Contemporary Reassessment of Punishment in Islamic and Secular Law: A Comparative Study of Justice and Penal Philosophy

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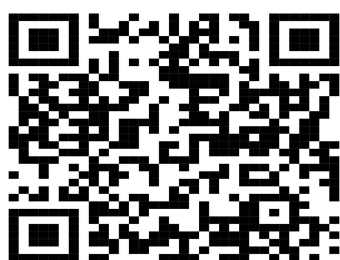
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Abstract: This study offers a contemporary reassessment of punishment in Islamic Sharia and secular legal systems by comparatively examining their classifications, objectives, and underlying penal philosophies. While both frameworks seek to deter crime, uphold justice, and preserve social order, they diverge significantly in epistemological foundations, moral orientation, and modes of legal authority. Employing a qualitative comparative legal approach, this research integrates classical Islamic jurisprudence with contemporary statutory regulations and judicial practices. The analysis moves beyond doctrinal exposition to address current challenges in crime prevention, legal objectivity, proportionality, and the role of state authority in administering punishment. Particular attention is given to the ethical coherence and legitimacy of each system in responding to modern social complexities. The findings reveal that Islamic Sharia—especially through its taʿzīr framework—offers a principled yet flexible penal paradigm that balances deterrence, moral reform, and restorative considerations. Its emphasis on proportionality, judicial discretion, and ethical responsibility reflects a holistic vision of justice consistent with the objectives of the Maqāṣid al-Sharia. Conversely, contemporary secular legal systems increasingly prioritize rehabilitation and utilitarian efficiency but often encounter structural challenges, including sentencing disparities, systemic bias, and susceptibility to political or socioeconomic interests. This study contributes academically by enriching comparative penal theory through an integrative ethical analysis of Sharia and secular models. It demonstrates that Sharia's justice-oriented framework provides valuable normative insights for contemporary penal reform, particularly in enhancing fairness, accountability, and moral balance within modern criminal justice systems.

Keywords: Criminal; Justice; Law; Penal; *Taʿzīr*.

INTRODUCTION

Punishment has long constituted a central mechanism through which legal systems—whether originating from divine revelation or grounded in secular authority—maintain social order, deter wrongdoing, and uphold justice. Although Islamic *Sharia* and modern secular law share foundational aims such as deterrence, retribution, rehabilitation, and the protection of human dignity, they differ significantly in their epistemological foundations and penal philosophies. Islamic jurisprudence locates the authority of punishment in divine injunctions and moral accountability, whereas secular systems rely on human rationality, evolving statutory frameworks, and social contract principles. This divergence shapes the conceptualisation, classification, and application of punishment in both traditions.[1]

In Islamic law, punishments are broadly categorised into *ḥudūd*, the fixed penalties explicitly articulated in the Qur'an and Sunnah, and *taʿzīr*, the discretionary sanctions that allow judicial and governmental authorities to respond contextually to public interest, moral integrity, and the higher objectives of *Sharia* (*Maqāṣid al-Sharia*). While *ḥudūd* is often narrowly defined in both scope and conditions of implementation, *taʿzīr* demonstrates the adaptive and principled flexibility of the Islamic criminal justice system, making it responsive to new societal challenges and evolving understandings of harm. By contrast, secular legal systems derive legitimacy from constitutional authority and legislative enactments, classifying punishment according to proportionality, rehabilitative potential, and procedural fairness. However, despite these aspirations, contemporary critiques highlight recurrent concerns about systemic bias, inconsistent sentencing, and susceptibility to political or socioeconomic influence.[2]

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[1] Islamul Haq, 'Prison in Review of Islamic Criminal Law: Between Human and Deterrent Effects', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (June 2020): 132–150, https://doi.org/10.22373/sjhk.v4i1.6683.

[2] Ahmad Badri Abdullah, *An Analysis of Islamic Jurisprudence (Fiqh) as Applied Islamic Ethics | ICR Journal*, 8 October 2020, https://icrjournal.org/index.php/icr/article/view/402?utm_source=chatgpt.com.

