the death penalty as ta'zīr.

According to some scholars like Ibn Taimiyah, ta'zīr punishment could be awarded up to the death penalty,³¹ and it appears that the committee relied on this opinion.

6- The Similarity Between Drug Smuggling and *Al-Ḥirābah*

Drug smugglers are a dear enemy of human beings who cause harmful and attack against man's rights both physically and mentally. In other words, drug addicts often lose mental and physical strengths. Similarly, the drug smugglers put themselves in a severe condition of drug problems namely, the dangerous exposure to their lives and property. Moreover, the product of drug smuggling is Haram (unlawful) just like property gained through highway robbery (*Al-Ḥirābah*) which is also Haram in Islam. As a consequence of this, smugglers must be awarded the same punishment as highway robbers.

According to Prof. Muhammad Ata Al-Sid, the term *Ḥirābah* involves several crimes. It includes the felonious taking of property of another against his will by violence or intimidation, which is called 'armed robbery'. It also covers any act of terrorising innocent people in their homes, shops, or streets even if there is no physical harm or taking of property involved. It also covers the causing of widespread fear by acts of violence (such as bombings) or repeated rapes or mutilation of the body. In general, it covers any spreading of gross corruption such as poisoning of drinking water, wreaking great havoc by arson or great criminal damage to the security or economy of the state.³²

No doubt drug smuggling is “mischief on the Earth” because every act which disturbs or attempts to disturb the faith, the life, the intellect, the posterity, and the property of others is considered in Islam as mischief. In addition, international drug smuggling has become an intractable problem. Drug smuggling is a global challenge for the international system.

Persons who cause mischief in the land, bandits, and disturbers of the peace and those who cause turmoil and persons who try to go against the established system of government are punished by having their hands and feet cut or banished from the land.³³

The punishment of drug smuggling has to pass several stages and categories according to its quantity and danger to human beings, the following highlights a parallel of drug smuggling to the crime of highway

robbery. For instance, according to the Holy Qur'an if the case of *Hirābah* is proved, the court is given the option to execute the culprit or crucify him or cut his right wrist and the left foot or punish him, which is interpreted by many Jurists to mean imprisonment.

Finally, all conceivable offences against the society and the state, such as drug smuggling, treason or public disorder or wilful defiance of the laws of God and of constituted authority, are made punishable with anyone of the four punishments which are mentioned in the case of *Hirābah*, that is killing, crucifixion, cutting hands and feet, and exile from land. The expression (*nafy*) literally means elimination from land, which in our modern age may mean banishment or imprisonment to prevent the commission or repetition of the offence. Assimilating to this case, the punishment towards drug addicts should be categorised into several categories that may range between whipping or imprisonment or the death penalty.

7- How Islam Fights Against Illicit Drug Trafficking

It is unanimously agreed that "it is better to prevent crimes than to punish them. That is the ultimate end of every legislation"³⁴ In this regard, Islamic Law is mainly crime prevention. It has a rational, efficient, and practical system of crime prevention and control. Unlimited efforts and resources were spent on correcting the behaviour of the drug smuggling, yet no point of reliable solution has been reached. A lasting solution is to be established that is in line with religious faith. It could be argued that the root causes are failure to observe moral and religious values, which seem to be important factors for the abstention of drug use and drug smuggling in general. In other words, there is a causal relationship between criminality and disregard for religious obligations.

A large statistic on comparison between religious students and non-religious students, Choo Piang Fong, and others, looked at the influence of religious beliefs and daily activities between the students.³⁵ They found that there is a relationship between the use of cigarettes and alcohol to the use of hard drugs.³⁶

The fact is that the use of illicit drugs influences the general attitude of society towards the use of other psychoactive substances. Drug abuse is not an isolated problem but is deeply linked with a whole host of social evils that society accepts and tolerates. In spite of the preventative measures that

392-*The Islamic Quarterly: Vol 66, No.3*

have been put in place, tobacco and alcohol use help create an environment in which drug use in many cases is only the next step. Credible evidence suggests that drug use in children and youth tends to begin with the introduction of cigarettes and alcohol.³⁷

Therefore, Islam, by abandonment of wine and any intoxicating obligatory for everyone endeavoured to protect mankind from inevitable downfall. As already been remarked, the prohibition of narcotic drugs in Islamic law is based on the theory that social interests must be protected by the law and therefore any action which contradicts social development or creates evil or domestic problems between individuals, groups and the state is juridical wrong and must be punished according to law.

