

CRIME AGAINST MAIDS: AN EVALUATION OF SHARIAH AND CIVIL LAW PUNISHMENT

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Abstract: It is undeniable facts that many maids whom have been abused sexually, physically, mentally, and psychologically by their employers or employer's family or relative. Therefore, this study examines how Shari'ah punishment can be applied as a deterrent punishment and lesson to others. It is individual rights to work as employee based on his or her class, status, and educational career. Shari'ah is the only law that gives all rights to human being regardless of his or her status, gender, tribe, and religion. The study will apply quantitative and qualitative methods for the analysis. Questionnaire and interviewed would be conducted on subject matter in order to discover undocumented facts. The sample would be conducted in certain universities such as UPSI, IIUM, and UKM in Malaysia. This survey or data will be sampled as an empirical evidence and proof that many maids were sexually abused while some were inflicted with injuries. Globally, maids' abuse is very serious and complex and it needs deterrent punishment to reduce high percentage of criminal against maids. The study also aims to discover the effectiveness of the Shari'ah to serve as best law to secure maids rights and protect them in working places. Finally, useful solution to outstanding problem and suggestions would be suggested in the findings.

Keywords: Maid, Abuse, Shari'ah punishment, Hudud, and Qisas

INTRODUCTION

In Malaysia, there are many legally employed foreign workers and they are normally hired on fixed term duration. The foreign workers span the occupational spectrum from professionals on fixed-term contracts to labourers who do work too dirty, dangerous or difficult for locals. Many of these foreign workers are predominantly employed as

labourers in the country's construction and plantation sectors, restaurants and domestic maids. In relation to domestic workers, many countries import them from abroad, usually poorer countries, through recruitment agencies and brokers because their own nationals are no longer obliged or inclined to do domestic work. This includes most Middle Eastern countries, Hong Kong, Singapore, Malaysia and Taiwan, among others. For most of these countries, the number of domestic workers runs into the hundreds of thousands. Major sources of domestic workers include the Philippines, Thailand, Vietnam, Indonesia, India, Bangladesh, Pakistan, Sri Lanka, Ethiopia and Mongolia. [1] It is worse for a woman to have to be sent away by her family and assume the role of breadwinner when it is actually a man's role, be it her father's or husband's. But due to certain circumstances, like incapacity of the male or the fact that the male has turned hostile and left the family to fend for themselves, poverty induces the women in the family to make the sacrifice, a gamble she has to take for the sake of feeding her parents and school going siblings.

A good employer is all they need to make their ends meet. A bad employer would spell for her 'hell on earth'. It is to be noted that Amnesty International has reported abuse of foreign workers throughout the world, especially towards foreign domestic workers, being mostly women and are usually submissive, timid and naive. [2] Unfortunately, Malaysia has its fair share of 'hell on earth' cases involving domestic workers. They are vulnerable to verbal, physical, sexual and economic abuses. It is not uncommon that we hear of inhumane treatment towards these workers. This includes *inter alia*, hitting, kicking, sexual harassment, being forced to work continuously without adequate rest, arbitrary deduction of pay, retention of their salaries by employers until the

worker returns home, working for two different families or working in the employer's business as well as home, retention of the worker's passport and other important documents, to name but a few. The extreme example is the case of Nirmala Bonat. Yim Pek Ha, the wife of Ms Bonat's employer, was accused of pouring boiling water on her, beating her, and pressing a hot iron on her breasts and back as punishment for mistakes in ironing clothes. Following her rescue she was treated for second and third-degree burns. Inevitable, such incidents would tarnish the image of the country. Often, if accused of some form of abuse, the employer responds by accusing the domestic worker of a crime such as theft, for example, and everyone tends to take the employer's word for it. [3] We often hear of torture and unpaid salaries. Some deaths have been reported after allegedly being beaten, bound and locked in toilets. [4]

Having said the above, the statute relating to criminal offences committed within Malaysia and criminal offences committed beyond but which by law may be tried within Malaysia is the Penal Code (Act 574) (Revised 1997). The Code has been revised in 1997 as Act 574 and applies throughout Malaysia. An employer who physical abuse or ill-treatment their domestic maid may be charged in court pursuant to the Penal Code and if found guilty may be imprisoned, fined and/or whipped. The offences of physical abuse or ill-treatment of domestic maid and the associated penalties are highlighted in the table 01.

Below are two cases, involving Indonesian maids where in one case the maid had taken law into her hands and the other case, the maid had successfully filed a civil suit against the employer for abuse. The case of *PP v Herlina Trisnawati* is a tragic case involving the death of a lady who had employed an Indonesian domestic maid, the accused. [5] The accused testified that the deceased often scolded her and hit her whenever she made any mistakes in carrying out her tasks, and uttered to her "*Mak engkau mati*". She demonstrated to Court how the deceased hit her near the ear using her hand, and claimed that she is deaf in the left ear till today, as a result of the deceased's abuse and alleges she suffers pain in the ear. However, she did not complain to anybody of the said pain or seek medical treatment for same, at anytime. She claimed she started work as early as 5 a.m. which only ended at 10 or 11 p.m., given meals twice a day and no breakfast. In short, she tried, in her testimony, to establish that the

deceased had abused her physically and verbally during the 3 months in employ, before her arrest.

