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Murder Trials in the Maldives from a Therapeutic Lens

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Abstract

Section 92 of the Maldives Penal Code (9/2014) reserves the capital penalty for the most serious homicides, and the law tries to reduce the imposition of capital punishment by rigidifying the procedural requirement. However, the case law demonstrates the opposite effect. This article seeks to advance therapeutic values of procedures and promote less severe punishments in murder cases by utilising knowledge from therapeutic jurisprudence and sharia. To validate the research claim, three randomly selected cases were examined. According to the findings, current court practises in murder cases do not promote therapeutic values or result in less severe punishment.

Keywords: Criminal Procedure; Sharia Law; Therapeutic Jurisprudence; Murder Trial

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1.0 Introduction

According to Article 10 of the Maldives Constitution 2008, the country's legal system is based on Sharia. As a result, the rules prescribed by Sharia are found in her laws. The recognition of the death penalty is one such rule. Despite the recognition of capital punishment, the Maldives' criminal law has safeguards for those subjected to capital punishment. According to Section 92 of the Maldives Penal Code (9/2014), capital punishment is reserved for the most heinous type of homicide. In addition to the procedural advantages afforded to individuals facing criminal prosecution, murder trial suspects benefit from extra cautionary evidentiary safeguards designed to reduce the use of the death penalty. Furthermore, capital punishment can only be imposed if the deceased's legal heirs opt for it (s.42 of the Court Procedure for Administering Punishment 2021/02).

Despite considerable efforts to protect the rights of murder trial suspects, the case law indicates that they fall short of achieving the desired outcome. For example, in 2019, while 5 out of 7 murder cases ended in acquittal, in the other 2 cases the defendants were sentenced to death. In the absence of studies that aims to understand why there is little success in securing forgiveness and consequently securing an alternative to capital punishment, it is difficult to explain the failure. However, it could be assumed that this divergence is due to the country's criminal laws being primarily concerned with establishing guilt and punishment. Another plausible cause could be how Sharia rules are interpreted in the administration of justice. While this is the case, the literature on therapeutic jurisprudence demonstrates its reliability in addressing the issue at hand.

Thus, the aim and objectives of this article are to achieve the following goals;

- (a) identify how knowledge derived from therapeutic jurisprudence and sharia can be used to incorporate therapeutic values into Maldives procedural laws, and
- (b) identify how court processes can be improved to promote a less punitive sentence in murder trials.

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To achieve the research objectives, the following questions are addressed in this article: first, how the concept of healing is conceived in both Sharia and therapeutic jurisprudence; second, how the information obtained from therapeutic jurisprudence and Sharia can be used in murder trials to maximise the therapeutic value of the processes.

2.0 Literature Review

The central concept of therapeutic jurisprudence is to maximise the therapeutic potential of legal norms and processes by designing the law with mental health information in mind. In this sense, therapeutic jurisprudence recognises the impact of the law on emotional and psychological well-being and works to avoid such harm. The method entails conforming the actors' norms and legal responsibilities to the principles of therapeutic jurisprudence (Perlin 2019). It is an interdisciplinary approach to legislative reform that prioritises the elimination of antitherapeutic effects. In this regard, therapeutic jurisprudence is influenced by several disciplines, including psychology, criminology, and behavioural science (Kawalek 2020). This approach seeks to improve the quality of outcomes and satisfaction with the judicial system by humanising the law and processes. Similarly, therapeutic jurisprudence is viewed as a more collaborative approach that places a high value on respect, dignity, explanation, voice, and participation, in addition to a strong emphasis on procedural justice (Kawalek 2020). Thus, the approach seeks to avoid undesirable consequences wherever possible, within the limits of other principles of justice (Perlin 2017).

Due to its therapeutic objective, therapeutic jurisprudence strives to maximise therapeutic benefits by continuously improving the processes for court users. In this respect, the approach offers the maximum benefit of procedural justice and alternative models for punitive sanctions by utilising innovative ideas such as criminal settlement conferences and enhancing collaboration between the courts and its users (Kawalek, 2020; Richardson et al., 2016). In this way, therapeutic jurisprudence has surpassed the typical boundaries of procedural justice through its utilisation of knowledge from interlocutory disciplines (Perlin 2017). Today, therapeutic jurisprudence is practised in many jurisdictions, such as Australia and Canada, to minimise any adverse effect of court processes and promote empathy and well-being for defendants, victims, and other court users (Kawalek, 2020; Richardson et al., 2016).

