

Dubai's criminal justice system, a victorian value system essay sample

[Law](#), [Justice](#)



Introduction

“ It’s no different than we were in America a hundred years ago, right after or during the end of the Victorian era, said Hamden.” Even though we are seeing globalization, in the city that has defined globalization; we are still seeing a value system that still looks like new Victorians” (qtd. in “ They destroyed me”, 2008). Victorian era is the period from 1837 to 1901. This is how Dr. Raymond Hamden, a Lebanese-American psychiatrist who works in the Dubai courts describes Dubai’s criminal justice system. He further said that although it has embraced modernization with high rise buildings and very rich economy, its criminal justice system is still an evolving one (“ They destroyed me”, 2008).

In criminal court, the equal protection before the law does not usually extend to foreigners. The amazing economic growth of Dubai is wholly dependent on millions of expatriates engaging actively from corporate financial executives down to construction and domestic jobs. Emiratis, representing only 10% of the total residents are not enough to meet the demands of a “ double-digit economic growth” goaded by foreign investments, so even the court personnel and lawyers are foreigners. Dubai boasts of its corporate legal system as fair and protective of foreign investors. Lawyers, however deny this fact.

In Dubai, the crime of rape is termed “ forced homosexuality” as UAE law does not acknowledge assault and rape of males. HIV and homosuality are taboos and held in secret in this bustling financial center. These, result in rampant harassment of gays and foreigners. Those found to be homosexuals

and infected with HIV are denied health care benefits, quarantined and subjected to deportation proceedings. According to a Western Diplomat who is familiar with the judicial system, equality exists only in theory, not in practice. It may have strived very hard to earn a good reputation in delivering fair and speedy dispositions of commercials claims, however, it is still struggling to balance a penal code deeply rooted in conventional Slamic and Arabic culture to the damage and prejudice of overwhelming foreign residents who are largely noncitizens (2008).

Background Information

Political leadership

The federation of seven semi-autonomous emirates (Abu Dhabi, Sharjah, and Ajman, Fujayrah, Umm al-Qawain, Dubai and Ras al-Khaymah) is what is globally known as the United Arab Emirates. The highest executive and legislative body is vested on the Federal Supreme Council represented by the seven emirates rulers who select the president and vice president. The prime minister and the cabinet are appointed by the president. There are no elections, hence, no elected institutions. Citizens' concerns are directed to their leaders. The Federal National Council which is a consultative body has 40 advisers appointed by the rulers for a term of two years. Generally, effective control of the security forces is maintained by the civilian authorities. The Judiciary enjoys independence as provided for in the Federal Constitution. However, political leadership reviews all decisions made by the judiciary. (" UAE Country Reports, 2004).

Respect for Human Rights

According to reports government's respect for human rights remains a problem in Dubai. There are no civil liberties as enjoyed by people in many parts of the world. There are no labor laws protective of the rights of the workers. Unpaid wages and poor working conditions are the common complaints by foreign workers. Women's trafficking for prostitution and camel racing with very young foreign boys as jockeys, are rampant and remain unabated despite government pledges to stop said practices. Shari'a courts enforce flogging sentences although there were no reports that they were employed as the Constitution prohibits torture, degrading or inhuman punishment. There was a case in Abu Dhabi where the authorities used a leather strap to administer the slashing sentence that caused open wounds and heavy bruises to the victim's body. In Dubai, flogging is not a practice.

Generally the government observes the Constitutional prohibition on arbitrary arrest and detention. However, in sensitive criminal cases, incommunicado detention is allowed in order not to imperil the investigation. There were complaints from diplomatic missions that they were not notified when their citizens were arrested and detained. Accused can be questioned for days or even weeks without the assistance of legal counsel because a defendant can only avail of the services of a lawyer after police investigation has been terminated. Incoming international mails are censored and internet sites determined to be objectionable are blocked by the government-owned provider, Etisalat, according to some reports. There are also restrictions on the freedom of speech and of the press, the reason why

there is press self-censorship although, the Constitution provides for such freedoms. In short, human rights violation has become a way of life in Dubai to the damage and prejudice of foreign nationals (2004).

