



Original Article

Comparative Study of Islamic Law and Justice Systems in Pakistan, India & Malaysia

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Abstract

"Penal law" examines Islamic criminal law, which is the most contentious area of Islamic law and frequently sparks contentious discussions regarding its relevance in the modern era. Hudūd, qisās, and ta'zīr are the three primary categories into which crimes and their punishments are divided in classical Islamic law. In essence, the transgressions of ta'zīr are determined at the discretion of the ruling class or judges. Under Islamic law, there are several standards and procedures for proving criminal offenses. With the appropriate revisions, the present penal codes of a few governments currently incorporate the traditional Islamic penal rules. Law frequently makes use of scientific and medical expertise to conduct research and provide trustworthy evidence to support the courts in enforcing the law. Examining a wounded person is crucial in a court of justice since the basic idea of law enforcement is to uphold the code of acceptable existence of a society by penalizing offenders in proportion to the seriousness of their acts.

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Introduction

Law is a norm of conduct that human behavior should conform to or a binding rule imposed on an individual. It can be enforced in a land court by a fine or other consequence¹. These laws are essential to living a civilized life and achieving the greatest amount of "Good in the

Society." Islam accepts the human origin of law as long as it complies with the core principles of Islamic law, or Shari'ah law, which is the ultimate law of the Qur'an. Shari'ah literally translates as "water," since for the Arabs who lived in the desert, water represented life¹.

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Crime, as defined by Islamic law, is any offense for which there is a set punishment that cannot be changed. This category of offenses includes highway robbery, adultery, slander, theft, and alcohol use². Among the established penalties for theft are the amputation of the hand, the whipping and stoning to death of an adulteress, the execution, banishment from the land, and the amputation of the hand and foot from opposite sides of the body for highway robbery. Crimes that are subject to retribution or blood money punishment make up the second category of crimes³. If this occurs, the culprit might have to pay "blood money" and face consequences. Premeditated murder, semipremeditated murder, murder by mistake, and premeditated offenses against human life other than murder fall under this category of crimes⁴.

Crimes punishable by Tazir make up the third type of crimes; yet, they are punishable due to the fact that they are acts of disobedience to God's commands that result in wrongdoing⁵.

The Islamic-legal justice system (ILJS) is committed to upholding human rights and enforcing punishment for those who violate them⁶. This paper looks at the ICJS from a theoretical perspective and concludes that it is crucial to the protection of society and human welfare because it works for each and every person on the planet and upholds human rights in every way. Islamic criminal law also declares punishment as a means of deterring legal infractions⁷.

Materials and Methods

This study explores the principles and methods used in Islam in criminalizing. The method used in this research is a library method with data obtained from the tafsīr books, hadith ahkām, jinayāt books, and literature on criminal law, criminology, victimology, and relevant previous research

findings. Each component of information was gathered by searching literature and document reviews. All acquired data were processed using the subsequent procedures: The philosophy of Islamic law served as the research methodology.

Results

The result found that the principles used in Islam in criminalizing an act are the principles of benefit, prevention, material legality, and transcendental principles. Two methods of criminalization are used: (1) the texts of the Al-Qur'an and the Hadith itself, which state that this action must be punished; (2) determined in one of three ways. (a) Al Qur'an and Hadith stipulate that this act is hazardous for society; (b) based on common sense considerations that the act could disturb public order; and (c) the act constitutes a preliminary offense for a more significant and more dangerous offense. Furthermore, it is found that the variant of the ta'zīr offense includes offenses that are related to morality, sexual crimes, crimes against religion, crimes against the body, crimes against property, crimes related to family/descent, disturbing public order, environmental crime, fraud and forgery, and traffic offense.

Discussion

Before independence or Merdeka, the British Penal Code applied to the Indian subcontinent and the British Malay Peninsula States. However, after 1947 and 1957, we inherited the same law with no notable modifications; for example, the Indian Penal Code (IPC) became the Indian Penal Code, the Malaysian Penal Code Act 574, and the Pakistan Penal Code. Therefore, the country's social justice

system urgently has to be updated to meet modern needs, particularly in light of the terrorist wave. In fact, Great Britain changed its legal system in 1984⁸.