At first instance, KN Segara J in his judgment of the High Court stated;

"I am of the opinion the accused was not telling the whole truth when giving her evidence on oath. I formed the impression that she was very angry and annoyed with her employer, the deceased, from the time she started her employment and was harbouring an intent to seek vengeance in some form or other. Nevertheless, I am of the opinion she has exaggerated and fabricated the alleged physical abuse of her by the deceased, and there is no truth in it at all. I think she is completely lying when she testified that she is deaf in one of her ears as a result of the physical abuse. She has not complained to anyone about it or sought medical attention for the pain in the ear, she is allegedly suffering. She has told a complete lie in testifying that her injury to her left hand had been inflicted by the deceased when the deceased quarrelled with her that day. She did not explain how the injury was inflicted by the deceased in the quarrel. This testimony tells very unfavourably as to the credibility of the accused, in the light of the evidence of the prosecution witnesses who testified that she told them the injury was occasioned (accidentally) when she was cutting chicken. She, therefore, cannot be believed on her testimony that upon being struck with the pestle, the deceased ran up to the kitchen cabinet drawer and pulled out a big knife, purportedly to attack her, whereupon she drew out a small knife (P28) from the drawer, and a fight ensued. If the accused's version of the event is in fact true, and having seen both the said knives produced in Court, I am of the opinion, considering the size of P30, the accused would have been mortally wounded. The accused's testimony that her intention to strike the deceased with the pestle was only to make her faint, in order that she could run away, cannot be believed, as the accused could have easily run away since the deceased was at that time, according to the accused, sleeping on the sofa. If her primary intention was to run away that day because she could not take the alleged physical and verbal abuse of her employer anymore, then, the accused could have easily done so without any need to make her faint while she was sleeping on the sofa. She also had ample opportunity to run away, at any time before the deceased returned from the airport after sending off her husband to Kota Bharu, if an intention to cause death to the deceased that day was never in her mind at all".

Offence	Penalty
Murder	Death Penalty (Section 302 of the Penal Code)
Culpable homicide nor amounting to murder	Up to thirty years imprisonment (if death was intended); or Up to ten years imprisonment (if not intended to cause death) ((Section 304 of the Penal Code)
Voluntarily causing hurt	Up to 1 year imprisonment and/or RM2,000 fine (Section 323 of the Penal Code)
Voluntarily causing hurt by dangerous weapons or means	Up to 3 years imprisonment, fine or whipping, or any 2 of these punishments (Section 324 of the Penal Code)
Voluntarily causing grievous hurt	Up to 7 years imprisonment; offenders are also liable to be fine (Section 325 of the Penal Code)
Wrongful confinement	Up to 1 year imprisonment and/or RM2,000 fine (Section 342 of the Penal Code)
Wrongful confinement for 3 or more days	Up to 2 years imprisonment and/or fine (Section 343 of the Penal Code)
Wrongful confinement for 10 or more days	Up to 3 years imprisonment and fine (Section 344 of the Penal Code)
Assault or use of criminal force to a person with intent to outrage modesty	Up to 10 years imprisonment, fine or whipping, or with any 2 of these punishments (Section 354 of the Penal Code)
Assault or criminal force in attempt wrongfully to confine a person	Up to 1 years imprisonment or RM2,000 fine or with both (Section 357 of the Penal Code)
Exploiting any person for purposes of prostitution	Up to 15 years imprisonment, whipping and fine (Section 372 of the Penal Code)
Persons living on or trading in prostitution	Up to 15 years imprisonment, whipping and fine (Section 372A of the Penal Code)
Unlawful compulsory labour	Up to 1 year imprisonment, fine or with both (Section 374 of the Penal Code)
Rape	Between 5 – 30 years imprisonment and whipping If, whilst committing or attempting to commit rape causes the death of the woman, between 15 – 30 years imprisonment and with whipping of not less than ten strokes(Section 376 of the Penal Code)
Criminal intimidation	Up to 2 years imprisonment and/or fine If hurt or fear of hurt is caused: up to 7 years imprisonment and/or fine (Section 506 of the Penal Code)
Word or gesture intended to insult the modesty of a person	Up to 5 years imprisonment and/or fine

Table 01: The offences of physical abuse or ill-treatment of domestic maid and the associated penalties

However on appeal, the Court of Appeal, presided by Mokhtar Sidin JCA, Hashim Yusoff JCA, Mohd Noor Abdullah JCA stated unanimously that on the evidence before the court the learned judge had erred in coming to the conclusion that the appellant had committed murder on the deceased.[6] The Court said:

Evaluating the evidence as a whole we find that the appellant did cause the death of the deceased but there is insufficient evidence to show that she had committed murder as defined under s. 300 of the Penal Code. The evidence shows that the appellant had committed culpable homicide not amounting to murder in that the act committed by the appellant was an act of causing such bodily injury as is likely to cause death when the appellant used the pestle to hit the deceased's head and followed up with a fight whereby she and the accused used knives to attack each other. This would come under the first limb of section 304 of the Penal Code. We therefore set aside the conviction for murder and substituted it for culpable homicide not amounting to murder under the first limb of s. 304 of the Penal Code. We hereby sentenced the appellant to eighteen (18) years imprisonment.

The case of *Marni Anyim v Shalini Shanmugam & Anor* is however in contrast to the above case. Heard in the Sessions Court, Kuching, this case was about the plaintiff, an Indonesian national, who entered into the employment of the second defendant (Mr Vijaya) as a domestic maid. [7] The first defendant (Mdm Shalini) was the wife of the second defendant. It was the plaintiff's allegation that in the course of her employment with the defendants until 27 November 2000 when she ran away from their residence, she was subjected to moral degradation, verbal and physical abuse by Mdm Shalini. After she ran away, she had lodged a police report and was brought to the Sarawak General Hospital for medical examination.

In this summons and statement of claim, the plaintiff claimed *inter alia* special and general damages for pain and suffering and loss of amenities resulting from the injuries inflicted and the scars from the injuries. In addition, there were also aggravated and exemplary damages claimed. Against Mr Vijaya's claim, her claim was based on a duty of care that he owed her as her legal employer and she alleged that he had failed to discharge that duty by not exercising due and reasonable care for her well being. The defendant's joint defence denied the abuses as alleged and averred that she was treated like their own daughter. Mr Vijaya further denied any knowledge of the abuses she allegedly suffered at the hands of Mdm Shalini and contended that the plaintiff had never complained to him about any assault or beatings by Mdm Shalini. It was not disputed that

Mdm Shalini had been charged with two counts of offences under ss. 326 and 323 of the Penal Code for the injuries sustained by the plaintiff. She had been convicted after a full trial and sentenced. At the time of this civil trial before the court, Mdm Shalini had already been released from prison having served her sentences.