Several earlier studies have attempted to analyse aspects of punishment from comparative or Islamic law perspectives. Scholars such as Nuraisyah (2021) have discussed the philosophical foundations of Islamic criminal law,[3] while Marly Candra (2018) has evaluated modern penal philosophies, including retributive and utilitarian models.[4] More recent comparative inquiries, such as those by Muhammad Arafat et al (2025), examine the potential compatibility between *Sharia* ethics and contemporary legal norms.[5] However, these studies often stop short of systematically assessing how *taʿzīr*, as the most flexible and operative dimension of Islamic punishment, can be used as an evaluative lens for modern statutory sanctions. Likewise, little research has directly explored how *Maqāṣid al-Sharia* might serve as a normative framework for assessing the objectivity, legitimacy, and ethical coherence of secular penal systems. This gap reveals the need for a more integrative and contemporary reassessment that bridges classical jurisprudence with modern penal philosophy.

Addressing this gap, the present study offers a comprehensive comparative analysis of punishment in Islamic *Sharia* and secular law, focusing on their classifications, philosophical foundations, and normative orientations. It also assesses the extent to which modern statutory punishments can be considered legitimate within a *Sharia*-based framework that prioritises justice, moral accountability, and the preservation of fundamental human values. Building on doctrinal, normative, and ethical inquiry, this study proposes that Islamic penal philosophy—when interpreted through the adaptive logic of *taʿzīr* and the overarching aims of the *Sharia*—provides valuable insights for strengthening fairness and ethical coherence within contemporary criminal justice systems. The central research question guiding this study is therefore: To what extent can contemporary

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[3] Nuraisyah Nuraisyah, 'Philosophical Dimensions of Punishment in Islamic Criminal Law', *Al-Hurriyah: Jurnal Hukum Islam* 6, no. 1 (August 2021): 91–101, https://doi.org/10.30983/alhurriyah.v6i1.3459.

[4] Marli Candra, 'The Penology of Islamic Criminal Law: Reintroduction of Islamic Penology', *Al-'Adalah* 15, no. 2 (2018): 345–366, https://doi.org/10.24042/adalah.v15i2.2783.

[5] Muhammad Arafat and Asmuni, 'Implementation of Maqashid Al-Syariah in Islamic Criminal Law in Muslim Countries: A Comparative Study in Saudi Arabia, Iran, Malaysia, and Indonesia', *AL-SULTHANIYAH* 14, no. 1 (March 2025): 45–68, https://doi.org/10.37567/al-sulthaniyah.v14i1.3577.

statutory punishments be considered legitimate and compatible with Islamic penal philosophy, particularly through the evaluative lens of *taʿzīr* and the higher objectives of *Maqāṣid al-Sharia?*

METHOD

This study adopts a qualitative doctrinal legal research design[6] that integrates inductive, comparative, and normative-analytical approaches to reassess contemporary punishment within Islamic *Sharia* and secular legal systems. This approach is selected because the study aims not merely to describe legal doctrines but to critically evaluate their philosophical foundations, ethical coherence, and relevance to contemporary penal reform. The inductive method is used to derive normative principles, classifications, and penal philosophies directly from primary Islamic sources, including the Qur'an, the Sunnah, classical jurisprudential texts, and *fatwā* literature. Through this approach, the study reconstructs the internal logic of Islamic punitive frameworks—particularly the fixed nature of *ḥudūd*, the discretionary and adaptable structure of *taʿzīr*, and the overarching ethical orientation of the *Sharia* toward justice, proportionality, and the preservation of fundamental human interests. This ensures that Islamic criminal law is interpreted in accordance with its own epistemological and moral traditions.

The comparative legal method is employed to juxtapose Islamic punitive concepts with modern secular legal systems rooted in civil and common law traditions. This comparison examines how Islamic penal classifications correspond to or differ from secular categories such as primary, secondary, alternative, and complementary sanctions. The analysis centres on key principles, including deterrence, moral accountability, rehabilitation, procedural fairness, and the philosophical justifications underlying contemporary punishment. Through this lens, the study evaluates the extent to which secular punitive models can be considered legitimate or compatible with Islamic penal philosophy, particularly through the flexible, context-responsive mechanism of *taʿzīr* and

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[6] Helaluddin and Hengki Wijaya, *Analisis Data Kualitatif: Sebuah Tinjauan Teori & Praktik* (Sekolah Tinggi Theologia Jaffray, 2019).

the value-based framework of *Maqāṣid al-Sharia*. The research draws upon a diverse set of sources, including Qur'anic exegeses, hadith compilations, classical and modern fiqh literature, statutory penal codes from selected jurisdictions, judicial guidelines, and contemporary scholarship on Islamic law, comparative criminal justice, and legal theory. Given its conceptual orientation, the study prioritises normative evaluation rather than empirical measurement, focusing on questions of jurisprudential legitimacy, ethical integrity, and the reform potential inherent in both systems.