It is argued that the practical application of therapeutic judging may require a broader understanding of the literature outside of legal academia, conjoined with the judicial capacity to use more empathetic and inclusive approaches. Therapeutic approaches require a participatory type of justice in which all parties are treated with empathy and dignity. As a result, in addition to focusing on bringing about positive behavioural change in the parties, judges who practise therapeutic adjudication must be completely aware of their own emotions. Where possible, judges should initiate direct communication with the disputant, listen to their concerns with respect and empathy, and promote greater recognition (Sourdin & Corners 2016).

That being the case, the traditional court structure is viewed as a challenge to therapeutic judging, as it does not allow the psychoanalytical approach that therapeutic jurisprudence requires. It hinders the opportunity for continuous judicial intervention, monitoring, and responsiveness that therapeutic jurisprudence requires. Traditional settings also do not allow multidisciplinary involvement and collaboration. It creates obstacles to treatment-based case processing (Sourdin & Corners 2016). According to Richardson et al. (2016), the traditional backwards-looking system does not maximise well-being or advance the justice system's role in promoting healthy social development. As part of its commitment to improving the quality of justice, the authors believe that the judicial system should be a promoter of people's well-being. Therapeutic jurisprudence approaches justice through an interdisciplinary lens. Rather than imposing guilt, it promotes problem-solving and views the legislation as a tool for improving physical and psychological well-being. Its primary goal is to improve the quality of the law and legal procedures. It helps to identify court processes that need to be altered to promote the well-being of court users. It identifies methods in which justice actors might perform their roles appropriately to promote the well-being of those who appear before the court.

When therapeutic jurisprudence is compared to Sharia homicide rules, it is revealed that the Quran, Sunnah, and actions of the companions show that Sharia employs several tactics to produce a less punitive outcome, especially in the most serious offences such as homicide. Forgiveness, reconciliation, and abstinence from violence are examples of these. According to the literature, these processes promote healing and forgiveness (Ibn Salamah, 2002; Kamali, 2019, pp.204-206).

As per the idea promoted by therapeutic jurisprudence, three essential aspects are necessary for successful healing. These components are apology, forgiveness, and reconciliation. It is claimed that therapeutic procedures can minimise negative emotions, improve reform, and maximise the therapeutic aspects of legal issues. As such, therapeutic jurisprudence emphasises rehabilitation and character development (Prince Pius 2018). A positive, humane justice system should promote hope, empathy, and rehabilitation of offenders. The system should understand that a crime being a bad experience would result in negative emotions such as anger, fear, and anxiety. Furthermore, the system should emphasise promoting positive feelings and outcomes despite the bad experiences of the past (Persak 2019).

Marilyn Armour and Mark Umbreit describe the dynamics of emotion in disputes, in which they investigated the emotional, cognitive, and behavioural dyadic shift between the victim and the offender that encouraged implicit forgiveness. Their study's data is noteworthy, as it was gathered through in-person interviews. Furthermore, the study concentrated on extremely violent incidents that could trigger strong emotions in victims. According to this research, forgiveness is a process inspired by the exchange of discourse. Forgiveness can only occur if the parties regard each other as moral beings (Armour & Umbreit 2018).

Hourigan (2018) examined the experiences of 30 homicide co-victims in another relevant and insightful study. The focus of her research was to understand the factors that foster forgiveness. The study demonstrated discrepancies between what the victims described as things that foster forgiveness and their life experiences of forgiveness. The study indicated that the main trigger for forgiveness was empathy and understanding. According to this study, the limitations imposed by criminal justice processes hinder reconciliation and forgiveness.

Sometimes, the legal advice the offenders receives is not to give clues about their blameworthiness. This creates an obstacle to constructive dialogue.

