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The Islamic Penal Code and *Sharīʿah* Law: Clarifying Misconceptions Through Classical and Contemporary Perspectives

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Abstract: This paper critically addresses widespread misconceptions among students of Islamic law regarding the Islamic penal code and its relationship with Sharīʿah. By systematically answering seven interrelated questions, the study clarifies whether the penal code contradicts, supplements, or forms an integral part of Islamic law. Beginning with the classical structure of Islamic criminal law—*ḥudūd*, *qiṣāṣ*, and *taʿzīr*—the paper examines Qur'ānic and Hadīth foundations, juristic consensus, and views of leading classical scholars including Imām Mālik, al-Shāfiʿī, Aḥmad ibn Ḥanbal, Ibn Taymiyyah, and Ibn al-Qayyim. It then transitions to the historical codification of Islamic penal law in modern Muslim states such as Saudi Arabia, Northern Nigeria, and Pakistan, analyzing their legal adaptations and inherent challenges. The study also offers a comparative reflection on the objectives of Islamic criminal justice vis-à-vis modern penal systems. Ultimately, the paper contends that the Islamic penal code is not a rival to Sharīʿah, but a vital component of its moral and legal architecture, aiming to uphold justice, deter harm, and protect societal values.

Keywords: Islamic Penal Code, Sharīʿah, ḥudūd, qiṣāṣ, taʿzīr, codification, modern criminal justice, comparative law, fiqh, maqāṣid al-sharīʿah.

Review Paper

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INTRODUCTION

One of the enduring misconceptions surrounding the Islamic Penal Code is the belief that it either contradicts the essence of Sharīʿah or competes with it as an extraneous legal model. This confusion is often fueled by modern legal pluralism, where secular and Islamic legal orders exist side by side, and by politicized implementations in contemporary Muslim-majority states. For undergraduate students of Islamic law, it is crucial to understand that the penal code (al-qānūn al-jinā'ī al-Islāmī) is not only derived from the primary sources of Islamic law but also deeply integrated within the objectives of Sharīʿah (maqāṣid al-sharīʿah). This paper aims to address the questions by exploring foundational texts, classical jurisprudential opinions, and historical as well as modern practices of codification.

The Penal Code Within the Framework of Sharīʿah The Islamic Penal Code is not external to Sharīʿah—it is an inseparable part of it. Sharīʿah is the totality of divine guidance revealed through the Qur'an and the Sunnah and elaborated by juristic reasoning (ijtihād). The penal code forms the criminal law branch of this broader legal and moral framework.

As Imam al-Qarāfī (d. 684 AH) notes:

"الشريعة كلها عدل ورحمة ومصالح وحكمة، فكل مسألة خرجت من العدل إلى الجور، ومن الرحمة إلى ضدها، ومن المصلحة إلى المفسدة، فليست من الشريعة وإن أدخلت فيها بالتأويل".

"The Sharīʿah is entirely justice, mercy, benefit, and wisdom. Any matter that departs from justice to oppression, from mercy to cruelty, from benefit to harm, or from wisdom to absurdity is not from the Sharīʿah, even if claimed to be so by interpretation." (*Al-Qarāfī, al-Furūq*, 1/114)

Thus, far from being antithetical to Sharīʿah, the penal code serves a critical function in upholding its fundamental aims: the preservation of societal moral and legal order, the protection of individual rights, and the establishment of justice.

Qur'anic Foundations of the Islamic Penal Code

The Qur'an forms the primary and most authoritative source of Islamic law, including its penal component. The foundational principles governing crimes and their punishments are drawn from clear, prescriptive verses, especially with regard to ḥudūd (fixed punishments) and qiṣāṣ (retaliatory justice). These

injunctions are not merely punitive but are deeply rooted in a divine vision of justice, moral accountability, and social reform.

Ḥudūd: Fixed Divine Limits

The Qur'an explicitly establishes certain crimes for which punishments are divinely prescribed, known as *ḥudūd Allāh* (the limits set by Allah). These include theft, unlawful sexual intercourse (zinā), false accusation of fornication (qadhf), highway robbery (*ḥirābah*), and consumption of intoxicants (*shurb al-khamr*).