By grounding the analysis in the *Maqāṣid al-Sharia* and aligning it with contemporary debates in penal philosophy, this methodology enables a multidimensional examination that moves beyond descriptive comparison. It provides a principled and reform-oriented reassessment of how punishment can be understood, justified, and improved in pluralistic legal environments—offering insights that bridge classical Islamic jurisprudence with modern legal and human rights expectations.

RESULTS AND DISCUSSION

Contemporary Reassessment of Punishment in Islamic Sharia and Secular Law

The contemporary reassessment of punishment across Islamic *Sharia* and secular legal systems reveals that both frameworks employ a structured classification of penalties, although grounded in differing philosophical and normative foundations. In both systems, punishments may be grouped into primary, alternative, secondary, and complementary forms. Primary punishments represent the core sanctions directly tied to a specific offence, such as *qiṣāṣ* for intentional murder in Islamic law or imprisonment for violent crimes in secular codes. Alternative punishments serve as substitutes when primary sanctions cannot be applied, as reflected in the allowance of diyyah, fines, or community service. Secondary punishments arise automatically as legal consequences of particular acts, such as disqualification from inheritance for intentional killing—an established principle in Islamic jurisprudence and also recognised in many modern legal systems. Complementary punishments, meanwhile, are judicially imposed to enhance deterrence or social

protection, reflecting a degree of discretionary authority in both Islamic and secular frameworks.[7]

The objectives behind these classifications underscore the philosophical differences and shared aspirations of the two legal systems. Islamic *Sharia* views punishment as a mechanism to preserve public order, uphold divine justice, deter wrongdoing, and rehabilitate the offender. This framework is deeply rooted in the principles of mercy, proportionality, and the protection of human dignity. Classical Islamic scholarship highlights measures such as delaying execution of penalties for pregnant women, the prohibition of degrading forms of punishment, and the insistence on equal treatment before the law regardless of social status. These features demonstrate that Islamic penal philosophy does not rest on retribution alone, but instead integrates ethical and societal considerations to maintain harmony and prevent unjust harm.[8]

Secular legal systems similarly articulate punishment as a means to deter crime, reform offenders, protect society, and uphold justice.[9] However, unlike Islamic *Sharia*, the legitimacy of punishment in secular systems derives from legislative authority and social consensus rather than from divine command. Despite this distinction, modern penal philosophy is increasingly incorporating principles long present in Islamic jurisprudence, such as proportionality, humane treatment, and prioritising public welfare.[10] Taken together, the classification and objectives of punishment in both Islamic *Sharia* and positive law reveal notable parallels alongside profound differences in their philosophical foundations. While *Sharia* embeds punitive measures within a holistic moral and spiritual

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[7] Mohamad Ridhuan Mohd Zawawi et al., 'Rethinking Hisbah and Sharia Proceduralism: A Comparative Approach to Justice in Contemporary Islamic Law', *MILRev: Metro Islamic Law Review* 4, no. 1 (May 2025): 234–68, https://doi.org/10.32332/milrev.v4i1.10391.

[8] Alizeh Jhokio, Tansif Ur Rehman, and Kaleemullah, 'Data Privacy Laws in Pakistan: A Comparative Analysis with the EU's General Data Protection Regulation', *Journal of Political Stability Archive* 3, no. 2 (June 2025): 870–82, https://doi.org/10.63468/jpsa.3.2.48.

[9] Ugochukwu Godspower Ehirim, 'Artificial Intelligence and Healthcare Delivery in Nigeria: Legal and Ethical Dimensions of Patients' Rights to Safety', *Indonesian Journal of Sharia and Socio-Legal Studies* 1, no. 1 (May 2025): 47–71, https://doi.org/10.24260/ijssls.1.1.10.