Hourigan's study can be compared with Osanloo's (2020) research, which was based on Iran. This study applied Griswold's criteria for forgiveness in the Iranian context. Osanloo's study demonstrates that some form of information exchange is needed in the forgiveness process. Osanloo (2020), like Hourigan (2018), observed that victims could empathise with offenders and seek genuine remorse rather than mere expressions. The study showed that many homicide co-victims chose to forgive the offenders despite the gravity of the offence. In addition, it was seen that the Islamic value of the Iranian people played a crucial role in securing forgiveness.

However, in the Maldives context, despite the heavy reliance on sharia rules, the procedural laws and court case outcomes demonstrate that the provisions are insufficient to promote healing and less punitive sanctions in murder trials. Furthermore, most local studies take a broad approach to criminal procedure law, leaving the impact of therapeutic jurisprudence on criminal procedural law unexplored. (Kamali, (2019) p.333) Thus, this article claims that local practices can incorporate more therapeutic elements to produce less punitive sanctions in murder trials.

3.0 Methodology

This article is based on doctrinal legal research, which is suitable for critically examining rules governing crime, court procedures, and sentences. The doctrinal legal study allows the researcher to study facts using a review of legal materials and draw conclusions about the legal system, laws, or court decisions without relying on field studies. (Pradeep, (2019) The method would assist in interpreting the relationship between legislation and case law. It is beneficial to determine how the legislation should be amended to enhance the therapeutic benefits for the parties in murder cases. The case reviews in this study are also conducted using the content analysis method of research. The research technique allows the researcher to draw valid conclusions from the text and apply them to the contexts in which they are used. (Krippendorff, 2019)

The primary data for this article was collected from the following sources. The court cases were collected from the criminal court website <<http://criminalcourt.gov.mv/>>, the High Court of the Maldives website <<https://highcourt.gov.mv>> and the supreme court of the Maldives website <<https://supremecourt.mv>>. The laws and regulations were retrieved from the official Gazette's website <<https://gazette.gov.mv/>>. As for the court cases, the cases concluded between 2015 and 2019 were selected. Secondary data relevant to therapeutic jurisprudence was gathered primarily through the ScienceDirect portal and Sage Publishing website <<https://us.sagepub.com>>. Sharia law-related data was collected through library research, which includes books and encyclopaedias.

This article used knowledge derived from therapeutic jurisprudence advanced by Wexler and Parlin and Sharia jurisprudence to suggest a method to promote healing and less punitive sanctions in murder trials. Three randomly selected murder cases were analysed to extract the information required to validate the research argument. The thematic analysis of the cases includes Identifying whether the parties were allowed to speak in the process and whether it is through a formal court hearing or a process that promotes dialogue with the victim or offender, then determining whether any party expressed empathy in the process. Finally, the article identifies if there was any statement, remark or ruling by the court that indicates that the courts promote the therapeutic values of voice, participation, healing and empathy. The recurring themes were then coded based on the objectives and research questions.

Pertinent provisions from the Penal Code, the Criminal Procedure Code, and the Court Procedure for Administering punishment were studied to discover processes that could be improved to enhance the healing impact on the parties in murder cases. Subsequently, the information drawn from the case law and legislative provisions was analysed by deploying the research on therapeutic jurisprudence advanced by Wexler and Sharia jurisprudence on homicide. The proposed approach may assist in identifying legal gaps in the law that may be impeding the therapeutic value of the processes.

However, the scope of the data is a significant limitation of this article. Apart from that, the case reports do not include affidavits and complete statements of the parties that might have enriched the author's understanding of the situation. Also, as the cases were not transcribed in English, the co-authors relied on translations created for this article. To supplement the limited data the authors used empirical data produced by other researchers who studied the effect of the therapeutic approaches in different localities.

4.0 Findings

In the Maldives, homicide crimes are defined in Sections 110 to 113 of the Penal Code (9/2014), and Section 1002 of the same act provides the sentencing guidelines. According to the Maldives Penal Code (9/2014), Section 92, capital punishment is reserved for the most egregious forms of killing. However, according to Section 42 of the Court Procedure on Administering Punishment (2021/02), capital punishment can only be imposed if the legal heirs of the deceased choose retribution. According to the procedure, the view of the legal heirs is taken in a formal court hearing. However, no judicial process allows communication between the offender and the victim to foster forgiveness. In addition to that, according to the Criminal Procedure Code (12/2016), Section 66 (b) (7), in murder cases, suspects can be prohibited from contacting witnesses, including victims.