Theft (Sariqah):

﴿وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ﴾

"As to the thief, male or female, cut off their hands as a recompense for what they committed as a deterrent from Allah And Allah is Almighty, All-Wise. (Al-Mā'idah 5:38)

Unlawful Sexual Intercourse (Zinā):

﴿الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ وَلَا تَأْخُذْكُم بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ﴾

The woman and the man guilty of fornication, flog each one of them with a hundred lashes. Let not compassion for them prevent you from carrying out Allah's law...(An-Nūr 24:2)

False Accusation (Qadhf):

﴿وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً﴾

Those who accuse chaste women and do not bring four witnesses, flog them with eighty lashes... (An-Nūr 24:4)

Highway Robbery and Terrorism (Ḥirābah):

﴿إِنَّمَا جَزَاؤُا الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَن يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُم مِّنْ خِلَافٍ أَوْ يُنفَوْا مِنَ الْأَرْضِ﴾

Indeed, the penalty for those who wage war against Allah and His Messenger and spread corruption on earth is that they be killed or crucified or have their hands and feet cut off on opposite sides, or be exiled from the land…*(Al-Mā'idah 5:33)*

Qiṣāṣ and Diyyah: Retaliation and Compensation

The law of retaliation (*qiṣāṣ*) is equally rooted in the Qur'an, aiming not only to ensure justice but also to promote mercy and forgiveness. While permitting proportional retribution, it encourages the victim's family to accept *diyyah* (blood-money) as a higher form of moral and communal reconciliation.

Qiṣāṣ in Murder Cases:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى﴾

O you who believe! Prescribed for you is legal retribution in cases of murder…(Al-Baqarah 2:178)

Deterrent Value of Qiṣāṣ:

﴿وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ﴾

In qiṣāṣ there is life for you, O people of understanding, that you may become mindful (of Allah). (Al-Baqarah 2:179)

These verses highlight that Islamic penal laws are not extraneous or supplementary to Sharīʿah but are in fact embedded within its revealed core. The penal code in Islam is not simply a procedural regulation; it represents a theological, ethical, and social imperative.

The Sunnah and Hadith as Sources of the Islamic Penal Code

The Sunnah of the Prophet Muhammad (peace be upon him) is the second principal source of Islamic law, clarifying, elaborating, and in some cases specifying the implementation of Qur'anic commands. In the realm of criminal law, the Hadith corpus provides the procedural and evidentiary details necessary for the application of ḥudūd, qiṣāṣ, and taʿzīr penalties.

Confirmation and Clarification of Ḥudūd

While the Qur'an establishes general legal principles and some specific penalties, the Sunnah clarifies conditions for implementation, procedural safeguards, and evidentiary thresholds.

Stoning (Rajm) for Adultery by a Married Person (Muḥṣan):

Though the Qur'an prescribes flogging for zinā (unlawful sexual intercourse), the Prophet (peace be upon him) established the punishment of stoning for adultery by a married person based on divine revelation not recorded in the Qur'anic text:

عَنْ عُمَرَ بْنِ الخَطَّابِ قَالَ: "إِنَّ اللَّهَ بَعَثَ مُحَمَّدًا بِالحَقِّ، وَأَنْزَلَ عَلَيْهِ الكِتَابَ، فَكَانَ مِمَّا أَنْزَلَ اللَّهُ آيَةُ الرَّجْمِ، فَقَرَأْنَاهَا، وَعَقَلْنَاهَا، وَوَعَيْنَاهَا، وَرَجَمَ رَسُولُ اللَّهِ..."

ʿUmar ibn al-Khaṭṭāb said: "Indeed Allah sent Muhammad with the truth and revealed the Book to him, and among that which He revealed was the verse of stoning. We read it, understood it, and memorized it. The Messenger of Allah stoned [the adulterers]…" (Saḥīḥ al-Bukhārī, no. 6829)

This ḥadīth is crucial in affirming the application of rajm as a part of the Sunnah-based penal code, corroborated by practice during the Prophet's time and continued by his Companions.

Punishment for Alcohol Consumption:

Although the Qur'an strongly condemned intoxicants (e.g., Qur'an 5:90), it did not assign a specific ḥadd punishment. The Prophet did so through practice:

."عَنْ أَبِي هُرَيْرَةَ: "أُتِيَ رَسُولُ اللَّهِ بِرَجُلٍ شَرِبَ، قَالَ: اضْرِبُوهُ

Abū Hurayrah reported: “A man who had drunk [intoxicants] was brought to the Messenger of Allah, and he said: ‘Beat him.’” (Saḥīḥ al-Bukhārī, no. 6777)

The companions would administer forty lashes, and in some cases, ‘Umar later enforced eighty lashes, indicating that taʿzīr (discretionary punishment) could increase the severity depending on public harm and repetition.

