

The Objectives of the Penal System in Islamic Jurisprudence

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Abstract:

This study examines the objectives of the penal system in Islamic jurisprudence through a maqasid-based analytical approach. It argues that punishment in Islamic law is not an end in itself and is not founded on the mere infliction of pain. Its central purposes are the protection of essential interests, the prevention of crime, the removal of harm, the preservation of public order, the realization of justice, and the rehabilitation of offenders whenever rehabilitation is possible. The study also explains the principles of legality, proportionality, individual criminal responsibility, procedural fairness, and the protection of victims. It distinguishes between hudud, qisas and diyah, and ta'zir, while emphasizing that each category operates within a framework of legal authority and evidentiary safeguards. The analysis shows that the flexibility of ta'zir enables the legitimate authority to respond to new forms of criminality and to adopt sanctions that are appropriate to the offence, the offender, and the interests of society. Contemporary international standards on legality, humane treatment, non-custodial measures, rehabilitation, and restorative justice are used for limited comparative purposes. The study concludes that the Islamic penal system combines deterrence with mercy, social protection with individual dignity, and accountability with reintegration. Its effective application requires sound legislation, independent adjudication, qualified institutions, and a continuing commitment to the higher objectives of Sharia.

Keywords: Islamic criminal law; maqasid al-Shariah; punishment; proportionality; deterrence; rehabilitation; social protection; restorative justice.

Introduction

Crime has existed throughout the history of human society. It accompanied the earliest human beings while they were still adapting to communal life. Punishment, including punishment in the Hereafter, followed soon afterward and may have been proportionate to the offence or even more severe. The Qur'an confirms the early appearance of criminal conduct in the story of Adam's two sons: "Relate to them in truth the story of Adam's two sons. Each offered a sacrifice, and it was accepted from one but not from the other. The latter said, 'I will surely kill you.' The former replied, 'Allah accepts only from those who are mindful of Him'" (Qur'an 5:27). In a hadith, Abd Allah reported that the Prophet, peace and blessings be upon him, said: "No soul is wrongfully killed without the first son of Adam bearing a share of its blood, because he was the first to institute killing."¹ Both texts condemn the unlawful taking of human life. Allah has honored the human person, granted the blessing of existence, and prohibited the destruction of life without lawful justification.

¹ Ibn Abi Shaybah, *Al-Musannaf*, vol. 7, p. 269.

The penal system is one component of a wider moral, social, and legal order. Islamic law does not begin with punishment. It begins with faith, education, family responsibility, social solidarity, lawful economic relations, and the cultivation of conscience. Penal intervention becomes necessary when preventive institutions fail and when protected interests are seriously violated. It therefore operates as a final legal response within a broader system that seeks to promote benefit and prevent harm.

A maqasid-based analysis is especially useful in this field. The maqasid of Sharia refer to the purposes, values, and interests that legal rulings seek to realize. Classical and contemporary scholars explain that these purposes include the preservation of religion, life, intellect, lineage or family, property, dignity, justice, and social order. They also include the removal of hardship and the prevention of corruption. The penal rules must therefore be read within the whole legal system rather than as isolated commands.²

Research Problem and Questions

Research Problem: What objectives underlie the legislation of punishments in Islamic jurisprudence, and why have human societies considered punishment necessary? How can the penal system protect society without reducing justice to retaliation or neglecting the dignity and possible rehabilitation of the offender?

The study addresses the following questions: What is the relationship between punishment and the higher objectives of Sharia? How do legality and proportionality restrict penal power? What is the role of prevention, deterrence, rehabilitation, and social reintegration? How are the interests of victims and society reconciled with mercy toward the offender? Finally, what contribution can the Islamic jurisprudential framework make to contemporary debates on penal policy?

Objectives, Methodology, and Significance of the Study

The study has five objectives. First, it identifies the principal objectives of punishment in Islamic jurisprudence. Second, it explains the relationship between the gravity of an offence and the severity of its sanction. Third, it clarifies the preventive and rehabilitative functions of penal measures. Fourth, it highlights the protection of victims, public security, and human dignity. Fifth, it presents a limited comparison with contemporary international criminal-justice standards in order to show areas of convergence without claiming identity between different legal traditions.

