# Formal Defects of Administrative Resolutions

Dr. Ayyoub bin Mansour Al-Jarboo'

## *Abstract*

In order to carry out its activities in a proper manner, the administrative authority uses different types of means, most important of which are administrative resolutions and contracts. Administrative resolutions are the most important features of the powers of public authority given to the administrative authority by the power of the public law. This is the favourite means used to carry out various functions and activities as the administrative authority is the only one having the right to take such resolutions without the need to obtain the consent of acceptance of the parties concerned. As described, administrative resolutions differ from administrative contracts since the latter occur as a result of the agreement of two parties to give the effect dictated by the law.

This paper focuses on the defect that affect the form and procedure of the administrative resolution as both of them have importance in the good progress of administrative work. They also realize public and private interests at the same time. The form and procedure of the administrative resolution make the administration take care before issuing the administrative resolution. It should complete the form or procedure required by the law. Issuing of administrative resolutions in the form required by the law often leads to proper implementation. The rules of form give the administrative a reasonable opportunity for deliberation in order that wrong resolutions may be avoided.

However, excessive formalities and procedures preceding the issue of the administrative resolution may hamper or slow administrative work. The Board of Grievances stresses the double interest of the form and procedure pillars of the administrative resolution in several judgments. One such judgment states, "It is not sufficient for the administration to comply with the limits of jurisdiction, realization of interests and acting within the authority given to it to pass its resolutions and to judge them as sound, rather it should also issue resolutions in accordance with the procedures specified by the Regulator aiming at realizing the public interest and maintaining rights. The rules of form and procedure are laid down with a view to protecting the public interest and the personal interest alike. Any violation of such interests calls for the invalidation of resolutions on the part of individuals. Taking these formal conditions of the administrative resolution into consideration is not less important than taking objective terms of the law into account in any case whatsoever because the administrative resolution is characterized by the power of the subject of the resolution and associated proof of soundness. Therefore, issuing it is considered valid and complying with the law within the limits of the public interest unless it is proved otherwise. Any administration should place itself in the best condition to issue resolutions based on its authorities."

# Values and their Relation with Criminal Policies

## Dr. Jalaaludin Muhammad Saalih

## *Abstract*

Every society has its own values that stem from its cultural privacies to guide its members in their lives and drive its cultural and material advancement and stability.

Legislation is one of the features of these values; every nation formulates its laws as dictated by its values in order to reflect its subjectivity and highlights its special qualities among nations.

Divine revelation is the only source of the values of the Muslim Nation and the source for the formulation of its laws.

Nations leave no effect on human civilization when they drift from their values. This is the very cultural backwardness that results in the death of any nation.

Criminal policies, as part of the legislation that draws for people what they should or should not do should have close relations to the values that a society cherishes. Prohibition, criminalization, punishment and other aspects of law depend on these values in order to protect necessities of life.

Religion, be it pure or distorted, has its effect on legislation in general. However, the time religion was put aside as a source of legislation and the time secular policies have been give control of legislation, the whole world, including our Muslim world, limited itself to secular laws or what is currently called "secular criminal policies".

This paper discusses the special aspects of each criminal policy and the values that affect it. The difference between each policy and the other results from the difference of cultural roots and civilizational principles. It is very hard to have a criminal policy without the effects of values.

The Islamic criminal policy, contrary to other policies, is affected by values drawing on revelation (Qur'an and Sunnah). Therefore, it is unique in criminalizing human acts, unique in the prevention of crime and unique in the punishment applied against such crimes.

Secular criminal policies, on the other hand, take secular values as guide without necessarily neglecting religious values.

While secular criminal policies do not rely on ethical values in formulating legal rules, Islamic criminal policies give ethical values much importance in the formulation of legal rules. Therefore, the scope of criminalization in the Islamic criminal policies is much wider than it is in the secular criminal policies.

Requirements of human dignity in the Islamic criminal policy values criminalize anything that may corrupt religion, reason, honour, property or life.

Freedom is also subject to criminal accountability if it adversely affects religion, defames honour, uses property unlawfully or kills innocent lives.