Overview of the Judicial Structure

In essence, the United Arab Emirates (UAE) is a civil law jurisdiction. Sources of law are Islamic law, Constitutional law, and legislation. Although it has its sources from Roman and French laws, to a great extent, it is influenced by the Egyptian legal system. Its law is also highly influenced by Islamic Law with Shari'a. as its Code. It has a Federal Court System with Abu Dhabi Supreme Court as its final court of appeal. Its judicial system is characterized as a dual system of Shari'a courts for criminal and family law matters and civil courts for civil law issues. Despite of being a part of the United Arab Emirates, Dubai and Ras Al-khaima has their own court systems which are not subject to the UAE Federal Supreme Court. They only maintain a channel of communication with the federal Ministry of Justice, Islamic Affairs and Endowments. The Court of First Instance, The Court of Appeals and the Court of Cassation or Supreme Court, composed the court structure of Dubai (Ule, C. and Buchler, F. K. 2006, 186).

. All commercial claims are heard in the Court of First Instance by a single judge for claims less than 100, 000 UAE Dirham and by three judges on amounts in excess of 100, 000. Just like in other countries, decisions of the Court of Cassation are final. Dubai Civil Code respects the inviolability of contracts. It recognizes the principle that the contract is the law between

the parties. However, where the presiding judge determines that the contract does not provide for the true intentions of the parties, he may order investigation to be carried out in accordance with the principle of trust and honesty and existing customs of the contracting parties. The debtor has the benefit of the doubt in the interpretation of rules. The principle of legal precedents or application or adoption of previous court opinions is not generally recognized. Notwithstanding, lower courts apply decisions made by higher courts (2006, p. 186). The governing Civil Laws are as follows:

“ The UAE Law of Civil Transactions (No. 5 of 1985) as amended by Federal Law No. 1 of 1987 governs civil transactions. In broad terms, the civil law sets out general contractual principles and covers certain specific types of business agreements (for example, construction contracts). The UAE Federal Commercial Transactions Law (No. 18 of 1993), on the other hand, governs commercial transactions and relationships between merchants. In civil matters of procedure, the UAE courts follow the Federal Law of Civil procedure (No. 11 of 1992), which sets out details for conducting civil cases before the UAE courts, whether local or federal (2006, p. 186)”.

Statutes of Limitations under UAE laws are procedural. Civil actions may be brought within fifteen years. Issues concerning commercial transactions, the period prescribes in 10 years from the date the obligation has become due and demandable, unless justifiable reason exists. For claims against professional services including issues involving employer-employee relations, the period of prescription is shorter. Statute of Limitation is suspended when

issues are submitted for amicable settlement. Filing of the action also suspends the running of the period (2006).

Civil cases are commenced with the filing of a pleading with supporting documents written in Arabic. The pleading is filed by a lawyer accompanied with a written request to the judge requesting that the defendant be served with a copy of the complaint. Representing the plaintiff, the advocate must file a power of attorney with the clerk of court. The clerk schedules the hearing upon payment of docket fees. The clerk issues summons on the defendant within 10 days from the filing of the case. The Law on Civil Procedure provides that the defendant must file his answer or defense at least three days before the scheduled hearing. After the contending parties have rested their case, it is submitted for decision. The whole process may consume at least one year at the lower court and another year in case of appeal (2006).

Accused individuals are provided with the right to speedy trial. In most cases, the right is invoked in civil cases where defendants sometimes demand disposition on the same day cases are filed against them. This is not true in criminal cases. Generally, accused are brought to trial in 3 to 4 months and trial may last for more than one year depending on the seriousness of the offense and availability of judges and witnesses. Oftentimes, the time of detention, exceeds the supposed penalty or sentence (UAE Country Reports, 2004).