The study adopts a descriptive and analytical method. It draws on Qur'anic texts, Prophetic traditions, works of Islamic jurisprudence, studies of criminal law, and selected international instruments. The comparative dimension is functional rather than historical. It does not attempt to derive Islamic rules from international law. Instead, it compares the purposes served by selected rules, such as legality, proportionality, non-custodial measures, humane treatment, and rehabilitation.

The subject is significant because the legitimacy of punishment cannot be evaluated only by the existence of a legal text. A sound penal policy must also consider the purpose of the sanction, the harm it seeks to prevent, the interests it protects, and the safeguards that limit its use. An objectives-based approach helps avoid two opposite errors: excessive severity that ignores justice and dignity, and excessive leniency that neglects victims, public safety, and the rule of law.

² See Ahmad al-Raysuni, *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law* (International Institute of Islamic Thought, 2005).

Preliminary Conceptual Framework

1. Punishment within the Structure of Islamic Criminal Law

Islamic jurisprudence generally classifies penalties into three broad categories. Hudud are sanctions connected with offences whose basic definition and punishment are established by the revealed texts. Qisas and diyah concern offences against the person, particularly homicide and bodily injury, and give an important place to the rights of the victim or the victim's family. Ta'zir includes discretionary sanctions for conduct that is prohibited but is not assigned a fixed hadd or qisas penalty. This classification is not merely technical. It reflects differences in the nature of the protected interest, the authority to prosecute, the availability of pardon, and the scope of judicial discretion.

Ta'zir is particularly important for contemporary penal policy because it allows the legitimate authority to address changing forms of criminality. Cybercrime, complex financial offences, organized criminal activity, environmental harm, and new forms of exploitation may require detailed statutory regulation and specialized sanctions. The objectives of Sharia guide this regulatory work by requiring that new offences and penalties protect genuine interests, avoid arbitrariness, and remain proportionate to the harm involved.

2. The Maqasid-Based Foundation of Penal Legislation

The higher objectives of Sharia provide a framework for understanding why conduct is criminalized and why punishment is imposed. Protection of life supports the prohibition of homicide and serious violence. Protection of property supports the criminalization of theft, fraud, and unlawful appropriation. Protection of intellect supports rules against conduct that destroys rational capacity or exposes society to serious impairment. Protection of family and dignity supports the prohibition of sexual violence, false accusation, exploitation, and attacks on honor. Protection of public order supports measures against organized violence, terrorism, and conduct that makes ordinary social life unsafe.

The maqasid framework also limits punishment. A sanction that destroys a protected interest without necessity, exceeds the gravity of the offence, or is imposed without reliable proof conflicts with the very purposes that justify penal law. Ibn Ashur treated order, equality, freedom, and rights as objectives that help Islamic law respond to changing social conditions.³ Auda likewise argues that maqasid reasoning must be holistic, multidimensional, and directed toward the effective realization of justice and human welfare.⁴

First: Legality, Legal Certainty, and Individual Responsibility

Crime necessarily causes harm. Offences must therefore be expressly defined by law so that criminalization does not expand without limit. Otherwise, penalties may proliferate, disturb society, and obstruct ordinary life through fear of arbitrary punishment. The applicable maxim is: “No crime and no punishment without a legal provision.” This principle is fundamental in both divine and positive legal systems. Islamic law observes it with particular care in hudud offences because of their gravity and the severity of their penalties.

The Qur'anic principle that punishment does not precede authoritative notification is expressed in the verse: “We never punish until We have sent a messenger” (Qur'an 17:15). The verse has a theological

³ Muhammad al-Tahir Ibn Ashur, *Treatise on Maqasid Al-Shariah*, trans. Mohamed El-Tahir El-Mesawi (International Institute of Islamic Thought, 2006).

⁴ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought, 2008).

context, but jurists also draw from it a broader commitment to notice, proof, and the rejection of arbitrary liability. Modern criminal law expresses a related rule through legality, non-retroactivity, and the requirement that the more lenient penalty apply when the law changes in the offender's favor. Article 15 of the International Covenant on Civil and Political Rights is a clear contemporary formulation of these guarantees.⁵

Positive laws have also adopted this principle. Legislative provisions “define and exclusively enumerate all crimes. No other legal provisions may share this function. Criminalization and punishment are therefore confined to the Penal Code and its supplementary laws. Those laws must define offences precisely and state their penalties. This exclusivity gives rise to a fundamental doctrine known as the principle of legality of crimes and punishments. Under this principle, only a legal provision may create an offence, and only a legal provision may prescribe a penalty.”⁶