Procedures, Evidentiary Rules, and Legal Safeguards

The Sunnah also meticulously outlines the principles of procedural justice in criminal matters, including the types of admissible evidence, the criteria for witness testimony, the allocation of the burden of proof, and the imperative of avoiding doubt in the application of penalties.

ادْرَءُوا الْحُدُودَ عَنِ الْمُسْلِمِينَ مَا اسْتَطَعْتُمْ، فَإِنْ كَانَ لَهُ مَخْرَجٌ فَخَلُّوا سَبِيلَهُ، فَإِنَّ الإِمَامَ أَنْ يُخْطِئَ فِي الْعَفْوِ خَيْرٌ مِنْ أَنْ يُخْطِئَ فِي الْعُقُوبَةِ

Ward off the ḥudūd punishments from the Muslims as much as you can. If there is a way out for him, let him go. For it is better for the Imam to err in forgiveness than to err in punishment. (Sunan al-Tirmidhī, no. 1424; considered ḥasan)

This profound Prophetic directive establishes a fundamental principle of Islamic criminal law: in any instance of doubt (shubha), the application of ḥudūd punishments must be suspended. This ethical ethos fundamentally distinguishes the Islamic penal code by prioritizing mercy, caution, and the robust protection of individual rights over the strict and potentially unjust enforcement of punitive measures.

Role of Intent and Confession

The Prophet (peace be upon him) often discouraged public confession of sins and actively sought to protect individuals from self-incrimination, reflecting a deep concern for individual dignity and the potential for undue punishment:

عَنْ مَعْزٍ قَالَ: "يَا رَسُولَ اللَّهِ، إِنِّي قَدْ زَنَيْتُ"، فَأَعْرَضَ عَنْهُ…

Maʿiz said:

“O Messenger of Allah, I have committed zinā,” and the Prophet turned away from him… *(Saḥīḥ Muslim, no. 1691)*

Despite Māʿiz’s repeated insistence on confessing his transgression, the Prophet (peace be upon him) deliberately delayed the implementation of the ḥadd punishment, demonstrating a clear reluctance to enforce such penalties without repeated and thoroughly verified admissions. This incident underscores the significant procedural safeguards and the inherent humane considerations embedded within the Islamic penal system.

Views of Classical Jurists and Legal Authorities on the Penal Code

Islamic jurisprudence (*fiqh*) is meticulously constructed upon the interpretive endeavors of generations of scholars who systematically organized and applied divine law to the diverse affairs of society. Among the most influential voices in the development and robust defense of the Islamic penal system are the founders of the major Sunni legal schools—Imām Mālik, al-Shāfiʿī, Aḥmad ibn Ḥanbal—as well as prominent post-formative scholars such as Ibn Taymiyyah and Ibn al-Qayyim. Their scholarly positions firmly established the penal code as a legitimate, integral, and indispensable component of the Sharīʿah.

Imām Mālik (d. 179 AH)

Imām Mālik’s *al-Muwaṭṭaʾ* includes several chapters detailing the administration of ḥudūd and evidentiary procedures. He consistently upholds the enforcement of Qur’an- and Sunnah-based penalties, emphasizing caution in their application.

"قَالَ مَالِكٌ: "مَنْ أَقَرَّ عَلَى نَفْسِهِ بِالزِّنَى أُقِيمَ عَلَيْهِ الْحَدُّ إِلَّا أَنْ يَكُونَ مَجْنُونًا

Mālik said:

Whoever confesses to zinā, the ḥadd is established upon him unless he is insane.” *(*al-Muwaṭṭaʾ*, Kitāb al-Ḥudūd)*

He permitted the reliance on confession but underscored the necessity of mental competence and legal certainty—illustrating his alignment with the Prophetic principles of fairness and caution.

Imām al-Shāfiʿī (d. 204 AH)

Al-Shāfiʿī, in his seminal work *al-Umm*, addresses criminal law extensively, including the epistemic conditions required for implementing punishments. His methodology emphasizes textual fidelity and procedural rigor.

"قَالَ الشَّافِعِيُّ: "وَيُدْرَأُ الْحَدُّ عِنْدَ الشُّبْهَةِ، وَإِنْ أَقَامَ بَيِّنَةً، وَخَالَفَتْهُ أُخْرَى، سَقَطَ الْحَدّ

Al-Shāfiʿī said:

The ḥadd is averted in the case of doubt. If a party presents evidence, but it is contradicted by another, the ḥadd is dropped.” *(*al-Umm*, Kitāb al-Ḥudūd)*

He viewed the penal code as part of the Sharīʿah’s protective structure, but one constrained by due process and justice.