In both court systems, defendants may be represented by legal counsel. In criminal prosecution, defendants whether financially capable of hiring legal counsel have a right to be represented by a government counsel in cases involving capital punishment. For criminal offenses punishable by imprisonment of 3 to 15 years, accused may also avail of government-provided counsel. An appeal to the ruler of the emirate where the crime was committed or to the Federation President, a death sentence may be considered for commutation to life imprisonment. Acquittal is based on "without the slightest doubt of guilt" In other jurisdiction, conviction is based on "guilt beyond reasonable doubt". As a traditional privilege, criminal as well as civil cases involving parties from different emirates and cases between citizen and non citizen, are reviewed by the local rulers before they are brought up to the prosecution. Likewise, decisions made by judges are also reviewed before returning to the appellate court. This process causes much delay in the judicial process (2004).

Security officers generally obtain search or arrest warrants before conducting search and arrest without probable cause. The Code of Criminal procedure provides that the police must report to public prosecutors arrests made within 48 hours. The prosecutors must determine within 24 hours whether to charge or release or order detention pending investigation. Arrested persons may be held for 21 days without charge and the court may order extension after such period for cases punishable by imprisonment. However, additional extension without charge may not exceed 30 days. . In cases involving killings, bails are allowed after payment of compensation

called " blood money" to the family of the victim. There is no formal system of bail. Temporary release of detainees are made only upon deposit of money or passport or through personal guarantee of a person signed in a statement. Third parties may contact by telephone detainees arrested of regular criminal offenses (2004).

Prison Condition

In Dubai and in Abu Dhabi, police authorities allow non government organizations to visit and observe prison conditions. Religious and local organizations are regular visitors extending repatriation assistance to females detainees after their release. Visits by human rights observers are also allowed. Prisons in rural areas are congested and have severe living conditions. Prison conditions vary from emirates to emirates. Reports received by the Ministry of Interior revealed that Dubai and Abu Dhabi prisons are overcrowded. Around 75% of the prisoners are noncitizens. In general, prison conditions met international standards (2004).

Role of the Police and Security Apparatus

The Police General Directorates in each of the seven emirates are under the control and supervision of the Federal Ministry of Interior. Each emirate however maintains its own police force and supervises the same through its respective Police General Directorate. Each has its own autonomy and degrees of efficiency. Complaints are received at the police stations, make arrests and forward cases to the public prosecutor and then filed before the court. Foreign defendants on cases involving moral turpitude are oftentimes

deported. Cases are filed before the Ministry of Interior. Police corruption is rare. To ensure that local police are compliant with the federal law, the ministry intervenes in criminal cases. A 70-person anti-trafficking section within the Ministry of Interior was created in May 2005 and in October 2005 a special Human Trafficking in conjunction with the Human Rights Care Department was established by the Dubai Police (UAE Country Reports, 2006).

Islamic Law

The Islamic penal system is basically different from man-made and Western legal systems that it draws in, zealous vigilance and much hatred. Non Muslim countries picture the Islamic law as one that punishes criminals by stoning, mutilating and slashing. Islamic law is not simply a system of law but the Shari'ah is more of a code of conduct. It is said to have a broader application than any system of law. It embraces all aspects of man's existence, his relations with God and his neighbors. Muslim people consider Islamic law as the only perfect system of justice capable of solving all problems including criminality which seriously affect Western countries, because it is believed to have been ordained by God. The Islamic penal system must be viewed in its totality considering every component, as it is often distorted by other people. The whole penal system covers economic, social and political human endeavors (. Iqbal, A., 1986, p. 75)

Punishment in Islamic Law

The Islamic penal system is but a branch of *Shari'ah* which is absolutely necessary in securing inherent human rights. It has been argued that Islamic crimes and punishments are applicatory only in socio-economic and political systems amply functioning in accordance with *Shari'ah*. Arguments are supported by the fact, that *Shari'ah* was tailored according to the kind of moral order the Islamic religion envisioned. Muslims believe that punishment must follow a tenacious series of steps to generate attitudes of disdain for crime and get rid of all the root causes of crime thus creating a crime-free society.