Legality requires more than a written rule. The rule must be sufficiently clear to guide conduct and constrain public authorities. Criminal provisions should not be drafted in language so vague that ordinary behavior can be punished according to changing preferences. The authority responsible for investigation and adjudication must also act within its legal competence. Punishment is part of public order and may not be imposed by individuals, private groups, or institutions that lack lawful authority. Individual responsibility is another essential limitation. A person may not be punished for the conduct of another. The Qur'an repeatedly states that no bearer of burdens bears the burden of another. This principle rejects collective punishment, inherited criminal liability, and retaliation against families or communities for an individual offence. It also requires proof of personal participation and a legally recognized form of responsibility.

The principle of equality embodies justice because no one other than the killer is subjected to qisas. It avoids punishing an innocent person who committed no offence, as occurs when collective punishment is imposed for an individual crime. In addition to its grave injustice, collective punishment encourages wider revenge and escalating aggression. The prolonged wars among Arab tribes before Islam provide clear evidence of this danger. The individualization of punishment, by contrast, is closer to justice and becomes complete justice when its substantive and procedural conditions are satisfied.

Second: Proportionality between Punishment and the Harm Caused by the Offence

The classification of offences in Islamic jurisprudence corresponds to the nature and degree of harm caused to protected interests. The following statement illustrates this principle: “The Wise Lawgiver observed proportionality between punishment and crime in hudud and qisas offences, as previously explained. It remains to examine expiatory offences and the applications of the principle of proportionality.”⁷ Proportionality is therefore not an external modern addition. It is embedded in the differentiated structure of Islamic penalties.

This principle is clearly established in the Qur'an, the Prophetic Sunnah, and juristic reasoning. It also applies to unlawful acts falling below the level of major crimes, whose discretionary penalties jurists call ta'zir. Whether they take the form of hudud, qisas, or ta'zir, sanctions vary according to the

⁵ International Covenant on Civil and Political Rights, adopted 16 December 1966, art. 15.

⁶ Abd Allah Sulayman, *Sharh Qanun al-'Uqubat: al-Qism al-'Amm* [Commentary on the Penal Code: General Part] (Dar al-Huda, Algiers, 1991), p. 61.

⁷ Al-Mabadi' al-Shar'iyyah fi Ahkam al-'Uqubat fi al-Fiqh al-Islami [Sharia Principles Governing Punishments in Islamic Jurisprudence] (Dar al-Gharb al-Islami, Lebanon, 1986), p. 432.

seriousness of the offence. As one authority explains: “It is undoubtedly known that unlawful killing is a graver offence than other acts. For this reason, feeding the poor is not prescribed as expiation for it ... since homicide is the graver offence.”⁸

Proportionality has several dimensions. The first is proportionality between the legal value protected and the maximum severity of the sanction. The second is proportionality between the concrete harm in a particular case and the penalty imposed. The third is proportionality between the offender's degree of intention, participation, and responsibility and the resulting sentence. The fourth is proportionality in enforcement, which requires that comparable cases be treated comparably and that relevant differences be taken into account.

A proportional sanction also avoids unnecessary collateral harm. The punishment of an offender should not become an indirect punishment of innocent dependents. Imprisonment, financial penalties, occupational restrictions, and public disclosure can have serious consequences for families. These consequences do not automatically make a sanction unlawful, but they should be considered when the law allows alternatives that can achieve deterrence and accountability with less social damage.

The intended proportionality between the committed offence and the subsequent punishment promotes equality in its broad sense. It restrains offenders, addresses crime, and protects society. It helps prevent offences, removes their effects after they occur, and reduces recidivism. Any disregard of proportionality weakens the response to crime and contributes little to social security. In his commentary on the verse, “There is life for you in retribution, O people of reason, so that you may become mindful” (Qur'an 2:179), Rashid Rida explains that equality in punishment protects wholesome life and prevents aggression. He emphasizes that qisas is a means of preserving life rather than an objective in itself.⁹

The principle also supports a graduated range of ta'zir sanctions. The judge or legislator should not move immediately to the harshest measure when a less restrictive response can achieve the legitimate objective. Contemporary non-custodial standards similarly require a balance among the rights of offenders, the rights of victims, public safety, the seriousness of the offence, and the purposes of sentencing.¹⁰ This comparison strengthens the case for carefully designed alternatives, especially for minor and non-violent offences.