The plaintiff alleged that Mdm Shalini was fierce and had punched her on the left side of her eye, and her mouth was also hit with a pellet until her tooth broke. Her head was hit with an iron hammer after she didn't fill in sufficient hot water for the baby's milk. She disagreed that the injury to her back was caused by hot water being poured down her back and that she inflicted the injury on her neck herself. The injury to her finger was done the same time as that on her head. Then on 27 November 2000 Mdm Shalini's mother in law's photograph fell and that was when Marni said she was dragged by the hair, pushed to the floor and kicked. The previous abuse on 26 November, 2000 and on 27 November, 2000 were witnessed by Mr. Vijaya who did nothing to help her except called her a stupid woman and asked her to report to the police.

On the legal duty of an employer, the Court stated that it is trite law that an employer has a common law duty to ensure that his employee worked in a safe and conducive working environment. That duty of care has been described in *Halsbury Laws of England*, 3rd edn, at p. 505 as a duty "to take reasonable care the safety of his work-people in all the circumstances of the case so as not to expose them to an unnecessary risk." The Court further cited the Privy Council's case of *Overseas Tanship (UK) Ltd v The Miller Steamship Co. (The "Wagon Mound") (No. 2)* where Lord Reid held that in general a person must be regarded as negligent if he does not take steps to eliminate a risk which he knows or ought to know is a real risk and not a mere possibility which would influence the mind of a reasonable man and "that it is justifiable not to take steps to eliminate a real risk if it is small and if the circumstances are such that a reasonable man careful of the safety of his neighbour would think it right to neglect it." [8]

The court thus awarded the plaintiff backwages in the sum of RM3,000 which had not been paid to her. The most grievous of the plaintiff's injuries were the hot iron attack on her back and the hammer attacks on her finger and head. For this hot iron injury which caused her permanent scarring, the figure of RM30,000 was awarded. That figure was given in consideration of not just the scar that disfigured the plaintiff but the excruciating pain she must have gone through when the wound was inflicted and during the period of its recuperation.

For the injuries to her fingers caused by the hammer, this court awarded compensation in the sum of RM8,000 and the bruises and swelling to her head, left eye, lip and other injuries as documented, this court believed a reasonable compensation should be RM10,000. In total therefore the general damages awarded was RM48,000.

From the two cases above, justice had been seen to be done towards both parties. A domestic worker had access to justice, in the same way that any local would have had and in this case she had the presence of mind to chose the right channel to bring her complaint to. She made a police report after running away from the employer's house and thereafter, sought shelter with the Indonesian Consulate. After 2 years of torture she finally saw light at the end of the tunnel. The other case shows that an employer might not always have a forbearing slave, as they take their domestic helpers to be. The tables might at times turn against them.

The question that comes to light is how Marni was allowed to suffer in silence for two years. Was there no law that called for inspection of domestic workers? How is it possible for Herlina to kill her employer only after 3 months of employment? Did she have a history of violence that was concealed by unscrupulous agents? These questions surface along with many others when it comes to human behaviour. Human must be governed by law, failure of which would lead to lawlessness, unscrupulous behaviour and deception among others. The question is, whether the laws in Malaysia are sufficient and if so, are they adequate.

Having said the above, it is noteworthy that Islamic teachings deplore acts of unkindness to domestic workers. The thing to note is that the Quran and *hadith*, had 14 centuries ago brought human rights to workers. Looking at the abuse faced by domestic workers in the recent times, it is about time one reflects on the Islamic injunctions again.

DISCUSSION ON DOMESTIC MAIDS ABUSE IN ARAB COUNTRIES

As noted above, domestic maid abuse is one of the social illness globally and the crime against the housemaid is increasing daily where human rights has been breached and violated. The crime against domestic maids need legal approach and Islamic law in particular to curtail the maid abuse in Muslim countries. This is because of ill-treatment that confronting maids in many Arabs counties and it is reported that more than three (3) million maids are in living under deplorable condition and subjected to the physical and mental abuse. [9] Domestic maids are working as housemaid in Arab countries due to their financial constraint and to support their family in particular and their countries at large. More than one

million Sri Lankans are working as domestic workers and nearly six hundred thousand are working as domestic maids especially in Saudi Arabia. [10] The Philippines government had requested the Arabs countries to enact a regulation on protection of domestic maids due to ill treatment against Philippines domestic maids. The regulation should contain inter alia, protection of maids dignity, human rights, setting maximum hours of working, guarantying a day off in a week and the monthly minimum wage to \$400. As a result of Philippines government's demand, Arabs countries prefer to employ maids from Indonesia, Sri Lanka in order to continuing in domestic maids exploitation and abuse. [11] The United Nations requested Lebanon government to address the plight confronted by domestic workers in Lebanon because it has been reported that at least one domestic worker dies weekly in Lebanon. [12]

Crime against maids has become global issues due to the high percentage of domestic maid abuse in many nations such as Saudi Arabia, Kuwait, Qatar, Lebanon, Jordan, Emirate and some Muslims countries. Due to the lack of legal provision to protect maid's rights, many maids were brutally abused physically, mentally, sexually, financially, and psychologically. The reported cases show that some domestic maids were abused inside and outside Saudi Arabians. In the case of Humaidan Al-Turki was sentenced to 28 years imprisonment in United States of America for the alleged sexual assault crime against his Indonesian maid and keeping her as virtual slave four year. Al-Turki sentence was later reduced to 8 years after he won in the Appeal court. [13] Similarly, the dead body of an Indonesian maid in person of Kikim Komalasari was recovered in November 11, 2010 on a street known as Abha, Saudi Arabia. Another Indonesian maid was hospitalized after she had been beaten by her employer and the case was confirmed by the Indonesian authority. [14]