“ You can bend the necks but you can't change the heart (Mohammad, A.)”, as the saying goes, which means that punishment alone is insufficient to guarantee abidance with the law. Not all evildoings are punished, only those that has a bearing on peace and order. Punishment is divided into three categories, namely: *hodoood* or *haad* in its singular form, meaning a thing which restrains or prevents which include crimes as sedition, adultery, fornication, drunkenness, etc.; *qisas* (equitable retribution), a punishment for wounding or killing a person, may be waived through blood money and the third category is *ta'zeer* (discretionary punishment) a sentence not fixed by the Shari'ah, although in the past it is carried out by whipping or fines and imprisonment. It is generally a minor punishment (Mohammad, A.).

Lashing

Lashing is whipping or flogging, which connotes savagery, a punishment usually inflicted for conviction of an offense, like drunkenness. Islamic law

not only prohibits drinking of intoxicating liquor but all acts connected with alcohol, such as buying, selling, etc. It is true that the major cause of violence is intoxication. Shari'ah is not only concerned about the evil effects on the body but the consequences of it which are detrimental to morality and society.

It is aimed at preventing commission of crimes by removing the root cause, thus eliminating or reducing criminality. It is said the lashing is done with control and in accord with justice not according to the whims of capricious guards. Flogging according to the President of the International Court of Justice is not a severe, inhuman punishment. At least two witnesses are required to prove acts of drinking. Restrictions are imposed such as: flogging should not be done under severe heat or cold weather; it must not be inflicted on the naked body, on the head, face and private parts and should not cause wound and must not be confined on a particular part of the body. The whip must be of medium size and the intensity level of beating must be average. " Such is the humanity of punishment in Islam even when it prescribes ' deterrent' punishments for major offenses such as fornication, slander and drunkenness! (Mohammad, A.)"

Stoning

Stoning is virtually the most grievous punishment under the Islamic law and is inflicted to those who commit of crime of *Zina* , the most pernicious of all social crimes. Islamic history reported only 14 cases of stoning during the last 14 centuries. Stoning to death is the penalty imposed on adultery. The

law requires four reliable witnesses who must have seen all the acts of penetration and that their testimony must be unanimous in every phase of the crime including minor details. If one is found to be contradictory, the four will receive 80 slashes each for slander.

Islamic law aspires to secure the stability of the cornerstone of society, the family. It is the family that generates the foundation of values of the societal order binding together the various institutions of the government. In this regard, Islam encourages the continuity of the family through the sanctity of marriage. Sexual morality is highly regarded as a supreme virtue which in other advanced countries is but a part of life. Sexual adventure is just an ordinary thing in the West where immorality is unrestrained and oftentimes results to the disintegration of the institution of marriage and consequently disintegration of society's other institutions. The root cause is *zina* which means extramarital sex or unlawful sexual union. To prevent the adverse effect of *zina* in society, *zina* has to be uprooted by blocking the way to *zina*. This is the reason why men and women are segregated and women are ordered to wear *hijab* (Mawdudi, M, 1986).

Mutilating

Depriving a person of any part of his body is mutilation. This is a *hudood* punishment for theft or armed robbery where there is cutting off of hand or amputation. This is practiced to protect rightful ownership of property. Accordingly, it is said that this kind of punishment must be seen in the context of social security. The aim of the law is to create a society where

nobody is forced by circumstances to steal. Inasmuch as rights and duties are reciprocal in Islam, it cannot impose a duty without granting a corresponding right. If the State failed to provide its people of the basic necessities in life, such as, food, clothing and shelter, it has no right to impose the penalty for theft. It was in this construct when the cutting off of hand was waived during times of hunger and starvation. The elements of the crime include two reliable witnesses and that the property stolen is sufficiently secured and the accused is mature and sane person and not forced by circumstances to commit the crime. The evidence that only 6 times the punishment was executed in 400 years proves that it was meant to prevent crime. Again, it is confessed that the punishment is carried out in humanely manner (Mohammad, A.).

