

Should fines also benefit victims? An evaluation of fines as a form of punishment in Malaysia with special reference to Islamic law

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Abstract: Existing financial punishments in Malaysia, usually in the form of fines for certain offences are payable to the government. The victims (if any) are not entitled to benefit from such payment, which implies that the system has failed to compensate the victims for losses that they have suffered. Another issue is the option provided for some offenders to pay a fine in lieu of imprisonment. This negates the principle of justice as it allows the rich to pay whilst the poor will have to face imprisonment. The question arises concerns the effectiveness of imposing fines to remedy the ailments in society. It also questions the reformative value of the punishment and how it can benefit the victim. This article evaluates the existing legal framework relating to financial punishments in Malaysia. In doing this, the objective of the article is to provide suggestions as to how these questions could be answered by incorporating *Shari‘a* principle of *al-‘adl*.

Keywords: Criminal fines, Financial punishments, Rights of victims, Islamic law

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Abstrak: Di Malaysia, penghukuman kewangan yang sedia ada selalunya terdapat dalam bentuk denda terhadap kesalahan-kesalahan yang tertentu yang memerlukan bayaran kepada kerajaan. Mangsa-mangsa tersebut tidak diberikan hak untuk mendapatkan manfaat daripada pembayaran tersebut. Ini bermakna bahawa sistem tersebut gagal untuk membayar pampasan kepada mangsa yang mengalami kerugian. Seperkara lagi adalah pilihan yang diberikan kepada beberapa pesalah-pesalah untuk membayar denda sebagai pengganti kepada dipenjarakan. Hal ini menafikan prinsip keadilan kerana ia memberikan hak kepada mereka yang kaya untuk membayar manakala itu mereka yang miskin terpaksa dipenjarakan. Persoalannya timbul kebimbangan mengenai keberkesanan mengenakan denda untuk memperbaiki ketidakseimbangan dalam masyarakat. Ia turut mempersoalkan tentang nilai reformatif terhadap hukumannya dan bagaimana ia dapat memberikan manfaat kepada mangsa kesalahan tersebut. Kertas kerja ini menilai rangka bentuk perundangan masa kini yang berkaitan dengan hukuman-hukuman kewangan di Malaysia. Dengan itu, artikel ini bertujuan untuk memberikan cadangan-cadangan bagaimana soalan-soalan dapat dijawab dengan menggabungkan prinsip-prinsip *Shari'ah al-'adl*.

Kata kunci: Denda jenayah, Hukuman kewangan, Hak mangsa, Undang-undang Islam.

Introduction

The conventional punitive justice system as exercised in Malaysia, generally concentrates on punishing the offender. Alas, when a crime is committed the victims of the crime are largely forgotten. The existing punitive justice system considers punishing the offender alone is an acceptable and sufficient response to crime. This can be seen from the way a criminal act is treated by the State. Under the current system, any criminal act that is committed by an offender is considered as a breach of the State's right and not seen as a wrong against the victim. This is especially so for crimes that are punishable with fines.

This article aims at addressing several issues relating to fines as a form of punishment under Malaysian law. In dealing with this, the article has identified two main issues relating to this topic. The first issue relates to who benefits from the fines. Under the current system fines are payable only to the State, whereas the victim is not entitled to benefit from any such payment. Hence, whilst the victim is the one who suffers from the wrongful act of the offender, it is the State, which

receives compensation from the fines that are paid by the offender, which seems to be unfair to the victim. The second issue that this article wishes to highlight relates to situations where fines can be issued in lieu of imprisonment. This raises concerns of discrimination because by allowing this a rich offender has a chance of escaping imprisonment by settling the fine, a privilege that may not be enjoyed by a poor offender.

The purpose of this article is to evaluate the existing legal framework relating to fines as a form of punishment in Malaysia. By doing this, it is hoped that the objective of the article, which is to provide suggestions as to how these questions can be answered by incorporating *Shari'a* rulings based on the principle of justice (*al-'adl*) can be achieved. In the context of this article, the word justice (*al-'adl*) is incorporated to mean fairness between two parties. The current system on fines only benefits the State. However, it leaves the victim without any compensation for the losses that he has suffered. Thus, this article evaluates the weaknesses in the current system and suggests that when imposing fines, the State needs to also take into account the rights of the victim for compensation. This is done through a comparative study of existing penal provisions in Malaysia and the position under the *Shari'a*.