Third: Prevention of Crime and Removal of Harm

1. Prevention before the Offence

Anyone who studies the penal system in Islamic jurisprudence across its various schools observes that legislation rests on sound belief, upright morals, and responsible social relations. Acts of worship and obedience educate the individual within a cooperative community. They cultivate a living conscience that restrains unlawful desires and conduct. Islam therefore established a system in which moral education and the just distribution of rights precede the use of penal sanctions.

One scholar writes that Islamic legislation derives from a divine source and organizes rights according to justice and truth. Before establishing punishments, Islam focused on educating the Muslim individual, creating an internal authority rooted in conscience, and using worship to nourish moral

⁸ Al-Mabadi' al-Shar'iyyah fi Ahkam al-'Uqubat fi al-Fiqh al-Islami, cited above, p. 432.

⁹ Muhammad Rashid Rida, Tafsir al-Manar [Al-Manar Exegesis] (Egyptian General Book Organization, Egypt, 1990), vol. 2, p. 107.

¹⁰ United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), General Assembly Resolution 45/110 (1990), rules 1.4, 2.3, 3.2, and 8.1.

supervision. It then distributed rights in a just manner and prescribed deterrent sanctions for those who departed from lawful conduct.¹¹ This sequence is important because it places punishment within a preventive social policy.

Sound upbringing is founded on sound ideas, correct worship, and the ethics of responsible citizenship. It gives a person the social values needed for effective integration. It also creates confidence that rights can be obtained through lawful institutions rather than through violence or private retaliation. Social values orient individuals toward shared objectives, define roles, and contribute to the continuity and stability of the social order. Persons guided by such values are inclined toward cooperation, assistance, flexibility, and concern for others.¹²

Crime prevention also has material and institutional dimensions. Poverty, exclusion, family breakdown, addiction, educational failure, and the absence of lawful opportunities do not remove individual responsibility. They may, however, increase vulnerability to criminal behavior. A comprehensive penal policy should therefore combine legal prohibition with social support, early intervention, accessible education, family protection, mental-health services, and fair opportunities for lawful work.

2. Deterrence and the Removal of Harm after the Offence

When an offence occurs, penal intervention seeks to stop continuing harm, protect potential victims, affirm the authority of law, and prevent repetition. Punishment is the means through which these purposes may be achieved. It is not itself the final objective. As one specialist in criminal law explains, pain is not the intended end of punishment. It is a means of protecting the interests of the community and consolidating social order. The immediate effects include preventing the offender from reoffending, often described as special prevention, and discouraging others from imitation, described as general prevention.¹³

General deterrence should not be based on fear alone. It also depends on the credibility and fairness of institutions. A severe penalty that is rarely applied, selectively enforced, or imposed after an unfair process may weaken rather than strengthen respect for law. Certainty, consistency, transparency, and prompt adjudication often contribute more to lawful conduct than the abstract severity of a punishment.

Special deterrence must be tailored to the offender and the causes of the offence. An impulsive first offender, an organized professional criminal, a person acting under addiction, and an offender who abuses a position of trust present different risks and require different interventions. The individualization of *ta'zir* allows the competent authority to consider these differences, provided that discretion is governed by law and subject to review.

Fourth: Protection of Society, Victims, and Public Security

Mercy is frequently discussed when attention turns to an offender after a crime. Compassion may be requested on the ground that the offender is also a victim of adverse social conditions. This perspective can reveal relevant circumstances, but it must not erase the victim or the community, both

¹¹ Muhammad Faruq al-Nabhan, *Mabahith fi al-Tashri' al-Jina'i al-Islami* [Studies in Islamic Criminal Legislation] (Dar al-Qalam, Kuwait, 1977), p. 11.

¹² Sayyid Ali al-Hasaniyya, *Dawr al-Qiyam al-Ijtima'iyyah fi al-Wiqayah min al-Jarimah* [The Role of Social Values in Crime Prevention] (Master's thesis, Naif Arab University, 1426 AH), p. 20.