Data for this article is extracted from the following murder cases. The dynamics of these cases helped to understand the therapeutic value of the established processes. For example, in the case of Nabeel, the deceased's behaviour toward the defendant's sister appears to have sparked the attack. In Humaam's case, according to his testimony, he was exploited during the commission of the crime. In addition, Aafiya's traumatic past has affected her ability to form a good relationship with her child.

4.1 Prosecutor General v Hussain Humaam (2016/SC-JC/06)

In this case, Humaam was charged with premeditated murder by attacking the deceased with a knife. At the first hearing, the trial court informed the defendant of the charge, which he denied. He also requested a state-funded attorney. However, at the second hearing, he appeared without his counsel and informed the court that he did not want a state-appointed attorney. He further requested more time to obtain a lawyer, which he was granted. At the third hearing, Humaam appeared again without a defence counsel and informed the court that he wished to proceed without a defence counsel. At that hearing, he told the court that the police had threatened him during questioning, saying they had DNA evidence pointing to his guilt; thus, he confessed to the crime at the remand hearing, but he knew nothing about it. At the fourth hearing, the state presented evidence against Humaam. Despite the court's repeated inquiries, he insisted he wanted to proceed without a lawyer. He also informed the court that his statements to the police and at the remand hearing were factual. The court then repeatedly asked whether he admitted guilt, to which he replied in the affirmative. He stated that he had initially denied the allegations because he feared that speaking the truth would endanger his family. He also asked that he be spared from execution. Despite that, he withdrew his confession at the fifth hearing. Therefore, he was allowed to cross-examine the witnesses. At subsequent hearings, more evidence was presented against Humaam, and he was allowed to cross-examine the witnesses. However, at the ninth hearing, the defence counsel chose not to cross-examine the witness. On that day, the court advised that the summary would be presented in the next hearing.

The Court of Appeals noted several significant issues in the case. First, Humaam's initial testimony indicated that the motive for the crime was money. He also shared that someone else had planned the murder and explained how those who planned and financed the crime cooperated with him. He was remorseful that the deceased died and expressed his desire to seek forgiveness from the bereaved family. In this case, the appellate court noted that the trial court did not rely solely on his testimony to determine guilt. There was other evidence that corroborated the substance of his statements. Even when he pleaded guilty during the trial, he was repeatedly asked if he was pleading guilty. At that point, however, he did not indicate that he was under duress. At that point, he was only concerned with mitigating the sentence.

Moreover, the Court of Appeal noted that to withdraw a judicial confession, one must provide an adequate justification. In this regard, the High Court highlighted that Humaam's reason for the confession withdrawal was that he was on remand and was frequently interrogated, which is common in severe crimes such as murder. Consequently, he could not credibly show that he was under duress. Furthermore, the Court of Appeal noted that the judge should exercise extreme caution when allowing to withdraw a confession in situations involving an aggrieved victim. The court also highlighted that a police officer had stopped Humaam for a random query on the night of the crime. The officer observed that Humaam was frightened and that Humaam mentioned that he had heard the deceased being attacked. In addition, the officer discovered several text messages on Humaam's phone demanding payment of monetary debts. In addition, a DNA test revealed that the defendant's clothing contained the deceased's DNA. However, the defendant could not explain why and how the deceased's DNA was discovered on his clothing.

Moreover, it was only after the confession and the conclusion of the hearings that Humaam produced some names to support his alibi. He had previously failed to present evidence in his defence despite numerous instructions. Moreover, the High Court noted that a judicial confession constitutes a waiver of legal protections. Furthermore, the Court of Appeal determined that even though the court permitted him to present an alibi defence, it would not make a material difference because other evidence pointed to his involvement and guilt. Therefore, it was up to the victim to forgive or retaliate against the perpetrator. Nonetheless, the death penalty is the legal punishment for murder. In this case, the rightful heirs of the deceased testified in court and asked for retribution.

For the same reasons, the case was also upheld by the Supreme Court.