[10] Danial Danial, 'Criminalization in Islamic Penal Code: A Study of Principles, Criminalization Methods, and Declining Variations', *Jurnal Ilmiah Peuradeun* 11, no. 3 (September 2023): 1005–26, https://doi.org/10.26811/peuradeun.v11i3.1058.

paradigm, secular systems anchor punishment in human rights instruments, constitutional values, and societal norms. These findings highlight the value of a contemporary comparative approach, which demonstrates that while the sources of legitimacy differ, both systems share a commitment to ensuring justice, preventing harm, and promoting societal stability.[11]

Islamic Penal Philosophy and International Human Rights Discourse

The debate on Islamic criminal law within the global human rights landscape remains one of the most contentious aspects of contemporary legal discourse. Critics frequently claim that Islamic penal provisions—especially *ḥudūd* punishments such as amputation for theft or stoning for adultery—violate international human rights standards articulated in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). These criticisms often emphasise concerns regarding dignity, freedom from cruel or degrading treatment, and the right to life. However, such assessments commonly arise from reading Islamic law in isolation from its broader ethical, procedural, and historical context. When examined holistically, *Sharia* exhibits a sophisticated penal philosophy that balances justice, mercy, and public welfare in ways that are frequently overlooked in modern critiques.[12]

A *Maqāṣid al-Sharia* perspective reveals that Islamic criminal law is fundamentally oriented toward safeguarding human dignity (*karāmah*), justice ('adl), and proportionality (*taʿdīl*). The Qur'an explicitly warns against injustice and excessive punishment, emphasising impartiality and moral restraint (Qur'an 5:8). Prophetic traditions further reinforce these values: the Prophet Muhammad (peace be upon him) prohibited striking the face. He condemned any form of humiliation in punishment, demonstrating concern for human dignity long before contemporary rights frameworks emerged. These ethical

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[11] Muhammad Mawardi Djalaluddin et al., 'The Implementation of Ta'zīr Punishment as an Educational Reinforcement in Islamic Law', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (March 2023): 399–417, https://doi.org/10.22373/sjhk.v7i1.15101.

[12] Itok Dwi Kurniawan and Souad Ezzerouali, 'Revisiting the Principle of Legal Certainty: A Contemporary Analysis through the Lens of Legal Positivism', *NUSANTARA: Journal of Law Studies* 3, no. 02 (December 2024): 137–146, https://doi.org/10.5281/zenodo.17385496.

imperatives challenge the assumption that Islamic punishments inherently conflict with human rights norms.[13]

In addition, *Sharia* embeds robust due process protections that parallel those found in modern human rights instruments.[14] These include the presumption of innocence, exceptionally high evidentiary standards for *ḥudūd* crimes, and opportunities for repentance, reconciliation, and intercession—mechanisms that often make the actual implementation of *ḥudūd* extremely rare. Many of these elements closely align with the fair trial guarantees outlined in Article 14 of the ICCPR. The extensive scope of *taʿzīr* further permits judges and legislators to adopt sanctions such as fines, community service, counselling, and other rehabilitative measures that both protect society and uphold human dignity.[15]

Consequently, the perceived tension between *Sharia* and international human rights norms is neither absolute nor irreconcilable. A growing body of scholarship argues for the development of Islamic human rights paradigms grounded in *Sharia* principles yet responsive to contemporary legal and ethical challenges. These approaches maintain that universal ethical commitments—such as justice, dignity, and the prevention of harm—do not demand uniform legal mechanisms. Legal pluralism, when anchored in accountability and fairness, can accommodate the coexistence of Islamic law and international norms. For this reason, ongoing legal reform in Muslim-majority societies should prioritise internal, principled reinterpretation (*ijtihād*) rather than uncritical adoption of external models. Such an approach ensures both doctrinal legitimacy and meaningful engagement with global human rights discourse, demonstrating that Islamic penal philosophy—properly

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[13] Saim Kayadibi, 'Reassessment of Human Rights in the Context of the Maqāṣid Al-Sharīʿah (High Objectives of Islamic Law)', 1 (December 2018): 163–93, http://www.yenidendusunmek.com/.

[14] Vhadia Yolanda, Ardiansyah, and Ari Widiyawati, 'Beyond Formal Metrology: The Socio-Legal Construction of Traditional Measurement in Shellfish Trading within a Muslim Coastal Community in Tempurukan', *Indonesian Journal of Sharia and Socio-Legal Studies* 1, no. 2 (November 2025): 111–131, https://doi.org/10.24260/ijssls.1.2.125.