¹³ Ali al-Jundi, *Al-Mawsu'ah al-Jina'iyyah* [The Criminal Encyclopedia] (Dar al-'Ilm lil-Jami', Lebanon, 1986), p. 8.

of which have suffered harm. A complete account of mercy therefore includes the protection of those exposed to violence, exploitation, theft, intimidation, and repeated offending.

The Qur'anic verse concerning the punishment for zina warns believers not to allow misplaced pity to obstruct the enforcement of a lawfully established sanction (Qur'an 24:2). Abu Zahra explains that mercy is not identical to unrestricted tolerance or emotional leniency. Leniency toward persons who attack others may conceal severe cruelty toward the victims of their conduct. Mercy must therefore be interpreted together with justice and the protection of the vulnerable.¹⁴ The Prophetic statement, "Whoever does not show mercy will not be shown mercy," confirms the moral centrality of mercy without converting it into a reason for abandoning accountability.¹⁵

The concept of mercy is inseparable from justice. An assessment of crime must go beyond the hardship imposed on the offender and consider the harm inflicted on the victim and society. Abu Zahra describes justice as the first expression of Prophetic mercy and argues that justice itself is comprehensive mercy. The Qur'an states that the messengers were sent with clear proofs, the Book, and the balance so that people might uphold justice (Qur'an 57:25). The purpose of justice is therefore not opposed to mercy. It is one of its most reliable forms.¹⁶

Victims have interests in safety, recognition, information, participation, reparation, and protection against intimidation. These interests differ from one offence to another. In qisas and diyah, the victim or the victim's family has a defined legal position that may include a choice among retribution, compensation, and pardon under the applicable conditions. This structure gives the victim a role while keeping the process within legal authority and preventing private vengeance.

Restorative justice offers a useful contemporary point of comparison. It focuses on the harm caused by crime, the needs of victims, offender accountability, reparation, and the safe participation of affected persons. It is not suitable for every case and should never expose victims to pressure or renewed harm. Properly designed programmes require informed consent, procedural safeguards, qualified facilitators, and judicial oversight. The UNODC handbook presents restorative justice as a complement or alternative that can support victim participation and the repair of harm in appropriate cases.¹⁷

The protection of society also requires attention to serious and organized criminality. Offences that spread fear, destabilize institutions, or attack large groups can undermine the conditions of ordinary life. Islamic jurisprudence treats security as a public interest of high importance. The law must therefore enable effective investigation, prosecution, and prevention, while refusing torture, collective liability, arbitrary detention, or punishment without proof. Security and legality are mutually reinforcing rather than mutually exclusive.¹⁸

Fifth: Rehabilitation, Reintegration, and the Individualization of Sanctions

Some modern legal systems have adopted more effective penal policies after examining the actual operation of punishments, the characteristics of individual offenders, and the social environments in which crime occurs. Their objective is to develop interventions that reduce future offending. This

¹⁴ Muhammad Abu Zahra, *Al-Jarimah [Crime]* (Dar al-Fikr al-Arabi, Egypt, 1985), p. 7.

¹⁵ Ibn Abi Shaybah, *Al-Musannaf* (Maktabat al-Rushd, Riyadh, 1409 AH), vol. 5, p. 214.

¹⁶ Muhammad Abu Zahra, *Al-Jarimah [Crime]*, cited above, p. 8.

¹⁷ United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programmes*, 2nd ed. (United Nations, 2020).

¹⁸ *Al-Mabadi' al-Shar'iyyah fi Ahkam al-'Uqubat fi al-Fiqh al-Islami*, p. 365.

orientation has encouraged education, vocational training, psychological support, treatment for addiction, and preparation for social reintegration. Such measures are beneficial when they remain consistent with lawful accountability and the protection of society.

A study of Algerian penal policy notes the development of treatment programmes designed to address factors associated with offending, reduce criminal dangerousness, and prepare the offender to become a constructive member of society who respects the law.¹⁹ The essential idea is that the sanction should not merely isolate the offender. It should also create conditions for a lawful return to society whenever the nature of the offence and the level of risk permit this objective.

Rehabilitation is consistent with the maqasid of preserving dignity, intellect, family, property, and social order. An offender who acquires education, work skills, emotional regulation, and a realistic reintegration plan is less likely to return to conduct that harms these interests. Rehabilitation should therefore begin at the earliest appropriate stage and should continue after release through supervised support, family involvement, employment assistance, and community-based services.