Analysis/Discussion

It cannot be denied that the Criminal Justice System in Dubai and other United Arab Emirates cannot or may not cope up with the changing times. The Federal Constitution provides that Shari'a, the Islamic law is the main source for legislation in the UAE being a Muslim country. Muslims however believe that Shari'a is not a law per se but a codification of conduct or behavior. Although it is encompassing and infallible as it is believed to be ordained by God, as divine will, Shari'a is in essence of human conception or construct.

To be functional, every society must have laws. Laws, however, that are based on some essential values. Having laws and a legal framework must

not lead to dehumanized legalism which is strict conformity to the letter or form of the law rather than its substance or spirit. Legalism emerged as the controlling way of thinking and approach among Muslim countries. Now, the values and goals of Islam has gradually languished into oblivion, diluted to the carapace of codes devoid of spirit (Farooq, M., 2006).

Saudi Arabia remains one of the worst violators of human and Islamic rights despite its claims to have its laws based on Shari'a; there is no rule of law as there is no independent judiciary. Defined rights are not guaranteed by the Constitution. Wealth is concentrated in the hands of a powerful few. The Shari'a law does not apply to the royal family contrary to the principle of Islam that no one is above the law. " Thus, *Shariah* of Saudi Arabia is basically Islam turned on its head (2006)". Pakistan is another good example of dehumanized legalism. Under dictatorship, the country was handled with strong dose of Shari'a laws. But then, it has committed one of the worst genocide in history (2006).

Most famous for its 7-star hotel, the Burj Al Arab, a sail-shaped munificently decorated with 22-karat gold; Dubai grows more astonishing when it finished completion of the world's tallest building in Burj Dubai. Soon it can be seen in space, a palm-shaped island of villas extending out into the Persian Gulf; a district made to look like chess pieces and an archipelago like a map of the world will soon be constructed in Dubai, all, being built by workers who earn less than a dollar an hour. Behind the glittering world of Dubai are some 500,000 foreign workers who, human rights groups say, live in practical captivity. Most of the workers live in camps, 12 in a room, a room smaller than the

horse cubicle in the royal stables. Falling from those high rise buildings, hundreds of foreign workers die every year. Dubai laws prohibit strikes and labor unions. But at the site of what will be the tallest building on earth ever built by man, workers went on strike for two days. More often, local newspaper reports construction workers not being paid for months and passports are withheld making them difficult to go home (Dowdy, S.)

An effort to cover up information on the rape of a 16-year old French national brought to light the unequal treatment of foreigners and the discriminatory legal system in Dubai. One of the rapists was found HIV positive. Confidential information received by New York Times affirmed the incomprehensible and unfriendly official behavior. Gross incompetence of services resulted to incoherent and deficient handling of the case. What was more maddening to the victim was that he was suspected of being a homosexual and that allegedly, there was no sexual assault as his anus was intact and even warned the victim of possible charge for homosexuality and serves a prison term of one year. Public pressures and diplomatic complaints helped a lot for prosecutors to expedite the case. Dubai's legal system remains a precarious challenged when it comes to homosexuality and legal protection of foreigners despite its status as the Arab world's perfection of modernism and riches. According to the victim, Alex Robert, "Dubai, they say we build the highest towers, they have the best hotels. But all the news, they hide it. They don't want the world to know that Dubai still lives in the Middle Ages (Cambanis, T., 2007).

The global perception that Dubai still lives in the Middle Ages and that its legal system is obsolete and unfashionable is untenable. Admittedly, its penal law is based on the Quran, a religious manuscript believed to be handed down to the Muslims by God. There is no such thing as contemporaneity in religion or faith in the Almighty. Natural law does not become obsolete. It is universal and applicable to all generation. However, if it is the codified law that is being referred to, yes may be, because generally, religion is vulnerable to legalism.