Abusing Indonesian maids in Saudi Arabia has urged the Indonesian government to request the Saudi Arabian Embassy to take the specific action in order to stop the heinous crime against the Indonesian maids. [15] Although, there are also some cases where the maids are sentence to jail or sentence to death due to their criminal offences against their employers. Some of the accused maids claimed that the alleged crime was committed as a self-defense to prevent and protect them from their employer's coerced sexual intercourse or rape and other inhuman treatment they are receiving from their employers. This can be seen in the case of Darsem binti Dawud Tawar, an Indonesian maid who faces being beheaded in Saudi Arabia after murdering the employer but she claimed the victim wanted to rape her. [16]

In Kuwait, domestic workers abuse is rampant and common where many were abused sexually, physically, financially, and some were forced to work for long hour without rest. In 2009, 10,000 of domestic workers from Sri Lanka, Indonesia, the Philippines and Ethiopia filed complaints of abuse by their employers with their embassies. The 97 pages of complain were filed by migrant domestic worker through Kuwait's sponsorship system due to exploitation and other sort abuse against domestic worker that included maids. [17]

GENERAL DISCUSSION ON SHARIAH RULING ON DOMESTIC MAIDS EMPLOYMENT

In Islam, everything is clearly explained and stated in the Holy Qur'an on the economic, social, relations, and devotional matters. Islam recognizes individual rights regardless of their gender, race, religion, status, colour, and worldly position. Under Islamic law, there are provisions and regulations guarding the employer and employee in order to protect each other dignity and maintain the term and condition of their contract and agreement. Islam enjoys individual to work and labour for his or her daily meals. The Quranic verses below is in support of individual work or employment with an employer:

It is He who has made the earth subservient to you (easy for you to walk, to live and to do agriculture on it), so walk in the path thereof and eat of His provision. And to Him will be the Resurrection. [18]

"When the prayer is finished, then may ye disperse through the land, and seek of the bounty of Allah and celebrate the praises of Allah often (and without stint) that ye may prosper" [19]

"That man can have nothing but what he strives for" [20]

Prophet Muhammad (s.a.w) worked and employed as employee before his Prophethood as he displayed strong honesty commitment and dedication. For many years he had supervised Khadijat's trade on the basis of fixed shares in the profit. He was a merchant, a trader who knew very well the caravan routes of Arabia and market town from Syria to Yemen. Once while reflecting his early life, Prophet (s.a.w) stated that "No one has been appointed with prophethood and not grazed cattle" The companions asked "And you too, O Prophet of Allah? Yes, replied the prophet (s.a.w), against the wage of one or two qairat, I too have grazed the cattle for the people of Mecca. (Sahih Bukhari). Abu Burdah bin Dinar narrated that the Prophet (s.a.w) said "The best income is from a blessed sale (transaction) and what one earns by his hands (Narrated by Iman Ahmad in his Musnad). Again, on the authority of Abdullah bin Abbas, the Prophet (s.a.w) was reported to have said: "Whoever

spends a night while he is exhausted because of day's labour his (sins) will be forgiven.

It is narrated by Az-Zubair bin Al-'Awwam, the Prophet (s.a.w) said: "It is better for anyone of you to take a rope (and cut) and bring a bundle of wood (from the forest) over his back and sell it and Allah will save his face (from the Hell-Fire) because of that, rather than to ask the people who may give him or not" Sahih al-Bukhari. Prophet Muhammad (s.a.w) further stated that: "Anyone, who provided one with sufficient security that he will not, failing normal circumstances, beg, from people, shall receive from me the promise of paradise".

It can be inferred from the above verses and hadith that human dignity and personality should be protected because the *Shariah* denounce and is against begging. Therefore working is highly recommended and requested from all human being in order to have sufficient income for himself and his family.

RELATIONSHIP BETWEEN EMPLOYER AND MAIDS

The following *hadiths* show and indicate the good relationship and treatment that the employer should be given the domestic maids during the period of their agreement. The employer should treat the domestic maids as human being because working as a domestic maid does not subject her to be victimized or abused. The quotation provides that:

"Those who serve you have been made by Allah subservient to you. It, therefore, behooves that the person who employs a brother should give the latter to eat out of his own food and to clothe him from own wardrobe. And they should not be burden with task beyond their power and if such a burden has been thrown on their shoulders then you should help them."

"Just as you treated those near and dear to you, so should you treated those who are your equals by virtue of being human beings and not beneath you. As your hearts throb, so do theirs. See you not that I freed Zaid bin Harris and married him to the daughter of my paternal aunt; I appointed Bilal as the caller for prayers; since he is our brother. You have been seeing that Anas has been serving me, but I do not look down with scorn upon him. If he does not do any job or fail to do it, I do not ask him why he failed to do this or that."

"You should treat your servants well and should be considerate to them. You should not hurt them, for you should realize that they too have sensitive hearts like you. If hurt, their hearts get sore and grieved, and if you treat them well, their faces glow to pleasure. Why, therefore, should you not be decent and kind with them."

“The Prophet (s.a.w) was also quoted as saying that; “the best among you is the one who treat his servants with kindness and charity. [21]

DOMESTIC MAIDS SHOULD NOT BE OVERBURDENED WITH TASK AND WORK

Many domestic maids are overburden by their employers by giving them too much of task to execute or carry out that leads to inadequate sleep, rest, food, and the withholding of medical care. Some domestic maids were confined in the house for several months or years and even domestic maid’s freedom to pray or worship has been deprived. Overburden of maid against the principle Islamic law and also contravened the hadith of Prophet Muhammad (s.a.w). The above analysis is inline the interpretation of the following quotations. Therefore, the Quran says that:

“Allah does not burden a person beyond his capacity.[22]

“Do not put on them such burden as will overwhelm them. If you burden them with such works, you must assist them. [23]

TRUST BETWEEN THE DOMESTIC MAID AND EMPLOYER

The concept of amanah or trustworthiness implies honesty, responsibility and accountability that both maid and her employer must maintain during the period of their contract and after. These are the basic attitude and approach towards work. Islam has furnished the highest possible standards of morality in relation to the discharging of responsibility and trust. Loyalty of a worker towards his or her duty, although it may not be recognized during his lifetime, it is still being recorded, the record of which will be reaped in the hereafter.