Imām Aḥmad ibn Ḥanbal *(d. 241 AH)*

Imām Aḥmad’s legal views, preserved in *Masāʾil al-Imām Aḥmad* and *al-Mughnī* by Ibn Qudāmah, reflect a balance between textual obligation and legal mercy. He accepted stoning for muḥṣan adultery and permitted taʿzīr in cases where evidentiary standards fell short of ḥadd.

"قَالَ أَحْمَدُ: "كُلُّ مَا لَمْ يُوجِبْ حَدًّا فَفِيهِ التَّعْزِيرُ

Imām Aḥmad said:
Everything that does not necessitate a ḥadd entails a taʿzīr punishment." *(*al-Mughnī, *vol. 10)*

This distinction demonstrates that Islamic criminal law is not limited to the ḥudūd, but rather includes a scalable system (taʿzīr) that adapts to the circumstances and severity of offenses.

Shaykh al-Islām Ibn Taymiyyah *(d. 728 AH)*

Ibn Taymiyyah advocated for the penal code as a tool for preserving public order and moral rectitude, while also defending the rationality and justice embedded in Islamic penalties.
"إِنَّ الْحُدُودَ شُرِعَتْ لِمَصْلَحَةِ الْعِبَادِ، وَفِيهَا رَدْعٌ عَنِ الْجَرِيمَةِ، وَتَطْهِيرٌ لِلنُّفُوسِ"

The ḥudūd were legislated for the benefit of the people; they deter crime and purify the soul." *(*Majmūʿ al-Fatāwā, *vol. 28)*

He recognized both the spiritual and societal aims of punishment—linking the penal code with maqāṣid al-sharīʿah (the higher objectives of Islamic law), especially preservation of life, lineage, and morality.

Ibn al-Qayyim *(d. 751 AH)*

Ibn al-Qayyim addressed penal theory in his *al-Ṭuruq al-Ḥukmiyyah*, emphasizing administrative flexibility within Islamic governance. He advocated for procedural rigor and taʿzīr when ḥadd evidentiary standards were unmet but moral certainty existed.
"إِذَا ظَهَرَ الْفِسْقُ، وَلَمْ يُقِمْ الدَّلِيلُ الشَّرْعِيُّ حَدًّا، وَجَبَ تَعْزِيرُهُ لِرَدْعِهِ"

When immorality becomes evident but the legal evidence for ḥadd is insufficient, taʿzīr is obligatory to deter the offender. *(*al-Ṭuruq al-Ḥukmiyyah, p. *23)*

His contributions articulate a comprehensive legal theory in which Sharīʿah-based penalties are inseparable from the holistic goals of justice, deterrence, and reform.

Contemporary State Codifications of the Islamic Penal Code

In the modern era, several Muslim-majority states have attempted to reintroduce Islamic penal law into their national legal systems. These efforts, while varied in scope and execution, reflect attempts to reconcile classical fiqh-based criminal law with the demands of modern governance, constitutionalism, and international law. Among the most prominent examples are Saudi Arabia, Northern Nigeria, and Pakistan.

Saudi Arabia: Application through Uncodified Sharīʿah

Saudi Arabia presents a unique model wherein the Islamic penal code is implemented primarily through the classical jurisprudence of the Ḥanbalī school of thought. Rather than adopting a codified penal statute, the Kingdom relies on qāḍī (judge) discretion within the bounds of Sharīʿah, guided by classical texts such as *al-Mughni* by Ibn Qudāmah and *al-Ikhtiyārāt al-Fiqhiyyah* by Ibn Taymiyyah.

The ḥudūd are enforced based on Qur'anic and Sunnah provisions, such as stoning for adultery (when four witnesses or confession exists), amputation for theft under stringent conditions, and capital punishment for ḥirābah (armed robbery). However, procedural requirements are often interpreted conservatively to limit the actual imposition of such penalties.

Importantly, Saudi Arabia's approach remains firmly rooted in traditional fiqh, but with the authority of the state (wilāyah) shaping the implementation. Taʿzīr remains the most commonly applied form of punishment due to the difficulty of proving ḥadd-level crimes.