Moreover, the prohibition of narcotic drugs within Islamic law also rests on the theory that since drugs are harmful to the human body and may handicap physical and mental growth and ability, any involvement in it must be recognised as criminal.

It is worth noting how non-Islamic scholars and researchers declared the Islamic remedy towards drug trafficking. In fact, there seems to be a tendency among clinicians and mental health workers to avoid discussion or integrating religion in their work, yet this is puzzling due to the fact that many treatment programs for drug abusers have a strong religious foundation (in Muslim countries?). For instance, in Malaysia, religious instruction is an important component of all the rehabilitation programs in the prisons, government centres and the voluntary agencies. This is because spiritual purification plays an important role in the prevention of crime generally and drugs smuggling particularly. For instance, regarding Salat (praying), Allah says; "Regular praying restrains from shameful and evil deeds".(29:45). Also the *ṣiyām* (fasting) plays an important role here and for this reason, the Prophet says, "fasting is preventive". Therefore, Islam always concentrates on creating habits and patterns that are free from bad behaviours by creating a virtuous environment.

Since the abandonment of both drug use and drug smuggling have its origin in the spirit and the faith, thus we need to heal the illness from the faith aspect. This is to understand that the objective of Islamic law is to provide for the individual the right path and ideal life, regardless of the existence of any proper authority, such as police.

During the lifetime of the Prophet Mohammed some Muslims who committed a crime or sin whether against human rights or God's right, used to rush to the Prophet and voluntarily confessed to him by explaining how the crime or sin occurred.

In short, there is an integral relationship between religion and morality in Islamic teachings and, such a relationship justifies the set of rules embodied in Islamic law for the protection of the moral values of the Muslim community. The Holy Qur'an encourages the prohibition of certain acts (such as drinking alcohol, adultery, fornication, gambling, usury and false testimony) on the basis of their moral consequences.³⁸

The morality of Islamic Penal Law can clearly be perceived in the consensus among Muslim jurists that the community of Muslims is required, by divine command, to ordain good and prohibit vice. It is a duty of the Islamic community to watch over the practice of what is good and decent and prohibit what is evil and blameworthy. Allah says in the Holy Qur'an " Ye are the best of peoples, evolved for mankind, Enjoining what is right, forbidding what is wrong and believing in God" (3:110).

Conclusion & Suggestions

- **Conclusion**

Although most Islamic Jurists agree on the prohibition of whatever substance that may cause mental interruption, however, there are few leading Jurists who hold the opinion that a small quantity of some contemporary drugs such as Hashish (herb) is not harmful, so it can be allowed to be used.³⁹

On the other hand, Islamic Law has a fixed punishment for wine consumption; however, the question of punishment on the heavy and dangerous drugs, which are mainly newly founded, still remains a controversial issue among both classical and modern Muslim Jurists. In the Hudud punishment, taking wine for instance is imputable by flogging with eighty stripes. After all, there is a debatable question of whether modern-type drugs, such as heroin, morphine, opium, cannabis etc. are quite similar to wine, due to intoxication caused. According to the legal theory of Islamic Law, the fourth source of Islamic Law, which is Qiyas (analogy), is to be employed in this matter.

In fact, all types of drugs are not the same in terms of intoxication. Some may not cause serious drunkenness, while others cause acute drunkenness. Yet we know, most types of such drugs are more dangerous than wine.

Whatever it may be, it is common knowledge that if certain punishment is not clearly mentioned in the Hudud it comes under *ta'zīr*; the punishment is left to the discretion of the judicial authorities. Clearly, if it was possible to equate drugs with wine, the *ḥadd* penalty of wine should be applied. Otherwise, it would have to be by *Ta'zīr*.