This article adopts a doctrinal analysis of primary and secondary sources which deals with financial punishments. This will include legislations in Malaysia as well as the State Enactments that provide for fines as a form of punishment. In an attempt to find a solution, references shall be made to the relevant verses in the Qur'an and *Sunna* (in light of the legal exegesis and interpretation of the two sources) whereby these sources are analysed to derive the basic principles governing the area. Meanwhile, a thorough examination of *fiqh* literature of the four Sunni scholars and their disciples on the subject matter is also done whereby the principle of "*tarjih*" was used to determine the strongest and most practicable opinion. The obvious limitation of this research is that it is that there are no empirical data analyzed.

The discussion in this article is divided into three parts. The first part concentrates on the explanation of financial punishments, particularly fines and its provisions under the Malaysian criminal law. This will then lead to the second part, which relates directly with the Islamic perspectives on financial punishments. The third part of the article concludes by submitting that in order to ensure a victim gets equal

protection, the punishment must incorporate the principle of justice (*al-'adl*) as one of the general objectives of *Shari'a* (*Maqāṣid al-Shari'a*) which is guaranteed in Islam.

Imposition of fines under Malaysian criminal law

A fine is a sum of money that must be paid as punishment for breaking a law or rule. Therefore, whenever a person is fined, the State would make him or her pay money as an official punishment. Imposing a fine is a common type of punishment under the Malaysian criminal system. A fine is prescribed for almost all offences provided in the Penal Code and other penal laws, normally as an additional punishment or as an alternative to the sentence of imprisonment.

The provisions regarding fines are stated in section 283(1) (b) of the Criminal Procedure Code (CPC). In every case of an offence in which the offender is sentenced to pay a fine, the Court passing the sentence may, at its discretion, do all or any of the following things:

- i. allow time for the payment of the fine;
- ii. direct payment of the fine to be made by instalments;
- iii. issue a warrant for the levy of the amount by distress and sale of any property belonging to the offender;
- iv. direct that in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may be sentenced or to which he may be liable under a commutation of sentence:

Provided that where time is not allowed for the payment of such fine, an order for imprisonment in default of payment shall not be issued in the first instance unless it appears to the court that such person has no property or insufficient property to satisfy the fine payable or that the levy of distress will be more injurious to him or his family than imprisonment;

- v. direct that such person be searched and that any money found on him when so searched or which, in the event of his being committed to prison, may be found on him when taken to

prison, shall be applied towards the payment of such fine, the surplus, if any, being returned to him:

Provided that such money shall not be so applied if the Court is satisfied that the money does not belong to the person on whom it was found or that the loss of the money will be more injurious to him than his imprisonment. (CPC s. 283 (1) (b))

c. The period for which the Court directs the offender to be imprisoned in default of payment shall not exceed the following scale:

i. if the offence is punishable with imprisonment:

Where the maximum term of imprisonment does not exceed six months, the period shall not exceed the maximum term of imprisonment. If it exceeds six months but does not exceed two years, the period shall not exceed six months. If it exceeds two years, the period shall not exceed one quarter of the maximum term of imprisonment.

ii. if the offence is not punishable with imprisonment:

Where the fine does not exceed twenty-five ringgit, the period shall not exceed two months. If it exceeds twenty-five ringgit but does not exceed fifty ringgit, the period shall not exceed four months. If it exceeds fifty ringgit, the period shall not exceed six months. (CPC s.283 (1) (C))

Hence, as seen above, when fines form a part of the penal punishment, offenders are required to pay the fines to the state. This is in view of the fact that all crimes are acts against the state. In Malaysia, a criminal act that is committed by the accused is considered as a breach of the state's rights and not as a wrong against the victim. Consequently the fate of the victim has little influence in the judgment of the court and he seems to have little knowledge or comprehension of what is happening in his case. Victims rarely have a voice in the process. The aggrieved party is not given any option to negotiate with the offender or claim his right against the offender. If a person commits any crime under the Penal Code, it is a crime that involves the state's right. Therefore, it is the State

which decides whether or not to bring an action against the accused whereas the victim cannot interfere in claiming his right directly from the offender.

Since the fines are payable to the state, the victim is not entitled to take the money. This scenario in fact, creates unfairness and dissatisfaction on the part of the victim because when a crime is committed, it is the victim who is harmed directly and not the state; instead of the offender owing a 'debt to society' which must be expunged by experiencing some form of state-imposed punishment, the offender owes a specific debt to the victim which can only be repaid by making good the damage caused. The criminal proceeding, however, seems to neglect this matter.