Quran state to the effects that:

“And fulfill (every) covenant. Verily, the covenant will be questioned about” [24]

PROTECTION OF HUMAN DIGNITY UNDER SHARIAH

Muslims must not oppress, humiliate, insult, backbite or look down upon his brother and sister in Islam. Even, non-Muslim maids should not be look down because her faith. Insulting a person with the intention of humiliating and tarnishing good name of the person by utterance, gestures, cursing, backbiting to mention but a few, is totally prohibited under Shariah. In the same vein, calling a person immoral, maliciously accusing another person of criminal is equally prohibited in the interest of human dignity and integrity. The following quotations provides that:

“O you who believe! Let not a group scoff at another group, it may be that the latter are better than the former. Nor let (some) women scoff at other women, it may be that the later are better than the former.

Nor defame one another, nor insult one another by nicknames. How bad is it to insult one’s brother after having faith [i.e to call your Muslim brother (a faithful believers) as: “O sinner”, or “O wicked] And whosoever does not repent, then such are indeed *Zalimun* (wrong-doers etc).

“O you who believe! Avoid much suspicion; not, neither backbite one another. Would one of you like to eat the flesh of his dead brother? You would hate it (so hate backbiting). And fear Allah. Verily, Allah is the one Who forgives and accepts repentance, Most Merciful” [25]

“And fight in the Way of Allah those who fight you, but transgress not the limits. Truly, Allah likes not the transgressors. [26]

“A Muslim is the brother of a Muslim. He neither oppresses him nor humiliates him nor looks down upon him. It is a serious evil for a Muslim that he should look down upon his brother Muslim. All things of a Muslim are inviolable for his brother in faith: his blood, his wealth and his honour.

“Do not harm your fellow Muslims, do not impute evil to them, and do not try to uncover their nakedness. For behold, if anyone tries to uncover the nakedness of his Muslim brother, Allah will uncover his own nakedness.

“Whoever saved the honour of his brother, Allah will save his countenance against the blaze of fire in the day of judgment.” [27]

“Do not annoy the Muslims, nor defame them, and do not expose their nakedness, for one who exposes the nakedness of his Muslim brother, Allah will expose his own nakedness. [28]

An employer owes a duty to preserve workers dignity and honour, in employment and at the time when the contract is ended. Whenever a worker is to be removed from employment, it should be preceded in justifiable manner without unduly inflicting emotional distress. What is certainly clear is that speaking ill of another, insulting with the aim of humiliating, maliciously accusing another with criminality are prohibited in Islam. This are sanctioned by the Divine law. In the last sermon, Prophet Muhammad (s.a.w) reminded the Muslims by stating “Remember one day you will meet Allah and answer your deeds. So, beware do not astray from the bath of righteousness after I am gone.

NEGLECTING FAIR TREATMENT OF DOMESTIC MAID

Domestic maid should not be maltreated or insulted due to her mistake, error, miscarry of employer’s order when discharging the task given to her by the employer. The following quotations encourages treat their employed maids fairly, nicely, and legally.

Prophet (s.a.w.) said: “Be careful about those who depend on you. Treat them mildly. An owner, who mistreats his servant, shall never enter the portals of paradise (Kanzul umma).

One day the Prophet was approached by a companion and asked the Prophet of Allah, how many times should I forgive my servants? The Prophet (SAW) sat quietly and contemplative and the companion put the same question again. He finally replied in a very soft and yet saddened tone: Why are you asking about the number of times? If your servants miscarry your orders or are guilty of grievous wrong seventy times each day, you should forgive them for an equivalent number, for they are your brothers (Tirmizi)

“The Prophet (s.a.w) said “The owners who meet out evil treatment towards their servants shall find the gateway of paradise shut to their faces...

“Anas bin Malik said: employee of Prophet (SAW) reported : I served the messenger of Allah for 10 years, but he did neither tell me “uff, nor why have you done this? Nor why have you not done this. [29]

CRIMINAL LIABILITY IN ISLAMIC LAW

Commission or omission of any unlawful or illegal act for which its punishment has been prescribed in the Quran or *hadith* is known as a crime. Therefore, commission or omission of any forbidden act is punishable under the Islamic criminal law. Every offence is considered as *jinayat* regardless whether it entails imprisonment or fine or severe punishment. [30] Based on that, any offensive act against domestic maid should entail severe punishment or imprisonment or fine on the offender as a deterrent and lesson to others. The Islamic Law has specific conditions and principles that make it different from other legal systems. These differences are specifically highlighted in the discussion on the criminal law provisions over the issue at stake. Hence, the judges in the Islamic courts have the right to pass judgment over the criminal liability of an offense based on the Islamic framework and principles. This framework and principles categorize the crimes in accordance with the punishment prescribed for it.