- **Suggestions**

In light of the discussion presented above, this paper makes the following suggestions:

There must be full cooperation between the public and the law enforcement forces.

1- Neighbouring states should enter into an understanding of mutual cooperation for the exchange of information, including intelligence and operational data, in order to check illicit smuggling of drugs at both the cross-border and coastal areas levels.

2- Governments' effort to tackle and overcome the problem of drug smuggling and drug use must be coordinated through international cooperation as well as individual support of NGOs, the private sector, and individuals.

3- The governments must consider more drastic measures, if lenient efforts do not produce the desired results.

4- There must be access to banking and other financial records of suspected illicit smugglers and producers of drugs where necessary by way of judicial warrant.

5- Since youths are most vulnerable to the deliberate promotion of drugs, they must be given access to classical education and culture to stop them from partaking in a harmful action that has substantial consequences before those consequences occur.

6- There is a need for treatment and rehabilitation services to be made available to drug dependants and prisoners serving drug related sentences.

7- The integration of preventive education concerning drug use into the school curricula and out-of-school is necessary, because education is one of the most effective measures for preventing the serious consequences of drug abuse among young people and in some cases even adults.

8- The role of family guidance in the prevention of juvenile delinquency and in the education of youth and the treatment of delinquents should be supported by the state and the community at large and should be balanced with the external institutional interventions.

9- Juveniles in trouble with the law should be provided with the opportunity to participate actively and constructively in programmes designed to provide them with the skills and experience that could bring value and self-esteem to their lives.

10- There should be widespread awareness raising about the effects of drug smuggling and its usage and promote a society that is grounded in morality and spiritual values.

Bibliography

1. Ata Alsaid, Muhammad, *The Hudud*, (1st ed. 1995 P.J. Malaysia).
2. Abu Dawūd, *Sunan Abi Dawūd*, (Beirut, Dar al-Fikr).
3. Al-ʿAsqalānī, Ibn Ḥajar, *Fath al-Bārī* (Lahore-Pakistan 1981).
4. Al-Ḥaṭṭab, *Mawāhib al-Jalīl*, (2nd ed. 1978, Dar al-Fikr, Beirut).
5. Al-Haytami, Ibn Ḥajar, *Al-Zawājir*, (Cairo, Dār al-Shaʿb, 1980).
6. Al-Jazīrī, Abdul-Raḥmān, *Al-fiqh ʿalā-Madhāhib al-Arbaʿah*, (Beirut, Dar al-Fikr, and Dar al- Kutub al-ʿImiyyah).
7. Al-Qarḍāwī Yusuf, *the lawful and the prohibited in Islam (Al-Halal wa-l-Haram fi l-Islam)*, translated by Kamal El-Helbawy, and Others, (Islamic book trust Kuala Lumpur 1994).
8. Al-Ramlī, Shamsuddīn, *Nihāyat al-Muḥtāj ilā Sharḥ al-Minhāj*, (ed. Al-Ḥalabī).
9. Al-Nawawī, *Al-Majmūʿ* (Al-Maktabah al-Salafīyyah Al-Madīnah, 1982).
10. Anwarul Yaqin, *Law and Society in Malaysia*, (1st Ed K.L.).
11. Al - Ṣāwī, Ahmad Muḥammad, *Bulghat al-Sālik li-Aqrab al-masālik ilā madhab Al-Imām Mālik* (Al-Maktabāt al-Maṣriyyah, Cairo).
12. Bassiouni, M. Cherif (Ed), *The Islamic Criminal Justice System*, (1982 by Oceana Publications, Inc.).
13. Buang, Hj. Salleh, working paper, *Internal Seminar in Drug Abuse* (IIUM, 21st Feb).
14. Bukhārī, Saḥīḥ al-Bukhārī, (Kazi publication, Lahore-Pakistan) translated by Dr Muhammad Muhsin Khan.
15. Choo Piang Fong and others, *A Comparative study of the Psycho-social profile of drug using and non-drug using school children* (1986, Penang, USM).
16. Franz Rosenthal, *The Herb* (1971 Ceiden, Netherlands) by E.J. Brill.
17. Al-Ṭaḥṭāwī, *Hāshiyat al-Ṭaḥṭāwī ʿalā Marāqī al-Falāḥ*, (mīr Mohammed-Karachi).