When the criminal act infringes the right of an individual, for instance, voluntarily causing hurt, the convict will be sentenced to imprisonment or fine or both. Section 323 of the Penal Code provides:

Whoever, except in the case provided for by section 334, voluntarily causes hurt shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand ringgit, or with both.

It is clear that imprisonment is a kind of retribution whilst the fine goes to the government's revenue. The question arises as to what compensation is available to the victim who has suffered physical pain, fear, trauma, loss of income, medical cost etc. Similarly, in crimes against property such as theft, whereby the punishment provided for is imprisonment or/ and fine, Section 379 of the Penal Code provides:

Whoever commits theft shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both, and for a second or subsequent offence shall be punished with imprisonment and shall also be liable to fine or to whipping.

The victim in this case, of course, faces difficulties and incurs losses in terms of losing the property. The question arises as to whether the victim has the right to claim restitution from the offender besides the return of the property. Despite the existence of statutory measures on victim protection such as that contained in the Criminal Procedure Code, the Domestic Violence Act 1994 and The Child Act 2001, it seems that such protection remains limited and inadequate.¹ It is true that the victim

can take a civil suit against the convict to claim compensation but the question arises as to whether there should be any remedy in terms of monetary compensation from the criminal law itself.

Imposition of fines in *Sharī'a* courts

In Malaysia, two separate bodies with different jurisdiction and power govern the administration of criminal justice. The Federal Constitution of Malaysia provides for a dual court system, i.e. the Civil Courts and the *Sharī'a* Courts. The former is administered by the Federal Government while the latter is administered by the State governments. Concerning the *Sharī'a* Courts, the Federal Constitution of Malaysia provides that, other than in the Federal Territories, the constitution, organization and procedure of the *Sharī'a* Courts are State matters over which the State has the exclusive legislative and executive authority (the Federal Constitution, Schedule 9, List II, item 1). The State enactments also provide for both the civil and criminal jurisdiction of the *Sharī'a* Courts. In criminal matters, the jurisdiction of *Sharī'a* Courts is limited to that conferred by the Federal Constitution. Parliament also enacted the *Sharī'a* Courts (Criminal Jurisdiction) Act 1965 (amendment) 1984, limiting the jurisdiction of the *Sharī'a* Courts to offences punishable with imprisonment for a term not exceeding three years, or with a fine not exceeding five thousand Malaysian ringgit, or with whipping not exceeding six strokes, or any combination thereof. It should be noted that the jurisdiction of the *Sharī'a* Courts is applied only to persons professing the religion of Islam.

A fine is also a common sentence imposed on a *Sharī'a* offender. It is prescribed for all offences provided for in the *Sharī'a* Criminal Offences Enactments of the States, normally as a main punishment. In most cases, the *Sharī'a* Courts impose fines as the sole punishment for *Sharī'a* offenders.² Sometimes this type of punishment is combined with imprisonment.³

The court may direct that in cases where there is a default of payment of the fine, the offender shall suffer imprisonment for a certain term which shall be in excess of any other imprisonment to which he may be sentenced. The imprisonment, which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law (Section 122 Syariah Criminal Procedure (Federal Territories) Act 1997).⁴

The imposition of imprisonment in default of payment of fines as practiced by the Civil Courts seems to negate the principle of justice (*al-'adl*) since it might lead to a wider gap between the poor and the rich. Those who can afford to pay the fine would escape the punishment. A fine would be ineffective to serve the objective of punishment in preventing the occurrence of an offence. Some might not even be deterred and are likely to recommit the offence. However, the poor who cannot afford to pay the fine will have to face the punishment of imprisonment. This is a form of discrimination which is contrary to the *Sharī'a* principle of *al-'adl*.

At this juncture, it is necessary to discuss the Islamic perspective of fines as a method of punishment. Nevertheless, before proceeding with a detailed discussion on this issue, it is essential to first understand the basic purpose of punishment as a whole.

The Position of fines in Islamic criminal law

The most fundamental purpose of the *Sharī'a* is the protection of the basic necessities of the human being i.e. religion, life, lineage, dignity, mind and property. These are known as *maṣāliḥ* (interests) which means human or public good, interest, welfare and utility. The protection of these interests is recognised by all jurists who also maintain that any transgression against these interests is considered unlawful and may be a punishable offence (Zaidan, 1986).