International standards provide a useful comparative framework. Article 10(3) of the International Covenant on Civil and Political Rights states that the essential aim of the penitentiary system is the reformation and social rehabilitation of prisoners.²⁰ The Nelson Mandela Rules also link imprisonment with the protection of society, the reduction of recidivism, and preparation for reintegration. They require humane treatment and respect for the inherent dignity of prisoners.²¹ These principles correspond with the view that punishment should remain connected to reform and not become purposeless suffering.

Non-custodial measures can contribute to rehabilitation when imprisonment is unnecessary. They may include warnings, conditional discharge, community service, financial sanctions, supervision, treatment, restrictions on certain activities, or combinations of these measures. Their use must be authorized by law, proportionate to the offence, and subject to safeguards. They are especially relevant where detention would disrupt education, employment, family care, or treatment without producing a corresponding public-safety benefit.

Reintegration requires society to accept a distinction between accountability and permanent exclusion. A person who has completed a sentence should not remain indefinitely outside lawful social participation unless a continuing restriction is necessary and legally justified. Excessive stigma can increase unemployment, isolation, and recidivism. A maqasid-based policy therefore supports the careful removal of unnecessary barriers while maintaining legitimate protections for vulnerable persons and sensitive professions.

Sixth: Procedural Justice and Limits on Penal Power

The objectives of punishment cannot be separated from the procedures used to establish criminal responsibility. A substantively appropriate penalty becomes unjust if it follows an unreliable investigation, coerced confession, denial of defense rights, biased adjudication, or insufficient proof.

¹⁹ Othmania Lakhmisi, *Al-Siyasah al-'Iqabiyyah fi al-Jaza'ir wa al-Mawathiq al-Dawliyyah li-Huquq al-Insan* [Penal Policy in Algeria and International Human Rights Instruments] (PhD dissertation, Department of Law, University of Biskra, Algeria, 2008), p. 2.

²⁰ International Covenant on Civil and Political Rights, art. 10(3).

²¹ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), General Assembly Resolution 70/175 (2015), rules 1, 4, and 87-90.

Procedural justice is therefore part of the maqasid of the penal system, not a secondary administrative matter.

The presumption of innocence protects individuals from punishment before guilt is lawfully established. The right to know the accusation, to present a defense, to examine evidence, to have access to qualified legal assistance, and to obtain review by a higher authority helps prevent irreversible error. These safeguards also strengthen public confidence in judgments and distinguish lawful punishment from revenge or political coercion.

The authority to punish belongs to the legitimate state and its competent institutions. Even where a victim possesses a private right, enforcement must proceed through lawful procedures. This condition protects the victim, the accused, and society. It prevents escalation, ensures that evidence is tested, and places coercive power under institutional responsibility.

Judicial discretion in ta'zir should be broad enough to respond to individual circumstances but not so broad that outcomes become unpredictable. Legislation can guide discretion through sentencing purposes, aggravating and mitigating factors, ranges of sanctions, written reasons, appellate review, and periodic evaluation of sentencing practices. These controls promote equality while preserving the flexibility that is one of the principal strengths of ta'zir.

Human dignity remains relevant throughout investigation, trial, punishment, and reintegration. The offender does not lose all rights by committing a crime. The state may restrict liberty and impose lawful burdens, but it may not use punishment as a license for humiliation, torture, neglect, or arbitrary discrimination. Respect for dignity also benefits society because institutions that normalize cruelty tend to weaken the moral authority of law.

Contemporary Relevance and Policy Implications

The objectives identified in this study can guide contemporary legislation. New offences should be created only where conduct causes serious and demonstrable harm that cannot be adequately addressed through non-penal regulation. Penal law should remain a necessary instrument rather than the first response to every social problem. Overcriminalization disperses institutional resources, increases unequal enforcement, and may reduce respect for law.

Sentencing policy should clearly identify the purpose of each sanction. A penalty may seek incapacitation, deterrence, reparation, rehabilitation, or a combination of these aims. The choice should reflect the offence and the offender. Legislatures and courts should also examine whether the sanction produces unintended harms that exceed its expected benefit.

Penal institutions should be evaluated by outcomes rather than formal compliance alone. Relevant indicators include recidivism, victim safety, access to treatment, educational achievement, employment after release, prison conditions, consistency in sentencing, and the use of lawful alternatives to detention. Evaluation does not replace moral and legal reasoning, but it helps determine whether a policy actually achieves its stated objective.