18. Ibn 'Ābidīn, *Hashiyat Ibn 'Ābidīn* (2nd ed. 1966, Dar al-Fikr, Beirut).
19. Ibn 'Abdul-Barr, *Al-Kāfī*, (Dar al-Fikr, Beirut).
20. Ibn Mājah, *Sunan Ibn Mājah*, (2nd ed. 1984, Sharika ataba'ahal-Arabiyyah al-Saudiyyah).
21. Ibn Rajab, *Jāmi' al-'Ulūm wa-l-Ḥikam* (Dar Al-Fikr, Cairo 1962).
22. Ibn Taymiyah, *al-Siyāsah al-Shar'iyah* (2ed, ed. 1988, Dar al-Jil Beirut).
23. Ibn Taymiyah, *Majmū' al-Fatāwā*, (1st ed. Saudi Arabia 1398 H.).
24. Ibn Qudāmah, *al-Mughnī*, (Maktabat al-Riyādh al-Ḥadīthah, Saudi, Riyadh. 1981) vol. 7, P. 113. See also Ibn Rajab, *Jāmi' al-'Ulūm wa-l-Ḥikam* (Dar Al-Fikr, Cairo 1962).
25. *Majallat Majma'Al-fiqh al-Islāmi*, Part One, vol. 2.
26. Muslim, Imam, *Saḥīḥ Muslim*, (1st ed. 1991, Dar al-Hadith, Cairo).
27. Schacht, Josseph; *An introduction to Islamic Law*, (U. K, 1964).
28. Tan Sri Datuk Ahmad Mohammed Ibrahim, *IJUM Law Journal*, vol. 3 (No. 1 1993).
29. Vold, George B. *Theoretical Criminology*. (2nd ed. 1979 New York, oxford university press).

Endnotes

-
- ¹ Abu Dawūd, *Sunan Abī Dawūd, Kitāb al-Ashribah*, chapter: prohibition of al-Khamr, vol.3. p. 329.No. 3686.
- ² Ibn Mājah, *Sunan Ibn Mājah*, Chapter: man banā fi ḥaqqihī mā yadhuru jārahu, vol. 2. P. 44.
- ³ Muslim, Imam, *Saḥīḥ Muslim*, Kitāb al-Imān, Chapter: taḥrim qatl insān nafsahu, Vol.1. pp.103-4. No.175.
- ⁴ Ibn Taymiyah, *al-Siyāsah al-Shar‘iyyah* (PP. 92,96).
- ⁵ Franz Rosenthal, *The Herb*, P. 41.
- ⁶ *Hāshiyat Ibn ‘Ābidīn* vol. 4 P. 43 and vol. 5 P. 453 and vol. 6 P. 458.
- ⁷ See, *Hāshiyat al-Ṭaḥṭāwī* ‘alā Marāqī al-Falāḥ, Bāb, mā yufsid al-Ṣiām, P. 364
- ⁸ Ibn ‘Abdul-Barr, *Al-Kāfi*, vol. 5. p. 196.
- ⁹ Al - Ṣāwī, Ahmad Muḥammad, *Bulghat al-Sālik li-Aqrab al-masālik ilā madhhab Al-Imām Mālik*, vol. 2, P. 1079.
- ¹⁰ Al-Ḥaṭṭab, *Mawāhib al-Jalīl*, vol. 6, p. 313-4.
- ¹¹ Al-Ramlī, Shamsuddīn, *Nihāyat al-Muḥtāj ilā Sharḥ al-Minhāj*, vol. II p. 12 also vol. 8.
- ¹² Al-Nawawī, *Al-Majmū’*, vol. 3 p. 8 and vol. 9, p. 30.
- ¹³ Al-Haytami, Ibn Ḥajar, *Al-Zawājir*, vol.1, p. 216.
- ¹⁴ Al-‘Asqalānī, Ibn Ḥajar, *Fath al-Bārī*, vol. 10 p. 45.
- ¹⁵ Ibn Qudāmah, *al-Mughnī*, vol. 7, p. 113. See also Ibn Rajab, *Jāmi’ al-‘Ulūm wa-l-Ḥikam*, pp. 336-7
- ¹⁶ Ibn Taymiyah, *Majmū’ al-Fatāwā*, vol. 10 442, vol. 33, p. 104, vol. 28, p. 399, vol. 23, p. 358, vol. 24, p. 198, vol. 34 pp. 204-5.
- ¹⁷ *Ibid.*, vol. 24, pp. 206, 210, 218.

