

## Syariah Law: A Feature on Moral Offences

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### ABSTRACT

*Morality or moral character (Akhlak) is the base building block of the Islamic civilization. The importance of which is more than apparent in the successful formation of a multi-cultural peaceful society under the leadership of Prophet Muhammad s.a.w and his companions. The purpose of this paper is to study the method in which the current moral degradation in Malaysia can be curbed, in addition to clarifying the laws that govern the said moral offences. In Malaysia, moral offences are under the Syariah Criminal law. The discussion in this paper is based on the analysis of various documents, books, law provisions, case studies, journals and related articles. According to the authors view, there is a lack of discussion on the topic of curbing moral degradation from a legislative perspective. However, the author believes that there are law provisions that can be used to overcome the prevalent moral degradation, namely the penal code and the Syariah laws on Criminal Offences. These will be discussed and considered in detail in the efforts of finding the best solution to overcome the moral offences and the subsequent moral degradation in the society.*

**Keywords:** morality, moral character, syariah criminal law, offence, degradation

### INTRODUCTION

Morality and the knowledge of it should be pursued by all individuals as the character and actions of a person are guided primarily by the moral values that exist in that person. Individuals with high morals will contribute to the forming of a society free of any social problems. According to Imam al-Ghazali, morality is the characteristics, that are embedded in the deep being and psyche of a person, which guides and defines the base actions of a person, and through this stems the primal actions, which are immediate actions that require no pre-consideration, judgement or weighing, of a person (Zainal Kling, 2008). The field of study of morality is not a newly explored field as there are numerous previous studies done on the various aspects of morality, with Prophet Muhammad s.a.w. as a model base, in the efforts of finding a solution to the problem of societal moral degradation. This is in line with the word and divine edict of Allah s.w.t in paragraph 4 of the *Surah al-Qalam*, which means "And truly, you really are noble in character". This verse depicts the moral characteristics of Prophet Muhammad s.a.w. which is perfect and unblemished as it is the perfect manifestation of the moral conduct as required by the *Syariat* or law (Mustafa Hajar and Muhyiddin Misto, 1998). This truth is reaffirmed through a hadith that related the question posed to Saidatina Aishah r.a. on the moral character of the Prophet Muhammad s.a.w. to which she answered "The morality of Prophet Muhammad is based on the al-Quran" (Narrated by Bukhari and Muslim). This clearly proves that morality is a primary factor that should not be taken lightly.

The Prophet Muhammad s.a.w also exhorted people in this way, saying "Have reverential fear of Allah s.w.t. no matter where you are. Follow all bad deeds with good and that will in turn smudge the bad. Associate only with people of high morals." (Narrated by Tirmidhi).

Among the lessons that can be derived from this hadith is that those who are faithful and have the reverential fear of Allah s.w.t. are mild mannered and kind when associating with others. The perfection of faith is the hatred towards vices and the keeping away from those who do not adhere to the exhortation (*makruf*) to do good deeds and continue in their disobedient lifestyle (Mustafa Hajar and Muhyiddin Misto, 1998).

Realizing that the problem of moral degradation is becoming worryingly prevalent and widespread, many parties of various backgrounds and walks have examined the foundations of the said problem and have proposed several measures to overcome it. However, to see the extent to which these recommendations are implemented may require a special study on its own. Although several studies and proposals have been put forward to address this problem, the author strongly believes that continuous studies should be carried out in order to measure progress done and to form a holistic solution that cover various angles, thus stemming the problem successfully. As such, the author carried out a study to examine the legal solutions that can be done exercised to curb the problems related to morality. In this paper, the author focuses on the Syariah Criminal law provisions in several states in Malaysia, namely Selangor, the Federal Territory of Selangor, Kelantan, Terengganu, Negeri Sembilan, Melaka and Kedah.

## **MORAL OFFENCES AND RELATED ISSUES IN MALAYSIA**

Islam emphasizes the teaching and propagation of good morals. Morals are a central part of Islam due to the fact that the Prophets themselves were sent to propagate the perfect moral pattern. Thus, Islam, being centred in morality, has with great care formed guidelines, methods and systems of morality that cannot be matched by any other religion in this world (Abdul Hafiz Mat Tuah et al., 2012). Since morality is an important agenda that underlined the mission of Prophet Muhammad s.a.w. its central purpose in the formation of an Islamic society should not be underestimated. Furthermore, various social problems among teenagers and the subsequent cases that follow, indicates the prevalence of societal moral degradation in Malaysia. According to an online newspaper report, the official statistics recorded and archived by the National Registration Department from the year 2008 to 2012 revealed that there are about 167,073 illegitimate babies, born with no information whatsoever about the father. This means that an average of 33,415 illegitimate babies is born in a year, 2,784 babies (in a month), 93 infants (in a day) and four infants (in an hour). These statistics are expected to be higher if the cases involving illegal abortions and abandoned babies, which are displayed but not recorded, are taken into account (daily news online, 21.3.2013). The increase in the statistics of illegitimate births proves that Malaysia is experiencing a very serious moral crisis which needs to be addressed and curbed immediately.