In Islam, crime and punishment may be classified into three types, i.e. *ḥadd*, *qiṣāṣ* and *ta'zīr*. *Hadd* (plural: *ḥudūd*) is a crime punishable with a fixed punishment imposed as the right of the public. The crimes of *ḥudūd* are *zinā* (sexual intercourse out of wedlock), *qazf* (false accusation of *zinā*), theft, robbery, drinking intoxicants, apostasy and rebellion. When a crime of *ḥadd* is established, the prescribed punishment must be imposed. *Qiṣāṣ* is a crime punishable with a fixed punishment imposed as the right of individual. The crimes include homicide and causing bodily harm to others. The victim has the right to choose, whether to demand the infliction of punishment on the offender or to pardon him. *Ta'zīr* is a crime punishable with penalties that are discretionary, i.e. it is left to the discretion of the judge to determine the suitable punishment to be imposed on the offender. It consists of all kinds of transgressions where no specific and fixed punishment is prescribed ('Awdah, 2003). The *Sharī'a* gives the ruler or the court

considerable discretion in the infliction of *ta'zīr* punishments, which range in gravity from a warning to death, taking into account the seriousness of the offence, the circumstances of the criminal, his record, and other mitigating or aggravating factors. However, the authority of the judge is limited by his obligation not to order a punishment which is not allowed by Islamic law (Siddiqi, 1985).

Fining is considered a type of financial punishments which can be categorized as *ta'zīr*. Nevertheless, the jurists such as Abu Hanīfa and al-Shaybānī do not agree on the legality of financial punishment as *ta'zīr*. According to them, financial punishment is illegal because they claim that although financial punishment was legalised during the lifetime of the Prophet, it was later abrogated on the basis that there was the fear that its legality would be abused by unjust rulers who might take unfair advantage and covet someone's property (Ibn 'Abidīn, 1994). This claim of abrogation is in fact confusing since it is not supported by any conclusive proof. Ibn Taymiyya (1992) and his student, Ibn al-Qayyim (1991), strongly rejected the claim of abrogation and furnished proof from the practices of the Prophet and decisions of some of his Companions. The following is a *hadīth* which says:

From 'Amr ibn Shu'ayb from his father from his grandfather from the Messenger of Allah that he was asked about the dates hanging on the tree. He said: 'Whoever has eaten because of extreme hunger and no more than that, he will be responsible for nothing, and whoever has taken more than that, he must be fined with double the amount of the value of the dates taken and also be liable for punishment,⁵ and whoever steals dates after they have been laid down to dry floor and their value amounts to the value of a shield, his hand must be cut off, and whoever has stolen less than that, he must be fined with double the amount of the value of the dates stolen and also be liable for punishment (al-Nasā'ī, 1964)

The above-mentioned *hadīth* has been unanimously accepted unanimously by scholars (*ijmā'*) as authentic and as a proof that the concept of fining is not strange in Islamic law. It is also reported that the Prophet imposed a fine on a thief who had stolen less than the *niṣāb*, the fine being double the value of the stolen goods. Similarly, he said that the fine imposed on anyone who had hidden lost property should be double the amount of the property. The Prophet has also given other

kinds of punishments: he gave orders to destroy wine jugs and places such as pubs etc., where wine is supplied or sold; he told a man wearing a gold ring to throw it away (Abū Dawud, 1998) and he declared that the catch of a hunter who went hunting within the protected areas of Medina be confiscated. This type of punishment was also practised by the four caliphs and the great Companions after the demise of the Prophet. For example, both ‘Umar and ‘Ali gave orders to burn down the places where alcoholic drinks were sold and to seize half of the property of those who refused to pay *zakāt*. ‘Umar set fire to the palace of Sa‘d ibn Abī Waqqāṣ since the palace had isolated the governor (Sa‘d) from the people. He also poured away milk which had been diluted with water by the seller. All these instances reject the opinion which claims the abrogation of financial punishment. Furthermore, there was no proof from the Prophet that he had prohibited all kinds of financial punishment (Ibn Farḥūn, 1995; Ibn Taymiyya, 1995).