Northern Nigeria: Codification and Legal Pluralism

In the early 2000s, several states in Northern Nigeria adopted Shariah Penal Codes, beginning with Zamfara State in 1999. These codes drew from Mālikī jurisprudence and classical fiqh manuals such as *al-Mudawwanah* and *Mukhtaṣar Khalīl*, adapting them into statutory form suitable for a plural legal system coexisting with common law.

Key features of the Northern Nigerian Shariah Penal Codes include:

- Codified ḥudūd, qiṣāṣ, and taʿzīr offences.
- The requirement of due process, including confession or four eyewitnesses for zinā.
- Penal provisions for alcohol consumption, false accusation (*qadhf*) and theft.

This codification attempts to harmonize classical Islamic doctrine with Nigeria's constitutional protections and international human rights commitments.

Complementarity or Rivalry? The Penal Code and Sharīʿah in Modern Discourse

One of the central concerns of modern legal and academic debates surrounding Islamic penal law is whether the "penal code" operates as a rival to Sharīʿah or as its extension. This question often arises from a confusion between two very different uses of the term "penal code": one, as a codified, often secular statutory text, and the other, as a structured set of criminal sanctions rooted in divine revelation (*waḥy*) and juristic reasoning.

Penal Code as an Expression of Sharīʿah

The classical Islamic penal code—comprising ḥudūd, qiṣāṣ, and taʿzīr—is an integral part of Sharīʿah. It draws directly from the Qur'an and Sunnah, reinforced by ijmāʿ (scholarly consensus) and qiyās (analogical reasoning), and elaborated upon by centuries of juristic

effort. The term "code" in modern usage may misleadingly suggest a human-authored, changeable document distinct from divine law. However, in the Islamic legal tradition, what is termed the "Islamic penal code" is a juristic effort (*fiqh*) to articulate divine commands on matters of public justice, crime, and punishment.

Thus, the penal code—when based on authentic sources and applied with proper procedural safeguards—is not a rival to Sharīʿah but one of its concrete expressions. It serves the higher objectives of Sharīʿah (*maqāṣid al-sharīʿah*), particularly in preserving life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-ʿaql*), honor (*ḥifẓ al-ʿirḍ*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*).

Statutory Penal Codes and Legal Pluralism

In modern Muslim-majority states, penal codes have often been inherited from colonial regimes (e.g., the Indian Penal Code in South Asia or the French Civil Code in North Africa). These statutory systems are often at odds with the Sharīʿah's conception of justice—especially with regard to evidentiary standards, punishments, and ethical foundations. This dissonance leads some reformers and critics to question whether adopting Islamic penal law within statutory formats dilutes or rivals Sharīʿah.

However, as shown in Northern Nigeria and Pakistan, codification efforts—if based on authentic fiqh sources—can serve as mechanisms for reviving the Islamic penal tradition within a modern constitutional framework. The issue is not codification *per se* but whether the process respects the epistemic integrity of Islamic law and whether safeguards against abuse are in place.

Juristic Affirmations of Harmony

The juristic tradition has long affirmed the compatibility between structured law and Sharīʿah. Classical scholars often distinguished between the *qaḍāʾ* (judicial procedure) and *siyāsah sharʿiyyah* (policy-based governance) to allow for administrative and criminal penalties beyond the strict boundaries of ḥudūd and qiṣāṣ. Ibn Taymiyyah wrote:

> Sharīʿah-based governance is that which brings about justice and does not contradict revelation. *(*al-Siyāsah al-Sharʿiyyah, p. 23*)*

This indicates that a penal code developed within the framework of Sharīʿah, attentive to context and justice, not only complements divine law but fulfills its intent.

Evidentiary and Procedural Foundations: Safeguards in Islamic Penal Law

A distinctive hallmark of the Islamic penal system is its rigorous commitment to procedural justice and the protection of human dignity. Contrary to modern misconceptions that portray Islamic criminal sanctions as harsh or indiscriminate, the classical tradition is deeply anchored in principles of due process, high evidentiary thresholds, and judicial restraint.

High Evidentiary Standards

Islamic law imposes strict standards for establishing criminal liability, particularly in cases involving *ḥudūd* punishments. For example, the crime of *zinā* (illicit sexual intercourse) requires either a voluntary confession repeated four times or the testimony of four upright male witnesses who directly observed the act. The Qur'ān stipulates:

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً

And those who accuse chaste women and do not bring four witnesses—lash them with eighty lashes…" *(Qur'ān, 24:4)*

These evidentiary safeguards underscore the principle that criminal punishments in Islam are not meant to be administered lightly or on mere suspicion. Instead, they serve as deterrents more than punitive instruments, as many classical scholars have emphasized.