4.2 Prosecutor General v Aafiya Mohamed (386/Cr-C/2015)

Aafiya was accused of killing her son by suffocation. Initially, Aafiya pleaded guilty and stated that she wished to proceed without her counsel, although a state-appointed attorney was present at the hearing. However, at the subsequent hearing, she stated that she did not intentionally kill the boy, although she pleaded guilty. Her attorney objected to the admission of her plea, saying that she pleaded guilty under duress. According to her lawyer, some people threatened her in the remand centre. However, the objection was not sustained due to the lack of reasonable evidence. In the following hearings, she repeated that she wanted to proceed without a lawyer despite the constant direction to assign a defence lawyer. She was also permitted to present a psychiatric report from an expert witness.

According to the expert report, the reason for her hostility towards the boy was that the child was born out of wedlock by her stepfather. She had a complicated past with her mother and stepfather, who abused her and forced her into prostitution. In addition, stigma and society's reaction made it difficult for her to have a healthy relationship with the child. She neglected the child so much that she sometimes left him without cleaning or feeding him. She had even beaten him on several occasions. However, she stated that she deserved the punishment for killing her child and regretted the act. Her psychiatric report suggested that she struggled with anger management and exhibited deviant behaviour.

The court was mindful of Afiyas' traumatic history and the unavailability of help for her problems in this case. Nevertheless, the judge noted that being a victim of unfair treatment is not a justification for being cruel to others. Others deserve to be protected as well. In sentencing, the trial court noted that in Aafiya's case, no death penalty could be imposed under Shariah rules because the deceased was her son. Therefore, an alternative sentence was imposed. The court found that the crime was committed against a child to whom the offender owed a fiduciary duty and that it was extraordinarily more than the minimum harm recognised by law (s.1102 of the Penal Code (9/2014)). In addition, the offence was committed in a manner that showed great cruelty and disregard for human dignity (s.1103 of the Penal Code (9/2014)). Therefore, the initial sentence was increased by four levels, and she was sentenced to 20 years imprisonment.

4.3 Prosecutor General v Mohamed Nabeel (2016/SC-JC/08)

In this case, Nabeel, the defendant, attacked a man and threw a cutter at him, which penetrated his body and damaged his lungs, resulting in the deceased's death. During the trial, Nabeel pleaded not guilty. However, he confessed to "a part" of the attack. The evidence presented against Nabeel included his sister's statements, the statement of her sister's friend who was present during the incident, statements of his accomplices, the medical records of the deceased, and video recordings of the police investigation. Except for the defendant's sister, all the testimonies were taken through video conference. According to the testimonies, the assault occurred because the deceased had harassed the defendant's sister on several occasions. When Nabeel's sister told him about the harassment, he decided to confront the deceased with the help of some of his friends. When Nabeel and the accomplices confronted the deceased and assaulted him, the victim tried to escape by running. Amidst that, one of the perpetrators hurled a cutter at the deceased, which pierced his torso from behind. Three witnesses recognised the person as one of the assailants, while the defendant's sister identified him as her brother (i.e. the defendant) in her police statement. Due to the deceased's terrible condition, he was treated in the intensive care unit, and emergency surgery was performed. The deceased died while being treated for his injuries.

At trial, the defendant was permitted to cross-examine witnesses. However, the defence chose not to question the witnesses. During the trial of this case, the defendant raised several concerns. First, Nabeel claimed that the police statements were obtained through coercion. According to Nabeel, the police conduct was contrary to procedural rules and guidelines, and the defendants were deprived of their legal rights and protections. However, the court found that the video recordings proved that the police conduct was in accordance with the applicable rules.

Moreover, while Nabeel admitted to "part" of the assault, in his subsequent statement, he denied this allegation entirely. The court stated that it is not permissible to withdraw a judicial confession when there is an aggrieved victim. Moreover, the court observed that it is unlikely that a sister would fabricate evidence to incriminate her sibling in such a critical situation. Likewise, the court noted that no one would make a self-incriminating statement in a serious crime, such as murder. Concerning the defendant's rights, the court observed that the defendant had consented to be interrogated without counsel, as evidenced by police documents. As a result, the issue of coercion and police misconduct was dismissed.