Hudud as defined is a punishment prescribed by Allah, hence, it is considered part of Allah’s right. This assertion denotes that there are various kinds of punishment and among them are the ones prescribed by Allah and these kind of punishment do not allow for *ijtihad* as it cannot be reduced or increased. The implication of this is that the prescribed punishment by Allah must be executed and implemented accordingly regardless of the status of the offender and as such these kind of punishments cannot be annulled or changed by the authority. [31] Hence, there is no immunity for anyone in such a prescribed punishment as it cannot be reduced or increased

because it is prescribed by Allah. Therefore, if any employer or employer’s family and relative commit heinous crime against their domestic maids, physically or mentally, the prescribed punishment must be effected as a deterrent and lesson to others. It is compulsory on the authority to let the execution of such a punishment takes its effect and failure to carry it out the said punishment amount to commission of sin by the authority. The implementation of *hudud* is important and necessary to maintain peace, security, and stability in the society. The essence of this punishment is to prevent the criminal from committing the same offence in future and it also serve as deterrent to others. [32]

QISAS AND DIYYAH

Literally, qisas is defined as equality and equivalence which means that a criminal who commits or violates the rules and regulation by killing another person should be punished in a way that is similar to his action. [33] As for *diyyah*, it is defined as the basic or substantive punishment for quasi-intentional and inadvertent homicide or infliction of wound. This kind of punishment is based on the injunction of Holy Quran that says:

“It is not for a believer to kill a believer unless (it be) by mistake. He who hath killed a believer by mistake must set free a believing slave and pay the blood-money to the family of the slain, unless they remit it as a charity”. [34]

The message of Allah, Prophet Muhammad (s.a.w.) is reported to have said: “Whoever is killed inadvertently as by flogging or beating with a stick or being hit by stone, his blood-price is a hundred camels.

Based on the above mentioned verse, *diyyah* is legally permitted through the payment of fine or compensation to the victim or victim’s family as social justice. Therefore, *diyyah* or compensation can be applied and implemented on crime against domestic maid regardless of the criminal status in society because justice must be upheld. The other crimes that fall into *Qisas* category are willful murder, willful dismemberment of limbs and willful infliction of injury by mistake. [35]

TYPES OF QISAS

Crimes of Qisas are five namely, murder, voluntary killing, involuntary killing, intentional physical injury or maiming and unintentional physical injury or maiming. The above are clearly mentioned in Holy Quran and *hadith*. These crimes carries the following punishments namely, retaliation are *diyyah* or compensation in accordance with the Quranic and *hadith* injunctions. [36] The prescribed punishment for any of the above mentioned crimes must be

executed and carried out judiciously. So, if domestic maid is murdered by employer or employer's family or relative, the offender must be punished accordingly.

APPLICATION OF *TA'ZEER* PUNISHMENT ON CRIME AGAINST MAID

Ta'zeer means chastisement and it is prescribed for such offences that are not categorized as hudud. It is a kind of punishment which is not prescribed or mentioned in the Quran or Sunnah. The quantity and kind of such a punishment has been left to the discretion of Islamic judge to determine according to the circumstances which may surround the case. It is a kind of punishment that ranges from minor nature such as admonition and warning to a severe punishment like lashes or capital punishment in case it is a murder case. [37]

Ta'zeer as a form of Islamic law punishment is considered as lawful provided that all the rules and regulation guiding are properly take into consideration when determining the punishment of *ta'zeer*. It's legality established through the tradition of Prophet Mohammed (s.a.w). [38] The ideal thing is to allow every creature to enjoy his or her life peacefully and in harmoniously. Otherwise, the rate of crime in society would escalate and society will become lawlessness society where everyone is free to act in accordance with his or her will. [39] Difference between *Ta'zeer* and other punishment

There are differences between *ta'zeer*, hudud, qisas, and diyat punishments and they are as follow: Firstly, it has been previously mentioned that certain punishment cannot be changed or amended by judges or jurists. This is peculiar to the punishment of hudud, qisas, and *diyyah* which have been prescribed by Almighty Allah or the *Sunnah*. Therefore, it is beyond the capacity of the court to amend or change such punishment. Even these punishments cannot be reduced or increased regardless of what may be the status of the offender. Unlike *ta'zeer* punishment which are not prescribed or stated in the Quran or *Hadith* but which can be determined through the discretion of the court not only to the offenders but to others as well. Therefore, as court is empowered to award the minimum or maximum punishment on the basis of the circumstances which may surround the offence and in line with gravity of the offence in the best interest of the society and the individual. [40] It can be applied on the crime committed against domestic maids in order to reduce the percentage of maid abuse globally and in Arab countries in particular.

Secondly, any *hudud* or *qisas* or *diyyah* punishment are irrevocable which mean that the court has no jurisdiction or power to intervene. Rather, it's duty is

to pronounce the appropriate punishment and execute it accordingly. This is contrary to *ta'zeer* punishment where the judge or the person in charge has the authority or power to reduce or increase and even pardon the offender as the case may be in the best interest of the society and community. Therefore, it is unlawful for judges to reduce or pardon the criminal due to his or her social status or personality. There is no room for immunity under Islamic law especially on any crime where its punishment has been prescribed by Almighty Allah. Therefore, the punishment must be meted on the criminal.

Thirdly, in *ta'zeer* punishment, the offence and social status of offender are taken into consideration while social status of the offender of *hudud*, *qisas*, and *diyyah* categorized crimes are of no consequences and has no impact on the punishment. [41]

It can, therefore, be summarily emphasized that jurists could determine crime against domestic maids on the basis of the principle of *ta'zeer* provided that all the rules and regulations are perfectly taken into consideration.

Types of *Ta'zeer*

Under the Islamic law, there are different kinds of *ta'zeer* punishments which may be imposed on an offender as criminal liability in respect of the crime that might have been committed. However, Islamic law does not prohibits any sort of *ta'zeer* provided that the punishment is able to serve the purpose meant for which to rehabilitate the offender and to deter others.