The laws regarding injuries in Malaysia and India stayed the same, but the Pakistani government took action in 1990 for the first time, in response to the wishes of the majority of the population (Muslims). The Hudood Ordinance was put into effect with the intention of aligning the laws with the teachings of the Holy Qur'an and Sunnah. The Qisas & Dyat Ordinance, which defined and explained the laws pertaining to injuries, was later implemented for the same purpose in 1990–1991; it was eventually passed as an act in 1997³.

Malaysian & Indian law for Hurt.

There are so many sections dealing with hurt i.e. 319 to 338 but for medico legal importance s section 320 i.e. Grievous hurt⁴ is as follows.

The following kinds of hurt only are designated as “grievous”:

- (a) emasculation;
- (b) permanent privation of the sight of either eye;
- (c) permanent privation of the hearing of either ear;
- (d) privation of any member or joint;
- (e) destruction or permanent impairing of the power of any member or joint;
- (f) permanent disfiguration of the head or face;
- (g) fracture or dislocation a bone;(fracture or dislocation of a bone or tooth IPC) (ref5) Modi page 558)
- (h) any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

Section 323: punishment for voluntarily causing hurt: Whoever, voluntarily causes hurt, shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to two thousand ringgit/one

thousand Indian rupees or both⁷.

Section 324: Voluntarily causing hurt by dangerous weapon or means⁹. Anybody who, with the exception of the situation specified in section 334, willfully causes harm to another person or animal by using a weapon that can be used for shooting, stabbing, or cutting, or by using a weapon that is likely to result in death; using fire or another heated substance; using poison or another corrosive substance; using explosives; or using any substance that is harmful to the human body to breathe in, swallow, or come into contact with blood; or using any of these methods will be punished with up to three years in prison, a fine, or both (or by whipping under the Malaysian act).

Section 325: Punishment for voluntarily causing grievous hurt.

Whoever, except in the case provided by section 335, voluntarily causes grievous hurt shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine¹⁰.

Section 326: Voluntarily causing grievous hurt by dangerous weapon or means.

Whoever may cause grievous hurt by dangerous weapon, shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to fine or to whipping (Malaysian) ten years and shall also be liable to fine (Indian).

Pakistani laws were same but in 1997 Qisas and Diyat Act of 1997 was passed based on Shari'ah law section 299 to 338 were repealed and new law was incorporated. Section 332 to 338 are related to Voluntarily hurt worth to comparative study.

Section 332 on Hurt :(1) Whoever causes pain, harm, diseases infirmity or injury to any person or impairs, disable or dismembers any organ of the body or part thereof of any

person without causing his death, is said to cause hurt. (2) The following are the kinds of hurt (a) Itlaf-i-udw (b) laf-i-salahiyat-i-udw (c) shajjah (d) jurh (e) all kinds of other hurts.

Section 333: Itlaf-I-Udw. Whoever dismembers, amputes, severs any limb or organ of the body of another person is said to cause Itlaf -I-Udw.

Section 334: Penalties for Itlaf-udw: Anyone who intends to cause harm to others or knows that he will likely cause harm to others by acting in this way will be punished with a qisas. If the qisas cannot be carried out in a way that upholds the principles of equality and the Islamic injunctions, the offender will be subject to arsh and may also be punished with either type of imprisonment for a term that may be as long as ten years as ta'zir¹¹.

Section335: Itlaf-i-salahiyat-i-udw: Whoever destroys or permanently impairs the functioning, power or capacity of an organ of the body of another person, or causes permanent disfigurement is said to cause itlaf-isalahiyat-i-udw

Section 336: Punishment for itlaf-i-salahiyat-i-udw: Same as section 334.

Section 337: Shajjah (1) Whoever causes, on the head or face of any person, any hurt which does not amount to itlaf-i-udw or itlaf-i-salahiyat-i-udw, is said to cause shajjah

(2) The following are the kinds of shajjah namely:-(a) Shajjah-i-Khafifah (b) Shajjah-i-mudihah (c) Shajjah-i-hashimah (d) Shajjah-i-munaqqilah (e) Shajjah-i-ammah (f) Shajjah-i-damighah.