Concerning the admissibility of the police statements, the judge found that their contents corroborated the witness statements. Although the defendant's police statement was not admissible as a confession, it was considered relevant evidence. Moreover, the telephone records of the defendant and his friends showed that they had many telephone conversations during the assault. The court observed that the evidence suggested that the defendant intended the assault. Also, the deceased's death was due to the assault. The victim's legal heirs were then given the choice of retaliating, forgiving, or accepting blood money. In this case, the heirs of the deceased sought retribution. As a result, the court sentenced the defendant to death.

On appeal, the defendant argued that none of the testimony at trial proved that the defendant threw the blade that caused the deceased's death. Only the defendant's and his sister's police statements established that the defendant threw the object at the victim. Thus, his guilt was determined based on weak evidence that violated the Shariah standard of proof in murder trials. Furthermore, it was argued that there were additional defendants in the case whose cases were still pending at that time, and one of the suspects admitted to stabbing the deceased three times. In addition, the defendant claimed that the death could have been caused by medical malpractice, which was not tested.

Furthermore, the court had not received DNA evidence linking the defendant to the murder. Moreover, some issues required expert testimony, which was not obtained during the trial. As a result, the Shariah criteria were not used to determine the elements of the crime. Nevertheless, the Court of Appeal found no violation of law or procedure in this case and affirmed the trial court's judgement. Subsequently, the Supreme Court also upheld the High Court's verdict.

The findings of the cases show that in the Maldives, in murder cases, both the victim and offender are allowed to address the court through a formal proceeding. However, there was no opportunity for horizontal dialogue that allowed victims and offenders to communicate directly. In two cases, the victims were asked if they wanted to forgive the offender or seek retribution, and the victims sought capital punishment. In one case, the law prohibited seeking retribution. In three cases, offenders were allowed to present their defence in court. In two cases, the defendants wanted to proceed without their lawyers. In three cases, the defendants stated that they were forced to admit guilt at the investigation stage. In two cases, there was a request to retract the confession. At some point, the defendants in two of the cases appeared remorseful. In two cases, the court issued an empathic ruling to the victim. Finally, in none of the cases, the defendants succeeded in mitigating their punishment.

The analysis of the cases reveals that Maldives's legislations provide the victim of homicide the opportunity to inform the court of the preferred method of punishment, and, in the selected cases, the victims preferred retribution. Surprisingly, the data also indicate that the defendants in these cases lacked trust in their defence attorneys. Nonetheless, it is difficult to conclude why communication barriers could exist between an attorney and the client. Moreover, the selected court cases reveal that court interactions are subject to strict formalities that offer little or no therapeutic benefit promoted by therapeutic jurisprudence. There is very little room for participation and dialogue between the parties in the current setup, and the trials are designed only to weigh the evidence and establish guilt.

5.0 Discussion

The proceeding cases were analysed to identify whether the current court practices in murder cases promote empathy, participation, and voice as advanced by therapeutic jurisprudence and whether the current practices can promote a less punitive sanction in such cases. The following issues were identified through the analysis:

5.1 Participation and voice:

Firstly, the current court procedures and practices are adversarial in nature. As a result, the courts do not allow dialogue between the parties. For instance, in the case of Humaam, he expressed his wish to seek forgiveness and repent, which could have even helped mitigate the sentence. However, as the court procedures do not allow such interaction, he was not permitted to do so. Furthermore, it should be noted that there is a formal prohibition on the offender from contacting victims and witnesses in homicide cases. Although there is no opportunity for dialogue, the court cases show that the court's decision in murder trials rests on the choice of the victim's heirs. In both Humaam and Nabeel's trials, the heirs opted for retribution, which the court upheld. In the absence of an opportunity to express concerns and actively participate, there is very little room for the offender to express remorse or for the victim to understand the circumstances that led to the crime. For instance, in Nabeel's statement, he informed the court how the assault was triggered. If there was an opportunity for dialogue, it might have helped the victims understand that the deceased was partially responsible for what happened and possibly drop the capital punishment, even though complete forgiveness might not have been possible. Most importantly, considering the position of sharia law within the legal system, it is worth incorporating the mechanisms available within sharia, such as reconciliation, to facilitate forgiveness and a less punitive resolution to the crime. (Kamali 2019; Ibn Salamah's 2002)