Illegitimate births is the most serious moral offence due to the fact that it damages the lineage and is contrary to the teachings of Islam in having descendants or children according to the correct way according to Islamic law. The birth of illegitimate children has also contributed to other criminal acts such as the abandoning or throwing of babies and other actions that can be categorized under cases of abuse, death and so on and so forth, all of which are contrary to the central principles of Syariah (maqasid) which is to preserve life, lineage, dignity, intellect and property. Immoral acts done in secret are contrary to the principle of protecting ones dignity, while the act of adultery and having an extramarital pregnancy is clearly actions that will damage the purity of a lineage in Islam. An Illegitimate child is born out of wedlock and in most cases; these children are either thrown away or aborted. This treatment is clearly a violation of the principle of the protecting a life that is sacred and God-given.

Studies have shown that teenage girls who engage in sexual activity face a high risk of getting pregnant out of wedlock and infecting HIV/AIDS or other sexually transmitted infections and diseases (Arnon et al., 2012). This disclosure should be a warning to all, as teenagers who engage in this sort of behaviour tarnishes the holy and pure teachings of Islam that condemns such immoral acts. Efforts in curbing said moral problems should be stepped up so that the central principles of the Syariah can be preserved.

### **SYARIAH CRIMINAL LAW IN MALAYSIA**

Siti Zubaidah Ismail (2013) in reference to the experts in Islamic law (*Fuqaha*) like Ibn Abidin and Ibn Humman explained that punitive action or punishment should be viewed as a preventive mechanism against the committing of an offense and as a reckoning if one does commit an offence. This is in accordance with the view of Yusuf Al-Qaradawi (2012) on the role of morality in society through legal provision. Based on this viewpoint, the author conducted a study to see whether there exist legal provisions that relating to morality and the upholding of it. Thus, for this purpose the author focused on the study of Syariah criminal law and its law provisions in several states, as according to Paizah Haji Ismail (2007), the enforcement and implementation of Islamic law in Malaysia falls under the jurisdiction of the state. This is in accordance with the Federal Constitution which provisioned that the affairs of Islam should fall under the jurisdiction of the state. Thus, Islamic law, which consists of a variety of guidelines had been enacted at state level, this includes the Syariah Criminal Law. Siti Zubaidah Ismail (2013) explicated that the Criminal Law of Islam in Malaysia refers to the provisions that are in line with the criminal law of Islam which are under the jurisdiction of the Syariah Courts in the respective states of Malaysia. For examples, the study done found that the law provides for offense as stated in the following table:

<i>Enactments</i>	<i>Related Sections</i>
1. Syariah Criminal Offences (Selangor) Enactment 1995  Part IV – Offences Relating to Decency	Section 22. <a href="#">Incest.</a> Section 23. <a href="#">Prostitution.</a> Section 25. <a href="#">Sexual intercourse out of wedlock.</a> Section 26. <a href="#">Act preparatory to performing sexual intercourse out of wedlock.</a> Section 29. <a href="#">Khalwat.</a> Section 31. <a href="#">Indecent acts in public place.</a>  Section 5. <a href="#">Indecent words.</a> Section 6. <a href="#">Utterance of indecent words.</a>
2. Kelantan Syariah Criminal Code Enactment 1985  Part II - Offences	Section 9. <a href="#">Khalwat.</a> Section 10. <a href="#">Incest.</a> Section 11. <a href="#">Zina.</a> Section 12. <a href="#">An act preparatory to the commission of Zina.</a> Section 13. <a href="#">Abetment of the commission of the offence of Zina.</a> Section 16. <a href="#">Pregnancy outside marriage.</a> Section 19. <a href="#">Prostituting.</a> Section 21. <a href="#">Selling or giving away child.</a>
3. Syariah Criminal Offences (Takzir)(Terengganu) Enactment 2001  Part IV – Offences Relating Decency	Section 25. <a href="#">An act preparatory to prostitute.</a> Section 29. <a href="#">An act preparatory to sexual intercourse out of wedlock.</a> Section 31. <a href="#">Khalwat.</a> Section 34. <a href="#">Indecent acts in public place.</a> Section 35. <a href="#">Exposing body in public.</a> Section 36. <a href="#">Watie.</a>