[15] Khaled Al-Farsi, 'Exploring Sharia Law in Islamic Jurisprudence', *Social Science Chronicle* 2, no. 1 (October 2022): 1–20, https://doi.org/10.56106/ssc.2022.009.

understood—offers a coherent, ethically grounded, and contextually adaptable contribution to contemporary justice systems.[16]

Sharia Foundations for Imprisonment, Financial Penalties, and Alternative Punishments

Within the broader comparative landscape of Islamic *Sharia* and contemporary secular penal theory, the Islamic tradition offers a structured, ethically anchored framework for imprisonment, financial penalties, and non-custodial sanctions. Central to this framework is the principle that every punishment must uphold human dignity and avoid degrading or excessive harm.[17] This moral orientation distinguishes Islamic penal philosophy from purely retributive models and aligns it with modern human rights–based penal reforms. Imprisonment, although not originally a primary punishment in early Islamic society, gradually evolved into a recognised form of *taʿzīr* through Qur'anic indications, Prophetic practice, and the institutional developments of the Companions. Classical exegetes such as al-Qurṭubī refer to Qur'an 5:106 as legitimising temporary detention in financial disputes, while authenticated hadiths document the Prophet's (peace be upon him) use of confinement in cases involving suspicion, debt, or unresolved claims. This practice was formalised under Caliphs ʿUmar and ʿUthmān, whose construction and regulation of prisons demonstrate the early development of structured incarceration. Compared with contemporary secular systems, Islamic imprisonment emphasises proportionality, avoidance of torture, and the possibility of repentance or reform.[18]

Financial penalties constitute another integral component of Islamic penal philosophy. Rooted in Qur'anic guidance—such as the expiatory framework in 5:89—and supported by jurists including Abū Yūsuf, al-Shāfiʿī, and Ibn Taymiyyah, fines and asset

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[16] Nur Alia et al., 'Understanding and Implementing Islamic Law: Challenges and Solutions in Modern Contexts', *Antmind Review: Journal of Sharia and Legal Ethics* 1, no. 2 (December 2024): 72–82, https://doi.org/10.63077/qgjzc372.

[17] 'Islamic Law As A Source of Legal Rules in the MENA Region | ElectronicPublications', accessed 15 November 2025, https://www.electronicpublications.org/stuff/1113.

[18] Gregorius Widiartana and Sajjad Hussain, 'Judicial Pardon in Contemporary Criminal Verdicts: Balancing Justice, Legal Certainty, and the Utility of Law', *NUSANTARA: Journal of Law Studies* 4, no. 01 (July 2025): 1–11, https://doi.org/10.5281/zenodo.17346796.

confiscations serve both compensatory and deterrent purposes. In contrast to many modern systems that emphasise punitive fines, *Sharia* prioritises fairness, avoidance of excessive burden, and social justice, ensuring that financial sanctions do not become instruments of oppression.[19]

Islamic law also provides a broad spectrum of alternative punishments within the realm of *ta ʿzīr*, particularly in cases where the ḥadd standards are not met. The conditional release of Abū ʿAzza al-Jumaḥī after the Battle of Badr exemplifies non-custodial sanctions based on trust, contractual obligations, and public benefit. His subsequent breach and punishment highlight the reformative and precautionary rationale behind alternative sanctions—an approach comparable to modern probation systems that balance rehabilitation with societal protection. Collectively, this evidence demonstrates the flexibility and ethical discipline of *Sharia* in employing diverse punitive measures consistent with justice, deterrence, and societal welfare.[20]

Sharia Foundations for Secondary and Supplementary Punishments

In evaluating the broader taxonomy of punishment within Islamic law, secondary and supplementary sanctions occupy a distinct place, reflecting the *Sharia*'s holistic attention to moral accountability and societal protection. These forms of punishment operate beyond direct judicial sentencing, arising either as automatic legal consequences or as supportive measures designed to reinforce primary rulings. Secondary punishments appear prominently in inheritance law. Islamic jurisprudence unanimously holds that a deliberate murderer is barred from inheriting from the victim. This ruling—supported by authentic hadiths such as "The killer does not inherit" and reinforced by the legal practice of ʿUmar ibn al-Khaṭṭāb—upholds moral accountability while deterring financially motivated crimes. The exclusion of apostates from inheritance, similarly endorsed by all

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[19] Mohsen Saeedi Abooeshaghi, Abdollah Bahmanpouri, and Seyyed Mahdi Jokar, 'Comparative Study of the Punishment of "Imprisonment" in Modern Criminal Law and Islamic Law', پژوهش‌نامه حقوق اسلامی 25, no. 1 (March 2024): 95–126, https://doi.org/10.30497/law.2024.245370.3446.