5.2 Empathy:

Secondly, the cases suggest the empathic attitude of courts towards the victims and how the processes reflect the same characteristic. When a victim has been harmed, courts are extra cautious about accepting a confession retrieval. At the same time, the law requires interpreting criminal law to serve the defendant's best interests. That being so, establishing empathy between the victim and offender is challenged by the existing procedures. In the selected cases, although victims were allowed to forgive or seek retribution, the victims demonstrated no understanding or empathy towards the offender. This contrasting finding can be compared with Hourigan's (2018) study which indicates the importance of witnessing genuine remorse in the offender for the victims. The study demonstrated that such experience could help the victim to overcome negative emotions, trigger empathy and foster forgiveness. However, the fact that none of the defendants could reduce their sentences demonstrates a lack of empathic encounters. Lack of dialogue between the offender and victim could be one reason for such an attitude. The data seems to support Osanloo's (2020) and Hourigan's (2018) claim that some form of information sharing is necessary to prompt empathy and forgiveness and possibly bring a less punitive solution to the crime.

Although not directly related to court processes, the most striking revelation of the current study is the nature of the defendant and attorney relationship. This aspect could be further explored in future studies. Data from the selected cases indicate that defendants and counsel experienced communication problems. For instance, in the case of Aafiya, she was reluctant to seek the attorney's assistance. She further gave self-contradictory statements to the court. Likewise, in the other two cases, the defendants seemed uncertain about their choice of counsel. Devoid of the required understanding and trust, the defendant took undesirable steps in these cases. In the case of Afiya, the court increased her sentence due to her contradictory statements, despite sympathising with her for her complicated past. In the other two cases, the defendants proceeded without the assistance of their legal representative and waived crucial legal rights for their defence. In the case of Nabeel, for example, he did not seize the opportunity to cross-examine the witnesses and present a convincing defence case. Therefore, it is critical to identify the causes of the suspects' and defence counsels' lack of understanding and trust.

The findings confirmed the position advanced by Richardson et al. (2016) that the controlled court processes might not be conducive to therapeutic judging. This article demonstrated that the current proceedings do not systematically foster forgiveness and dialogue. As a result, it is reasonable to argue that there is a need to improve current court procedures in murder cases and to implement mechanisms that would facilitate forgiveness and healing for both the offender and the victim. These mechanisms can increase the offender's sense of accountability while addressing the justice and healing needs of the victim. Furthermore, it can identify areas of intervention that can help to bring a more long-lasting solution to the crime. To do so, the author proposes the literature of therapeutic jurisprudence and Sharia to achieve the desired outcome for both the victim and the offender. The knowledge would assist in modelling the law to promote the therapeutic benefit for the parties.

6.0 Conclusion & Recommendations

This article provides insight into how the procedural laws in the Maldives can be designed to maximise the therapeutic benefits for the parties involved in a murder trial. It reveals that current practices do not foster understanding and empathy as promoted by therapeutic jurisprudence. Furthermore, the article unravels that the current procedures do not advance voice and participation either. However, the idea promoted by therapeutic jurisprudence is in line with Sharia's concept of healing and forgiveness. Therefore, the literature on therapeutic jurisprudence can be used to enhance the benefits of methods encouraged by Sharia in murder cases.

The author also acknowledges that the scope of the data is a significant limitation of this article. Furthermore, the case reports do not include affidavits and complete statements of the parties that might have enriched the author's understanding of the situation. Additionally, as the cases were not transcribed in English, the co-authors relied on translations created for this article. The author believes that carrying out a similar study using extensive data would strengthen the proposition made in this article. Furthermore, empirical research could shed further light on the attitudinal aspect of the parties towards the idea of healing and inclusion in the justice process.

At the same time, this article is significant for the Maldives because, to the best of the authors' knowledge, the therapeutic value of the Maldives' court processes in murder trials has not been examined previously. Thus, this article contributes to the body of knowledge by demonstrating that the current court processes can be enhanced by incorporating sharia-based approaches and therapeutic values. To make a convincing case and counteract the limited data size, the authors used empirical data produced by other researchers who studied the effect of the therapeutic approaches in different localities.

