

THE LEGAL DIMENSIONS OF SELF DEFENCE UNDER ISLAMIC JURISPRUDENCE

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ABSTRACT

Self-defence in Islam is always viewed as a violent phenomenon that is inevitably connected with the application of physical force. The use of force has been considered one of the salient features of self-defence that corresponds to the precepts of Islam. The Quran provides permission to apply force in self-defence. However, the general permission to use force in self-defence does not entail any confinements on how the force should be used or who is entitled to apply the force. Most theories of private defence under Islamic law are shaped by its purpose as a regulator of social and individual conduct. Under Islamic law, necessity may have different meanings. Necessity can be viewed as a separate criminal law defence that has nothing to do with other defences such as private defence. Alternatively, it may be regarded as a requirement of private defence. The principle of necessity is essential in terms of establishing the proof that the assailant acted in self-defence. The major influences of Muslim culture upon Islamic law, including the law regulating private defence, manifest themselves in the way that homicide is addressed, which is closer to concepts of popular justice than in other non-Muslim cultures. The cultural aspect of Islamic law provides political elites with an effective mechanism of control and repression. The study of differences and similarities provides an opportunity to illuminate our understanding of law and the process of its development. As both systems have their

own methodology for tackling legal issues, their different approaches to similar problems will provide fresh insights leading to revitalised solutions. It will also be helpful to understand the methodology and the legal reasoning of both systems; this will lead to a better understanding of law in general while providing an efficient means for improvement. Thus, the adoption of Islamic criminal legislation often serves as a prerequisite to the promotion of corporal punishment, particularly flogging, not only for *hadd* offences, but also for crimes that are not related to Islamic criminal law at all.