These types of *ta'zeer* are:

First, Capital punishment: This kind of a punishment is not allowed and permitted as *ta'zeer* under the Islamic law because the main objective of *ta'zeer* is to reshape the culprit from further committing or pursue bad conduct and rehabilitate him. Therefore, amputation of limb or death penalty is unlawful and invalid under Islamic law principle in regards to *ta'zeer* punishment. Although, some Islamic jurists permit capital punishment as a form of *ta'zeer* on the argument that if such a penalty would put an end to the horrific situation that confronting the people in the society or nation such as physical injuries or sexual abuse of domestic maid, then, it is well and good. Classical jurists were different on their views on capital punishment as *ta'zeer*. The Hanafites for example uphold the view that it is improper to award death penalty as *ta'zeer*. This opinion is express by Ibn Taimiyyah, Ibn al-Qayyim and some disciples of Imam Malik as well. On the other hand, Imam Malik, Imam Shafi'i and Imam Hambal were of the view that capital punishment can be awarded on a criminal

who may be found guilty of the alleged and accused crime or offence. [42]

In this regard, one can say that capital punishment is admissible in a case of crime against domestic maids because it will serve as deterrent and lesson to others. Therefore, this paper agrees with the opinion which admits the application of death penalty as a form of *ta'zeer* in a situation where employer murdered the maid intentionally and evidences were proved beyond reasonable doubt. It should also be bond in mind that death penalty has been prescribed in the Quran and *Hadith*, therefore, no one has authority to go against any of the prescribed penalty.

Second, Punishment of lashes; This kind of punishment is allowed under the Islamic law as *ta'zeer* with the aim of preventing the habitual offenders from committing any of those crimes. According to Imam Malik, an offender may be scourged with more than a hundred stripes despite the fact that the punishment of lashes prescribed on *hudud* does not exceed hundred stripes. On the other hand, Imam Abu Hanifa and Imam Muhammad held the view that lashes should not more than thirty nine while Imam Abu Yusuf said lashes should not exceed seventy-five. [43] This research therefore suggest that if judges can consider the implementation of lashes as *ta'zeer* against a culprit of maid abuse, then, it would be appropriate.

Third, banishment punishment: This is another form of *ta'zeer* punishment for offences that the minimum period of banishment is one day while others are of the view that maximum of banishment should be between 6 months to one year. On the issue of crime against domestic maid, instead of banishing the criminal, it is rather better to imprison the guilty offender as a deterrent and lesson to others.

Fourth, death by hanging is mainly for the *hadd* punishment while some scholars are of the view that death by hanging can also be considered as *ta'zeer* punishment. To this study, death penalty by hanging is also applicable and implemented on the subject matter if the criminal hanged the domestic maid to death. Then, similar punishment should be met on the criminal in order feel similar paid that he or she inflicted on the deceased.

In addition, admonition and exhortation are also considered as *ta'zeer* under the Islamic law if the court strongly believes that the offender would be rehabilitated by such punishments. Therefore, if admonition and exhortation are found to be suitable as punishment for domestic maid abuse, it can be adopted provided the case is well carefully and firmly studied by the court and judge.

Lastly, on monetary fine is also considered as *ta'zeer* punishment under the Islamic law in a situation

where a more fine is imposed on the offender as a form of criminal liability. So, if the employer commits crime against the domestic maid that requires a monetary fine (compensation) as *ta'zeer* punishment, he or she should be enjoyed to pay imposed fee.

The researcher is therefore of the view that any of the above mentioned *ta'zeer* punishments could be imposed on a person found of to have duly commits crime against maid who is working under employer capacity.

SHARIAH RULINGS ON CRIME AGAINST DOMESTIC MAIDS

Sexual offences

Under the ruling of Islamic law, the married adulterer is liable to the stoning to death while unmarried would be flogged. Stoning the married adulterer will serve as example and strict warning to other married persons who are not adulterer and flogging is to chastise the fornicator and lesson to others. [44] Based on the divine punishment of adultery, sexual crime against domestic maid such as forced intercourse or rape can carry similar punishment against the adulterer. If the adulterer or rapist who raped the domestic maid either with or against her will, the offender would be punished accordance with prescribed punishment. The reason is that, the Quran provides that the adultery which involve any such of crime related to sexual intercourse against the will of the victim or both are consented with the commission of the adultery. On that note, if the employer raped the domestic maid and credible evidences indicate that the accused is guilty of the alleged offence, the offender should be stoned to death if he is or was married or hundred lashed if the offender is unmarried fornicator.

Physical Injury of Maid

In respect of physical injury or inflicting injuries to innocent person like domestic maid, the punishment of such intended crime carries *qisas* as prescribed punishment by Almighty Allah. The basis of the infliction of injuries to the victim can be seen in the following quotation say that:

“And We ordained therein for them: Life for life, eye for eye nose for nose, ear for ear, tooth for tooth, and wound for wounds equal for equal. But if anyone remits the retaliation by way of charity, it shall be for him an expiation. And whosoever does not judge by that which Allah has revealed, such are the zalimun (polytheists and wrong doer.” [45]

It can be inferred and interpret from the above quotation that whoever inflicted permanent or any injury on his/her domestic maid, the offender would

be punishment accordingly or pay *diyah* known as compensation to the victim provided that the victim agreed on payment, otherwise, the punishment must be executed on criminal. The word “whoever does not judge by prescribed” indicates that there is no immunity for any person who committed the punishable crime.

Willful Murder of Maid

Under Shariah, willful murder of an innocent person carries death penalty where the offender would be sentence to capital punishment provided that the evidence level against him/her is beyond the shadow of doubt. [46] Similar punishment shall be applied on the employer who murdered his/her maid intentionally. It has to be bear in mind that nobody is empower to reduce or replace the prescribed punishment for willful murder. It is strongly believed that by executing said punishment against employer who murdered his/her domestic maid willfully will sharply reduces the rate of murder involving domestic maids in the Muslim countries and Arab nations in particular.