Avoidance of *Ḥudūd* (درء الحدود بالشبهات)

A foundational maxim in Islamic criminal jurisprudence is the principle of *darʾ al-ḥudūd bi al-shubuhāt*—that ḥudūd punishments must be averted in cases of doubt or ambiguity. This maxim, drawn from prophetic precedent, is widely attested in the works of jurists across the madhāhib.

The Prophet Muhammad (peace be upon him) is reported to have said:

ادْرَءُوا الْحُدُودَ عَنِ الْمُسْلِمِينَ مَا اسْتَطَعْتُمْ، فَإِنْ كَانَ لَهُ مَخْرَجٌ فَخَلُّوا سَبِيلَهُ

Ward off the ḥudūd from the Muslims as much as you can. If there is a way out for him, then let him go free. (Sunan al-Tirmidhī, 1424)

Imām Mālik, commenting on the implementation of ḥudūd, stated in *al-Mudawwanah*:

I do not wish to carry out a ḥadd punishment in the presence of doubt, nor in the absence of clear proof. (*al-Mudawwanah*, 4:378)

This reflects a legal culture cautious in the administration of punitive measures, giving primacy to justice, mercy, and protection from wrongful conviction.

Presumption of Innocence and Legal Procedure

Islamic law recognizes the presumption of innocence, articulated in the legal principle *al-aṣl barā'at al-dhimmah*—that legal responsibility is not presumed unless proven. This mirrors modern criminal justice norms and further dispels the notion that Islamic

penal law is inherently harsh or alien to contemporary standards of fairness.

Procedurally, Islamic courts followed detailed protocols regarding testimony, admissibility of evidence, the credibility of witnesses (*ʿadālah*), and the moral conduct of judges. In *al-Umm*, Imām al-Shāfiʿī outlines criteria for judicial conduct and conditions for valid testimony, demonstrating an early sophistication in legal procedure that foreshadowed later developments in legal theory.

Juristic Views on the Penal Code: Mālik, al-Shāfiʿī, Aḥmad, Ibn Taymiyyah, and Ibn al-Qayyim

The classical Islamic penal system, far from being an innovation or external addition to Sharīʿah, was deeply embedded in the legal thought of the early Imams and later jurists. Their discussions on ḥudūd, qiṣāṣ, and taʿzīr demonstrate a coherent and systematic approach to criminal justice within the broader framework of divine law.

Imām Mālik (d. 179 AH)

Imām Mālik, whose views are preserved primarily in *al-Muwaṭṭaʾ* and *al-Mudawwanah*, was meticulous in codifying rules for ḥudūd and qiṣāṣ. His school emphasized judicial restraint and the necessity of clear evidence. Mālik allowed *taʿzīr* as a discretionary measure for offenses not covered by ḥudūd, and he affirmed the deterrent purpose of punishments.

In *al-Mudawwanah*, he stated:

The ḥudūd are the right of God and are not to be applied in the presence of doubt. (*al-Mudawwanah*, 4:378)

This shows a firm but cautious approach to penal enforcement, privileging mercy and evidentiary rigor.

Imām al-Shāfiʿī (d. 204 AH)

Imām al-Shāfiʿī elaborated a sophisticated jurisprudence of criminal law in *al-Umm*, where he addressed the procedural requirements and philosophical rationale behind Islamic punishments. He distinguished between *ḥaqq Allāh* (God's right) and *ḥaqq al-ʿabd* (individual right), assigning different levels of evidentiary burden accordingly.

He wrote:

> No one is to be held accountable for another's crime, and the ḥadd cannot be applied except through evidence or confession. (*al-Umm*, 6:152)

Al-Shāfiʿī's theory places criminal law within a framework of justice, legal protection, and divine accountability.

Imām Aḥmad ibn Ḥanbal (d. 241 AH)

Though much of Aḥmad ibn Ḥanbal's legal legacy is transmitted through his students, his approach to criminal law was conservative and marked by deference to prophetic precedent. Aḥmad emphasized the gravity of applying ḥudūd and discouraged their use without unambiguous evidence.

He was reported to have said:

Ward off the ḥudūd due to doubts, and seek shelter from God's punishment through His mercy. *(*Ibn Qudāmah, al-Mughnī, *10:108)*

This perspective confirms his alignment with the Islamic tradition that upholds the sanctity of life and the need for restraint in criminal enforcement.