[20] Melodie H. Eichbauer, 'The Shaping and Reshaping of the Relationship between Church and State from Late Antiquity to the Present: A Historical Perspective through the Lens of Canon Law', *Religions* 13, no. 5 (May 2022): 378, https://doi.org/10.3390/rel13050378.

four Sunni schools, rests on both textual evidence and the higher objective of protecting religion (*ḥifẓ al-dīn*). These consequential sanctions demonstrate how Islamic law combines moral, social, and legal reasoning in a manner that modern systems often separate into distinct civil and criminal categories.[21]

Supplementary punishments further enhance the *Sharia*'s capacity to maintain social order. The banishment (*taghrīb*) of an unmarried fornicator reflects prophetic instruction and reveals rehabilitative and preventive dimensions: it removes the offender from harmful environments while allowing society to restore social equilibrium. The practice—attested in early Islamic history—of publicly displaying the severed hand of a convicted thief functioned as a deterrent mechanism, although later juristic discourse introduced limits and contextual considerations. When examined through a comparative lens, such measures parallel modern penal strategies involving public warnings, community notifications, or supervised restrictions, albeit within different ethical and cultural frameworks.[22]

Through these secondary and supplementary mechanisms, Islamic penal philosophy demonstrates a layered, purposive structure that integrates deterrence, moral protection, and social welfare. When compared to contemporary secular legal systems, which often fragment punishments across criminal, civil, and administrative domains, the *Sharia* presents a unified framework grounded in justice, proportionality, and the preservation of fundamental human rights.[23]

Sharia Basis for Supplementary Punishments: Exile and Public Deterrence

[21] R. Dzhansarayeva and Meruert Kylishbaevna Bissenova, 'The Concept and Signs of Punishment in Islamic Law', 2014, https://www.semanticscholar.org/paper/The-Concept-and-Signs-of-Punishment-in-Islamic-Law-Dzhansarayeva-Bissenova/80397aeba16e92261b10813b684f683c1974a6b6.

[22] Salman Faris Tc, 'Revisiting the Legacy of Islamic Legal Scholarship: The Influence of Sharia on Contemporary Legal Systems', *Al-Arfa: Journal of Sharia, Islamic Economics and Law* 3, no. 1 (July 2025): 59–76, https://doi.org/10.61166/arfa.v3i1.96.

[23] Mahir Amin, Marli Candra, and Helga Nurmila Sari, 'Punishment in Islamic Criminal Law: Between Facts and Ideals of Punishment', *Al-Jinayah : Jurnal Hukum Pidana Islam* 10, no. 1 (June 2024): 48–71, https://doi.org/10.15642/aj.2024.10.1.48-71.

Within the broader framework of Islamic penal philosophy, supplementary punishments hold a legitimate position, especially when they advance the *Maqāṣid al-Sharia*—namely, deterrence, societal protection, moral restoration, and the prevention of future harm. One of the clearest examples is *taghrīb* (exile) for the unmarried offender convicted of fornication. This ruling is explicitly established in several authentic hadiths, including the Prophet's command that "the unmarried offender is to be lashed one hundred lashes and banished for one year." Classical jurists, such as ʿAbd al-Qādir ʿAwdah, emphasise that exile fulfils two complementary functions: it allows communal tensions to subside by distancing the offender from the social environment associated with the crime, and it protects the offender from potential stigmatisation or retaliation within the community. Thus, exile operates not merely as a punitive measure but as a rehabilitative mechanism with both individual and societal benefits.[24]

Another historical example of supplementary punishment is the practice of hanging the severed hand of a convicted thief around his neck. This measure—attributed to both prophetic precedent and the actions of ʿAlī ibn Abī Ṭālib—served as public deterrence to prevent similar offences. Although the four Sunni schools differ in their assessment— Shāfiʿī and Ḥanbalī scholars generally recommend the practice, Ḥanafīs leave the matter to the ruler's discretion, and Mālikīs do not explicitly address it—the underlying principle remains consistent: supplementary penalties may be used to reinforce deterrence as long as they do not contravene overarching *Sharia* values of dignity, proportionality, and justice.[25] From a contemporary comparative perspective, these *Sharia*-based supplementary punishments parallel modern secular practices that incorporate sentencing enhancements, public awareness measures, and protective orders. This suggests that Islamic penal theory is neither rigid nor incompatible with modern legal developments; instead, it offers a

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[24] Abdulkhaliq Fasihi, 'The Philosophy of Punishment in Islam and Statute', *International Journal of Multicultural and Multireligious Understanding* 11, no. 6 (June 2024): 258–271, https://doi.org/10.18415/ijmmu.v11i6.5894.