- ¹⁸ Ibn Rajab, *Jāmi' al-'Ulūm wa-l-Ḥikam*, pp.. 336-7.
- ¹⁹ Al-Qarḍāwī Yusuf, *the lawful and the prohibited in Islam*, p.72.
- ²⁰ Bukhari, *Saḥiḥ al-Bukhārī*, Chapter: The liquor prepared from honey, and it is called Al-Bit', vol. VII, pp. 343-344
- ²¹ Al-Qarḍāwī, Yusuf, *Al-Halal wa-l-Haram fī l-Islam*, p. 78.
- ²² Bassiouni, M. Cherif (Ed), *The Islamic Criminal Justice System*, p.189.
- ²³ Abu Dawūd, *Sunan Abī Dawūd, Kitāb al-Ashribah, Chapter the prohibition of al-khamr*, vol. 3, p.329, No.3679 and 3680.
- ²⁴ Abu Dawūd, *Sunan Abī Dawūd, Kitāb al-Ashribah*, Chapter: *an-Nahyu 'an al-Khamr*, vol.327, No.3679.
- ²⁵ Bassiouni, M. Cherif, (Ed), *The Islamic Criminal Justice System*, p. 188.
- ²⁶ Al-Jazīrī, Abdul-Raḥmān, *Al-fiqh 'alā-Madhāhib al-Arba'ah*, vol. 5. pp. 38-40.
- ²⁷ Ibn Mājah, Sunan Ibn Mājah, Chapter: *lu'inat al-Khamr*, See, Sahih Sunan Ibn Mājah, vol.2. p. 243, No. 2725, and 2726.
- ²⁸ Bassiouni, M. Cherif, (Ed) *The Islamic Criminal Justice System*, p. 215
- ²⁹ It is a well-known principle in Islamic law that sometimes the *ta'zīr* Punishment may be stricter than *ḥadd*, this depends on the merits of the case.
- ³⁰ Buang, Hj. Salleh, working paper, *Internal Seminar in Drug Abuse* (IIUM, 21st Feb.
- ³¹ *Majallat Majma'Al-fiqh al-Islāmi* ; Part one, vol. 2, PP. 221-222.
- ³² 'Ata Alsīd, Muhammad, *The Hudud*, p. 62.
- ³³ Tan Sri Datuk Ahmad Mohammed Ibrahim, IIUM Law Journal, vol. 3 (No. 1 1993) p.6.
- ³⁴ Vold, George B. *Theoretical Criminology*, p. 24.

*An examination of Illicit Drug Smuggling and the Usage of Drug Substance
through the lens of Islamic Law*

³⁵ Choo Piang Fong and others, *A Comparative study of the Psycho-social profile of drug using and non-drug using school children*, p. 51.

³⁶ *Ibid.*, p. 47.

³⁷ Anwarul Yaqin, *Law and Society in Malaysia*, pp. 186-187.

³⁸ Schacht, Joseph; *An introduction to Islamic Law*, p. 112.

³⁹ Franz Rosenthal, *Ibid*, pp. 111-112

Abdirazak Mohamud Takar