Shaykh al-Islām Ibn Taymiyyah (d. 728 AH)

Ibn Taymiyyah developed a dynamic view of Islamic governance and penal authority. He endorsed the application of ḥudūd but stressed the necessity of ensuring justice and preventing harm. For him, *taʿzīr* was a flexible tool to address emergent crimes and moral corruption.

In *al-Siyāsah al-Sharʿiyyah*, he writes:

Taʿzīr is intended for the public good and the administration of society in a way that secures benefit and removes corruption. (*al-Siyāsah al-Sharʿiyyah*, p. 45)

This indicates his recognition of the adaptable and preventative dimension of the Islamic penal code in light of public interest (*maṣlaḥah*).

Ibn al-Qayyim (d. 751 AH)

Ibn al-Qayyim elaborated his teacher's ideas in his work *Iʿlām al-Muwaqqiʿīn* and *al-Ṭuruq al-Ḥukmiyyah*. He discussed the harmony between fixed punishments and discretionary measures, emphasizing justice, equity, and social welfare.

He wrote:

> The Sharīʿah does not assign a single fixed punishment for all crimes; rather, taʿzīr is left to the discretion of the ruler. (*al-Ṭuruq al-Ḥukmiyyah*, p. 34)

Thus, Ibn al-Qayyim affirms the complementary role of judicial discretion within the penal framework, balancing divine prescription with context-sensitive governance.

Islamic Penal Code and Modern Legal Systems: Comparative Reflections

In the contemporary legal landscape, Islamic penal law is frequently judged through the lens of modern criminal justice systems, many of which are built on secular principles rooted in Enlightenment thought. This comparison has fueled misconceptions—especially the view that Islamic penal codes are inherently incompatible with human rights, due process, or rehabilitative justice. A closer examination, however, reveals not only the distinct epistemological foundations of Islamic criminal law but also several underlying points

of convergence and divergence with modern penal theories.

Purpose of Punishment: Retribution, Deterrence, and Rehabilitation

The classical Islamic penal system encompasses multiple objectives:

- **Retribution (*qiṣāṣ*)** reflects justice in the strict sense—proportional response to a specific wrong.
- **Deterrence** is evident in the public implementation of *ḥudūd*, as the Qur'an states:

وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ

Let a group of the believers witness their punishment. (Qur'ān 24:2)

- **Rehabilitation** and **mercy** are integral to *taʿzīr*, which allows the judge to assign corrective measures suited to the offender's circumstances.

Modern penal systems likewise emphasize these aims but differ in their application. While rehabilitation has become a central tenet in many legal systems, critics argue that retributive and punitive logics still dominate, especially in systems with mass incarceration or capital punishment.

Evidentiary Standards and Legal Safeguards

A major criticism leveled against Islamic penal codes relates to their perceived harshness. However, Islamic law imposes extraordinarily high evidentiary thresholds—particularly for *ḥudūd*—to minimize wrongful convictions. For instance:

- *Zinā* requires four upright witnesses to the actual act (Qur'ān 24:4).
- *Qiṣāṣ* cannot be applied without clear intention**,** admissible evidence, and due judicial process.
- *Taʿzīr* offers flexibility and discretion to avoid disproportionate punishment.

These stringent requirements often result in *ḥudūd* being rarely enforced historically—contrary to popular portrayal. Modern systems, by contrast, often rely on circumstantial evidence and probabilistic reasoning, which, while efficient, increase the risk of error.

Role of the State and Judicial Discretion

Islamic criminal law recognizes the role of state authority (*ḥākim* or *wālī al-amr*) in:

- Administering *taʿzīr*,
- Ensuring public welfare (*maṣlaḥah*),
- Creating procedural frameworks in line with Qur'ān and Sunnah.

This overlaps with modern legislative and judicial powers, albeit grounded in different sources of legitimacy—divine command (*ḥukm Allāh*) versus popular sovereignty or constitutionalism.

Moreover, Islamic jurisprudence emphasizes judicial discretion (ijtihād, siyāsah sharʿiyyah)**,** especially in evolving circumstances. Ibn Taymiyyah and Ibn al-Qayyim, as discussed earlier, argue that punishment should serve the greater aim of justice, not mechanical application of texts.