[25] Yusrizal Hasbi, 'Tindak Pidana Narkotika Dalam Perspektif Hukum Islam dan Filsafat', *Equality : Journal of Law and Justice* 1, no. 2 (August 2024): 115–136, https://doi.org/10.69836/equality-jlj.v1i2.119.

principled structure capable of guiding the ethical application of supplementary penalties today.

Integrating Islamic Penal Philosophy into Contemporary Legal Systems: A Comparative Synthesis

The findings of this study show that Islamic *Sharia* provides a coherent, principled, and philosophically rich foundation for criminal punishment that aligns with many contemporary objectives of secular penal systems. Islamic criminal law is grounded in divine legitimacy and emphasises the principles of unwavering justice, impartial application, and the protection of the five essential values (*ḍarūriyyāt al-khams*): religion, life, intellect, lineage, and property. Although specific *Sharia* punishments are often perceived as severe, their severity functions within a moral-legal system designed to uphold human dignity, discourage harmful behaviour, and preserve social stability.[26]

Contemporary statutory systems employ a combination of primary, secondary, and supplementary penalties, including imprisonment, financial sanctions, probation, community restrictions, and public deterrence mechanisms. This study demonstrates that many of these modern punitive approaches have precedents in Islamic penal philosophy, whether through *taʿzīr* measures, consequential penalties (e.g., denial of inheritance), or supplementary punishments like exile.[27] The comparative analysis suggests that *Sharia* is not antithetical to modern legal developments; instead, it provides a robust moral framework that can accommodate legal reform while maintaining fidelity to its ethical principles. *Sharia*'s flexibility in *taʿzīr*, along with its commitment to proportionality, justice, and the

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[26] Nasruddin Yusuf, Ridwan Jamal, and Misbahul Munir Makka, 'The Significance of Ushul Al-Fiqh and Maqashid Syari'ah Approaches in Reforming Islamic Law in Indonesia: A Critical Study of the Penal Code or Another Topic', *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum* 58, no. 2 (December 2024): 389–417, https://doi.org/10.14421/ajish.v58i2.1450.

[27] Muhammad Fuad Zain and Ahmad Zayyadi, 'Measuring Islamic Legal Philosophy and Islamic Law: A Study of Differences, Typologies, and Objects of Study', *El-Aqwal : Journal of Sharia and Comparative Law*, 2 January 2023, 1–12, https://doi.org/10.24090/el-aqwal.v2i1.7472.

protection of society, provides meaningful guidance for contemporary legal systems grappling with rising crime rates, inconsistent sentencing, and moral fragmentation.[28]

Accordingly, this research recommends that contemporary legal reform—particularly in Muslim-majority contexts—should draw upon the objective spirit of *Sharia*, emphasising impartial justice, removal of discriminatory exemptions, and the implementation of effective deterrent-based penalties. Such an approach would enable modern systems to incorporate the philosophical strengths of Islamic penal law while maintaining compatibility with international human rights standards and contemporary legal expectations.

Table 1: Islamic *Sharia* and Positive Law Comparative

Feature	Islamic *Sharia*	Positive Law
Source of Legitimacy	Divine (Qur'an, Sunnah)	Legislative/Judicial
Punishment Types	*Ḥudūd*, *Qiṣāṣ*, *Taʿzīr*	Primary, Alternative, Secondary
Objectivity	Status-blind, fixed principles	Flexible, often status-sensitive
Primary Goals	Deterrence, justice, moral reform	Reform, deterrence, human rights
Flexibility	High in *taʿzīr*	High in sentencing discretion

Source: author's interpretation

The table highlights the fundamental differences between Islamic *Sharia* and Positive Law in terms of legitimacy, sanction structure, and underlying penal philosophy. Islamic *Sharia* derives its authority from divine sources—the Qur'an and Sunnah—and classifies punishments into *ḥudūd*, *qiṣāṣ*, and *taʿzīr*, emphasising objectivity and justice regardless of social status. Its primary aims include crime deterrence, the establishment of justice, and moral reform, with flexibility primarily manifested in the domain of *taʿzīr*. In contrast, Positive Law obtains its legitimacy from legislative and judicial institutions and categorises punishments into primary, alternative, and secondary sanctions. This system tends to be more adaptable and sensitive to social context, prioritising offender

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[28] Abdul Mujib, 'Philosophy and Methodology In Islamic Law: Pendekatan Sistem Terhadap Teori Hukum Islam', *Jurnal Masharif Al-Syariah: Jurnal Ekonomi dan Perbankan Syariah* 3, no. 2 (October 2018), https://doi.org/10.30651/jms.v3i2.2089.

rehabilitation, human rights protection, and deterrence. The flexibility of Positive Law is reflected in the broad judicial discretion available during sentencing, enabling the law to adapt to evolving social needs and contemporary legal developments.