Abu Yusuf holds that the ruler may enforce a *ta‘zīr* punishment of taking property from an offender if the public interest necessitates it (Ibn ‘Abidīn, 1994; Ibn al-Humam, 1995). The same opinion is held by the school of Mālik ibn Anas, Aḥmad ibn Hanbal and is one of the two opinions of al-Shafi‘ī (Ibn Farḥūn, 1995). What is meant by financial punishment according to Abū Yūsuf, as explained by the Hanafi commentators, is seizing some of the offender’s property for a certain period and then returning it to him when he repents. This means that the judge does not take the property for himself or for the public treasury. The intention is merely to threaten the offender. They support this view by saying that no one is allowed to take another’s property without legal reason. The judge may keep the offender’s property until the latter’s repentance is proved. However, if it appears later that the offender will not repent, then the property may be sold and the proceeds spent on public welfare according to the judge’s discretion (Ibn ‘Abidīn, 1994).

Based on the above, Ibn Taymiyya (1995) and Ibn al-Qayyim (1977) accepted that these are facts which are not easy to deny and thus, whoever had claimed that financial punishment had been abrogated, ascribing this to Malik and Ahmad, had made a mistake. In fact whoever said that it was absolutely abrogated is completely confused. There is no legal evidence either from the Qur’an or from the *Sunna* or *ijmā‘* to support their claim. Even if there was from the *ijmā‘*, it would have no power to abrogate the *Sunna*.

These facts are not only mentioned in the classical legal texts such as those mentioned above, but they have also been accepted by contemporary scholars (‘Awda, 2003; Bahnasī, 1989; El-‘Awa, 1982). Therefore the statement by Joseph Schacht (1964) that “there are no fines in Islamic law” is incorrect and baseless.

From the examples noted earlier, it can be seen that financial punishments, at the time of Prophet and the four Caliphs after him, were imposed in two forms: firstly, through the imposition of fines; and secondly, through the seizure or destruction of the property concerned.

The example of fining, as illustrated by Ibn Taymiyya (1995), is that of the Prophet punishing a thief who stole dates still on the tree, by flogging him and fining him double the value of the dates. Similarly, the Prophet flogged a thief who stole cattle and fined him double the value of the cattle. ‘Umar also inflicted a fine on the owner of a hungry slave who stole a camel, the fine being double the value of the camel. In another case, ‘Umar fined a person who had hidden lost property double the value of that property.

In some cases, the amount of the fine is determined by the example set by the Prophet, for instance in the case of theft in which the value involved does not reach the *niṣāb* or when someone refuses to pay *zakāt* (Abū Dawud, 1998). But in other cases it is not clearly determined, and it is left to the judge to decide how much the offender should be fined. In fact, there is nothing to stop the lawmaker of any Muslim country from listing crimes and their fines as he wants them to be applied by the court.

Types of fines

In determining the fine to be imposed on the offender, it is worthwhile mentioning that fines, according to Ibn al-Qayyim (1977), can be divided into two types, i.e., definite (*maḍbūt*) and indefinite (*ghayr maḍbut*).

A definite fine means the exact fine imposed as an equivalent for the losses incurred due to the committing of the offence, whether such an offence violates the right of Allah such as destroying an animal hunted during the period of *ihrām*, or the right of a person such as destroying his property. Another example of a definite fine is to punish the criminal by giving him the opposite of his original intention in committing the crime, such as excluding him from his inheritance if he has killed his

testator; not giving him the bequeathed if he has killed his mandator (*muṣī*), and refusing a disloyal wife her maintenance. It is worth mentioning that though the fine is definite; it is still relative (*nīsībī*) in that the exact amount cannot be determined beforehand since it depends on the situation and the amount of the loss incurred by the commission of such an offence.

The amount of an indefinite fine is obviously not determined but left to the judgement of the jurists which is based on public interest (*maṣlaha*). In fact, there is no clear statement in the *Sharī'a* texts regarding this matter which leads to the difference of opinion among the jurists as to whether this type of fine is abrogated or not. The more acceptable opinion is that indefinite fines vary according to public interest and the decision of the jurists of a certain time and place since there is no proof (*dalīl*) of abrogation. Moreover, it was also practised by the leading Companions and by scholars after them.