Proportionality and Human Dignity

While the Qur'ān prescribes fixed punishments for certain crimes, it also includes principles of proportionality and grace:

فَمَن تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَّهُ

"But if the victim forgives, it is an expiation for him." (Qur'ān 5:45)

This verse emphasizes that even retributive justice (*qiṣāṣ*) is not absolute; forgiveness and mercy are given precedence.

In modern penal codes, proportionality is a constitutional principle, often invoked in debates on sentencing guidelines. Yet, unlike Sharīʿah, modern systems tend to lack spiritual incentives for forgiveness or communal repair.

Integration vs. Rivalry

A key misconception is that Islamic penal codes "rival" modern legal systems. In fact, **they operate on distinct legal and moral foundations**. Where implemented in modern states—such as Northern Nigeria, Saudi Arabia, or Pakistan—Islamic penal law has often been *codified* alongside statutory laws, resulting in legal pluralism. Challenges do arise—particularly regarding clarity of law, consistency of application, and international human rights obligations—but these reflect issues of governance and reform, not intrinsic flaws in Sharīʿah.

Thus, the Islamic penal code should not be seen as an archaic rival, but rather as a normative system with its own internal logic, developed through centuries of juristic reasoning, and adaptable to contemporary contexts when applied with fidelity to its core principles.

Conclusion: Summary of Findings and Clarification of Misconceptions

This paper has sought to address a series of fundamental questions often raised by students of Islamic law concerning the nature, legitimacy, and function of the Islamic penal code. The questions reflect widespread modern misconceptions—particularly the notion that Islamic penal law is either alien to, or in conflict with, the broader framework of Sharīʿah.

The following key conclusions may be drawn:

1. **The Islamic Penal Code is an Integral Part of Sharīʿah:** The Islamic penal code—comprising *ḥudūd*, *qiṣāṣ*, and *taʿzīr*—is deeply embedded in Sharīʿah, supported by the Qur'an, authentic Sunnah, and centuries of juristic consensus (*ijmāʿ*). It is not an innovation nor a competing legal system, but rather a divinely mandated component of Islamic legal theory aimed at protecting religion, life, intellect, lineage, and property.
2. **The Penal Code Compliments, Not Rivals, Sharīʿah:** Penal sanctions in Islamic law serve as protective measures, reinforcing the ethical and social goals of Sharīʿah. Far from undermining Sharīʿah, they uphold its moral and legal authority by deterring harm, achieving justice, and encouraging reform.
3. **Qur'ānic and Hadīth Foundations are Explicit and Authoritative:** The paper has presented direct Qur'ānic verses and authentic Hadīths related to each category of crime and punishment. These texts serve as foundational sources, not merely supplementary references. Their interpretation has been the subject of rigorous elaboration by classical scholars.
4. **Classical Scholars Affirm and Elaborate the Penal Code:** Foundational imams—Mālik, al-Shāfiʿī, Aḥmad ibn Ḥanbal—as well as later scholars like Ibn Taymiyyah and Ibn al-Qayyim, discussed penal sanctions within broader discussions of justice, public interest (*maṣlaḥah*), and reform. Their writings affirm that Islamic penal law is both principled and flexible when rightly understood.
5. **Modern State Codifications Require Contextual Understanding:** The codification of Islamic criminal law in states like Saudi Arabia, Northern Nigeria, and Pakistan reflects the challenges of applying classical law in a postcolonial world dominated by Western legal systems. While these efforts show continuity with tradition, they also reveal the importance of reforming implementation and clarifying jurisprudential foundations to avoid politicization.
6. **Islamic Penal Law Differs from, but Dialogues with, Modern Systems:** Though rooted in divine command, Islamic criminal law shares certain goals with modern systems, such as justice, deterrence, and proportionality. However, it departs in its spiritual orientation, evidentiary safeguards, and emphasis on communal ethics and divine accountability. Recognizing these differences is crucial to a fair and informed comparison.
7. **Misconceptions Stem from Disconnection, Not Doctrine:** The widespread confusion regarding Islamic penal codes arises not from the substance of the law itself but from its **dislocation from its ethical and jurisprudential roots**, colonial disruptions, and media-driven narratives. This paper has attempted to re-anchor the discussion in authentic sources and nuanced scholarship.

Final Remarks

The Islamic penal code, when approached through its own jurisprudential lens and within the broader maqāṣid of Sharīʿah, emerges as a system concerned not only with justice but also with mercy, reform, and the protection of society. Its application requires deep legal knowledge, contextual awareness, and ethical sensitivity.

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