In summary, the current article reveals that although the Maldives homicide laws are based on sharia, the Maldives court practices

and processes in murder cases do not promote healing and forgiveness. However, if the court processes promote therapeutic values, it could promote healing and less punitive outcomes.

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Paper Contribution to Related Field of Study

This paper contributes to the body of knowledge about therapeutic jurisprudence, procedural justice and court practices.

References

Armour, M & Umbreit, M. (2018) *Violence Restorative Justice and Forgiveness*. Jessica Kingsley Publishers

Court Procedure on Administering Punishment (2021/02) (mdv)

Hourigan, K. L., (2018). Forgiving the Unforgivable: An Exploration of Contradictions between Forgiveness related Feeling Rules and Lived Experience of Forgiveness of Extreme Harm. *Humanity & Society*, xxx. <https://doi.org/10.1177/0160597618801049>

Ibn Salamah, A. (2002). *Athar Al-Sulh Ft Qat'i Al-Khusūmāt Al-Jinā'iyat* [Masters dissertation, Naif Arab Academy for Security Sciences] Naif Arab University for Security Sciences research repository. <https://repository.nauss.edu.sa/handle/123456789/51852>

Imiera, Prince Pius. (2018). Therapeutic jurisprudence and restorative justice: healing crime victims, restoring the offenders. *De Jure Law Journal*, 51(1), 82-101. <https://dx.doi.org/10.17159/2225-7160/2018/v51n1a6>

Kamali, Mohammad Hashim, (2019) *Crime and Punishment in Islamic Law: A Fresh Interpretation*, Oxford Academic.

Kamali, Mohammad Hashim, (2019) 'Shariah Punishments in the Islamic Republics of Mauritania and Maldives, and Islamic State of Yemen', *Crime and Punishment in Islamic Law: A Fresh Interpretation*, Oxford Academic.

Kawalek, A. (2020). A tool for measuring therapeutic jurisprudence values during empirical research. *International Journal of Law and Psychiatry*, 71, 101581. <https://doi.org/10.1016/j.ijlp.2020.101581>

Krippendorff, K. (2019). *Content analysis*. SAGE Publications, <https://dx.doi.org/10.4135/9781071878781>

Osanloo, A. (2020). *Forgiveness Work: Mercy, Law, and Victim's Rights in Iran*. Princeton University Press

Perlin, M. L., (2017). "Have You Seen Dignity?": The Story of the Development of Therapeutic Jurisprudence. *New Zealand Universities Law Review*, 27, 1135

Perlin, M. L., (2019). "Changing of the Guards": David Wexler, Therapeutic jurisprudence, and the transformation of legal scholarship. *International Journal of Law and Psychiatry*, 63. <https://doi.org/10.1016/j.ijlp.2018.07.001>

Persak, N., (2019). Beyond Public Punitiveness: The role of Emotions in Criminal Law. *International Journal of Law, Crime and Justice*, 57. DOI: <https://doi.org/10.1016/j.ijlcj.2019.02.001>

Pradeep, M. D. (2019). Legal Research- Descriptive Analysis on Doctrinal Methodology. *International Journal of Management, Technology, and Social Sciences (IJMSTS)*, 4(2), 95-103. DOI: <http://doi.org/10.5281/zenodo.3564954>.

Prosecutor General v Aafiya Mohamed (386/Cr-C/2015)

Prosecutor General v Hussain Humaam (2016/SC-JC/06)

Prosecutor General v Mohamed Nabeel (2016/SC-JC/08)

Richardson, E et al., (2016) The International Framework for Court Excellence and Therapeutic Jurisprudence: Creating Excellent Courts and Enhancing Well-being. *Journal of Judicial Administration* 25(3), 148

Sourdin, T & Comes, R, (2016). Implications for therapeutic judging (TJ) of a psychoanalytical approach to the judicial role: Reflections on Robert Burt's contribution. *International Journal of Law and Psychiatry*, xxx. <http://dx.doi.org/10.1016/j.ijlp.2016.06.010>

The Criminal Procedure Code of the Maldives (12/2016) (mdv)

The Penal Code of the Maldives (9/2014) (mdv)