# Compensation for Delay of Repayment of Debts

**Dr. Saad bin Abdul Azeez Al-Shiwairikh**

## *Abstract*

One of the major problems that banking business and Islamic investment encounter is outstanding debts. This is not only limited to companies but extends to affect countries. Islamic banks are adversely affected by this problem because their tools in the investment of funds include *muraabahah* contracts which result in debts from clients. If these debts are delayed beyond the specified date, the bank will lose returns on investment.

Debts form more than 90% of the assets of Islamic banks. Any delay in the repayment of debts has great adverse effect on them. Therefore, authorities of banks stipulate compensation for any delay in the repayment of debts. The number of Islamic banks that stipulate compensation was 12 in 1999. This number is increasing. This made several banks stipulate strict conditions on funding and hence limited their clientele.

This study concludes the following:

1. Debt is general and special.
2. Reasons of delay of repayment of debts may include bankruptcy, insolvency or procrastination.
3. The creditor may not take from the debtor any amount more than the principal debt if repayment is delayed, whether the debtor is insolvent or financially capable.
4. The creditor may not stipulate any addition to the principal debt if the debtor delays repayment to spend in charities.
5. The creditor may stipulate that the debtor should assume the expenses of any legal procedures taken against him before courts provided that the debtor is financially capable to repay the debt, he is procrastinating repayment of the debt which forced the creditor to claim against him and the amount lost by the creditor as a result of procrastination relates to the claim.
6. The creditor may not stipulate maturation of installments if he delays repayment of an installment if the debt is a price for sale and a term is given to repay it but he can do so if the debt is a loan.
7. The creditor may not stipulate that the debtor should lend him, if he delays repayment, an amount equal to that of the debt and for a similar period whether the debt is a price for sale or a loan.

# Woman's Permission to Give her in Marriage

**Dr. Abdur-Raheem Al-Sayyid Haashim**

## *Abstract*

Islam has given women a high position and all their material and moral rights in their relation with their Lord and people as commensurate with their nature and disposition. One of these rights is the permission she must give to the one who is going to give her hand in marriage.

However, two excessive positions have always prevailed within the ranks of Muslims with regard to the right of women to give themselves in marriage and the permission they must give to the one who gives them in marriage. Some jurists give the woman all the rights related to giving her in marriage but some others give her father or guardian all the rights and leave no room for her to choose her husband.

This paper sheds some light on how Islam has dignified women by giving her the right to ask their permission and to finalize their marriage contracts.

1. The permission obtained from a woman is to inform her parent or guardian that she accepts her betrothing person as a husband.
2. Islam has given women the right to give herself in marriage whether they are of legal age or underage or insane.
3. Islam does not give women the right to conclude her marriage contract, to act as a witness or attorney in marriage as all jurists agree.
4. Islamic jurisprudence gives consideration to differences among jurists in matters of reasoning based on strong evidence. Some of them are of the opinion that a marriage contract concluded by the woman herself is invalid.

# Rulings on Real Estate Grant Orders

**Dr. Ibraheem bin Naasir Al-Hamood**

## *Abstract*

The present paper discusses the rulings on the sale of real estate grant orders which is prohibited by many of our scholars because these orders are uncertain.

The form of uncertainty is realized when a person purchases a grant order in Riyadh for an amount of SR. 20,000 without knowing anything about its location and the time which have a great effect on the price of the piece of land. If the real estate is located at a good place, the price will be high which is a deception to the seller and if it is located at a bad place, the price will be low which is a deception of the purchaser.

Therefore, it is not permissible to sell something unknown because it involves some uncertainty and eventually deception to both parties or one of them.

Moreover, this type of transactions is not permissible because it is selling something not in the seller's possession. The grand order contains a piece of land which does not exist in reality. Therefore, deception and fraud in such type of sales is clear.

Many jurists are of the opinion that selling a non-existing thing as part of the forbidden sales.

This type of transactions involves something that the seller may not be able to deliver. Some jurists stipulate that sales should provide for delivery. Moreover, the commodity is of unknown price at the time of sale because it cannot be described in a manner that makes it known to the purchaser even though the area is known.

In summary, it is not permissible to sell or buy grant orders prior to actualization because this type of sales lacks a condition that renders the sale contract invalid; namely that the object of sale should be known to both parties of the contract. Lack of knowledge of the object of sale results in uncertainty. Prior to actualization of grant orders, the location, borders or streets where the piece of land is located is unknown. The location has a major effect on the price and required acceptance and consent between the two parties does not permit such type of transaction.