Juvenile justice requires particular care. Children and adolescents have developing capacities and a strong potential for reform. Responses should prioritize education, family support, diversion, and reintegration while protecting victims and public safety. Detention should be exceptional and adapted to age and legal status. This approach is consistent with the objectives of prevention and reform and with the special treatment of juvenile offenders recognized in international standards.

Victim-sensitive policies should provide information, protection, referral services, compensation mechanisms, and safe opportunities for participation. The United Nations Declaration of Basic

Principles of Justice for Victims of Crime and Abuse of Power recognizes access to justice, fair treatment, restitution, compensation, and assistance as important components of a legitimate justice system.²² These principles can enrich an objectives-based penal policy without displacing the doctrinal structure of Islamic jurisprudence.

Restorative programmes may be particularly useful in selected juvenile, family, property, and community disputes when participation is voluntary and power imbalances are carefully managed. The Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters emphasize legality, consent, safety, and procedural fairness.²³ Such programmes should supplement rather than replace prosecution when serious public interests require formal adjudication.

Findings

- The Islamic penal system is governed by disciplined Sharia objectives that are both legal and humanitarian.
- Punishment is a means of protecting essential interests. It is not an independent objective and must not be reduced to the infliction of pain.
- Legality, legal certainty, individual responsibility, and procedural fairness restrict the authority to criminalize and punish.
- Proportionality requires attention to the protected interest, the actual harm, the offender's responsibility, and the social effects of the sanction.
- Prevention begins before the offence through education, moral formation, social justice, and effective institutions.
- Deterrence and incapacitation remain legitimate objectives, especially where serious violence or organized criminality threatens public security.
- Mercy must include victims and society. It is realized through justice, lawful accountability, and the prevention of further harm.
- Rehabilitation and reintegration are consistent with maqasid reasoning and are particularly important within ta'zir and custodial policy.
- Victim participation, reparation, and restorative processes can support the removal of harm when supported by consent and procedural safeguards.
- Contemporary penal policy should combine doctrinal fidelity with institutional competence, empirical evaluation, and respect for human dignity.

Recommendations

- Criminal legislation should define offences and penalties precisely and should review vague or unnecessarily broad provisions.
- Sentencing laws should state the purposes of punishment and provide structured criteria for proportionality and individualization.
- Judicial and prosecutorial training should include maqasid al-Shariah, evidentiary safeguards, victim protection, and contemporary penal policy.

²² United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Resolution 40/34 (1985), annex.

²³ United Nations Economic and Social Council, Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, Resolution 2002/12 (2002), annex.

- Non-custodial measures should be expanded for suitable minor and non-violent offences, with clear eligibility rules and effective supervision.
- Prison programmes should provide education, vocational training, psychological and addiction treatment, family contact, and release planning.
- Victim-support services and compensation mechanisms should be strengthened, and restorative justice should be used only through safe and voluntary procedures.
- Penal policies should be periodically evaluated through reliable indicators, including recidivism, victim safety, prison conditions, and reintegration outcomes.
- Further research should examine the application of maqasid-based penal policy to cybercrime, environmental crime, juvenile justice, and alternatives to imprisonment.

Conclusion

The penal system in Islamic jurisprudence has disciplined and coherent objectives. It seeks to preserve essential interests, prevent crime, remove harm, protect society, uphold justice, and reform the offender whenever reform is possible. These purposes are reflected in the principles of legality, proportionality, individual responsibility, and procedural fairness. They are also reflected in the distinction among hudud, qisas and diyah, and ta'zir.

A correct understanding of punishment must avoid both uncontrolled severity and ineffective leniency. Severity without justice contradicts the objectives of Sharia, while leniency that abandons victims and exposes society to repeated harm is not genuine mercy. The proper balance is achieved through lawful authority, reliable proof, proportionate sanctions, humane enforcement, victim protection, and serious efforts toward rehabilitation and reintegration.

The contemporary value of this framework lies in its capacity to connect enduring principles with changing forms of crime and punishment. Maqasid reasoning does not eliminate legal texts or juristic method. It clarifies their purposes and guides responsible application. A strong penal system is therefore not measured only by the punishments it can impose. It is measured by the justice it secures, the harm it prevents, the dignity it preserves, and the social peace it helps restore.

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