As far as Islamic law is concerned, the blood, body, dignity and property of a Muslim are sacred and inviolable, the violation of which amounts to a serious breach of law. In Islamic law, any criminal act that affects body and life as well as that which infringes the property and dignity of the victim is actually affecting two rights, those of the individual and the state. As such, the decision to determine whether to claim his right or to relinquish it is granted to the aggrieved party. Likewise, if the offender is convicted for committing a crime that infringes the property or dignity of the victim such as theft, *qazaf* or defamation, he should be responsible for the loss incurred by the victim. If he is sentenced with a fine, it should be paid to the aggrieved party. It is deduced from the concept of *diyāt* (blood money, i.e. a prescribed amount of property to be given to the aggrieved party in cases of murder or injury), whereby the victim is given the right to demand *diyāt* directly from the offender or his *'ā'ila* (relative). Allah says to the effect:

O ye who believe! The law of equality is prescribed to you in cases of murder...But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude. This is a concession and a mercy from your Lord. (2:178)

Meanwhile the state remains responsible for ensuring the mechanism and procedure for prosecution, trial and administration of

the punishment. This is necessary to ensure that justice is done and not simply left in the hands of the victims to do as they please.

Conclusion

From the discussion thus far, it can be clearly seen that fines are the most popular type of punishment imposed under Malaysian criminal law. Any criminal act that is committed by the accused is considered as a breach of the state's right and it is not a wrong against the victim. The current system's channel of communication is criminal-centric and it serves as the medium to punish and rehabilitate the offender. It neglects its role to create self consciousness regarding responsibility and accountability towards the damage that has been done.

However, it should be pointed out that from the viewpoint of Islamic law, the imposition of fines is less preferred as the Qur'anic *hudūd* punishments are corporal in nature. Furthermore, even the jurists dispute as to the legality of imposing fines. Concerning this matter, Dr. Tanzil al-Rahman in a paper entitled "Crime and Punishment in Islam" says:

Recent researches reveal that imprisonment is and has, in fact, proved itself to be source of producing criminals, besides bringing a burden on the public exchequer. Fines, as prescribed in various modern legislative enactments, have miserably failed to achieve the desired result. It neither brings any reformatory virtue to the criminal nor puts any deterring effect on him...Personally speaking I am in favour of imposing physical punishments instead of long and fruitless, rather harmful, imprisonment or fines. (As quoted by Hashim Mehat, 1991, p.288)

The imposition of fine, though a popular choice of sentencing in the Malaysian criminal justice system, is actually not in line with the principle of justice (*al-'adl*), as recognized and practiced under the Islamic system. It denies the victims from being compensated for their losses. It is also insufficient to deter the commission of an offence. The imposition of imprisonment in default of payment of fines also seems to be unjust since it might open a wider gap between the poor and the rich. This contradicts the *Sharī'a* principle of *al-'adl* which always tries to ensure that any injustice in the society is eradicated and the gap

between the rich and the poor is closed. This is among the reasons why the institution of *zakāt* has been established in Islam.

Hence, it is proposed that the authorities concerned must review the implementation of existing financial punishments to allow the victims to be compensated as they are the ones whose rights have been infringed by the offender. The punishment must incorporate the principle of justice (*al-‘adl*) as one of the general objectives of Sharī‘a (*Maqāṣid al-Shari‘a*) which is guaranteed in Islam. If the offender is convicted for committing a crime that infringes the victim’s rights, body, property or integrity such as causing bodily harm, theft or defamation, the offender should be responsible for the loss incurred to the victim. If the offender is sentenced with fines, the payment should not go to the government but to the victim instead. However, if the crime infringes the rights of the general public, the court may consider any suitable punishment that serves its objective.

Endnote

1. See *Muniandy v Public Prosecutor* [1955] MLJ 231; *Raja Izzuddin Shah v PP* [1979] 1 MLJ 270; *PP v Low Lu Keng*, Current Law Journal 1992, vol. 3.
2. See *Rusidah binte Abdul Ghani v Syarie Prosecutor of Federal Territories* [1991] 7(2) JH 209; *Mokhtar bin Pangat v Syarie Prosecutor of Federal Territories* [1991] 7(2) JH 202.
3. See *Zarina Mahamad Budi v Chief Syarie Prosecutor of Penang* [2006] 22 (1) JH 127; *Abd. Wahab v Deputy Syarie Prosecutor of Selangor* [1982] 2(2) JH 281.
4. See *Mohd. Ibrahim bin Mohd Shariff v Syarie Prosecutor of Penang* [1999] 13(2) JH 185; *Norazlisham Ramli v Chief Syarie Prosecutor of Negeri Sembilan* [2002] 15 (2) JH 165; *Zainab Abd. Rahman v Syarie Prosecutor of Negeri Sembilan* [2003] 16(1) JH 41.
5. The punishment here is a *ta‘zir* punishment, normally whipping.

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