4. Syariah Criminal Offences (Federal Territories) Act 1997	Section 20. <a href="#">Incest.</a> Section 21. <a href="#">Prostitution.</a> Section 23. <a href="#">Sexual intercourse out of wedlock.</a> Section 24. <a href="#">An act preparatory to sexual intercourse out of wedlock.</a> Section 27. <a href="#">Khalwat.</a> Section 29. <a href="#">Indecent acts in public place.</a>
Part IV – Offences Relating to Decency	
5. Syariah Criminal (Negeri Sembilan) Enactment 2004	Section 60. <a href="#">Illicit intercourse.</a> Section 61. <a href="#">An act preparatory to illicit intercourse.</a> Section 66. <a href="#">Male person posing as a woman.</a> Section 67. <a href="#">Indecent acts.</a> Section 69. <a href="#">Prostitution.</a> Section 75. <a href="#">Pregnancy outside marriage.</a>
of Offences Relating to Decency	
6. Offences Enactment (State of Malacca) 1991	Section 52. <a href="#">An act preparatory to illicit intercourse.</a> Section 53. <a href="#">Illegal cohabitation.</a> Section 54. <a href="#">Pregnancy out of marriage.</a> Section 55. <a href="#">Abetment of the offence of illicit intercourse.</a> Section 71. <a href="#">Indecent acts.</a> Section 75. <a href="#">Prostitution.</a>
Part IV – Other Offences	
7. Crimes (Syariah) Enactment 1992 (Perak)	Section 46. <a href="#">Prostituting oneself.</a> Section 48. <a href="#">Illicit intercourse.</a> Section 49. <a href="#">An act preparatory to illicit intercourse.</a> Section 50. <a href="#">Pregnancy out of marriage.</a> Section 51. <a href="#">Illegal cohabitation.</a> Section 56. <a href="#">Exposing body in public.</a> Section 57. <a href="#">Indecent acts.</a>
Part VI – Offences Relating to Decency	
8. Syariah Criminal Code Enactment 1988 (Kedah)	Section 5. <a href="#">Indecent acts.</a> Section 6. <a href="#">Utterance of indecent words.</a> Section 9. <a href="#">Khalwat.</a> Section 10. <a href="#">Incest.</a> Section 11. <a href="#">Zina.</a> Section 12. <a href="#">Muqaddimah zina.</a> Section 16. <a href="#">Pregnancy outside marriage.</a> Section 19. <a href="#">Prostituting.</a>
Part II - Offences	

This study found that the offences listed in the table above are given provisions in most of the Syariah Criminal Offences Enactments of the listed states. Each offence or crime is listed under crimes relating to decency and is directly related to one another, which means, if the law and its subsequent punitive action is not enforced for light offences like indecent behaviour, it can lead to more serious offences, such as pregnancy out of marriage.

With respect to the offences categorised as such in the criminal law of Islam, the author believes that most people in the community have no awareness or in many cases, do not care about the existence of these legal provisions, which then leads them to commit such immoral acts without guilt or even realizing that it is an offence under the Syariah law. The author believes that understanding and awareness is very crucial and should be inculcated beforehand in every member of the society. To achieve inculcation, it is important that the

responsible authorities put in earnest effort to disseminate information, promote understanding and raise public awareness towards the implications of the relevant laws. Although most reported cases involve youths, the efforts in disseminating information and raising awareness about the legal implications of said provisions should not only target this group. It should rightly include parents and guardians who are responsible for their own behaviours and for their children or those who are under their care. The effectiveness and efficiency of the information dissemination mechanisms and the methods of creating awareness should also be taken into account so as to make sure the objective and goal of the efforts is achieved. With heightened societal understanding and awareness, members of the society will be more cautious and steadfast when it comes to engaging in the social ills and immoral acts that are forbidden in Islam. This is in harmony with the view of Yusuf al-Qaradawi (2000) that the law is necessary in the regulating of social affairs and the limiting of negative relationships among members of the society.