Data Analysis on crime against maid: an evaluation of Shariah and Civil Law Punishment

In order to answer the research questions, the researcher developed questionnaire namely crime against maid questionnaire (CAMQ). The instrument divided into four parts, first, respondent's profile (7 items), second, crime against maid (10 items), third, Shariah punishment (15 items), fourth, rights of maid (10 items). The content validity of the questionnaire was conducted by consulting Dr. Mohammed Yusuf. However, his comments played significant impacts towards the improvement and structuring the questionnaire. For instance, the researcher was encourage to change the statement of : “criminal must be punished Islamically”? to “ culprits must be punished legally”. The researcher also encouraged to change the statement of: “ many maids were abused financially and psychologically” to “ many maids were abused financially, as number 8” and “many maids were abused psychologically” as number 9. The distribution of questionnaire covered three selected universities such as Sultan Idris Education University, Perak, International Islamic University, Gombak, and Universiti Kebangsaan Malaysia. Therefore, 100 questionnaires were distributed to the undergraduate and postgraduate student and majority of respondent were from Islamic Law, Islamic Education, and Common Law background. The quantity of distributed questionnaire was varied from university to another and 95 questionnaires were returned back to the enumerator.

Frequency Analysis

Findings of the frequency analysis indicate that the

majority of respective respondents understand the concept and the meaning of maids abuse. The majority of 57.9 % understood maid abuse and its criminal implication. Also, the frequency analysis shows that 49.5% of respondents strongly agreed that maid abuse is a crime and 63.3% agreed that culprits must be punished. The frequency analysis of crime against maid Questionnaire (CAMQ) is a crime and sin. For illustration, majority of participants 54.7% indicated and strongly agreed that employer's family who abused maid must be punished if he or she intentioned committed the crime against the victim while 49.5% of respondents agreed that any maid abuser should be held responsible for hospital bill. On the other hand, 49.5% of respondents agreed that legal punishment can reduces maid abuse globally while 53.7% agreed that maid abuser should not be given privilege due to employer's status but 8.4% disagreed. Similarly, 62.1% agreed that crime against maids is a punishable crime under Shariah while 7.4% disagreed with majority. The majority of respondent of 62.1% agreed that Shariah punishment capable of reducing maid abuse especially in Muslim countries while 12.6% disagreed. It is also discovered from the respondents that 60.0% agreed that punishment for maid abuse must be based on credible evidence and beyond the reasonable doubt but 8.4% disagreed.

Concerning Shariah punishment on crime against maids, 53.7% of respondents agreed that ta'zeer punishment can be implemented against maids abuser based on the nature of abuse but 16.8% disagreed. Shariah, therefore, 54.7% of participants agreed that diyah (compensation) should be imposed on maids abuser if there is call for it while 25.3% disagreed with majority of participants in that regards.

On the other hands, 50.5% agreed that hudud and qisas punishment should apply in any maid abuses as a deterrent to other but 16.8% disagreed that hudud and qisas shall not be implemented. In addition, 58.9% of respondent agreed that Shariah is the best law to approach crime against maid and 8.4% disagreed to the majority. Regarding maid rights, 51.6% of respondents agreed that nobody has right to infringe maid's right while 10.5% disagreed that maid's right can be infringed. Financially, 65.3% agreed that maids wages must be paid as agreed upon and 7.4% disagreed. Similarly, 64.2% agreed that all maid entitlement must be paid to her accordingly and 3.2% disagreed. Concerning to rest, 64.2% agreed that employer must allowed maid to rest and 9.5% disagreed. Finally, 60% strongly agreed that maid who abuses her employer must be punished accordingly, 34.7% agreed while 4.2% disagreed

No of item	Strongly Agreed	Agreed	Strongly Disagreed	None
1	49.5%	48.4%	0%	2.1%
2	41.1%	57.9%	0%	1.1%
3	30.5%	66.3%	2.1%	1.1%
4	54.7%	36.8%	8.4%	0%
5	49.5%	32.6%	11.6%	6.3%
6	42.1%	49.5%	5.3%	3.2%
7	46.3%	49.5%	3.2%	1.1%
8	33.7%	55.8%	8.4%	2.1%
9	34.7%	53.7%	8.4%	3.2%
10	27.4%	60.0%	6.3%	6.3%
11	23.2%	62.1%	7.4%	7.4%
12	17.9%	62.1%	12.6%	7.4%
13	21.1%	60.0%	8.4%	10.5%
14	29.5%	61.1%	3.2%	6.3%
15	21.1%	65.3%	6.3%	7.4%
16	32.6%	58.9%	2.1%	6.3%
17	20.0%	64.2%	10.5%	5.3%
18	12.6%	61.1%	22.1%	4.2%
19	22.1%	54.7%	9.5%	13.7%
20	25.3%	58.9%	6.3%	9.5%
21	22.1%	53.7%	16.8%	7.4%
22	14.7%	54.7%	25.3%	5.3%
23	26.3%	50.5%	0%	16.8%
24	28.4%	58.9%	8.4%	4.2%
25	21.1%	64.2%	9.5%	5.3%
26	17.9%	71.6%	7.4%	3.2%
27	28.4%	51.6%	10.5%	9.5%
28	27.4%	62.1%	7.4%	3.2%
29	9.5%	65.3%	23.2%	2.1%
30	23.2%	53.7%	16.8%	6.3%
31	17.9%	65.3%	7.4%	9.5%
32	22.1%	64.2%	9.5%	4.2%
33	34.7%	57.9%	3.2%	4.2%
34	30.5%	64.2%	3.2%	2.1%
35	60.0%	34.7%	4.2%	1.1%

Notice: 1 = Strongly agreed 2 = Agreed 3 = Disagreed 4 = None

Table 02: Frequency analysis

CONCLUSION

The findings show that many domestic maids were abused in many countries including the Arab world. It is discovered that there is no adequate provisions under common or civil laws to curb the ugly situation that confronting many domestic maids. In Islam, an employer should refrain from making an unjustifiable accusation against the employed domestic maids. The

domestic maid should not be abused sexually, mentally, physically, and psychologically due to the nature of her job. Similarly, failure to treat the employee with an appropriate degree of dignity, thereby causing her undue mental distress, anxiety, humiliation or injury to feeling is prohibited under Islamic law.

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