“ Religions in general and Christianity in particular have seemingly forever waged warfare with ideologies (-ism's) from without, ranging from Gnosticism to communism and beyond. More persistent threats, perhaps, come from what I call 'ism's within.' One of those is legalism. Legalism, at one time or another, in one form or another, seems to blight every major faith. One essential function of any religion is to provide a code of conduct. Legalism attempts to solve this need by specifying, in great detail; just what behaviors (and prohibitions) are required of the individual. (Qtd. in Richard Kahoe. “ Taking a Look at Legalism,” Mainstream Messenger, Vol. 3, No. 2, April 2000 by Farooq, M. O., 2006)”

“ It is not a system of law to be judged and evaluated as ' good' or ' bad' in accordance with the changing views of the population or the policies of the state (Amin, S. H., 1989, p. 53) “. and therefore the *Shari'ah* is radically different from “ the ordinary law in which the legislative authority is free to explain and comment on the law introduced by it which it can freely amend, cancel or withdraw (Iqbal, A., 1986, p. 75)”.

The basis of Islamic criminal system is inflicting deterrent punishment. On the surface, the deterrent punishments in Islam appears to be harsh, however defenders of the faith believe that such punishment are intended for unreformable offenders who fend as tangible obstructors in the healthy emergence of society. And in fact it is a necessary tool in the moral force of establishing social order. Aside from being hell, prison conditions destabilize or destroy people. Prisons in Western societies are miserably breaking its people. Statistics prove that longer sentences do not guarantee reconviction. It is a fact, that large percentage gets reconvicted after being released from prisons. It does not therefore follow that imprisonment is a more appropriate punishment for theft instead of amputating or cutting off of hand. If the objective is reduction in crime rate, Shari'a will be the choice. Crime rate in Saudi Arabia is far better off than in America.

Islamic penal system lacks police, prisons and public executioners. This is because Islamic people do not believe in hunting offenders for requital. Human experience proved that punishment to serve as a deterrent has to be severe and admonitory. Life is unsafe if recidivists are left unfinished. It is better to kill one and save many; than to save one and kill many. If cultured societies can tolerate mass killing by use of modern weapons as atomic bomb during World War II, annihilating masses of people, then stoning to death, cutting off of hand can also be permitted.

Conclusion

For a government to function effectively, it must be governed by laws.

Without law, there will be chaos. However, it is necessary that laws must be based on essential values. Dubai being an Islamic country is governed by the Shari'ah on family matters and criminal justice. Good governance is not only a matter of having an ideal legal framework, but it is of utmost importance that there is a rule of law. Muslim faith relies too much on the divinity of the Shari'a and its belief on the permanent nature of the laws embodied in it. It is conceded that it is complete and there is no need for other laws to guide their social, economic and political norms. However, the Shari'ah contains not laws but doctrinal principles that could serve as a guide in enacting concrete laws that could best serve the interest of society. In other words, God has only laid the foundation of the law. One of the essential characteristics of a good law is its flexibility and elasticity which is reflective at all times to the correct expression of the progressive and changing necessities of the state.

Inadequacy of the necessary rules of procedures, regulatory laws or statutes may also cause unrest and threaten stability. Dubai is facing problems on labor unrest due to lack of laws protective of the rights of foreign noncitizens. Recent press releases show that there are not enough labor laws such as, laws regulating number of hours work; overtime pays; minimum wage law, laws on working conditions, etc. Criminal justice system is not well-structured such that there is no government program to assist victims of crimes as well as protection of rights of the accused and correctional facilities for convicted criminals. For an economy to survive

human resources are indispensable; yet, the government pays little attention to the needs of those people responsible for the high-rise buildings and for the booming of the tourism industry in the country. Soon oil will be exhausted, and Dubai will be more than dependent on these people for the government to function effectively. Dubai should not forget the fact that Emiratis represent only 10 % of its total population.

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