CONCLUSION

This study concludes that Islamic *Sharia* presents a coherent, principled, and ethically grounded framework for criminal punishment that remains highly relevant to contemporary debates on justice and penal reform. Rooted in divine authority and guided by enduring moral values, Islamic penal philosophy emphasises objectivity, proportionality, and universal accountability, ensuring that justice applies equally to all individuals, regardless of their social standing, power, or wealth. Its overarching commitment to protecting the five essential human interests (*al-ḍarūriyyāt al-khams*)—religion, life, intellect, lineage, and property—provides a stable moral foundation that many modern statutory systems, often shaped by political pressures or subjective interpretations, struggle to uphold consistently. Although *ḥudūd* punishments are frequently critiqued from a human rights perspective, this research shows that such critiques often overlook the rigorous safeguards embedded within the Islamic tradition, including strict evidentiary requirements, procedural protections, and a deterrent philosophy aimed at safeguarding public order and moral integrity. Equally important is the flexibility of *taʿzīr*, which allows Islamic law to adapt to changing social contexts, incorporate rehabilitative measures, and reconcile moral accountability with societal welfare. In this respect, Islamic law demonstrates a dynamic capacity for reform that is comparable to, and often more principled than, the discretionary sentencing practices found in modern legal systems.

The comparative analysis further reveals that many contemporary penal concepts—such as alternative sanctions, supplementary penalties, and rehabilitative goals—are not only compatible with *Sharia* but have clear precedents within classical jurisprudence. This alignment highlights the potential for meaningful harmonisation between Islamic criminal law and modern statutory frameworks. Ultimately, the study affirms that a contemporary reassessment of Islamic punishment, when understood holistically rather than through

isolated readings of *ḥudūd*, can significantly enrich global discussions of justice, deterrence, human dignity, and penal philosophy. Looking forward, further research would benefit from exploring how Muslim-majority countries implement *Sharia*-based penal principles within hybrid legal systems, particularly through empirical studies on judicial practice, sentencing patterns, and the real-world application of *taʿzīr*. Comparative work on restorative justice—examining intersections between sulḥ, diyah, and modern reconciliation models—may also offer valuable insights. Additionally, interdisciplinary collaboration with criminology, sociology, and human rights scholarship could deepen understanding of how *Sharia*-informed penal philosophy can contribute to more humane, effective, and culturally grounded approaches to criminal justice in the contemporary world.

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AUTHOR CONTRIBUTIONS STATEMENT

Anis Mashdurohatun contributed to the conceptualisation of the research framework, supervised the overall study design, and provided critical revisions to strengthen the manuscript's theoretical and methodological components. Eid Abed Alhaleem Maslat Harahsheh conducted a comparative analysis of Islamic *Sharia* and secular penal systems, contributing substantial insights to philosophical and jurisprudential discussions. Muhammad Irwan Datuiding handled the legal analysis, data interpretation, and integration of contemporary criminal justice perspectives. Abun Hasbulloh Syambas contributed to the literature review, methodological refinement, and manuscript editing to

ensure academic clarity and coherence. Prasetiyo Adhi Wibowo supported the data collection, structured the research findings, and assisted in finalising the manuscript for publication. All authors read, reviewed, and approved the final version of the article.

CONFLICT OF INTEREST

The authors declare that this research was conducted and prepared without any conflict of interest. Every stage of the study—from its initial formulation to the conclusions—was carried out independently and objectively, with no financial, institutional, or professional influence. All data were obtained voluntarily and analysed in accordance with academic ethical standards. The findings presented in this article accurately reflect the authors' analysis and are free of external intervention, ensuring the study's integrity and credibility.

AI USAGE STATEMENT

AI tools were used solely for language editing and formatting. All ideas, analyses, interpretations, and conclusions are entirely the authors' own, and all AI-assisted outputs were reviewed to ensure academic integrity.

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