### **SURMOUNTING MORAL OFFENCES: PREEMPTIVE SOLUTIONS**

Education of morality and moral values is a crucial ingredient in the forming of a happy family, peaceful society and united State. Harmony in a family can be achieved when good manners and values are incorporated in each aspect of family life. Whereas, happiness and peace in the family unit is within grasp with the practice of good moral behaviour just as seen in the example set by Prophet Muhammad s.a.w. in his household and that of his companions. This family harmony, peace and happiness will help form a peaceful and united society which will in turn catalyse the establishment of a prosperous and secure State (Faridah Che Husain et al., 2011). It is crystal clear that good morals and manners are not just important in the life of an individual in an absolute sense, but has a direct relevance towards the development of a nation.

The awareness towards the importance of morality certainly does exist and has been harnessed by the government to form various activities and monitoring methods such as the curriculum content and co-curriculum at the school level. This is clearly seen in the agenda and implementation of the State education policy. In Malaysia, it is compulsory for Muslim students to attend the Islamic Education class, while non-Muslim students are required to follow the Moral and civic education classes. This approach taken by the government in making the subjects of Islamic and moral education compulsory, demonstrates the importance of morality in the Malaysian societal personality development agenda (Abdul Hafiz Mat Tuah et al., (2012).

These efforts are crucial to begin inculcation of the characteristics of an Islamic society as outlined by Yusuf Qaradawi. Morality and decency is the fifth characteristic of an Islamic society. It refers to a society which is fair, courteous, kind, merciful, truthful, trustworthy, patient, loyal, modest, pure, noble, humble, generous, brave, chivalrous, virtuous, dedicated, self-sacrificing, self-respecting, helpful, clean, ornate, thrifty, prudent, tolerant, lenient, quick to advice and help each other, chaste, full of self-control, with righteous anger and loving kindness, humane, kind to all creatures, especially to parents, appreciating familial ties and bonds, respectful towards neighbours, moving people to good deeds, embracing the good while shunning all evil. ... in addition to having every noble quality and characteristic that is honourable and pure (Yusuf Al-Qaradawi, 2012).

Based on the explicit explanation above, it is understood that a Muslim community is decorated with the personal characteristics of high morals and great decency. Thus, any action that is contrary to the nature of such excellent morals and decency will contaminate the clear and pure distinguishing features of a Muslim community that makes it stand out from

other communities. That being said, the presence of a variety of social problems in our society today indicates that efforts must be made to preserve the excellence of moral character and decency that was the major attribute of the Muslim community in Malaysia. In addition to educating the children, parents also need to be given a clear understanding of their tasks in their role as a leader of the family. They play a major part in the moral development of children. As such, the efforts to propagate understanding towards moral offences and the importance of forming good characteristics among children should be continued and amplified by various concerned agencies like the Malaysian Department of Islamic Development and the Ministry of Women, Family and Community Development through various forms missionary or community programs such as forums, seminars, workshops and so on.

Yusuf Al-Qaradawi (2012) explicated that morality and decency can be inculcated and maintained through three methods, which are guidance, development and protection. Guidance can be done through the means of dissemination of knowledge and information, publicity, media awareness, preaching and being a role model, whereas development is done through long-term and in-depth education, within the family unit, in school and through institutions of higher education. The author was captivated by the view of the said scholar, who stated that protection is done through the enforcement of laws that can prevent damage before it occurs and punishes a wrongdoer after an offence is committed as a lesson to those who deviate, while also educating the people who go against the law and ridding the society of any contamination. This view clearly recognizes the law as a channel that is capable of providing protection to the public from the harmful effects of depravity. Therefore, efforts to create a society that is aware of, cares for and is concerned with regulations and laws should be underway through the organizing of courses, mass lectures and dissemination of information and knowledge through the media. All these efforts should be done efficiently and effectively so as to provide adequate exposure and awareness to the society.

## **CONCLUSION**

Morality and moral character has a very close relationship with life as every action and behaviour a person displays in his or her every day life depends on their moral standards. Morality is also crucial when it comes to protecting the central principles of Syariah, as discussed before it is immoral behaviour like adultery, pregnancy outside of marriage and the throwing of babies that had brought about the moral degradation of today that has destroyed the sanctity of dignity, lineage and life. The research carried out on moral offences showed that in Malaysia, offences that are related to Syariah crime and offences are placed under the jurisdiction of each state as per the provision of the Constitution. All offences related to morality and decency is given a legal provision under the Syariah law. Though so, it is believed that a large majority of people do not know of the existence of such legal provisions. As such, awareness and exposure towards said laws and the punitive implications of breaking them should be propagated towards all members of society and not just those who are largely involved in social ills. Parents should be focused on as they have the main responsibility in shaping and building their children's character, specifically those who are still underage.

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