(3) Whoever causes shajjah (i) without exposing bone of the victim, is said to cause shajjah-i-khafifah (ii) by exposing any bone of the victim without causing fracture, is said to cause shajjah-imudihah; (iii) by fracturing the bone of the victim, without dislocating it, is said to cause shajjah-ihashimah; (iv) by causing fracture of the bone of the victim

and thereby the bone is dislocated, is said to cause shajjah-i-munaqqilah (v) by causing fracture of the skull of the victim so that the wound touches the membrane of the brain, is said to cause shajjah-i-ammah; (vi) by causing fracture of the skull of the victim and the wound ruptures the membrane of the brain is said to cause shajjah-i-damighah¹².

Section 337: (A) Punishment of Shajjah (i) shajjah-i-khafifah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to two years as ta'zir, (ii) shajjah-i-mudihah to any person, shall, in consultation with the authorized medical officer, be punished with qisas, and if the, qisas is not executable keeping in view the principles of equality, in accordance with the Injunctions of Islam, the convict shall

be liable to arsh which shall be five percent of the diyat and may also be punished with imprisonment of either description for a term which may extend to five years as ta'zir, (iii) shajjah-i-hashimah to any person, shall be liable to arsh which shall be ten per cent of

the diyat and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir, (iv) shajjah-i-munaqqilah to any person, shall be liable to arsh which shall be fifteen percent of the diyat and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir, (v) shajjah-i-ammah to any person, shall be liable to arsh which shall be one-third of the diyat and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir, (vi) shajjah-i-damighah to any person shall be liable to arsh which shall be one-half of diyat and may also be punished with imprisonment of either description for a term which may extend to fourteen years as ta'zir.

Section 337 C: Jaifah: Whoever causes jurh in which the injury extends to the body cavity of the trunk, is said to cause jaifah.

Section 337 D: Punishment for Jaifah: Whoever by doing any act with the intention of causing hurt to a person or with the knowledge that he is likely to cause hurt to such person, causes jaifah to such person, shall be liable to arsh which shall be one-third of the diyat and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir.

Section 337 E: Ghayr-jaifah: (1) Whoever causes jurh which does not amount to jaifah, is said to cause ghayr-jaifah

(2) The following are the kinds of ghayr-faifah, namely: - (a) damihah (b) badi'ah (c) mutalahimah (d) mudihah (e) hashimah; and (f) munaqqilah.

(3) Whoever causes ghayr-jaifah (i) in which the skin is ruptured and bleeding occurs, is said to cause damiyah (ii) by cutting or incising the flesh without exposing the bone, is said to cause badi'ah; (iii) by lacerating the flesh, is said to cause mutalahimah; (iv) by exposing the bone, is said to cause mudihah (v) by causing fracture of a bone without dislocating it, is said to cause hashimah; and (vi) by fracturing and dislocating the bone, is said to cause munaqqilah.

Section 337 F Punishment of ghayr-jaifah:

(i) damihah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to one year as ta'zir; (ii) badi'ah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to three years as ta'zir; (iii) mutalahimah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term

which may extend to three years as ta'zir (iv) mudihah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to five years as ta'zir; (v) hashimah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to five years as ta'zir, (vi) munaqqilah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to seven years as ta'zir.

Section 337 G, H: are related with hurt by rash or negligent.

Section 337L: Punishment for other hurt: (1) Whoever causes hurt, not mentioned hereinbefore, which endangers life or which causes the sufferer to remain in severe bodily pain for twenty days or more or renders him unable to follow his ordinary pursuits for twenty days or more, shall be liable to daman and also be punished with imprisonment of either description for a term which may extend to seven years (2) Whoever causes hurt not covered by sub-section (1) shall be punished with imprisonment of either description for a term which may extend to two years, or with daman, or with both¹²⁻¹⁴.

Law frequently makes use of scientific and medical expertise to conduct research and provide trustworthy evidence to support the courts in enforcing the law. Examining a wounded person is crucial in a court of justice since the basic idea of law enforcement is to uphold the code of acceptable existence of a society by penalizing offenders in proportion to the seriousness of their acts¹⁵. As a result, great care must be taken to define and clarify the various forms of harm and the characteristics of injuries in accordance with various laws that are implemented in various nations¹. Based on English and Roman law, the Malaysian, Indian, and Pakistani penal codes¹⁶⁻²⁰ were

inherited; however, Pakistan amended them in 1990 by an ordinance. According to section 320 of the law, forensic terminology classifies injuries as either grievous or non-grievous²¹. However, since the introduction of new legislation in Pakistan, the classification of injury type has changed. While in English law, the importance of a weapon is paramount, under the new law, the depth and severity of the injury—for example, a fractured little finger and a fractured skull are both classified as grievous—matters more.

Merits of Pakistani laws over Indian and Malaysian laws is as follows.

Section 333 Itlaf-i-Udw; this is corresponding to the section 320 sub(d)privation of any member or joint.

Section 335 Itlaf –I – Salahyat –i-udw is corresponds to the 320 sub (b)(c)(e)&(f)but little bit difference ie (i) permanently impairs the functioning power where as in section 320 old law is privation so in new law it may be 1% or 90% loss of function but punishment will be same (ii) Permanent disfigurement ie any part of the body where as in old Pakistani law & present Malaysian, Indian section 320 it is permanent disfigurement of head and face so in new Pakistani law it is difficult to decide disfigurement²²⁻²⁴.

Section 337 (A) Shajjah (Head face) which is corresponding to section 320 (g) ie fracture(any bone from top to toe) or dislocation of bone or tooth Indian Law but in Malaysian law dislocation of the bone is missing whereas Shajjah word is limited only injuries to the head and face and punishment depends on depth but not weapon for example injury reaches to brain (Shajjah Damighah) punishment will be 14 years where as in old law all fractures are same i.e Fracture of the little finger and the fracture of the skull.ie (Shajjah –I –Khafifah) just superficial injury ,then (Shajjah Mudihah) Bone visible ,then fracture (Shajjah-i-Hashimah)

same injury fracture and dislocation (Shajjah –i- Munaqqilah) same injury if it reaches membrane of the brain (Shajjah Ammah) and if it involve the brain than it will be Shajjah –i- Damighah so now it is clear that nature of the injury depends upon the depth but not on the type of the weapon²⁵.

Section 33 (C) Jaifah means body cavity i.e. chest& abdominal cavities) this corresponds to section 320 sub section (h)

Section 337 (E) Jurah –Ghayr-Jaifah means all injuries of the body except head, face, body cavities and organs of the body i.e. corresponds to section 320 sub section (g) fracture or dislocation of the bone but here two sub sections (b) i.e. Badi’ah & (c) Mutalahimah are based on weapon whereas rest are based on the depth of the irrespective of the weapon²⁶.

Malaysian and Indian laws stipulate corporal punishment, rigors imprisonment, and fines. In contrast, Pakistani laws provide for (a) the same type of injury (which is typically not possible) and (b) the expression of compassion, wherein the value of the diyat is fixed based on the victim's heirs and the convict's financial situation. The value of the diyat cannot be less than thirty thousand six hundred and thirty grams (30,630 grams) of silver. Understand Qisas and Diyat; Refer to Hamdani YL the Friday, May 12, 2011 timings. (c) Tazir, which is the same mandated punishment as in the British system but is based on the extent of the wound²¹⁻²⁵.

Conclusion

Stereotypical depictions abound in the way Islamic law is treated in modern times. A fixed sentence for all offenses is required under Islamic law, according to several researchers, and certain academic papers have also been misinterpreted and not necessarily entirely

correct. These authors have also come to the conclusion that Islamic judges in the Sharia Court System lack discretion when it comes to sentencing defendants. All the above insights show that Malaysian and Indian laws are excellent, but Pakistani law is different. Under British law, a weapon is more important and a grievous injury a broken little finger and a fractured skull are both considered serious injuries is labelled as such because the weapon is important for the purpose of punishment, whereas under Pakistani law, the depth of the wound regardless of the weapon—is more important. However, there are many legal pitfalls in Pakistani law that need to be fixed by legislators with the advice of forensic and legal experts.

English Common Law is not at all like Islamic Law. Everyone must abide by the laws passed by the several branches of government, including those pertaining to taxes, traffic, white collar crime, and theft. These and numerous other offenses that bear resemblance to Common Law offenses are prosecuted in contemporary "Mazalim Courts." Under Islamic law, there are distinct tribunals for "religious crimes" and modern, nonreligious courts for other.

Limitation of the study

There are limitations on the research model and study topic of this work. Consequently, it is advised that more studies look at prescriptive aspects of Islamic criminal law, especially with relation to the question of criminalization. Subsequent research will focus on the evolution of offense variants in the modern setting if this study prioritizes the criminalization ideas and techniques.

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